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AN ANALYSIS OF THE RELATION BETWEEN
CHILDREN'S RIGHTS AND CLIMATE CHANGE

YOUTH-LED CLIMATE LITIGATION AND
INTERGENERATIONAL EQUITY

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Abstract

Climate change is one of the biggest challenges to the fulfilment of children's rights, making children one of the most vulnerable groups to climate-related impacts and diseases. Children are less equipped to deal with climate-related shocks and stresses. They are more likely to be injured, experience psychological trauma, and suffer health complications due to impacts on water and food security.

Consequently, the climate crisis is leading to a child's rights crisis and is undermining the effective enjoyment of the rights enshrined in the Convention on the Rights of the Child (CRC), including the best interest of the child (Art. 3), the right to survival and development (Art. 6), the right to be heard (Art. 12), the right to health (Art. 24), the right to an adequate standard of living (Art. 27), among others. Additionally, recognising children's rights is not overly featured in key international, regional, and national decision-making frameworks related to climate change. The UN Committee on the Rights of the Child only receives complaints from children after they have exhausted all channels of redress in their countries, meaning that children have to navigate a lengthy and expensive legal process. Additionally, the CRC, the United Nations Framework Convention on Climate Change (UNFCCC), and the Paris Agreement do not provide child-sensitive complaint mechanisms, and the UNFCCC does not provide for a procedure for people (children included) to seek redress for injury caused by climate change.

Despite this, children and young people actively engage in climate activism and are more aware of the intergenerational impact of climate change and its implications for future generations. In youth-led climate litigation, young activists ask states to be held accountable for their lack of action and adopt strong mitigation measures. Children and their representatives advocate for the protection of the rights of future generations, and argue that climate change is an "abdication of one generation's responsibility to the next, violating the principles of intergenerational equity", a concept that can be defined as the idea that "long-term interests of future generations are taken into due account in the decisions made by the present generation and, thus, the latter does not compromise the former's ability to meet their own needs".

In summary, with this thesis I intend to analyse the relationship and the interactions between children's rights and climate change, focusing on youth-led climate litigation and the protection of the rights and interests of future generations and, in doing so, ensure intergenerational equity. To do so, I will try to answer the following research question: "Considering the developments and challenges of children's rights and climate change, how are children and young people ensuring the protection of the rights of future generations and intergenerational equity through climate litigation?"

Keywords: Children's Rights; Climate Change; Future Generations; Climate Litigation; Intergenerational Equity; Youth-led Climate Litigation.

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Acronyms

CRC – Convention on the Rights of the Child

UNFCCC – United Nations Framework Convention on Climate Change

UNICEF – United Nations Children’s Fund

IPCC – Intergovernmental Panel on Climate Change

UN – United Nations

ICCPR – International Covenant on Civil and Political Rights

ICESCR – International Covenant on Economic, Social and Cultural Rights

OHCHR – Office of the United Nations High Commissioner for Human Rights

HRC – United Nations Human Rights Council

UDHR – Universal Declaration of Human Rights

ECHR – European Convention on Human Rights

ECtHR – European Court of Human Rights

IACtHR – Inter-American Court of Human Rights

OPIC – Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure

SDGs – Sustainable Development Goals

UNGA – United Nations General Assembly

ACHR – American Convention on Human Rights

CIEL – Center for International Environmental Law

ENOC – European Network of Ombudspersons for Children

CoE – Council of Europe

ACHPR – African Charter on Human and Peoples' Rights

IACHR – Inter-American Commission on Human Rights

CESCR – United Nations Committee on Economic, Social and Cultural Rights

UNESCO – United Nations Educational, Scientific and Cultural Organization

ACHPR – African Commission on Human and Peoples' Rights

EU – European Union

WCED – United Nations World Commission on Environment and Development

NGO – Non-Governmental Organisation

FFF – Fridays for Future

COP – UN Climate Change Conference

GLAN – Global Legal Action Network

Introduction

The climate crisis is viewed by many scholars as one of the biggest challenges to human rights, particularly to the fulfilment of children's rights, making children one of the most vulnerable groups to climate-related impacts and diseases (Child Rights Now, 2019: 2). According to the United Nations Children's Fund (UNICEF), the climate crisis is not only a human rights crisis, but also a child's rights crisis and is undermining the effective enjoyment of the rights enshrined in the UN Convention on the Rights of the Child (CRC), including, but not limited to, the right to life, the right to education, the right to the highest attainable standard of health, and the right to express their views and to be heard (UNICEF, 2021: 9-11).

Despite the recognition of children's vulnerability to climate change and environmental harm, children's rights are not overly featured in key international, regional, and national decision-making frameworks related to climate change (Children's Legal Centre Wales, 2021). Additionally, children and young people are not usually recognised as climate activists but rather are perceived as victims, and their participation in court proceedings has been limited to family matters, such as divorce, separation of parents and alternative care (Donger, 2022: 268-269). Yet, in recent years, we have been witnessing a new shift in the paradigm, in which children and young people are actively engaging in climate activism. Through formal and informal climate activism – climate litigation and peaceful marches, protests, and mobilisations, respectively – children and young people are bringing awareness to the consequences climate change and environmental harm have on their rights and to the lack of relevant mitigation and adaptation measures to protect not only the rights of children but also the rights of future generations (Donger, 2022: 264)

Children and young people are aware of the intergenerational impact of climate change and its implications for future generations if measures are not taken soon. Through climate litigation, children and their representatives advocate for the protection of the rights of future generations, arguing that climate change and environmental harm represent an “[...] abdication of one generation's responsibility to the next, violating principles of intergenerational equity [...]” (Child Rights Now, 2019: 2). This concept, argued by some scholars to be one of the most important concepts of the century (Daly, 2023: 134) was defined by Edith Brown Weiss as the idea that the “[...] long-term

interests of future generations are taken into due account in the decisions made by the present generation and, thus, the latter does not compromise the former's ability to meet their own needs." (Sulyok, 2023: 4-5).

Therefore, taking into consideration the importance of ensuring the protection of children's rights in the context of climate change, and bearing in mind the recent trend in youth-led climate litigation and its focus on the principle of intergenerational equity and the protection of the rights and interests of future generations, this thesis will attempt to answer the question "Considering the developments and challenges of children's rights and climate change, how are children and young people ensuring the protection of the rights of future generations and intergenerational equity through climate litigation?", arguing that, despite the challenges and situational barriers of youth-led climate litigation, in which cases are often dismissed and the views and opinions of child and youth climate activists are disregarded, and the lack of a universal definition for the concepts of future generations and intergenerational rights, the impact of the inclusion of intergenerational equity and future generations' rights in youth-led climate litigation can still be positive.

Methodology and Literature Review

The methodology of this research will focus on a literature review related to children's rights and youth-led climate litigation, as well as the rights and interests of future generations and the principle of intergenerational equity. It will focus on existing sources, including academic literature, and reports, among others. Additionally, this research will include the use of relevant case law to provide practical examples regarding the challenges and obstacles of youth-led climate litigation for both children and young people and the unborn generations. Among these challenges are, for example, the impacts of the duration of the process and financial burdens on children and young people; the difficulties in accessing regional or international courts due to the necessity of exhaustion of domestic remedies; and the view of children as victims rather than as active participants in climate justice, and how this affects their right to be heard and the right to participation in climate-related court proceedings.

It is important to note that, while the number of cases taken to courts by children and young people is growing – as of May 2021, 32 climate cases were led by or involved children or youth (Parker *et al.*, 2022) – most of these cases are submitted to national courts. There are notable exceptions, such as *Duarte Agostinho and Others v. Portugal and Others*, submitted to the European Court of Human Rights, and *Sacchi and Others v. Argentina and Others*, a petition submitted under the UN Committee on the Rights of the Child. On the level of regional human rights systems, the Inter-American Court of Human Rights has taken steps to reflect the importance of the right to a healthy environment, releasing an Advisory Opinion in 2017 on the recognition of the right to a healthy environment as a human right and, as of 2023, the Court has been asked to produce another Advisory Opinion on the obligations of states concerning the climate crisis, including the protection of future generations.

Chapter 1, “A Child Rights Approach to Climate Change”, will focus on children's rights in the context of climate change, highlighting how children are one of the most vulnerable groups to climate change and environmental harm. This chapter will develop on regional and international instruments which focus on the protection of children's rights when it comes to the climate crisis, including the recent CRC General Comment No. 26 on children's rights and the environment with a special focus on climate change, and how

children and young people themselves are becoming active participants in climate justice, both through formal and informal activism, such as climate litigation and peaceful marches and movements, respectfully.

Chapter 2, “The Rights of Future Generations in the Context of the Climate Crisis”, will focus on the challenges and obstacles in defining the concept of future generations in the context of climate change, and how this leads to future generations often being excluded from the climate debate. This chapter will also highlight the role of children and young people as both present and future generations and the importance of their role in ensuring the protection of the rights of future generations in youth-led climate litigation.

Chapter 3, “Intergenerational Equity in Youth-Led Climate Litigation” will analyse the emergence and the challenges in defining the principle of intergenerational equity in the context of climate change and its relevance to youth climate activism, especially youth-led climate litigation.

Finally, Chapter 4, “Youth-Led Climate Litigation – Breaking Ground on Climate Activism” will focus on the recent emergence of youth-led climate litigation and how child and youth litigants are also including the protection of the rights and interests of future generations and the principle of intergenerational equity in their court applications. Additionally, this chapter will highlight the challenges and obstacles of climate litigation for children and young people, as well as the influence of present cases in future litigation.

Chapter 1: A Child Rights Approach to Climate Change

1. The Impact of the Climate Crisis on Children and Children's Rights

The impact of environmental harm and climate change is significantly greater on children and young people than on adults, which makes the climate crisis one of the greatest challenges to human rights in general, but particularly to the rights of children (Child Rights Now, 2019: 2). The impact of what the Committee on the Rights of the Child describes as a “triple planetary crisis” – consisting of climate crisis, environmental pollution, and biodiversity – is more threatening to children than adults due to their lack of resources to respond to and cope with environmental harm (Child Rights Now, 2019: 2; Croke *et al.*, 2021: 7; UNICEF, 2021: 19).

It is estimated that 30% of the world's population is below eighteen years old, representing 2.2 billion children, who face severe and long-term impacts on health, development, and well-being, as well as on physical and mental health (Fambasayi and Addaney, 2021: 31; OHCHR, 2017: 3). Children are among the most vulnerable groups negatively impacted by climate change and environmental harm as a result of their age, fewer economic resources, less mobility, and their dependence on adults (Fambasayi and Addaney, 2021: 34). They are more likely to be injured, to experience psychological trauma, or be killed by extreme weather events and natural hazard-related disasters and suffer more health complications due to impacts on water and food security, which can lead to malnutrition and water- and vector-borne diseases, such as malaria and dengue fever (Child Rights Now, 2019: 3-5; OHCHR, 2017: 4-8).

According to new studies on climate change, most national climate pledges are inadequate and will have serious consequences for children and young people (Save the Children, 2021: 7). Climate researchers led by the Vrije Universiteit Brussel found that, under the Paris Climate Agreement pledges, a child born in 2020 will experience, on average, “[...] twice as many wildfires, 2.8 times the exposure to crop failure, 2.6 times as many drought events, 2.8 times as many river floods, and 6.8 times more heatwaves across their lifetimes, compared to a person born in 1960” (Save the Children, 2021: 7).

Furthermore, children's access to key essential services, such as essential education, health and housing services and child protection systems, are negatively affected by

climate change and environmental harm, diminishing their resilience and adaptive capacities (UNICEF, 2021: 11; OHCHR, 2017: 4-8). However, despite bearing the greatest burden of impacts when it comes to climate change and environmental hazards, children are the least responsible for the cause of the problem, and they do not feel the effects of climate change equally (UNICEF, 2021: 20). According to a report by Save the Children, the top 50% of States (when ranked by income) are responsible for 86% of the cumulative CO₂ emissions, and children of low- and middle-income households are disproportionately impacted by losses and damage to health and human capital, land, cultural heritage, indigenous and local knowledge, and biodiversity (Save the Children, 2021: 6).

In a report on the climate crisis and children's rights, UNICEF (2021: 73) introduced the Children's Climate Risk Index, a tool to analyse children's exposure to vulnerability to climate action, composed of two pillars, the first focusing on the exposure to climate and environmental shocks and stresses, and the second on child vulnerability. When analysing the data provided in the document, it can be seen that, out of the 163 countries included in the analysis, 111 have a "medium", "high" or "very high" children's climate risk index (UNICEF, 2021: 79-80).

The climate crisis is harming the children most affected by inequalities and discrimination first and worst (Save the Children, 2021: 22). Climate change and environmental harm can lead to school dropout, child labour and domestic violence, and can cause even more disproportionate impacts on children in already vulnerable situations, such as girls and children discriminated against based on their sexual orientation, gender identity and expression, indigenous children, children with disabilities, displaced children, among others (OHCHR, 2017: 4-8; Save the Children, 2021: 22).

Marginalised children are not only the first and worst affected but are also the least empowered in climate change policy decision-making and action (Child Rights Now, 2019: 5-7). Climate change-related frameworks largely ignore children's right to be heard and the principle of the best interest of the child, which are absent from key policy processes under the United Nations Framework Convention on Climate Change (UNFCCC), and usually lead to an incomplete implementation of States' obligations under the Convention on the Rights of the Child to provide environmental education to

all children (Child Rights Now, 2019: 5-7). This absence also limits the development of child-centred public climate policies and action plans (Child Rights Now, 2019: 3-5).

Furthermore, children are experiencing “eco-anxiety”, which can be described as a feeling of anxiety, angst, and helplessness with the failure of governments to take action against climate change and concern with the lack or slow pace of progress on climate measures (Council of Europe, 2022: 1). Due to the temporal nature of the climate crisis, children and young people are manifesting their concerns over the disproportionate ways they are being and will be impacted by climate change and environmental harm (European Network of Ombudspersons for Children, 2022: 3). Additionally, the Intergovernmental Panel on Climate Change (IPCC), expects that climate-related mental health challenges for children and young people increase in the future (Global Network of Human Rights and the Environment, 2022: 3-4).

A report by Save the Children on the effects of the climate crisis on children’s rights recommends governments and multilateral agencies limit warming to a maximum of 1.5°C above pre-industrial levels – as stated in the 2015 Paris Climate Agreement – and increase their commitments to climate finance for mitigation and adaptation measures, bearing in mind that the climate crisis is a child rights crisis, recognising children as equal stakeholders and key agents of change, and improving social protection systems (Save the Children, 2021: 9; UNFCCC, 2015: 2)

The climate crisis is considered by many to be a child rights crisis (UNICEF, 2021: 17). This means that it is necessary to enforce children’s right to participation and to be heard, and governments should consult them directly and hear their perspectives when developing climate mitigation policies and plans of action (UNICEF, 2021: 17). Additionally, a report of the IPCC outlined that the failure to reduce global warming has already caused irreversible damage to humanity, leading to a disproportionate impact on the health and well-being of children and young people (Daly, 2023: 132-133; European Network of Ombudspersons for Children, 2022: 3). Without adequate mitigation policies, it has been projected that global warming will accelerate towards 3.2°C by the end of the century, and children will be among those most impacted by it (Daly, 2023: 133). It is therefore critical to listen to and respond to the perspectives of all children and young

people concerning climate change and environmental harm and how they impact children's rights (UNICEF, 2021: 20).

2. Children's Rights and the Environment in International and Regional Human Rights Law

The 1989 Convention on the Rights of the Child (United Nations, 1989: 2) defines "child" as "[...] every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier". And while there is no universally agreed international definition of "Youth", the United Nations (2023b) defines the concept as those between the ages of fifteen and twenty-four years.

The rights of children were first codified in the Geneva Declaration of the Rights of the Child in 1924 (Global Network of Human Rights and the Environment, 2022: 5). This necessity to protect and recognise the rights of children was also stated in the Declaration of the Rights of the Child adopted by the United Nations General Assembly in 1959, the Universal Declaration of Human Rights of 1945, the 1966 International Covenant on Civil and Political Rights (Article 24), the 1966 International Covenant on Economic, Social and Cultural Rights (Article 10), and the 1989 Convention on the Rights of the Child (Global Network of Human Rights and the Environment, 2022: 4-5).

The Convention on the Rights of the Child is the most widely ratified rights treaty in the world – with the United States remaining the only country to have not ratified the document – and protects inalienable and universal human rights for children (Global Network of Human Rights and the Environment, 2022: 5). There are three Optional Protocols to the Convention, and the most recent of which establishes a communications mechanism and enables children whose rights have been violated to present a complaint directly to the UN Committee on the Rights of the Child (Global Network of Human Rights and the Environment, 2022: 5).

In this context, it is important to highlight the four main principles of the CRC that should guide all matters concerning children's rights: the principle of non-discrimination, the best interests of the child, the child's right to life, survival and development and the child's

right to express his or her views (OHCHR, 2017: 9). Arts (2009: 90-91) reflects on the importance of the main principles of the Convention as an effort to combat climate change and environmental harm, focusing on the necessity to develop and clarify them in relation to climate change.

Several of the rights enshrined in the CRC are undermined due to the impacts of environmental harm and climate change (UNICEF, 2021: 109-111). Among these are the right to non-discrimination (Article 2), the principle of the best interests of the child (Article 3), the right to life, survival and development (Article 6), the right to family relations and not to be separated from one's parents against one's will (Articles 9 and 10), the right to be heard (Article 12), freedom of expression, association and peaceful assembly (Articles 13 and 15), access to information (Articles 13 and 17), the right to freedom from all forms of violence (Article 19), the right to the highest attainable standard of health (Article 24), the right to social security and adequate standard of living (Articles 26 and 27), the right to education (Articles 28 and 29.1.e), the rights of indigenous children and children belonging to minority groups (Article 30), and the right to rest, play, leisure and recreation (Article 31) (Committee on the Rights of the Child, 2023: 3-11; OHCHR, 2017: 9).

The Committee on the Rights of the Child has declared that climate change is one of the biggest threats to children's rights, mainly to their health, and has urged States parties to pay attention to children's health when developing their mitigation and adaptation policies and action plans (OHCHR, 2017: 9). Despite being the only United Nations human rights treaty that explicitly refers to the connection between children's rights and the environment, the Convention on the Rights of the Child only briefly refers to environmental protection in Articles 24 and 29 (Arts, 2009: 87; Global Network of Human Rights and the Environment, 2022: 8).

Article 24, on the right to the highest attainable standard of health, establishes a crucial link with the right to a healthy environment (European Network of Ombudspersons for Children, 2022: 3). Article 24.2.c focuses on the combat of disease and malnutrition while considering the dangers and risks of environmental pollution, and article 24.2.e focuses on the basic knowledge of child health and nutrition and the advantages of environmental sanitation (United Nations, 1989: 7). The recent CRC General Comment No. 26 on

children's rights and the environment adds that Article 24 includes the enjoyment of facilities, goods and services that are necessary to the realisation of the highest attainable standard of health, including a healthy environment (Committee on the Rights of the Child, 2023: 7).

Article 29 of the CRC specifically refers to the importance of the right to education in developing respect of children for the natural environment (United Nations, 1989: 9). Once again, General Comment No. 26 highlights that education plays an instrumental role in the protection of the rights of children and increases their awareness of environmental damage, pollution and how to act and proceed before, during and after a natural disaster (Committee on the Rights of the Child, 2023: 9).

The CRC recognises the right of children to rest and leisure, to play and to participate freely in cultural life and the arts (Global Network of Human Rights and the Environment, 2022: 10). However, children face hazardous conditions when they play outside due to polluted water, open waste sites, toxic substances, and the lack of safe green spaces (Global Network of Human Rights and the Environment, 2022: 10). Additionally, the environmental and climate crisis impacts the enjoyment of cultural rights due to the destruction and damage to cultural heritage caused by natural disasters (Global Network of Human Rights and the Environment, 2022: 10).

Article 12 of the CRC states that children who are capable of forming his or her own views have the right to be heard and to express those views in a free manner (United Nations, 1989: 4). Children must be allowed to be heard in any judicial or administrative proceeding affecting them, directly or through a representative or an appropriate body (OHCHR, 2017: 11).

Children's rights are rarely featured in international, regional, and national decision-making instruments focused on climate change, as is the case of the Paris Agreement, the UNFCCC and even the Sustainable Development Goals (SDGs) (Child Rights Now, 2019: 2). Yet, several resolutions reflect on the connection between children's rights and the climate crisis, and on the necessity for States to protect children's rights in their climate mitigation and adaptation policies.

Resolution 2415 of the Council of Europe, entitled “Inaction on climate change – a violation of children’s rights”, stresses the importance of member States focusing on their shared responsibility to safeguard the rights and well-being of children from both current and future generations (Council of Europe, 2022: 1). In addition to this, the Resolution states that their failure to do so will mean that “[...] member States will continue to be subjected to environmental litigation by today’s children and young people who seek climate justice [...]” (Council of Europe, 2022: 1).

Among the recommendations of this resolution, it is important to highlight the strengthening of the right to a safe, clean, healthy, and sustainable environment, as well as the fortification of international cooperation to protect the rights of the child and of future generations (Council of Europe, 2023: 2-3). Additionally, it recommends the prioritisation of climate change adaptation policies to develop the resilience of children to climate change, and the recognition of children as “agents of change” in the climate crisis by including them in decision-making processes, promoting their participation and their right to be heard (Council of Europe, 2023: 2-3).

A 2017 report by the Office of the United Nations High Commissioner for Human Rights (OHCHR), entitled “Analytical study on the relationship between climate change and the full enjoyment of the rights of the child”, develops on the need to adopt a human rights-based approach to protect those more vulnerable to the impacts of climate change and environmental harm, particularly children and young people (OHCHR, 2017: 9). On this matter, the report declares that a “[...] child rights-based approach to climate change mitigation and adaptation builds upon the essential attributes of human rights-based approaches while incorporating the specificities of children’s rights, needs and capacities” (OHCHR, 2017: 9).

The report concluded that the impacts of climate change and environmental harm interfere with the effective enjoyment of the rights enshrined in the Convention on the Rights of the Child, including the rights to life, family relations, the highest attainable standard of health, adequate standard of living, education, freedom from any form of violence or exploitation, recreation and play, and the enjoyment of one’s culture, and that States and other duty bearers must protect children’s rights from the effects of climate change (Global Network of Human Rights and the Environment, 2022: 9-10).

The 2018 report of the Special Rapporteur on Human Rights and the Environment on children's rights and the environment emphasises the obligations of States to protect children and young people from environmental harm and declares that States must take precautionary measures to protect children from environmental harm (European Network of Ombudspersons for Children, 2022: 7). Due to this, it is essential that States party to the Convention on the Rights of the Child conduct specific research on the impact of the climate crisis on children (European Network of Ombudspersons for Children, 2022: 7). However, the Committee on the Rights of the Child has found that there is lack of data on the impacts of environmental harm on children (European Network of Ombudspersons for Children, 2022: 7).

2.1 Right to a clean, safe, and healthy environment

On 28 July 2022, the General Assembly of the United Nations (UNGA) adopted A/RES/76/300, a resolution recognising the right to a clean, healthy, and sustainable environment as a human right (OHCHR, UNDP and UNEP, 2023: 3). This resolution was the follow-up to the October 2021 resolution A/HRC/RES/48/13 of the Human Rights Council on the same right, which stresses the importance of the implementation of agreements under international environmental law and urges states to develop their efforts in the protection of the environment (OHCHR, UNDP and UNEP, 2023: 7; United Nations Human Rights Council, 2021: 3).

However, these documents only briefly refer to the importance of the right to a clean, healthy and sustainable environment for children, with the UN General Assembly resolution recognising that the climate crisis has a disproportionate impact on women and girls, children, indigenous peoples, older persons and persons with disabilities, and the Human Rights Council resolution noting that civil society organisations, including child and youth organisations, had signed a letter calling for the urgent recognition, implementation and protection of the human right to a safe, clean, healthy and sustainable environment (United Nations General Assembly, 2022: 3; United Nations Human Rights Council, 2021: 3)

Prior to this, however, the Human Rights Council had already recognised the importance of implementing children's human rights through an environmental lens (United Nations Human Rights Council, 2020: 5). Resolution A/HRC/RES/45/30 on the realisation of the rights of the child through a healthy environment includes provisions urging States to ensure that children have access to justice regarding environmental matters (European Network of Ombudspersons for Children, 2022: 4). According to the Resolution, realising the rights of the child through a healthy environment means that States must respect, protect, and fulfil human rights and address environmental harm where it negatively affects children and the full enjoyment of their rights (Global Network of Human Rights and the Environment, 2022: 6). The document also urges States to recognise the right to a healthy environment in national legislation to not only protect children's rights but also the rights of future generations (Global Network of Human Rights and the Environment, 2022: 6).

States are required to facilitate justice mechanisms to enable children and adults to enjoy their right to a healthy environment (European Network of Ombudspersons for Children, 2022: 4). This includes mechanisms through which children can submit complaints, seek reparation and compensation for violation and abuse of their rights through environmental harm, and means to prevent actions harming the environment (European Network of Ombudspersons for Children, 2022: 4).

This resolution calls for the inclusion of the right to a healthy environment as an integral part of the rights of the child and acknowledges that preventing environmental harm through the recognition of the right of the child to a healthy environment is the most effective way to fully protect children and their human rights (Global Network of Human Rights and the Environment, 2022: 6).

Before its recognition in the Human Rights Council and the UN General Assembly, the right to a healthy environment had already been included in several regional documents, among which are the African Charter on Human and Peoples' Rights (1981), the San Salvador Protocol to the American Convention on Human Rights (1988), the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus Declaration, 1998), the Arab Charter on Human Rights (2004), the ASEAN Declaration on Human Rights (2012), and the Regional Agreement

on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean (Escazú Agreement, 2018) (OHCHR, UNDP and UNEP, 2023: 8). The Aarhus Convention established the first Special Rapporteur for environmental defenders, and the Escazú Agreement was the first multilateral environmental agreement to make specific references to the importance of the role of environmental human rights defenders (OHCHR, UNDP and UNEP, 2023: 17).

The UN General Assembly considers the right to a healthy environment, as established in its resolution, to include both substantive and procedural elements (OHCHR, UNDP and UNEP, 2023: 9). The first category includes clean air, a safe climate, healthy ecosystems and biodiversity, safe and sufficient water and adequate sanitation, healthy and sustainable food, and non-toxic environments (OHCHR, UNDP and UNEP, 2023: 9). The second category of elements focuses more on access to information, public participation, and access to justice (OHCHR, UNDP and UNEP, 2023: 9).

This resolution recognises that individuals, including young people, have an important role to play in the realisation of the right to a healthy environment for both present and future generations, through participation in environmental decision-making processes and holding governments and other decision-makers accountable through mobilisation, complaints, and litigation (OHCHR, UNDP and UNEP, 2023: 20).

While the CRC does not make an explicit mention of the right of children to a safe, clean, healthy and sustainable environment, it does protect it, requiring States parties to fully implement the rights of the child to the enjoyment of the highest attainable standard of physical and mental health by taking measures to combat disease and malnutrition, considering the dangers and risks of environmental pollution (Global Network of Human Rights and the Environment, 2022: 8). Additionally, it recommends that children's education must include environmental education (Global Network of Human Rights and the Environment, 2022: 11).

The right of the child to a safe, clean, healthy, and sustainable environment “[...] recognises the undeniable link between human health and well-being and the state of the natural environment” (Global Network of Human Rights and the Environment, 2022: 6). This right develops from the notion that a safe, clean, and healthy environment is a

necessary precondition to realise several human rights (Global Network of Human Rights and the Environment, 2022: 6).

2.1.1 Advisory Opinion OC-23/17 on the Environment and Human Rights of the Inter-American Court of Human Rights

In February 2018, the Inter-American Court of Human Rights (IACtHR) became the first court to formulate in an advisory opinion that the right to a healthy environment is a human rights issue (De Meulemeester, 2023).

The Advisory Opinion OC-23/17 extensively detailed the “[...] state obligations that arise from the need to protect the environment under the American Convention[.]” (Environmental Law Alliance Worldwide, 2018a). This advisory opinion was the result of a request by Colombia in 2016 for the Court to address the scope of Articles 1(1) (obligation to respect rights); 4(1) (right to life); and 5(1) (right to humane treatment and personal integrity) of the American Convention on Human Rights, and the interpretation of Articles 4(1) and 5(1) in relation to Article 1(1) and international environmental law (Environmental Law Alliance Worldwide, 2018b: 1).

The Court addressed the interrelationship between human rights and the environment; and the human rights affected by degradation to the environment, including the right to a healthy environment (Environmental Law Alliance Worldwide, 2018a). The advisory opinion focused on environmental protection and human rights; the right to a healthy environment and other rights affected by environmental degradation; the scope of the term “jurisdiction” under the American Convention on Human Rights (ACHR); and the environmental obligations under the IACtHR (Inter-American Court of Human Rights, 2017: 5).

The Court affirmed that the right to a healthy environment constitutes a fundamental human right and that the degradation of the environment, including climate change, affects the enjoyment of this and other human rights. Additionally, the IACtHR concluded that States have an obligation to ensure that their actions do not impact the enjoyment of

these fundamental rights, including the rights of those living outside the State's own borders (Environmental Law Alliance Worldwide, 2018a).

Additionally, in 2023 the IACtHR was asked to produce another advisory opinion on human rights and the climate emergency, this time to clarify the scope of state obligations in responding to the climate emergency (De Meulemeester, 2023).

According to the request submitted by Chile and Colombia, the main objective of this advisory opinion would be to clarify State obligations, "[...] in their individual and collective dimension, in order to respond to the climate emergency within the framework of international human rights law, paying special attention to the differentiated impacts of this emergency on individuals from diverse regions and population groups [...]" (Inter-American Court of Human Rights, 2023: 1).

Colombia and Chile request the IACtHR to also develop the obligations of States regarding the rights of children and future generations concerning the climate emergency (Inter-American Court of Human Rights, 2023: 10), focusing on the nature and scope of the obligations of a State Party to adopt effective measures regarding the climate emergency to ensure the protection of the rights of children; and to provide children with means to express their opinions freely and fully, including the opportunity to initiate or participate in any administrative or judicial proceedings concerning climate change (Inter-American Court of Human Rights, 2023: 10).

2.2 General Comment No. 26 on children's rights and the environment, with a special focus on climate change

The CRC General Comment No. 26 on children's rights and the environment, with a special focus on climate change, was adopted in August 2023 (Committee on the Rights of the Child, 2023: 1). As noted by Tigre and Iliopoulos (2023), the creation and development of this document stemmed from the *Sacchi et al., v. Argentina et al.* petition and the subsequent declarations of the Committee on the Rights of the Child on extraterritorial responsibility. This complaint to the CRC started the debate on the effects of environmental harm and climate change on children and their rights within the CRC (Tigre and Iliopoulos, 2023).

The General Comment focuses on the effects of the triple planetary crisis and its urgent and systemic threat to the rights of children, analysing the effects of climate change and environmental harm on several rights of the CRC, and interpreting the right to a clean, healthy, and sustainable environment through a child's rights lens (Committee on the Rights of the Child, 2023: 1).

The main goals of this General Comment are to emphasise the urgency to address the devastating effects of environmental harm and climate change on children's rights, to promote a better understanding of children's rights concerning environmental protection, and to clarify the obligations and responsibilities of States to the CRC and to assist them in the development of measures to address environmental harm (Committee on the Rights of the Child, 2023: 3).

For the elaboration of the General Comment, the Committee on the Rights of the Child took into consideration the contributions made by children at its 2016 day of general discussion on children's rights and the environment, as well as the contributions of a children's advisory team, which included twelve members, aged between 11 and 17 years (Committee on the Rights of the Child, 2023: 1). This advisory team supported the consultation process of the General Comment, with 16,331 contributions from children of 121 countries, through online surveys, focus groups and in-person national and regional consultations (Committee on the Rights of the Child, 2023: 1). This team reported on the negative effects of environmental degradation and climate change in their lives and communities, asserting their right to life in a clean, healthy, and sustainable environment (Committee on the Rights of the Child, 2023: 1).

During the drafting process of the General Comment, the Center for International Environmental Law (CIEL, 2023: 7) stressed the importance of including and developing in the final draft the principle of intergenerational justice as a key element of sustainable development. It emphasised the urgency of recognising the dimensions of intergenerational equity and justice in the present, particularly to the triple planetary crisis, and the important role children play in this context, considering they are the closest in time to future generations (CIEL, 2023: 8).

Furthermore, CIEL (2023: 8) highlighted the need to recognise the duty of States to protect future generations and their human rights, stating that the CRC does not contain

temporal limitations and does not limit rights to the present time and that human rights include both present and future generations. Additionally, since decisions in the present day can affect the lives and rights of those born years, decades, and centuries in the future, it stressed the need for States to refrain from any conduct that could reasonably be expected to result in or perpetuate any form of discrimination against future generations (CIEL, 2023: 8).

However, while the Committee on the Rights of the Child stresses the importance of intergenerational equity in climate litigation and the interests of future generations, highlighting that the children consulted during the drafting process stressed the importance of the principles, the final document only makes a brief mention to the topics and does not define the concepts (Committee on the Rights of the Child, 2023: 2; Tigre and Iliopoulos, 2023).

While the rights of children of the present generation require urgent action, it is also important to consider the realisation of the maximum extent of the human rights of the children constantly arriving (Committee on the Rights of the Child, 2023: 2). Beyond their immediate obligations under the CRC, the General Comment affirms that States also have the responsibility for “[...] 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.” (Committee on the Rights of the Child, 2023: 2-3).

The Committee on the Rights of the Child also stresses the importance of a child rights-based approach to environmental protection and the full consideration of all rights under the CRC and its Optional Protocols to implement it, stating that, “as rights holders, children are entitled to protection from infringement of their rights stemming from environmental harm and to be recognised and fully respected as environmental actors.” (Committee on the Rights of the Child, 2023: 2).

The General Comment describes a clean, healthy, and sustainable environment as both a human right implicit in the Convention on the Rights of the Child and a necessary condition for the full enjoyment of children’s rights, whose enjoyment is threatened by the adverse effects of environmental harm and degradation, particularly for children in disadvantaged situations or in regions that are highly exposed to climate change (Committee on the Rights of the Child, 2023: 2; 11). Among these rights are the right to

life, survival, and development; the right to the highest attainable standard of health, including the dangers and risks of environmental pollution; the right to an adequate standard of living; and the right to education, including the development of respect for the natural environment (Committee on the Rights of the Child, 2023: 11).

3. The Emergence of Youth Climate Activism and Youth-led Climate Litigation

In recent years, children and young people have become highly involved in climate activism, taking the initiative to bring attention to the climate crisis and seeking to influence those with the power to enact the necessary changes (European Network of Ombudspersons for Children, 2022: 3). Through informal or more formal processes, such as peaceful protests and the creation of youth organisations, and climate litigation, respectively, children and young people have been involved in several climate movements, advocating not only for the protection of their rights but also for the protection of the rights of future generations (Kotzé and Knappe, 2023: 1).

They have, however, expressed their disappointment with the lack of action of States in developing mitigation measures and action plans that protect the rights of children and include provisions concerning the protection of future generations, perceiving their efforts to be in vain (European Network of Ombudspersons for Children, 2022: 3). Despite being one of the most vulnerable groups to climate change, it is rare to hear their concerns, experiences and voices in relevant negotiations and decisions (Arts, 2009: 80).

Children and young people face disadvantages when attempting to exercise political agency to influence policies and action plans, leading to a democratic deficit emphasised by the fact that they do not have the right to vote (European Network of Ombudspersons for Children, 2022: 4). Arts (2009: 80) emphasises the necessity to facilitate the design of child rights-based climate change programmes, policies, and measures. The author adds the importance of framing climate change as an issue of children's rights, affirming that a child rights-based approach to climate change flows from the state obligations imposed by the CRC and is mandatory under international law (Arts, 2009: 86).

The report of the European Network of Ombudspersons for Children (ENOC) on children's rights and climate justice describes "climate justice" as a "flexible umbrella", highlighting the importance of the use of both law and human rights to tackle the climate crisis (European Network of Ombudspersons for Children, 2022: 4). Furthermore, the report declares that "Children's rights are only just beginning to be given explicit consideration in the framework of climate justice, although children/youth have long been advocating for social justice, including in relation to environmental rights" (European Network of Ombudspersons for Children, 2022: 4).

It is important to note that children are in a unique position to argue on behalf of future generations, and discussions of future generations must consider the rights of children, both born and not yet born (Global Network of Human Rights and the Environment, 2022: 27). For example, in the 1993 case *Minors Oposa v. Factoran*, the Supreme Court of the Philippines held that the children who took the case to the court could legitimately do so based on intergenerational responsibility where the right to a balanced and healthful ecology is concerned (Global Network of Human Rights and the Environment, 2022: 27).

In *Demanda Generaciones Futuras v. Minambiente*, or *Future Generations v. Ministry of Environment and Others*, the Supreme Court of Colombia held that, based on the principle of intergenerational equity, children could bring to court a climate litigation claim on behalf of future generations, since both were directly affected by the current climate science prospects of temperature rise (Global Network of Human Rights and the Environment, 2022: 27).

The Supreme Court of Colombia has underlined that environmental rights should include future generations based on the ethical duty of solidarity, and guaranteeing the rights of future generations is important "[...] to address the complex temporal and spatial scope and root causes of environmental crises and, as a result, an integral part of a children's right to a healthy environment" (Global Network of Human Rights and the Environment, 2022: 26-27).

In *Sacchi and Others., v. Argentina and Others* (2021), a petition taken by sixteen youth climate activists (which included Swedish youth climate activist Greta Thunberg) to the UN Committee on the Rights of the Child, the Committee determined that States parties to the Convention on the Rights of the Child have extraterritorial responsibility, that is,

states can be held responsible for the harmful impact of their carbon emissions on children's rights within and beyond their territory (Children's Legal Centre Wales, 2021; Council of Europe, 2022: 1-2).

The Committee found that children and young people are victims of foreseeable threats to their rights to life, health, and culture and that there is a sufficient causal link between the harm alleged by children due to climate change and the acts and omissions of States in preventing it (Global Network of Human Rights and the Environment, 2022: 9). The Committee stressed that the petitioners had to exhaust all domestic channels of redress before presenting their petition to the Committee on the Rights of the Child (Children's Legal Centre Wales, 2021). This means that children and young people have to face several obstacles when taking a case to court, having to navigate a lengthy legal process to hold their governments accountable for their actions (or lack thereof) in mitigating the effects of climate change and environmental harm (Children's Legal Centre Wales, 2021).

As stated by the OHCHR (2017: 11), "[a] child rights-based approach to climate change requires that children should not be treated as passive victims of events beyond their influence, but rather as agents of change whose preferences and choices are fairly reflected in policy design and implementation. Ensuring children's education and participation as called for in the 2030 Agenda will be critical to fulfilling this objective."

Children and young people, due to a sense of shared experience with those not yet born, have brought claims on behalf of future generations for the harm they will suffer in the future, claiming that the principle of intergenerational equity can be applied to both children and young people and the future generations (Global Network of Human Rights and the Environment, 2022: 27). It is important to ensure that not only is justice child-friendly, but also that children are included in the decision-making process and their views are heard (European Network of Ombudspersons for Children, 2022: 4-5). This process should also recognise the unique characteristics of children and that they may require more support than adult litigants (European Network of Ombudspersons for Children, 2022: 4-5).

3.1 The Importance of a Child-Friendly Approach to Climate Justice

The climate crisis creates highly disproportionate impacts for children and young people, but much of the focus of climate litigation and intergenerational equity is on “those yet to be born” and children are simply assumed to be part of and intersect with future generations (Daly, 2022a: 2). And although children’s rights are increasingly used in climate litigation and children and youth are the litigants in climate cases, there is little academic research on the experiences of children and young people during climate litigation processes (Daly, 2022a: 2). According to Daly (2022b: 6), there has been a shift towards a greater recognition of children and youth as political actors and holders of political rights. However, the international human rights law framework has failed to emphasise and accommodate children’s political capabilities (Daly, 2022b: 6).

On this note, Daly (2022a: 2) highlights the importance of child-friendly justice, which is becoming increasingly important as child- and youth-led applications on climate cases increase. Additionally, there is a necessity to adapt justice proceedings to accommodate a children’s rights approach, bearing in mind the needs and vulnerabilities of children so that they can have meaningful participation in the legal process (Daly, 2022a: 2).

The concept of child-friendly justice has been defined by the Council of Europe (CoE) as justice that respects and effectively implements the rights of children at the highest attainable levels, taking into due consideration the maturity of the children and the circumstances of each individual case (Council of Europe, 2010: 17). Furthermore, child-friendly justice must be accessible and age-appropriate and must respect the rights of the child, including the right to be heard, the right to integrity and dignity, the right to private and family life, and the right to participate in proceedings (Council of Europe, 2010: 17).

Daly (2022a: 8) adds that it is important to analyse the Convention on the Rights of the Child to determine what constitutes child- and youth-friendly climate justice. According to the author, there are four suggested concepts for this analysis (Daly, 2022a: 3). First, children should have access to justice and have their applications heard on their merits whenever possible (Daly, 2022a: 3). Second, children should enjoy their rights of participation, including information and support (Daly, 2022a: 3). Third, the interests of children should be considered by their adult representatives and by judges (Daly, 2022a:

3). And fourth, the children's rights framework should be considered in judgements, which should be delivered in a child-friendly manner (Daly, 2022a: 3).

Daly (2022a: 6) highlights the importance of ensuring that justice is child-friendly so that children can have the same opportunities as adults when accessing justice and are included in decision-making processes concerning their own interests and rights. The author also alerts for a divide between child-friendly justice and present-day climate litigation, since the child-friendly justice framework has been developed in relation to family and criminal law cases, that is, the type of cases in which children have been almost exclusively involved (Daly, 2022: 7; Donger, 2022: 289). However, the development of youth-led climate litigation opens the way for a revision of the child-friendly justice framework to better suit the interests and rights of children and young people (Daly, 2022a: 7). As opposed to the traditional proceedings, in which children are not physically present at hearings, in climate litigation children and young people have chosen to be involved in the process and are likely to be present during the proceedings (Daly, 2022a: 7).

In conclusion, despite being one of the most vulnerable groups to climate change and environmental harm, children and young people have established their role as "agents of change", advocating for the inclusion of their rights in mitigation policies and action plans, calling out governments for their insufficient measures to combat the climate crisis, taking cases to court and petitioning for the protection of the rights and interests of future generations and taking into consideration the principle of intergenerational equity.

The following chapters will detail the most important aspects of the concepts of future generations and intergenerational equity and will explain in more detail how children and young people, through youth-led climate litigation, are working to include them in the discussion on climate change and environmental harm.

Chapter 2: The Rights of Future Generations in the Context of the Climate Crisis

1. Impacts of Climate Change and Environmental Harm on Future Generations

One aspect of the climate crisis that is not yet fully developed is the impact of climate change and environmental harm and of the lack of sufficient and complete mitigation and adaptation measures and action plans on the rights and interests of future generations. Future generations are expected to be affected and permanently compromised by climate change and environmental harm, biodiversity loss, pollution, unsustainable consumption, and production patterns, backsliding on human rights, persistent inequalities and exclusion, insufficient attention to matters of sustainable development, poor management of extinction-level threats, among others (United Nations, 2023a: 5).

The actions of the present generations are expected to have consequences in the lives and the enjoyment of the rights of future generations born decades or even centuries in the future (United Nations, 2023a: 5). Ecological threats (i.e., environmental harm and climate change) are one of the main threats to basic human needs and capacities protected under human rights, and the protection of the environment for future generations requires different measures than those of traditional human rights regulations (Düwell and Bos, 2018: 15). More specifically, it is necessary to consider measures related to the spatial and temporal distance between actions and human rights violations, the recognition and representation of future rights and rights holders in the present, and the uncertainty about causal relationships and actions with the potential to violate the human rights of future generations (Düwell and Bos, 2018: 16).

On the matter of the spatial and temporal scope of the protection of the rights and interests of future generations, Caney (2018: 477) develops that some issues of intergenerational justice, such as climate change, have negative impacts on the global scale and can reach into the distant future, and it is necessary to develop measures to protect both current and future generations. Düwell and Bos (2018: 16) further develop this issue, stating that the environmental effects of industrialisation, globalisation, population growth and modern lifestyles have a complex spatiotemporal relationship. For example, the production of nuclear waste in the present day is expected to have irreversible environmental impacts

centuries from now, and the use of energy and accompanying CO₂ emissions in one part of the world will accumulate with other emissions and may result in negative climate impacts in another part of the world decades from now (Düwell and Bos, 2018: 16).

This raises the question of to what extent actions that will affect future people (who do not yet exist) can be regulated within the current human rights framework, which will be developed later in this chapter (Düwell and Bos, 2018: 17). The long-term effects of the actions of current generations can only be estimated at a general level, and the links between actions and potential rights violations can be indirect and there are often significant spatial and temporal gaps between actions and effects (Düwell and Bos, 2018: 16). Bos, Düwell and von Steenberg (2018: 3) discuss that the ethics of climate change and future generations are such a complicated issue since the present generation is asked to rethink its moral order consistently and coherently and to minimise the negative impacts on future generations.

Additionally, the definition of the concept of future generations is a highly debatable topic. Since there is no consensual way to define the concept, several authors and international and regional instruments have diverged in the best way to approach the issue and how to protect the rights and interests of future people in regard to climate change and environmental harm. It is necessary to observe the ethics of climate change through an interdisciplinary approach since the current generations' long-term responsibility to future generations requires the present generations to rethink the social, political, and legal orders (Bos, Düwell and von Steenberg, 2018: 5).

This chapter will develop on the impacts of the climate crisis on future generations, focusing on the challenges of defining the concept, its presence in regional and international human rights instruments, and how child and youth climate activists are advocating for the protection of the rights and interests of future generations in youth-led climate litigation.

2. Defining Future Generations – Challenges and Obstacles

The Maastricht Principles on the Human Rights of Future Generations, adopted in February 2023, define the concept of “future generations” as “[...] those generations that do not yet exist but will exist and who will inherit the Earth. Future generations include persons, groups and peoples.” (Rights of Future Generations, 2023: 4).

As Nolan (2022: 4) points out, for the purposes of international human rights law there is no specific definition of future generations, and the definitions that exist are not clear and are usually contested. The author subsequently identifies different ways in which literature can refer to future generations: some experts refer to future generations by explicitly including them in current generations, (i.e., as children); others speak of future generations as referring to the rights of children and young people when they reach adulthood (Nolan, 2022: 4). Another option views future generations and children as two separate groups, defining “future generations” as “those yet to be born” (Nolan, 2022: 4). Another perspective stresses the links between current and future rights claims when considering the potential interactions between children and future generations’ rights (Nolan, 2022: 4).

In a similar approach, Caney (2018: 476) recognises three different ways to identify future generations, distinguishing between those who are not yet born, those who are not yet citizens, which also includes children, and, to any age cohort, all the age cohorts that come after it, including children, adult citizens, and the unborn.

According to the author, there are different types of responsibilities for future generations, which are often causally interrelated and frequently overlap with each other (Caney, 2018: 476-477). First, economic responsibilities are focused on the distribution of income and wealth and whether current generations may leave public debts to be paid by future generations (Caney, 2018: 476). Second, ecological responsibilities focus on the use of natural resources and the creation of environmental hazards (Caney, 2018: 476). This category analyses the creation of nuclear waste, biodiversity loss, climate change, the exhaustion of non-renewable natural resources, and concerns about overpopulation (Caney, 2018: 477).

The third category is concerned with bioethical responsibilities and focuses on the overuse of antibiotics by one generation, which can lead to the emergence of drug-resistant infections that will impact the health of future generations (Caney, 2018: 477). The fourth and final category highlights political responsibilities and what respecting future generations requires in terms of creating new political institutions and reforming existing ones, or respecting future political institutions (Caney, 2018: 477).

A 2023 Report of the United Nations describes “future generations” as those whose “[...] lives and eventual ability to effectively enjoy all human rights and meet their needs are already being influenced by our actions today.” (United Nations, 2023a: 4). The report also highlights that future generations are distinct from present generations and, according to demographic projections, will be more numerous (United Nations, 2023a: 4). Another report of the United Nations declares that it is expected that 10.9 billion people will be born later this century, and further develops that solidarity with future generations must focus on the representation of future generations and long-term thinking, since today’s issues, like climate change, will have deep impacts on their livelihoods (United Nations, 2021: 38; 43).

Pirjatanniemi (2018: 72) analyses the concept of future generations in relation to the concept of human dignity, arguing that, due to its timelessness, this second concept embodies the basic status of a human being, meaning that it is plausible to argue that future generations will also benefit from it. The author further adds that “[...] respect for human dignity requires that we recognise and respect the intrinsic worth of future generations and since future generations cannot stand up for their rights themselves, we would need representatives to defend their rights.” (Pirjatanniemi, 2018: 72). This view is shared by Düwell and Bos (2018: 17), who consider that, based on the assumption that all human beings have dignity and must respect each other’s rights, this principle should also be applied to future generations.

When analysing the existing legal and political instruments to represent future generations, Zwarthoed (2018: 95) focuses on constitutions as an appropriate tool to secure the interests of future generations. Among the national constitutions that refer to future generations are the constitutions of Bhutan, the Czech Republic, Estonia, Poland, Switzerland, and Ukraine (Zwarthoed, 2018: 95). On another level, the constitutions of

Norway and Japan grant rights to future generations (Zwarthoed, 2018: 95). Additionally, the constitutions of Armenia, Bolivia, Burundi, Cuba, Germany, and Sweden explicitly assign state institutions with the obligation to protect future generations (Zwarthoed, 2018: 95). Finally, the national constitutions of South Africa, Andorra, Argentina, Brazil, Ecuador, Uruguay, and France connect the protection of future generations' rights and interests to the protection of the environment (Zwarthoed, 2018: 95).

At the national level, some countries have established committees for the future or future generations commissioners who advise governments and public bodies on the effects of present decisions on people in the future (United Nations, 2021: 45). Zwarthoed (2018: 96-97) identifies several national commissions tied to the environment and sustainable development, and the protection of the environmental rights of future generations, focusing on the cases of Brazil and New Zealand.

The Brazilian Commission on Environment and Sustainable Development has been a permanent and independent agency since 2004, with the power to deliberate and vote on bills related to national environmental policies, environmental law, renewable natural resources, flora and fauna, desertification, and sustainable development (Zwarthoed, 2018: 96). The Commission also receives citizens' complaints and petitions, requires assessments, and reports, and promotes public debates, conferences, and exhibitions (Zwarthoed, 2018: 96).

In New Zealand, an independent Parliamentary Commissioner for the Environment is appointed by the Governor-General to investigate environmental matters and make recommendations on such topics, but the Commissioner for the Environment can neither reverse legislation nor vote on bills (Zwarthoed, 2018: 96).

Other examples include the Canadian Commissioner of the Environment and Sustainable Development, Chile's Commission on Natural Resources, Environment and National Resources, the German Committee for Sustainable Development, and the Council for Sustainable Development in Hong Kong (Zwarthoed, 2018: 97). However, the effectiveness of these instruments varies, since some lack independence, institutional support, or access to resources to fulfil their tasks, and their mandate is often too narrow to effectively protect the interests and rights of future generations (Zwarthoed, 2018: 97).

At the multilateral level, a growing number of States and advocates have proposed options to represent future generations in the United Nations system, including through a Commissioner or Ombudsperson for Future Generations, a Commission of Global Guardians for the Future, or through a repurpose of the Trusteeship Council (Zwarthoed, 2018: 103; United Nations, 2021: 45). UN Secretary-General António Guterres has also proposed the appointment of a Special Envoy for Future Generations (United Nations, 2021: 45).

In a 2023 report, the United Nations suggests practical steps to meet the demands of the present generation, while at the same time safeguarding the interests of future generations and preserving their ability to effectively enjoy all human rights (United Nations, 2023a: 2). Among these suggestions is the appointment of an envoy to serve as a voice for future generations at the global level, the improvement of the use of science and data, the creation of a written instrument to define and establish the duties current generations have to future generations, and a dedicated intergovernmental forum to advance implementation of this document and to share best practices (United Nations, 2023a: 2).

It is necessary to ensure a fair and equitable distribution of opportunities and resources in the present, as a way to guarantee better and more equal opportunities and outcomes for future generations (United Nations, 2023a: 5). Despite repeated commitments, there is no dedicated mechanism within the UN to do so (United Nations, 2023a: 5).

In conclusion, while there may be a wide variety of definitions and perspectives to analyse future generations, this makes it difficult to actually define the concept, which is usually dependent on children's rights. The next section of this chapter will focus on these challenges and obstacles, and how future generations' rights and children's rights may be connected, but should not be overlapped, due to the risk of instrumentalising one set of rights in favour of the other.

2.1 Challenges and obstacles in defining future generations

A key question that needs to be addressed by international human rights law is the extent to which future generations' rights can be asserted as individual rights by future generations' group members, or whether they can only be exercised as, or on behalf of, a

collective entity (Nolan, 2022: 5). For example, while children's rights are group-specific, they can be asserted by children on an individual or collective basis (Nolan, 2022: 5). Given the growing focus on access to justice and remedies in international human rights law, including in areas where the rights of future generations are important, such as environmental protection and climate litigation, it should be possible for such rights to be asserted by individuals or a group of individuals (Nolan, 2022: 5).

If this is not the case, Nolan (2022: 5) develops, there is a risk of continuing to view children's rights and their respective individual complaint mechanisms as a vehicle to address intergenerational justice instead of developing the rights of future generations. This also poses a risk to children's rights themselves, as they can be instrumentalised to advance the rights of others beyond born children and can be reduced in the international human rights law framework to another type of future generations' rights (Nolan, 2022: 5). Additionally, children's rights are not equipped to adequately deal with the rights of future generations (Nolan, 2022: 6).

The United Nations (2023: 4) establishes the difference between children and youth and future generations, highlighting that, while their interests may overlap and children and young people may share an affinity with future generations, they are not the same. The report further develops that children and young people should not bear the burden of advocating for future generations, but they deserve to be heard and to share their views and interests on their rights and future generations' rights throughout decision-making processes (United Nations, 2023a: 4). The United Nations report of 2021 entitled "Our Common Agenda: Report of the Secretary-General" states that young people have a lack of trust in the ability of existing institutions and leadership to meet their concerns, and there is a necessity for a deepening of intergenerational and intragenerational solidarity (United Nations, 2021: 38).

And while decision-making in the children's rights framework may involve a balance between the interests of children of current and future generations, scholarship and practice have not focused on this, with time constraints and urgency being often cited as a justification for the urgent action on children's rights issues (Nolan, 2022: 6). However, the matter of intemporal rights claims remains under-explored in children's rights law (Nolan, 2022: 6). Given the limited scope and specificity of children's rights, a

dependence on that framework to explore key issues related to a group that may have significantly different rights and interests from children may lead to a distortion of the development of future generations' rights (Nolan, 2022: 6).

Düwell and Bos (2018: 17-18) consider three assumptions regarding the protection of the rights and interests of future generations. First, current generations have to assume that, since the world population is growing more than ever, there will be people in the future (Düwell and Bos, 2018: 17-18). Second, we have to assume that the future generations share similarities with the current generations, including basic biological features and ecological needs (Düwell and Bos, 2018: 18). Third, considering the long-term effects of environmental changes, we have to assume that the actions of current generations affect the environmental needs of future generations (Düwell and Bos, 2018: 18). The authors further develop that this does not imply that future people have rights in the present day, but that it is sufficient to assume that future people will have rights and their interests must be integrated into human rights protection systems (Düwell and Bos, 2018: 18).

There are several questions unanswered regarding the inclusion of future generations and the protection of their rights and interests in the decision-making process, including the weight of the decisions of future generations and their representatives. Since future people will outnumber current generations, the use of the “one voice, one vote” system may give more priority to future issues and concerns than the present (Zwarthoed, 2018: 84).

Future generations are not yet alive to advocate for their interests and necessities (United Nations, 2023a: 5). Therefore, their interests should be considered at all levels of the decision-making process, and present generations have a responsibility to “[...] halt and prevent developments that could threaten the survival of future generations ... [including] climate change, conflict and new technologies.” (United Nations, 2023a: 5).

Current generations must act in a way that preserves future generations' ability to effectively enjoy all human rights and determine their own needs in the future (United Nations, 2023a: 5). This is something that has already been enshrined in several international agreements and in the concept of sustainable development (United Nations, 2023a: 5). Düwell and Bos (2018: 18) argue that current generations must assume that generations overlap, and it is their responsibility to guarantee that it is possible for future

generations to have their human rights recognised and protected and not obstructed by the actions of present generations.

As Zwarthoed (2018: 79) notes, a straightforward way to secure the rights and interests of future generations is to include them in the decision-making process, but this issue raises several questions since future people do not yet exist. Future people may be represented in various stages of the decision-making process – legislative, executive and/or judicial – but there are doubts about how to represent future generations, how many representatives they would have, and how they would be selected, among other questions (Zwarthoed, 2018: 79). However, the political representation of future generations is a controversial issue, with some experts arguing that the official representation of future generations would cause interference with the existing democratic institutions, the proliferation of bureaucracy, trade-offs between present and future needs, and even the costs of such institutions (Zwarthoed, 2018: 80).

The author argues that one possible justification for the claim that future people should be represented in democratic decisions is that future people will be affected by today's decisions and that their absence is not a good reason to exclude them from the democratic process (Zwarthoed, 2018: 83-84). This is a reference to the “all-affected interests” principle, which specifies that those whose interests are affected by collective decisions have the right to participate in the democratic decision-making process (Zwarthoed, 2018: 83).

Düwell and Bos (2018: 21) state that not all rights approaches accept that there is an important connection between human rights and the recognition of the rights of future generations, that is, “[...] there are views on rights that emphasise the legitimacy and scope of rights in terms of agreement and acceptance by individuals in a shared community.” According to the authors, there are at least three ways to address the criticism of this connection (Düwell and Bos, 2018: 21).

First, the questions on whether and why the duties to the human rights of future generations will continue as long as there is no international agreement focused on the human rights of future generations (Düwell and Bos, 2018: 21). The authors counterargue the criticisms on the lack of a theoretical basis for the rights of future generations, claiming that there is a clear commitment to human rights based on the aspect of human

dignity, and challenging or denying this commitment would have consequences for modern international agreements (Düwell and Bos, 2018: 21-22). Additionally, the authors argue that concern for the rights of future generations is mandatory in the context of human rights (Düwell and Bos, 2018: 22).

Second, philosophically grounded conceptions of rights sometimes fail to include obligations to the rights of future generations (Düwell and Bos, 2018: 22). There is a question of why current generations should recognise the rights of people in the distant future with whom they will never interact (Düwell and Bos, 2018: 22). The authors further develop that it is not plausible to view this argument as mutually securing the interests of both generations because, if there is an overlap between generations, it becomes difficult to limit the scope of this application to the current generation (Düwell and Bos, 2018: 22).

Third, there is a gap in recognising the rights of future generations and enforcing their corresponding duties (Düwell and Bos, 2018: 22). The authors exemplify this situation by stating that one may recognise the existence of rights or moral obligations for future generations, while at the same time considering that no state has any authority to enforce these obligations because, for example, they believe that the State is limited to secure the rights of the citizens it represents, and not future generations (Düwell and Bos, 2018: 22). On another instance, “[...] one may accept that future people have rights but question one’s duty to secure their basic needs [...]”, since the relevant stakeholders may deny their responsibility for the impacts their actions will have on future generations.

Additionally, present generations may argue that their contribution as an individual, state or generation to the impacts and hardships in the well-being of future generations is quite limited, and the fact that future generations will suffer from the impacts of present generations’ actions is not sufficient to show that one could stop contributing to it, or invest in preventing it (Düwell and Bos, 2018: 22). The authors counter-argue that human rights include a moral commitment to human dignity that should guide the agreement between the current generations on how to secure the freedom and well-being of human beings, including of future generations (Düwell and Bos, 2018: 22). “If this is the case, the recognition of obligations to respect the dignity of future people should be less

controversial, and the political enforcement of such obligations possible” (Düwell and Bos, 2018: 22).

Furthermore, Düwell and Bos (2018: 11) argue that, for some people, the environmental crisis affirms the scepticism about the idea of human rights as a means to address urgent matters. “Some will reason that since future people do not yet exist, it is entirely unclear that we can violate their rights at all. Even if we would have to care about future people, why should we think that our behaviour today would harm them?” (Düwell and Bos, 2018: 11). The authors argue the necessity of current generations seeing themselves as a global community to protect the environment and the rights and interests of future generations, instead of embracing an individualistic approach and framework that continues to focus on the protection of the individual freedom in detriment of the collective goods (Düwell and Bos, 2018: 11).

In conclusion, Pirjatanniemi (2018: 76) argues that, to operationalise the human rights of future generations, at least four obstacles must be removed. First, the human rights community should consider the possibility of giving more space to group-based rights (Pirjatanniemi, 2018: 76). Second, the human rights of future generations must be adapted to include precautionary measures (Pirjatanniemi, 2018: 76). Third, the concept of the victim must be broadened to also include anonymous groups of victims (Pirjatanniemi, 2018: 76). And fourth, the current generation needs to comprehend its role as a guardian of the environment for future generations, be it decades or centuries from now (Pirjatanniemi, 2018: 76). In the legal world, this role can be best played by *actio popularis*, a concept which will be developed in the next section (Pirjatanniemi, 2018: 76).

3. Future Generations in Regional and International Instruments: Initiatives in Regional and International Human Rights Law and Challenges

There have been several international and regional initiatives which make references to the rights and interests of future generations, and that have explored the connection between future generations, children’s rights, and intergenerational equity. However, the lack of an official definition of the concept of “future generations” creates difficulties in

assessing how to properly protect a group of people that do not yet exist. This section will focus on some of the initiatives at the regional and international level that have been undertaken recently and how they are advancing the inclusion of future generations' rights claims.

A 2023 United Nations report includes a list of international and regional instruments that refer to future generations (United Nations, 2023a: 20-21). Among these are several international and regional instruments focused on the protection of the environment, sustainable development and/or children's rights, including the Charter of the United Nations (1945), the Declaration of the United Nations Conference on the Human Environment (1972), the Report of the World Commission on Environment and Development: Our Common Future (also known as the Brundtland Report, 1987), the Rio Declaration on Environment and Development (1992), the United Nations Framework Convention on Climate Change (1992), the Vienna Declaration and Programme of Action (1993), the Copenhagen Declaration on Social Development (1995), the UNESCO Declaration on the Responsibilities of the Present Generations Towards Future Generations (1997), the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (1998), the Charter of Fundamental Rights of the European Union (2000), the United Nations Declaration on the Rights of Indigenous Peoples (2007), the Outcome document of the United Nations Conference on Sustainable Development, entitled "The Future We Want" (2012), the Paris Climate Agreement (2015), the 2030 Agenda for Sustainable Development (2015), the Declaration on the commemoration of the 75th anniversary of the UN (2020), the Human Rights Council resolution on the human right to a clean, healthy and sustainable environment (Human Rights Council resolution 48/13 of 8 October 2021), and the General Assembly resolution 76/300 on the human right to a clean, healthy and sustainable environment (2022) (United Nations, 2023a: 20-21).

Nolan (2022: 2) identifies two other initiatives on the level of international human rights law that have worked to find the answer to several questions related to future generations, namely who the rights holders for children's rights and future generations' rights are and how do these categories overlap and diverge: the CRC General Comment No. 26 on children's rights and the environment with a special focus on climate change, and the General Comment of the UN Committee on Economic, Social and Cultural Rights

(CESCR) on sustainable development and the International Covenant on Economic, Social and Cultural Rights (Nolan, 2022: 2). As stated in the previous chapter, however, the CRC General Comment only briefly refers to future generations and intergenerational equity, highlighting their importance for children's rights and the environment, but does not define the concepts (Committee on the Rights of the Child, 2023: 2-3).

According to Nolan (2022:2), the Issues Paper developed by the UN Committee on Economic, Social and Cultural Rights implicitly links children's rights and the rights of future generations in the context of intergenerational equity. The Issues Paper considers the types of legal and institutional mechanisms that would advance effective access to justice and accountability in matters of sustainable development and economic, social, and cultural rights, with the view that children's rights could act as a path to future generations' rights claims (Nolan, 2022: 2).

Article 3 of the 1992 United Nations Framework Convention on Climate Change (UNFCCC) states that the Parties to the Convention must protect the environment for the benefit of both present and future generations (Zwarthoed, 2018: 101). Additionally, the Council of Europe Recommendation 2211 (2021) and Resolution 2396 (2021) on "Anchoring the right to a healthy environment: the need for enhanced action by the Council of Europe" also focus on future generations, highlighting the need for States to recall their shared responsibilities and commitments to advance human rights with a focus to better protect the well-being of both present and future generations (Council of Europe, 2022: 1).

Regarding the critiques that the current human rights legislation does not reference the protection of the rights of future generations, De Meulemeester (2023) argues that the existing body of human rights legislation does not include temporal limitations and its legal foundations could also be applied to issues impacting future generations. For example, the Preamble of the Universal Declaration of Human Rights (UDHR) recognises that dignity and equal and inalienable rights are the foundation of freedom "to all members of the human family" (United Nations, 1948). It can be interpreted that, since the Declaration establishes this principle, its rights are not limited to the present generation, but instead have a temporal dimension that includes all generations within the scope of the UDHR (Pirjatanniemi, 2018: 66). In the face of the criticisms to this

perspective, Pirjatanniemi (2018: 68) also highlights that the human rights law framework can adjust itself to new circumstances and challenges, which is exemplified by the way environmental concerns have been integrated into human rights law.

Just like the UDHR, most of the early human rights instruments do not refer to environmental issues at all (Pirjatanniemi, 2018: 68). This includes the ICCPR and the ICESCR, which do not include specific provisions concerning the environment, and the early regional human rights treaties, that is, the 1950 European Convention on Human Rights and the 1969 American Convention on Human Rights (ACHR) (Pirjatanniemi, 2018: 68).

One of the milestones in environmental protection was the United Nations Conference on the Human Environment held in Stockholm in 1972 (Pirjatanniemi, 2018: 68). According to the Stockholm Declaration and Action Plan for the Human Environment, adopted by the participants of the Conference, human beings have the responsibility to protect and improve the environment for present and future generations (Pirjatanniemi, 2018: 68; United Nations, 1972: 3). Even though the Declaration represents soft law, its significance was still groundbreaking, opening up the debate on the consequences of environmental degradation for future generations (Pirjatanniemi, 2018: 69).

The 1992 Rio Declaration, adopted in the follow-up United Nations Convention on Human Environment, introduced the precautionary principle, a concept which states that the lack of scientific certainty should not be used as a reason to delay cost-effective measures to prevent environmental degradation in cases where there are threats of serious and irreversible damage (Zwarthoed, 2018: 102). This principle has also been invoked by Article 191 of the Treaty on the Functioning of the European Union and has been referred to in several European Union policies on environmental protection (European Union, 2012: 133; Zwarthoed, 2018: 102).

It is of note that the importance of environmental rights was mainly supported by non-binding soft law documents. However, occasional references to environmental issues started to appear in legally binding instruments drafted after the Stockholm Declaration (Pirjatanniemi, 2018: 69). But, despite the exceptions presented below, the existing human rights treaties are silent on environmental matters and concerns (Pirjatanniemi, 2018: 69).

As previously noted in Chapter 1, CRC Article 24 on the highest attainable standard of health refers to the combat of disease and malnutrition in consideration of the dangers and risks of environmental pollution (Pirjatanniemi, 2018: 69; United Nations, 1989: 7). Additionally, Article 11 of the 1988 Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, also known as the Protocol of San Salvador, declares that everyone has the right to live in a healthy environment and to have access to basic public services and that states must promote the protection, preservation, and improvement of the environment (Organization of American States, 1988: 17; Pirjatanniemi, 2018: 69). And Article 24 of the 1981 African Charter on Human and Peoples' Rights (ACHPR) states that all peoples have the right to an environment favourable to their development (African Union, 1981: 8; Pirjatanniemi, 2018: 69).

The Paris Agreement on Climate Change emphasises the relationship between human rights and the environment, highlighting the relevance of intergenerational equity and acknowledging that climate change is “a common concern of humankind” and states should, when taking action to address climate change, “respect, promote and consider their respective obligations on human rights” (UNFCCC, 2015: 1; Pirjatanniemi, 2018: 70). However, this legally binding document does not specifically mention future generations and only refers once to intergenerational equity (UNFCCC, 2015: 1).

The 1998 Aarhus Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters is one of the most important legal instruments on the right to participation, the right to information and the right of access to justice (Pirjatanniemi, 2018: 74). The Convention recognises the individual and collective duty of every person to protect and improve the environment for present and future generations, and the duty of every party to the Convention to guarantee to both present and future generations the right of access to information, participation in decision-making, and justice in environmental matters (UNECE, 1998: 2-3).

Additionally, Article 9(3) of the Aarhus Convention recognises *actio popularis* claims, that is, claims made by a person or a group in the interest of public order, which can be used for the protection of the rights of future generations, and are different from a usual human rights claim, where the claimant must be individually suffering from a violation

(Pirjatanniemi, 2018: 74; UNECE, 1998: 13). The Convention also provides for standing to ‘members of the public’ to challenge environmental decisions.” (Pirjatanniemi, 2018: 75; UNECE, 1998: 13).

Pirjatanniemi (2018: 74) further points out that, generally, human rights instruments require individualisation of the violation, and explains what the standing of *actio popularis* is in the European, Inter-American, and African regional human rights systems. Per Article 34 of the ECHR, every person, group of individuals, or even non-governmental organisations, can submit claims to the European Court of Human Rights (ECtHR) (ECHR, 2021: 6; Pirjatanniemi, 2018: 74). However, all claimants must fulfil the requirements of victim status, meaning that the claimant must personally suffer from violation of his or her rights, and those whose rights are not affected cannot apply to the Court (Pirjatanniemi, 2018: 74).

The Inter-American and the African regional human rights systems are more flexible towards *actio popularis*, even though Pirjatanniemi (2018: 75) believes that a claim submitted on behalf of future generations is not likely to be successful, since their rights and interests are too abstract. Article 44 of the American Convention on Human Rights states that victims, NGOs, and other persons or groups of persons have standing before the Inter-American Commission on Human Rights (IACHR), and claimants can act on behalf of others and do not have to suffer from violation themselves (Inter-American Commission on Human Rights, 1969; Pirjatanniemi, 2018: 75). Finally, even though the African Charter does not explicitly define the eligibility of complaints, the African Commission on Human and Peoples’ Rights (ACHPR) has adopted an *actio popularis* approach, enabling everyone with an interest in the matter to file a communication (Media Defence, 2022: 6-7; Pirjatanniemi, 2018: 75).

Future generations are unrepresented in today’s decision-making processes and are unable to articulate their needs (United Nations, 2021: 45). It is important to consider forums to act on behalf of future generations, as their trustees, and also to instruments to further protect their interests, putting into practice the principle of intergenerational equity (United Nations, 2021: 45).

The establishment of a committee or a representative for future generations has been a highly debated topic when discussing the rights and interests of future generations. For

example, during the negotiations for the Rio +20 Summit in 2012, the establishment of a High-Level Representative for Future Generations at the United Nations was considered (Zwarthoed, 2018: 102). However, despite strong support from the European Union, this draft declaration was opposed by many countries, and any reference to the High-Level Representative was removed from the final document (Zwarthoed, 2018: 102). Those who opposed the proposal argued that international representation of future generations would threaten national sovereignty, encourage the proliferation of bureaucracy, and excessively favour the future over the present (Zwarthoed, 2018: 102-103).

Despite all these initiatives and challenges to effectively define future generations and include them in decision-making processes, there is no common definition of the concept to guide the existing human rights instruments. The following section will focus on the Maastricht Principles on the Human Rights of Future Generations, a non-binding document adopted in 2023 that, even though it does not represent hard law, can have an impact on the codification of the rights and future generations and influence climate litigation aimed at protecting the rights of present and future generations.

3.1 The Maastricht Principles on the Human Rights of Future Generations (2023)

One of the most recent initiatives to define future generations in international human rights law and to develop the scope of their rights is the Maastricht Principles on the Human Rights of Future Generations (Nolan, 2022: 5). Adopted in Maastricht on 3 February 2023, the document's signatories include experts from all regions of the world and current and former members of international human rights treaty bodies, regional human rights bodies, and former and current Special Rapporteurs of the UN Human Rights Council (Rights of Future Generations, 2023: 1). Additionally, the Principles were backed by UN Special Rapporteur on Human Rights and the Environment, David Boyd (De Meulemeester, 2023).

This new set of legal principles, backed by the United Nations, is aimed at codifying the rights of future generations, which can have an impact on generational climate lawsuits, that is, climate lawsuits focused on current and future generations (De Meulemeester,

2023). The Principles provide an overview of international law about the human rights of generations that have not yet been born (De Meulemeester, 2023).

This document is non-binding and does not represent hard law, nor will it be an authoritative legal interpretation (Nolan, 2022: 5). Nevertheless, given the concerning gap on the matter of future generations, as well as the influence of the previous Maastricht Principles, both Nolan (2022: 5) and De Meulemeester (2023) consider that it is likely the Principles will have an influential role and a significant impact on climate legislation, becoming a powerful tool for claimants and authorities in ongoing climate lawsuits since they connect with existing human rights laws, treaties, and constitutions while also considering climate implications.

The Maastricht Principles address that the rights of future generations have long been neglected in the analysis and application of human rights and yet, human rights law is not limited to current generations (Rights of Future Generations, 2023: 1). As the introductory remarks of the document point out, “The foundations of international law to address the rights of future generations are established in international instruments in an array of subject areas [...]; constitutions and legislative acts [...]; in the laws, traditions, and cosmologies of Indigenous Peoples from every continent; and in the doctrine of major faith traditions [...].” (Rights of Future Generations, 2023: 1).

The Preamble of the Maastricht Principles states that neither the Universal Declaration of Human Rights nor any other human rights instrument has a temporal limitation or limit rights to the present and, therefore, human rights extend to all, including present and future generations (Rights of Future Generations, 2023: 2). This is once again emphasised in the “General Provisions” section, which states that future generations are entitled to human rights based on international law which recognises human rights for all people, without limiting these rights to present generations, and based on international law that, explicitly or implicitly, recognises obligations and responsibilities towards future generations and seeks to ensure intergenerational equity (Rights of Future Generations, 2023: 4). Furthermore, the Maastricht Principles point out the importance of reading the Principles together with existing human rights standards (Rights of Future Generations, 2023: 1).

The Preamble describes the human rights of future generations as an essential dimension of the duty to uphold the inherent dignity, equality, and inalienable rights of all (Rights of Future Generations, 2023: 2). The document highlights that the actions and decisions made by current generations will affect the rights and lives of future generations, whether these are born years, decades, or centuries in the future (Rights of Future Generations, 2023: 2). It further remarks that there is an increasing urgency to recognise the intergenerational dimensions of the conduct of present generations to protect the rights and lives of future generations, which are impaired by the failure of current generations to prevent and respond to climate change (De Meulemeester, 2023; Rights of Future Generations, 2023: 2).

The Maastricht Principles recognise that children and young people are the closest in time to future generations and therefore have a vital role in ensuring the protection of human rights throughout their lifetimes and for future generations (Open Global Rights, 2023; Rights of Future Generations, 2023: 2). Additionally, children and youth recognise the importance of their perspectives and participation in decision-making concerning long-term and intergenerational risks (Open Global Rights, 2023: Rights of Future Generations, 2023: 2). Therefore, States must guarantee that children and young people can participate meaningfully in decision-making processes that impact their human rights and the rights of future generations and that their views and perspectives are given due weight (Open Global Rights, 2023).

The Maastricht Principles highlight that intergenerational justice has both individual and collective dimensions, and that future generations are entitled to all individual and collective human rights including, but not limited to, civil and political, 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 (Rights of Future Generations, 2023: 5).

Finally, the Principles declare that the rights of future generations must be interpreted, understood, and integrated within the evolving legal context that recognises humanity's relationship with the natural world, including the right to a clean, healthy, and sustainable environment (Rights of Future Generations, 2023: 3). Additionally, recognising and ensuring the rights of future generations demands an evolution of the decision-making

processes to consider and ensure both justice and sustainability in an intergenerational manner (Rights of Future Generations, 2023: 2).

4. Future Generations and Children in International Human Rights Law and Youth-Led Climate Litigation

Nolan (2022: 1) establishes that the links between the rights of children and the rights of future generations are increasing. In fact, these links are being reinforced by the growing efforts of youth-led climate litigation at the national, regional, and international levels and their influential role in ensuring justice for future generations (Kotzé and Knappe, 2023: 2; Nolan, 2022: 1). As De Meulemeester (2023) points out, the rise in generational climate lawsuits is rising and becoming an irreversible phenomenon due to the expansion of constitutional rights to incorporate the right to a clean, safe, and healthy environment and to consider the rights of future generations. However, as previously stated in this chapter, the relationship between children's rights and future generations is underdeveloped, specifically in matters concerning the application, scope, and content of international human rights law (Nolan, 2022: 1).

There are different perspectives on the issue of the rights of children and future generations under international human rights law. On one hand, Nolan (2022: 1) states that, by definition, children embody both the present and future generations, legitimising the focus on intergenerational rights issues and future generations' rights through the lens of children and their rights. On the other hand, however, some authors consider that "[...] the use of children as a proxy [...] or a shortcut [...]" for future generations may risk an under-theorisation of rights for future generations in key areas of international human rights law, that is, future generations' rights will not be properly developed since they are being considered as a part of children's rights (Nolan, 2022: 1).

There are several interrelationships and divergences between children's rights and future generations for the purposes of international human rights law and, according to Nolan (2022: 2), this requires the answer to two questions which have yet to be answered by the broad literature on future generations and human rights law. The first question inquires about who the rights-holders for children's rights and future generations' rights are,

respectively, in terms of international human rights law (Nolan, 2022: 2). The second question asks to what extent these categories, groups, or rights-holders overlap and diverge in terms of the scope of application of these rights (Nolan, 2022: 2).

Nolan (2022: 3) describes a growing acknowledgement of the links between the interests and rights of children and future generations in international human rights law. However, this poses several challenges due to the complexities in defining the concept of “future generations” and the relationship between children and future generations (Nolan, 2022: 3).

When analysing youth-led climate litigation and future generations, it is important to refer to the Filipino case *Minors Oposa v. Secretary of the Department of Environmental and Natural Resources*, brought to the Philippine Supreme Court in 1993 (Zwarthoed, 2018: 95). The case opposed a group of children, who were also representing unborn generations, and the State Department of Environmental and Natural Resources on the matter of timber-cutting licenses (Zwarthoed, 2018: 96).

The children, represented by their parents and legal guardians, and the NGO Philippine Ecological Network Inc., asked the Supreme Court to cancel existing timber license agreements and to cease allowing new licenses, invoking their right and the right of future generations to a healthy environment (Arts, 2009: 82; Zwarthoed, 2018: 96). The Court decided that the parents and guardians had *locus standi*, that is, that they were qualified to represent the unborn Filipino generations and ruled in favour of the children and future generations (Zwarthoed, 2018: 96).

In *Duarte Agostinho and Others v. Portugal and Others*, a case brought to the European Court of Human Rights in 2020, six Portuguese children and young people claim that 33 European Countries¹ – including the 27 Member States of the EU – are failing in their human rights obligations by not setting climate targets aligned with the Paris Agreement (De Meulemeester, 2023). The ECtHR held a hearing on the case in September 2023 and, at the time of writing, it is still in deliberations (European Court of Human Rights, 2023).

¹ The case is brought against Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Germany, Greece, Denmark, Estonia, Finland, France, Croatia, Hungary, Ireland, Italy, Lithuania, Luxembourg, Latvia, Malta, the Netherlands, Norway, Poland, Portugal, Romania, Russia, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Turkey, Ukraine, United Kingdom (Climate Case Chart, 2024).

In *Juliana v. United States* (2015), a group of twenty-one children and young people filed a complaint against the Government of the United States, asserting that the Government had knowingly violated their rights, as well as their own duty to protect public grounds (Daly, 2022a: 5). In addition to the children and young people, the plaintiffs also included an adult scientist, to act as a guardian for future generations (Donger, 2022: 273). The plaintiffs invoked the constitutional rights to life, liberty, and property, the right to equality and the public trust doctrine (Parker *et al.*, 2022: 73).

While the District Court found that the young plaintiffs had already established current harm, it declined to consider the issue of legal standing for future generations as a separate issue from the legal standing of the children and youth litigants, therefore avoiding the analysis of the differences between children's rights and the rights of future generations (Daly, 2022c; Donger, 2022: 273; Slobodian, 2020: 577). The plaintiffs met one element of the standing by showing current harm, ranging from evacuation due to flooding to loss of recreation opportunities (Slobodian, 2020: 578).

The District Court developed on the matter of the public trust doctrine, arguing that public trust assets would be affected by climate change and that the doctrine would create a requirement for the government to take action to address this threat, therefore creating an obligation to both present and future generations (Slobodian, 2020: 581).

However, in 2020, the Ninth Circuit reversed the District Court's decision, stating that plaintiffs met the injury and causation requirements for standing, but failed to show redressability (Slobodian, 2020: 581). While the plaintiffs had requested multiple forms of relief, such as a declaration that the federal government was violating the Constitution by not taking sufficient action on climate change, the Ninth Circuit found that the forms of relief suggested by the plaintiffs were either too complex or not sufficient to the relief (Slobodian, 2020: 581).

As previously mentioned in Chapter 1, in 2018 the IACtHR became the first Court to formulate an advisory opinion on the right to a healthy environment and to consider it an issue of human rights (De Meulemeester, 2023). Additionally, in 2023, Chile and Colombia requested the IACtHR to clarify, in an advisory opinion, the scope of the obligations of states when responding to the climate emergency and the states' obligations concerning the rights of children and future generations regarding the climate crisis (De

Meulemeester, 2023; Inter-American Court of Human Rights, 2023: 10). While the 2018 advisory opinion and the 2023 request for an advisory opinion do not focus specifically on the issue of youth-led climate litigation, these actions represent an important step for the Court of a regional human rights system to specify the obligations of Member States concerning the rights and interests of future generations and can have an impact in future climate litigation cases.

It is important to note that the outcome of youth-led climate litigation is not always favourable – as it will be analysed in the next chapters. Despite this, youth-led cases tend to have a strong impact that goes beyond the scope of the lawsuits themselves, pressuring governments to consider the obligations they have towards citizens whether the cases are successful or not and influencing public opinion on the matter of the protection of the environment and climate change (De Meulemeester, 2023).

Chapter 3: Intergenerational Equity in Youth-Led Climate Litigation

1. Intergenerational Equity – Emergence of the Concept and Challenges

One important concept that has guided youth-led climate litigation with a focus on the rights and interests of future generations is the principle of intergenerational equity, described by some scholars as one of the most important concepts of the century in relation to human rights (Daly, 2023: 143). It was first elaborated in relation to the environment in 1989 by Edith Brown Weiss, an American lawyer and legal scholar, in the book “In Fairness to Future Generations” (Sulyok, 2023: 5). Brown Weiss’ book sought to provide a contemporary analysis concerning the difficulties of recognising the rights and interests of future generations, and her work has since been considered a turning point concerning intergenerational equity (Daly, 2023: 139). For clarification purposes, this chapter will focus on the definition presented by Edith Brown Weiss in 1989 and remarks made by the author in the last decades, especially concerning the evolution of youth-led climate litigation.

1.1 Definition of Intergenerational Equity by Edith Brown Weiss

The principle of intergenerational equity can be summarised as fairness between generations. According to the definition provided by Edith Brown Weiss, it is the idea that the long-term interests of future generations are taken into due consideration in the decisions made by the present generation and that these decisions do not compromise future generations’ ability to meet their own needs (Mary Robinson Foundation, 2015: 1; Sulyok, 2023: 4). The author also argued for the fair distribution of natural resources among generations so that the current generation does not suffer poverty in anticipation of the needs of those in the future, and the future generations do not suffer poverty due to the present disregard for their needs (Daly, 2022c: 2).

Brown Weiss’ book argues that the human species holds the natural environment in common with all generations, past, present, and future (Brown Weiss, 1990: 198-199). According to the author, the principle of intergenerational equity “[...] requires that each generation leave the planet in no worse condition than it received it, and to provide

succeeding generations equitable access to its resources and benefits.” (Brown Weiss, 1990: 199; 1992: 21). The theory of intergenerational equity declares that the present generation is both a trustee, responsible for the robustness and integrity of the planet, and beneficiary, with the right to use and benefit from it (Brown Weiss, 1992: 20).

Brown Weiss declares that the theory of intergenerational equity focuses on the fact that all generations are equal in relation to the natural system and that there is no foundation for favouring past, present or future generations in relation to this system (Brown Weiss, 1992: 20). The author adds that there is a focus on the partnership among generations, whose purpose is to realise and protect the welfare and well-being of every generation in relation to the planet (Brown Weiss, 1992: 21). As Brown Weiss (1992: 21) notes. “[...] when one generation severely degrades the environment, it violates its intergenerational obligations to care for the natural system.”. Generations may have an obligation to restore the system, but not to bear all the costs, which should be distributed equitably across generations (Brown Weiss, 1992: 21).

According to Brown Weiss (1990: 201; 1992: 20), intergenerational equity has roots in international law, including in the Universal Declaration of Human Rights (UDHR), which recognises the inherent dignity and the equal and inalienable rights of “all members of the human family” in its Preamble (Brown Weiss, 1990: 201; 1992: 20). The author further declares that this reference to “all members of the human family” can be interpreted as having a temporal dimension which includes all generations in its scope, and the reference to equal and inalienable rights affirms the equality of all generations (Brown Weiss, 1992: 21).

The principle of intergenerational equity is tied with the concept of sustainable development, which is both an intergenerational and an intragenerational matter (Brown Weiss, 1992: 19). It relies on the commitment to equity with future generations and implies that future generations also have rights, but these rights are only meaningful if the present generations respect them (Brown Weiss, 1992: 19-20). As Brown Weiss (1990: 200) points out, “[...] equity among generations provides for a minimum floor for all generations and ensures that each generation has at least that level of planetary resource base as its ancestors. This [...] is consistent with the implicit premisses of trusteeship,

stewardship and tenancy, in which the assets must be conserved, not dissipated, so that they are equally available to those who come after.”

The author also highlights that intergenerational rights are present in all generations, whether they are immediate successive generations or more distant, and there is no theoretical basis to limit intergenerational rights to successive generations (Brown Weiss, 1992: 23-24). In fact, the author points out that nuclear waste, hazardous waste disposal, loss of biological diversity and ozone depletion, for example, have significant effects on the climate for more distant generations (Brown Weiss, 1990: 202; 1992: 23-24).

There are two relationships that shape intergenerational equity in the context of the environment: the relationship between generations and the relationship with the natural system (Brown Weiss, 1992: 20). The first type highlights that all generations are inherently linked to each other in the use of the common patrimony of the planet Earth, and each generation wants to inherit the Earth in at least as good condition as the previous generations and have the same access to resources and opportunities (Brown Weiss, 1990: 199-200). The second is focused on the relationship with the natural environment, and how the natural system must be used sustainably (Brown Weiss, 1990: 199).

In addition to this, Brown Weiss (1992: 21) also focuses on the links between intergenerational equity and intragenerational equity. While the first refers to equity among different generations, the second refers to equity among the current generations (Brown Weiss, 1992: 21). The author adds that, while the concepts may appear in conflict with one another, the actions needed to achieve equity among the current generations are consistent with those needed to advance intergenerational equity (Brown Weiss, 1992: 21-22). The author further points out that a theory of intergenerational equity also has an intragenerational dimension, and the fulfilment of intergenerational obligations requires attention to certain aspects of intragenerational equity (Brown Weiss, 1990: 201).

Brown Weiss (1992: 23) proposes four criteria to guide the development of the principle of intergenerational equity. These principles acknowledge the right of each generation to use the Earth's resources for their benefit. Still, they also limit the current generation's use of these resources (Brown Weiss, 1992: 23). The principles can offer guidance but should not dictate how each generation should manage its resources (Brown Weiss, 1992: 23).

First, to ensure a fair distribution of natural resources among generations, guaranteeing that the current generation does not over-exploit its resources to the point that future generations will not be able to access them, or that current generations are faced with disproportionate burdens so that future generations can meet their own needs (Daly, 2023: 139; Brown Weiss, 1992: 23). Second, it is not necessary to predict the needs and values of future generations but simply to give them sufficient flexibility to achieve their goals according to their values (Daly, 2023: 139; Brown Weiss, 1992: 23). Third, the application of the principles of intergenerational equity must be clear and simple (Daly, 2023: 139; Brown Weiss, 1992: 23). And finally, these principles must be generally accepted and shared to different economic and political systems, as well as different cultural traditions (Daly, 2023: 139; Brown Weiss, 1992: 23).

Brown Weiss (2008: 618) further highlights that the connection between intergenerational and intragenerational equity is important when one focuses on the specific aspects of climate change. Since climate change is expected to have the most harmful impacts on impoverished regions and communities, which have the least capacity to adapt, the present generation cannot expect people to fulfil obligations to safeguard the rights and interests of future generations if they are not able to satisfy their own basic needs (Brown Weiss, 2008: 618). As future generations become living generations, they inherit the intergenerational obligations to conserve options, quality, and access in relation to other members of the present generation (Brown Weiss, 2008: 618).

1.2 Conservation of Options, Quality and Access

Edith Brown Weiss (1990: 201; 1992: 22) identifies three normative principles of intergenerational equity: conservation of options, conservation of quality, and conservation of access. Brown Weiss (2008: 616-617) adds that, since one cannot predict the values and needs of future generations, these principles need to be balanced, flexible, clear, and acceptable to the different cultures in the world, allowing future generations to satisfy their own needs.

First, each generation must conserve the diversity of the existing natural and cultural resource base, making sure that they do not unduly restrict the options available to future

generations (Brown Weiss, 1990: 201-202; 1992: 22). The author highlights that it does not mean increasing diversity, but simply allowing that future generations have a diversity “[...] comparable to that which has been enjoyed by previous generations.” (Brown Weiss, 1990: 201-202; 1992: 22). Second, concerning the conservation of quality, each generation is entitled to quality similar to that enjoyed by previous generations and must maintain the quality of the planet so that “[...] it is passed on in a condition no worse than that in which it was received.” (Brown Weiss, 1990: 202; 1992: 22). Finally, regarding the conservation of access, each generation should have equal rights of access to those of past generations and conserve this access for future generations, including, for example, access to clean drinking water (Brown Weiss, 1990: 202; 1992: 23).

The author highlights that even though these principles may constrain the actions of the current generations in their development and usage of the planet, it is not dictated how each generation should manage its resources (Brown Weiss, 1990: 202). These principles are simply the basis of intergenerational obligations and rights that are held by each generation and are integrally linked (Brown Weiss, 1990: 202).

1.3 Are intergenerational rights individual or group rights?

On the matter of whether intergenerational rights are individual or group rights, Brown Weiss (1990: 203; 1992: 24) points out that these rights can be regarded as group rights when held in relation to past, present and future generations, that is when a generation holds these rights as a group vis-à-vis another generation. Furthermore, the author points out that intergenerational rights exist regardless of the number and identity of the individuals that make up a generation and when held by members of the current generations, these rights obtain characteristics of individual rights since one can identify the interests of the individuals that the rights protect (Brown Weiss, 1990: 203).

Brown Weiss (1992: 24) adds that it is not necessary to know the number of individuals that will exist in the future to attribute generational rights to future generations. As the world’s population continues to grow, the amount of diversity and quality that must be passed on to future generations will become more difficult to achieve if there is a drastic increase in the population (Brown Weiss, 1992: 24). Despite this, a generation can choose

different ways to meet its obligations vis-à-vis future generations, by curtailing exploitation, consumption, and waste, or by constraining population growth (Brown Weiss, 1992: 24). As Brown Weiss (1992: 24) adds, “[t]he fact that future generations have a generational right to receive the planet in a certain condition limits the extent to which a present generation can ignore such choices and trade-offs.”. Additionally, every policy decision of governments, such as decisions concerning war and peace, economy, transportation, health, and education, affect the composition of future generations by affecting the lives of the current generation (Brown Weiss, 1990: 206).

The author addresses the critique that rights can only exist when there are identifiable interests to protect and, for that reason, future generations cannot have rights (Brown Weiss, 1992: 24). Brown Weiss (1992: 24) refers to Parfit’s paradox, which states that since it is not possible to identify how many people will exist in the future and what their interests will be, future generations cannot have rights. Some theories go even further by pointing out that every intervention taken by the current generations to protect the environment affects the composition of future generations (Brown Weiss, 1990: 204).

Brown Weiss (1990: 204-105) highlights that there are two key elements to this analysis. First, future generations cannot have rights because it is not possible to identify the individuals who have interests to protect (Brown Weiss, 1990: 204-205). This assumes the conceptual framework of rights as rights of identifiable individuals, but the rights proposed by Brown Weiss in *In Fairness to Future Generations* are generational, meaning that generations hold these rights as groups in relation to other generations, and the interests protected do not depend on knowing how many people will exist in the future and what will their interests be (Brown Weiss, 1990: 205; 1992: 24).

Second, every intervention taken by present generations to protect the environment influences the composition of future generations (Brown Weiss, 1990: 205). Brown Weiss (1990: 205) points out that, since the rights of future generations are generational, it is not important to focus on the number of future individuals, because they only become members of the present generations and are attributed the generational rights attached to individuals once they are born (Brown Weiss, 1990: 205). Brown Weiss (1990: 205-206) adds that future generations “[...] do not consist of individuals until they are born, and

hence it is necessary and appropriate to speak of future generations as having rights in relation to the planet.”

In summary, the categorisation of the rights of future generations as individual or group rights is still a highly debated topic among scholars. Despite this, the principle of intergenerational equity and the rights of future generations are more often than not being included in regional and international human rights law frameworks, and we can expect this to have impacts on youth-led climate litigation.

1.4 Legacy of the Concept of Intergenerational Equity

Since 1989, there have been several explicit references to future generations and intergenerational equity in treaties, judicial decisions, and national constitutions (Daly, 2022c: 2). As Daly (2022c: 2) points out, the moral obligation associated with intergenerational equity does not create rights or legal obligations, but it is a step forward in the evolution of the public conscience (Daly, 2022c: 2).

The 1987 report of the UN World Commission on Environment and Development (WCED), also known as the Brundtland Commission Report on Our Common Future, became the first to conceptualise intergenerational equity in the definition of sustainable development and gave intergenerational equity its first concrete meaning in international law (Daly, 2023: 142; Fambasayi and Addaney, 2021: 37-38; Mary Robinson Foundation, 2015: 1). The Brundtland Report states that, for socioeconomic development to be sustainable, it must meet the needs of the present generation “[...] without compromising the ability of future generations to meet their own needs.” (Daly, 2023: 142).

Article 3 of the UNFCCC recognises that climate change is an intergenerational problem, declaring that the States party to the Convention must protect the climate system for the benefit of present and future generations (Fambasayi and Addaney, 2021: 38; Mary Robinson Foundation, 2015: 1).

Additionally, the Rio Declaration on the Environment and Development and the Agenda 21, produced by the 1992 UN Earth Summit, both refer to the well-being of present and future generations (Daly, 2023: 142; Fambasayi and Addaney, 2021: 38). Even though

these documents only constitute soft law, they have set forth important principles of international climate action (Fambasayi and Addaney, 2021: 38). The UNESCO Declaration on Responsibilities Towards Future Generations, adopted in 1997, refers to the obligation of States to pass down to future generations a planet that has not been irreversibly damaged by human activity (Daly, 2023: 142).

Edith Brown Weiss also proposed the establishment of a Commission or the appointment of a Commissioner for Future Generations, also proposed by Malta in the lead-up to the 1992 Earth Summit, and the lead-up to Rio+20 in 2012 (Mary Robinson Foundation, 2015: 2). This proposal was also considered in a 2013 report of the UN Secretary General, entitled “Intergenerational solidarity and the needs of future generations” (Mary Robinson Foundation, 2015: 2). However, none of these proposals has ever been put into practice (Mary Robinson Foundation, 2015: 2).

In 2020, the Human Rights Council released a resolution urging States to recognise the right to a healthy environment in domestic legislation, ensuring the rights of both present and future generations and realising children’s rights (Daly, 2023: 141). However, the resolution refrained from elaborating on the meaning of future generations in relation to the right of children to a healthy environment (Daly, 2023: 141). Additionally, the definition of future generations and intergenerational equity in General Comment No. 26 on children’s rights and the environment with a special focus on climate change remain very vague, with the Committee on the Rights of the Child only briefly mentioning the concepts (Daly, 2023: 141).

Sulyok (2023: 5) adds that the concept of intergenerational equity “[...] has been deemed as a non-binding principle in international judicial practice; and was exiled to preambular references in international treaties and symbolic formulations in national constitutions.” Despite having limited recognition in law, the principle of intergenerational equity has a strong moral appeal and the recent wave of climate litigation and child and youth climate activism has shown that courts are starting to recognise the rights of future generations and the protection of their needs, constraining the ability of States to pursue policies that will have a negative environmental impact in the future (Sulyok, 2023: 5).

The next section of this chapter will focus on youth-led climate litigation and the principle of intergenerational equity and how this concept links children’s rights to future

generations, providing examples of cases in which the principle of intergenerational equity was invoked by the applicants to protect the rights of future generations.

2. Intergenerational Equity in Youth-Led Climate Litigation

2.1 Intergenerational equity and children's rights

Since its elaboration by Edith Brown Weiss, the principle of intergenerational equity has gained prevalence in international discourse, influencing the drafting of several legal instruments focused on the environment and sustainable development (Daly, 2023: 140). However, Brown Weiss did not explicitly consider children in her definition of intergenerational equity in 1989 and since then the children's rights framework has evolved greatly and children and young people have become active participants in the fight for climate justice (Daly, 2023: 140; 153).

Brown Weiss' work is mainly focused on the rights of future generations in the chain of generational relationships, and children are not prominent in her arguments, being merely included in her work as part of the "present generation" (Daly, 2023: 139). Additionally, future generations are usually meant to refer to "those yet to be born", excluding children (Daly, 2022c: 1). Brown Weiss has since emphasised that children are "the first embodiment of the interest of future generations" and that they have the intergenerational right to a healthy environment (Daly, 2023: 139). According to Daly (2023: 139-140), Brown Weiss has emphasised a belief in the dignity of all members of the human family and the equality of rights for all, extending in time and space, including children and adults in any time period.

Furthermore, Daly (2023: 135) adds that the principle of intergenerational equity should not focus solely on future generations and those yet to be born but should also give due regard to those who are here now and focus on children's rights and interests as well. The author adds that intergenerational rights are children's rights and that children are a crucial link between present and future generations, specifically when one considers the principle of the best interests of the child (Daly, 2023: 132). Daly (2023: 140) also highlights that the role of children in intergenerational equity shows the interconnectedness and

interdependence of human beings across space and time and outlines why the connections between intergenerational equity, children's rights and the rights of future generations are difficult to elaborate on.

Children are often seen only in terms of their future potential and the future violations of their rights, which diminishes the value of their present experiences and capacities, and their role as actors and rights holders in the present is often ignored and frowned upon (Daly, 2023: 135). Despite this, the children of the current generation can be described as the first representatives of future generations (Daly, 2022c: 3). Daly (2022c: 3) writes that this is both a paradox and a practical fact, that "[...] the human who is a child now can be said to be a member of both a present generation and a future generation."

In a March 2018 statement on children's rights and the environment, John Knox, the former UN Special Rapporteur on human rights and the environment, emphasised the importance of focusing on both present and future generations (Daly, 2022c: 4; 2023: 135). Knox stated that "[...] many members of the next generation have already arrived, and more arrive every moment. We do not need to look into the future to see the people whose lives will be affected by our actions today. They are already here." (Human Rights Council, 2018: 4) Knox also emphasised that States have the obligation to protect children from environmental harm and, since children will be disproportionately affected by the climate crisis, children's interests should be given higher priority in relation to the environment (Daly, 2023: 147).

Due to the confusion between the overlapping concepts of intergenerational equity and future generations, children's rights frameworks are often excluded from climate cases (Daly, 2023: 135). For example, Daly (2023: 135) notes that the CRC, in particular the principle of the best interests of the child (Article 3), has great potential for climate litigation. Additionally, the author focuses on the importance of emphasising the role of children as the link between present and future generations, highlighting that children are the worst affected by the climate crisis and that the use of child rights-based arguments in climate litigation can lead to an increase of successful outcomes (Daly, 2023: 135).

Daly (2023: 151) points out that there is a lack of engagement with the CRC, particularly the principle of the best interests of the child, in climate cases with child litigants. One of the main reasons for this is that it is likely there is a reliance on the right to a healthy

environment (Daly, 2023: 151). Daly (2023: 152) states that another possible reason for youth-led climate litigation not using the CRC or the principle of the best interests of the child is that some of the litigants in these cases are young people over the age of eighteen, and children's rights arguments do not apply to these applicants.

Daly (2023: 142) notes that, despite the greater attention to children's environmental human rights, the definition of children in the context of intergenerational equity is not very clear. Even though the rights of future generations are gaining more attention in the context of climate litigation, the issue of children's rights in this context is still neglected and can affect whether children's rights are used in litigation (Daly, 2023: 142).

The climate crisis is an inherently intergenerational issue which has led to a deeper understanding and consideration of the position of children in intergenerational justice since its impacts have serious implications for justice and equity between present and future generations (Daly, 2023: 138; The London School of Economics and Political Science, 2023). Additionally, the right to a healthy environment is being given increasing legitimacy at the UN level, first with the Human Rights Council in 2021 and with the UN General Assembly in 2022 (Daly, 2023: 138).

Children and young people are expressing more interest in climate negotiations, demonstrating their eagerness to participate in multilateral meetings on climate change and sustainable development and, due to the temporal nature of the climate crisis, they are actively advocating for intergenerational equity and the rights of future generations (Daly, 2023: 134; Mary Robinson Foundation, 2015: 3; The London School of Economics and Political Science, 2023). Child and youth climate activists are demonstrating that children and young people of the present generation are interconnected with future generations, highlighting that intergenerational rights can also be meant to include children's rights (Daly, 2022c: 1).

Daly (2022c: 3) adds that, since future generations are not yet born, they do not have legal standing and, by extension, access to justice. Despite this, children can use the international human rights law framework to advance the rights of future generations and to safeguard their interests, arguing that their own rights are being violated in the present since they will likely have legal standing and can argue that they are already suffering from harm caused by climate change and environmental harm (Daly, 2022c: 3; 2023: 14).

Furthermore, the author adds that the efforts to combat climate change and its impacts in the future must include children's rights, since children will be, of the current generations, those most affected by the climate crisis, and children's rights can be used as arguments to guarantee a safe and healthy environment for future generations (Daly, 2022c: 5).

As Kotzé and Knappe (2023: 6) highlight, youth-led climate litigation is a relatively new phenomenon, and success may increase as courts and youth litigants become more familiar with the complex process of climate litigation. As the next section will explore, youth-led climate litigation, despite presenting a new avenue for child and youth climate activists to advocate for climate justice, it still presents several obstacles to the participation of children and young people in formal activism processes.

2.2 Intergenerational equity on youth-led climate litigation

While children and young people are traditionally marginalised in national, regional and UN political settings, and are largely ignored by the rhetoric of multilateral environment agreements that have failed in operationalising intergenerational justice, they are changing the narrative and actively becoming representatives of present and future generations (Kotzé and Knappe, 2023: 1).

Through informal and formal avenues to assert claims of intergenerational justice, youth climate activists and advocates have been protesting, lobbying politicians, and engaging with the media on matters concerning climate change (Daly, 2022c: 3; Kotzé and Knappe, 2023: 1). Additionally, they have turned to courts as a crucial part of their strategy to hold states accountable regarding their climate mitigation measures, in which there has been the prevalence of arguments related to intergenerational equity (Daly, 2022c: 3). Plaintiffs usually demand protection for the interests of future generations against governments' actions or omissions concerning environmental and climate measures and policies (Sulyok, 2023: 4).

Young people have been increasingly engaging to respond to their political disempowerment and marginalisation and, through the mobilisation of mass demonstrations – such as the Fridays for Future Movement – and more formal processes, such as climate litigation, are bringing increasing attention to the impacts of climate

change on the rights and interests of future generations (Kotzé and Knappe, 2023: 5). Children and young people are raising the profile of climate cases and raising awareness to the rights of future generations and intergenerational equity in climate litigation (Kotzé and Knappe, 2023: 9). Additionally, their efforts are shifting the perspective of future generations from absent and distant unborn generations to present young people who are already disproportionately suffering from the climate crisis (Kotzé and Knappe, 2023: 2).

Young people claim to embody future generations through their shared vulnerability to the impacts of climate change, and intergenerational equity is gradually shifting from an abstract notion to a more concrete matter that has direct impacts on the rights and interests of young people and future generations (Kotzé and Knappe, 2023: 5). Additionally, the rise of the youth climate movement is a response to the concern that “[...] despite being most affected by climate change, young people [...] are not only the least responsible for the current state of global emissions, but they are also the least able to influence policy efforts that could avert its worst impacts.” (Parker *et al.*, 2022: 66 in Kotzé and Knappe, 2023: 4).

Despite the positive developments, however, youth climate activists and advocates are still struggling to be properly included and heard in formal global climate politics, putting their claims forward, and reaching the addressees of their claims (Kotzé and Knappe, 2023: 5). These struggles are directly linked to their economic and political disempowerment and the false impression that the youth is not a valid and legitimate “political position” (Kotzé and Knappe, 2023: 5).

Kotzé and Knappe (2023: 5) further address the “peculiar double status” of children and young people as members of both the present and future generations. Children and young people can be seen as the ones who will become future citizens, but they should also be recognised in the present as full “human beings with equal worth to those who belong to the current decision-making generations” (Kotzé and Knappe, 2023: 5). Sulyok (2023: 14) adds that, in the specific case of youth-led climate litigation, the majority of child plaintiffs do not plead violations of specific children’s rights, but rather seek protection for their long-term interests, such as reducing climate risks.

This also influences the discourse on intergenerational justice, sustainability, and climate change. Intergenerational justice has been defined in the context of sustainable

development without a specific reference to children and youth (Kotzé and Knappe, 2023: 5). In addition to this, children and young people do not have a dominant role in the debate surrounding intergenerational justice, and their formal participation in political decision-making processes is often seen with scepticism (Kotzé and Knappe, 2023: 5). Children and young people are seen as less knowledgeable or motivated to take a stand regarding climate change and their representation of future generations in court proceedings is not seen as an effective political instrument (Kotzé and Knappe, 2023: 6). Furthermore, children and young people do not have the right to vote until they reach majority, which makes it difficult to express their support for politicians willing to take more progressive climate protection action (Kotzé and Knappe, 2023: 6).

According to Parker *et al.*, (2022: 66), as of May 2021, the database of the Sabin Center for Climate Change included thirty-two climate cases that had been filed by children and young people in the global North and global South, as well as in regional and international proceedings. Despite the increase in the number of youth-led climate cases, many of these are dismissed by courts, which undermines the agency of young people and denies their rights to redress for human rights violations resulting from worsening climate change (Kotzé and Knappe, 2023: 6). Additionally, children and young people face situational barriers to justice, that is, lack of information on the available legal remedies, as well as the financial burdens of the litigation processes, and technical obstacles, such as inadequate representation and limited standing (Kotzé and Knappe, 2023: 6).

Included below are two examples of successful youth-led cases in national courts that focus heavily on the issue of intergenerational equity: the *Minors Oposa* decision, regarded as one of the first youth-led climate cases to focus on intergenerational equity that granted standing to the applicants, and the *Neubauer* decision, in which the applicants argued that the German Climate Protection Act was partly unconstitutional.

2.2.1 Minors Oposa v. Secretary of the Department of Environment and Natural Resources

One of the first youth-led climate litigation cases to focus on the issue of intergenerational equity was *Minors Oposa v. Secretary of the Department of Environmental and Natural*

Resources, the first successful environmental class action brought in the name of present and future generations and which relied heavily on arguments relating to future generations (Daly, 2023: 143-144; Sulyok, 2023: 13).

In 1993, forty-four children, represented by their parents and legal guardians and the NGO Philippine Ecological Network Inc., asked the Supreme Court to cancel the issuance of timber license agreements by the government, claiming that the deforestation that resulted from these licenses was a violation of their and the future generations' constitutional right to a balanced and healthful ecology and a violation of the principle of intergenerational equity (Arts, 2009: 82; Zwarthoed, 2018: 95-96).

The Supreme Court recognised the existence of intergenerational responsibility in the right to a balanced and healthful ecology (Arts, 2009: 82), and *Minors Oposa* became the first successful environmental class action in the name of present and future generations (Sulyok, 2023: 13). The Supreme Court recognised that the government had protective duties towards future generations, originating from the constitutional right to a balanced and healthful ecology (Sulyok, 2023: 13). The Court decided the parents and legal guardians had *locus standi*, that is, that they were qualified to represent the unborn Filipino generations and ruled in favour of the children and future generations. (Zwarthoed, 2018: 96).

It is also important to note that courts have often avoided addressing the convergence and divergence of children's rights and future generations in youth-led climate cases (Daly, 2022c: 4). One such example is *Juliana v. United States*, in which the court did not consider the issue of standing for future generations as separate from the legal standing of the children and youth litigants (Daly, 2022c: 4).

2.2.2 Neubauer and Others v. Germany

In *Neubauer and Others v Germany*, the applicants argued that the State had failed in mitigating the climate crisis and that this constituted a burden on future generations (Daly, 2023: 144). The case highlights how young people can assert intergenerational justice claims before a court that is open to innovation, and the decision of the case is particularly

sensitive to the temporal aspects of climate change and its impacts on future generations (Kotzé and Knappe, 2023: 2).

Neubauer and Others v. Germany is described by Kotzé and Knappe (2023: 6-7) as an innovative example of youth-led climate litigation, with the Supreme Constitutional Court understanding the temporal challenges of climate change and the necessity of changing current laws to protect young people and future generations from the severe impacts of climate change. It highlights that the existing laws were not proportionate with the scientific evidence of the impacts of climate change and were therefore unable to meaningfully address the crisis in the present and the future (Kotzé and Knappe, 2023: 6-7).

The claimants were a German youth group who alleged that the German government had failed to introduce laws that were sufficient to reduce greenhouse gas emissions and to limit the increase in global temperature to below 2°C, and preferably to 1.5°C, according to the targets set by the 2015 Paris Climate Agreement (Kotzé and Knappe, 2023: 7). The applicants claimed that the reduction of carbon dioxide emissions specified in the Federal Climate Protection Act, that is, a 55% reduction by 2030 from 1990 levels, would be insufficient to meet the country's obligations under the Paris Climate Agreement and to stay within the remaining CO₂ budget (Kotzé and Knappe, 2023: 7).

However, the Federal Climate Protection Act did not include provisions for the reduction of carbon dioxide beyond 2030, and the claimants argued that certain measures of the Climate Protection Act were incompatible with some of the fundamental rights included in the German Constitution, the Basic Law (Kotzé and Knappe, 2023: 7). Among these fundamental rights, the petitioners refer to the right to life, the right to physical integrity and personal freedom, and the right to an ecological minimum standard of living (Kotzé and Knappe, 2023: 7).

In a unanimous decision on 29 April 2021, the German Supreme Constitutional Court declared that the Federal Climate Protection Act was partly unconstitutional since it created disproportionate risks for the fundamental rights of future generations, which in turn could lead to a disproportionate intergenerational impact (Kotzé and Knappe, 2022: 8; Sulyok, 2023: 14). The Court held that the state had the obligation to review its distribution of climate measures and laws and to equitably distribute allowable emissions

over time and generations and ordered that the government set clear provisions for reduction targets from 2031 onwards by the end of 2022, and therefore protect the fundamental rights and freedoms of its citizens against climate change and environmental harm, including future generations (Kotzé and Knappe, 2023: 7; Parker *et al.*, 2022: 82). Additionally, the state's duty to protect the right to life, physical integrity and personal freedom includes the duty to protect life and health against the risks posed by climate change, and it can give rise to an objective duty to protect future generations (Kotzé and Knappe, 2023: 7).

The German Supreme Constitutional Court relied on Article 20a of the Basic Law, to determine its decision and establish the protection of the rights and interests of future generations regarding the severe impacts of climate change (Kotzé and Knappe, 2023: 7). Article 20a determines that “Mindful also of its responsibility towards future generations, the state shall protect the natural foundations of life and animals by legislation and, in accordance with law and justice, by executive and judicial action, all within the framework of the constitutional order” (Federal Ministry of Justice, 2022). The German Constitutional Court (2021: 2) developed this article in relation to the *Neubauer* case, stating that:

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. In their subjective dimension, fundamental rights – as intertemporal guarantees of freedom – afford protection against the greenhouse gas reduction burdens imposed by Art. 20a of the Basic Law being unilaterally offloaded onto the future. Furthermore, in its objective dimension, the protection mandate laid down in Art. 20a of the Basic Law encompasses the necessity to treat the natural foundations of life with such care and to leave them in such condition that future generations who wish to carry on preserving these foundations are not forced to engage in radical abstinence. Respecting future freedom also requires initiating the transition to climate neutrality in good time. In practical terms, this means that transparent specifications for the further course of greenhouse gas reduction must be formulated at an early stage, providing orientation for the required development and implementation processes and conveying a sufficient degree of developmental urgency and planning certainty.” (Climate Case Chart, 2021: 4).

While the Court did not expand Art. 20a of the Basic Law to include any type of fundamental rights for future generations, it did find that the Federal Climate Protection Act was partly unconstitutional since certain measures created disproportionate intergenerational risks and impacts to the fundamental rights of future generations (Kotzé and Knappe, 2023: 8). As Kotzé and Knappe (2023: 7) state, this is one of the clearest articulations yet by any Court on the obligations of the state to guarantee that the current legal, political, and broader governance arrangements embrace and include the rights and interests of future generations in a way that does not defer mitigation obligations onto future generations.

In conclusion, the Court's decision in both *Minors Oposa* and *Neubauer* highlights that the efforts to address the climate crisis must be improved, that its extent and severity disproportionately affect young people and future generations and reinforce the agency of children and young people to assert themselves as influential political actors that have the right to be heard in climate matters (Kotzé and Knappe, 2023: 8). And while it is not possible to generalise the decisions, these cases set an example of the innovative ways through which a court can ensure that children and young people have political agency and that present laws and political processes are more considerate of the rights and interests of future generations (Kotzé and Knappe, 2023: 9).

Chapter 4: Youth-Led Climate Litigation – Breaking Ground on Climate Activism

1. Emergence of Youth-Led Climate Litigation and Relevant Typology

Throughout this thesis, we have seen that children and youth are disproportionately affected by climate change and environmental harm due to certain age-related vulnerabilities and adverse discrimination linked to the impacts of climate change (Parker *et al.*, 2022: 64). The climate crisis disproportionately affects children's physical and mental health and development, and this is exacerbated by social, legal, political, and economic structures that marginalise them (Donger, 2022: 265; Parker *et al.*, 2022: 64).

As Daly (2022a: 1) notes, there is perhaps no other group more affected by the climate crisis than children and young people, which solidifies the interpretation of the climate crisis not only as a human rights crisis but also as a child's rights crisis. Children and young people face the biggest impacts of the consequences of the climate crisis and are disproportionately affected by extreme weather events, food and water insecurity, air pollution and extreme heat, which have long-term impacts on their lives, health, access to food and water, shelter, education, and livelihoods (Donger, 2022: 265; Parker *et al.*, 2022: 65).

According to a report by the IPCC, children will be the worst and longest affected by the climate crisis, and the failure of humanity to control global heating has already guaranteed irreversible damage (Daly, 2022a: 1). Additionally, a child born today will be more impacted by climate change in terms of food security, disease, and poverty (Daly, 2022a: 2). As Parker *et al.* (2022: 65-66) note, “[...] [C]hildren living today experience disproportionate physical, psychological, and educational vulnerability associated with climate change due to their unique sensitivity to climate risks and their limited adaptive capacity to respond to them”.

Despite this, children and youth are the least responsible for the climate crisis and global emissions and the least able to influence policy efforts that could avert its worst impacts (Parker *et al.*, 2022: 66). Children and young people lack political influence and are excluded from most climate-related decision-making processes and instruments at the

national, regional, and international levels, making them feel unable to shape political decisions regarding climate change (Donger, 2022: 266; Parker *et al.*, 2022: 66). And as Donger (2022: 266) notes, the use of an age-specific lens to analyse the impacts of climate change and environmental harm on children and young people is a rare occurrence. Additionally, social, and legal norms define children and young people as lacking agency and maturity, leading to them being largely ignored in social and environmental policy-making environments (Parker *et al.*, 2022: 66).

Despite this, there has been an international legal mobilisation concerning children's environmental rights, which has been accompanied by the strengthening of the youth climate movement (Donger, 2022: 267). Children and young people are one of "[...] the most vocal and active segments of the climate justice movement [...]" and their involvement indicates a broader evolution of climate justice globally (Daly, 2022b: 4; Parker *et al.*, 2022: 65).

Parker *et al.* (2022: 69) develop on the research of O'Brien, Selboe and Hayward on the ways through which youth activists engage with political power to transform climate policy. The authors highlight three types of overlapping dissent: dutiful dissent, dangerous dissent, and disruptive dissent (Parker *et al.*, 2022: 69). Dutiful dissent focuses on non-confrontational efforts, such as work in non-profit organisations, or policymaking efforts (Parker *et al.*, 2022: 70). This type of dissent is often expressed through activities that support existing and emerging institutions and typically does not challenge the status quo (Parker *et al.*, 2022: 70).

Secondly, dangerous dissent means confrontational political activism that advocates for and initiates large-scale transformations to the economy and status quo (Parker *et al.*, 2022: 70). Finally, disruptive dissent represents the youth efforts to transform norms, rules, and regulations within the existing economic and political structures (Parker *et al.*, 2022: 70). This type of dissent represents activism that demands more ambitious climate targets, opposes polluting projects, and calls for more transparency in climate policies (Parker *et al.*, 2022: 70).

Children and youth are not usually associated with the exercise of political rights, but youth-led climate activism is highlighting the potential that children and young people have for political activism, and they have come to be seen by many as competent in

climate change-related matters (Daly, 2022b: 1). Youth climate activists are using national, regional, and international human rights law mechanisms to exercise political and social influence in the global efforts to address climate change and to advance climate justice (Daly, 2022b: 1; Donger, 2022: 264). Additionally, children and youth are shifting international human rights law from a human-centric and highly procedural arena to a holistic approach that better encompasses person-environment connections (Daly, 2022b: 1).

One of the best examples of youth mobilisation for climate justice in recent years is the Fridays for Future (FFF), a youth-led climate strike movement which began in August 2018, when then-15-year-old Swedish climate activist Greta Thunberg began a school strike for climate outside the Swedish Parliament, demanding urgent action on the climate crisis (Fridays for Future, 2024). Through the use of social media, the movement soon extended to other cities and countries, leading to global school strikes for climate (Daly, 2022b: 4; Fridays for Future, 2024). According to Donger (2022: 264), in 2019 the global strikes organised under the FFF campaign had mobilised 7.6 million participants across six thousand events in 185 cities.

Children and young people have also taken on consultative roles in regional and international instruments, such as the COP26 and the drafting of General Comment No. 26 on children's rights and the environment, with a special focus on climate change (Daly, 2022a: 1). Additionally, the United Nations Youth Advisory Group on Climate Change has met with UN Secretary-General António Guterres every few months since July 2020 (Donger, 2022: 264).

Daly (2022a: 3) points out that children and young people are also becoming more visible in international efforts and standards in relation to the climate crisis, while Donger (2022: 266) adds that there has been a convergence of climate governance and children's rights. For example, the United Nations and other regional and international organisations are gradually focusing on the interests of the child, as is the case of the 2018 Report of the Special Rapporteur on Human Rights and the Environment, which outlines states' duties and obligations concerning the rights of children and environmental harm, and General Comment No. 26, which was accompanied by consultations with groups of children during the drafting process (Daly, 2022a: 3). Additionally, the 2015 Paris Climate

Agreement marked the first instance in which states were formally asked to consider children's rights when developing climate measures, policies, and programmes (Donger, 2022: 266). However, as this obligation was included in the non-binding Preamble of the document, it did not hold governments accountable for protecting the rights of children and largely ignored the potential of children to climate justice (Donger, 2022: 266).

Another way through which children and young people have fought for climate justice is through climate litigation cases and applications at the national, regional, and international levels (Daly, 2022a: 1; Daly, 2022b: 2; Parker *et al.*, 2022: 65). Youth activists are breaking new ground in court and are increasingly taking governments to Court for their failure to mitigate climate change in a meaningful way (Daly, Leviner and Stern, 2021; Parker *et al.*, 2022: 64-65). Youth climate activists have mobilised against policies and actions they consider insufficient to mitigate the climate crisis and have begun to access courts and other complaint mechanisms (Daly, 2022a: 5; Parker *et al.*, 2022: 64-65).

Children and young people are commonly portrayed as victims, with several UN documents emphasising children's protection rather than their status as active and political individuals (Daly, 2022b: 4). As Donger (2022: 289) points out, the participation of children in civil proceedings has been limited to matters of divorce and separation, separation from parents and alternative care, and adoption and *fakalah* of Islamic law. However, the climate crisis has repositioned children and youth as notorious activists and litigants on a global scale, with climate activism transforming and empowering a generation of children (Daly, 2022b: 4).

Parker *et al.* (2022: 79) note that youth-led climate cases also serve as a tool with the potential to address the lack of agency of children and young people in climate policymaking. In youth-led climate litigation, the voices and rights of children and young people are positioned as central to climate governance, reflecting the notion that children are not "human becomings", but rather human beings (Parker *et al.*, 2022: 79). Additionally, the child's right to be heard and to express their views freely is developed in connection with climate mitigation and adaptation measures (Parker *et al.*, 2022: 79).

Both Daly (2022a: 5; 2022b: 14) and Donger (2022: 266) speak of a "rights turn" in climate litigation. That is, when a plaintiff who takes a climate case to court alleges a

violation of human rights (Donger, 2022: 266). This was facilitated by the convergence of climate governance and human rights, leading to new legal opportunities and new types of mobilisation (Donger, 2022: 266). According to research undertaken by Daly (2022b: 14), by July 2021 there were over one hundred human rights-based climate change cases globally, and thirty-four of those had been filed in 2020 or 2021.

While there is no concrete information as to the number of cases that involve children, children's rights arguments, or intergenerational equity arguments, Parker *et al.* (2022: 66-67) note that, as of May 2021, the climate litigation database of the Sabin Centre for Climate Change Law included 32 climate cases led by or involving children or youth, including in the domestic courts of Australia, Brazil, Canada, Colombia, Germany, India, Pakistan, Mexico, Norway, Peru, South Korea, Sweden, Uganda, and the USA, and international or regional bodies, such as the Committee of the Rights of the Child and the European Court of Human Rights (Parker *et al.*, 2022: 66-67). Slobodian (2020: 573) notes that most of the cases have been brought in the Global North, but more are emerging in the Global South. Additionally, according to Donger (2022: 263), children and young people constitute more than one-quarter of the plaintiffs in rights-based strategic litigation cases filed globally until 2021.

Furthermore, Donger (2022: 264) highlights that thirty-three rights-based climate cases, with 26% being filed globally before 2021, have involved plaintiffs who are children under the age of eighteen, a children's NGO, or a class of children. Additionally, many rights-based climate cases also involve youth climate activists as plaintiffs (Donger, 2022: 264). Donger (2022: 269) adds that the term "youth-led" is defined to include cases involving plaintiffs who are named children and young people, NGOs led by children and young people or a class of children and young people.

According to Daly (2022b: 2), children are often not seen as competent political actors. Yet, the developments in youth activism and climate justice have initiated change in the international human rights law framework, and youth-led climate litigation is extending the boundaries of traditional international human rights law (Daly, 2022b: 2). Furthermore, as Daly (2022b: 2) points out, applications brought by children and young people to the European Court of Human Rights and the UN Committee on the Rights of the Child have posed challenges to the usual features of typical legal applications. Most

youth-led climate cases include multiple child and youth applicants suing multiple respondent states, including states in which they do not live, on the basis of future harm anticipated by climate change (Daly, 2022b: 2).

The author adds that there is no certainty that these developments will transform human rights law, but there are indications that these actions are already having an impact, as is the case of the *Sacchi and Others v. Argentina and Others* petition and the *Duarte Agostinho and Others v. Portugal and Others* case (Daly, 2022b: 2). Regarding the first, in 2019, sixteen youth activists petitioned to the UN Committee on the Rights of the Child under the Optional Protocol on a Communications Procedure targeting the five largest carbon emitters that are signatories to the CRC, Argentina, Brazil, France, Germany and Turkey (Daly, 2022a: 6). Even though the *Sacchi* petition was deemed inadmissible due to the petitioners' failure to exhaust domestic remedies, it was the first time that a UN body recognised the principle of transboundary responsibility for human rights violations, with the Committee finding that a state can be held accountable for the impacts of its carbon emissions on the rights of children inside and outside its territory (Daly, 2022a: 6; 2022b: 2).

Concerning the second case, in 2020, six Portuguese children and young people submitted a petition to the ECtHR arguing that the inadequate policies of several European States violate their human rights, and the Court's fast-tracking of the petition indicates that it is aware of the seriousness of the claims of human rights violations presented by the plaintiffs (Daly, 2022a: 5-6; 2022b: 2).

Daly (2022b: 16) highlights that these two petitions are the most prominent international and regional climate petitions involving children and young people and demonstrate that there is a potential change in the international human rights law framework. These two cases also evidence that international human rights are becoming more participatory for groups of youth applicants (Daly, 2022b: 16).

Moreover, Parker *et al.* (2022: 71) identify three types of youth-led cases. First, cases concerning insufficient efforts to reduce carbon emissions and meet climate commitments (Parker *et al.*, 2022: 71). Second, cases concerning insufficient efforts to implement mitigation and adaptation measures (Parker *et al.*, 2022: 71). And third, cases concerning specific regulatory approvals that are expected to have dramatic climate impacts (Parker

et al., 2022: 71). The authors argue that these three types of youth-led cases can be seen as examples of disruptive dissent, through which children and young people aim to transform the existing norms and structures that have generated the climate crisis (Parker *et al.*, 2022: 78).

According to Donger (2022: 270), by the end of 2020 there had been filed thirty-three youth-led climate cases, and the plaintiffs of thirty-two of these challenged the climate actions and omissions of sovereign states. The majority of these cases challenge insufficient efforts to reduce carbon emissions and achieve climate commitments, while the rest of the cases challenge specific regulatory approvals that are expected to have dramatic climate impacts (Donger, 2022: 270).

The first category of youth-led cases argues that insufficient efforts to reduce carbon emissions represent a violation of the fundamental rights of children and young people (Parker *et al.*, 2022: 71). This category challenges the fundamental norms that influence climate-related decisions (Parker *et al.*, 2022: 78). Within this first category, there are two subsets of claims, the first being the public trust doctrine (Parker *et al.*, 2022: 71). According to this doctrine, certain natural resources are part of a trust equally owned by and available to all citizens (Parker *et al.*, 2022: 75).

One of the biggest examples of public trust doctrine is *Juliana v. United States* (Parker *et al.*, 2022: 75). As presented in Chapter 2, the plaintiffs of *Juliana* filed a complaint against the Government of the United States, arguing that the government had knowingly violated their rights and its duty to protect public grounds (Daly, 2022a: 5; Donger, 2022: 273). The District Court developed on the matter of the public trust doctrine, arguing that public trust assets would be affected by climate change and that the doctrine would create a requirement for the government to take action to address this threat, therefore creating an obligation to both present and future generations (Slobodian, 2020: 581).

However, in 2020, the Ninth Circuit reversed the District Court's decision, stating that plaintiffs only met the injury and causation requirements for standing, but failed to show redressability (Slobodian, 2020: 581). While the plaintiffs had requested multiple forms of relief, the Ninth Circuit found that the forms of relief suggested by the plaintiffs were either too complex or not sufficient to the relief (Slobodian, 2020: 581).

The second subset of claims are cases that challenge the insufficient action of governments to address climate change as a violation of fundamental human rights, of which *Neubauer v. Germany* and *Duarte Agostinho and Others v. Portugal and Others* are examples (Parker *et al.*, 2022: 75-76). As mentioned in the previous chapter, in *Neubauer v. Germany*, the German Supreme Constitutional Court held that the Federal Climate Protection Act of 2019 was partly unconstitutional since it did not include provisions for the reduction of carbon dioxide beyond 2030, and violated the human rights of present and future generations, including the right to life, to physical integrity and personal freedom, and the right to an ecological minimum standard of living (Daly, 2022a: 5; Kotzé and Knappe, 2023: 7).

In the *Duarte Agostinho* petition, submitted in 2020, six Portuguese children and young people filed a case in the ECtHR against thirty-three countries, in which they accused the States of violating their rights by not setting climate targets in line with the 2015 Paris Climate Agreement (De Meulemeester, 2023).

The applicants claim that the States violated Articles 2 (right to life) and 8 (right to family life), as well as Article 14 (non-discrimination) of the European Convention on Human Rights, arguing that States' failure to tackle the climate crisis constitutes youth discrimination (Daly, Leviner and Stern, 2021; Sulyok, 2023: 24). The petition declares that due to the failure of the States to adopt strong mitigation measures, children and young people will experience extreme weather events which affect their living conditions and health (Sulyok, 2023: 24). The claimants, represented by the NGO Global Legal Action Network (GLAN), argue that States' climate policies place most of the economic and environmental burden on the younger generations, and do not pay enough attention to figure out how to share that burden and reduce carbon emissions (Daly, Leviner and Stern, 2021; Daly, 2022b: 19).

The second category of youth-led cases focuses on insufficient efforts to implement mitigation and adaptation measures (Parker *et al.*, 2022: 77). According to Parker *et al.* (2022: 77), this is the most common type of case in the Global South and focuses on the efforts of individuals and NGOs to adapt their existing mitigation and adaptation measures, holding the governments accountable for their action and inaction concerning the climate crisis. One of the biggest examples of this category of cases is *Demanda*

Generaciones Futuras v. Minambiente, a case filed in 2018 to the Supreme Court of Colombia, invoking the rights to a healthy environment, to life, to health, food, and water (Parker *et al.*, 2022: 73; 77).

In *Demanda Generaciones Futuras*, the plaintiffs asked for compliance with the Paris Climate Agreement and with the domestic commitment established in the National Development Plan 2014-2018 to reduce the deforestation rate of the Colombian Amazon to zero by 2020, arguing that this deforestation threatened their constitutionally protected right to enjoy a healthy environment and their rights to life and health (Parker *et al.*, 2022: 77). As a remedy, the plaintiffs requested that the Colombian Supreme Court should order the creation of an intergenerational pact to halt the deforestation in the Colombian Amazon (Parker *et al.*, 2022: 79).

The Supreme Court declared the Colombian Amazon to be a “subject of rights” and its conservation to be a national and global obligation (Parker *et al.*, 2022: 80-81). Additionally, the Court held that, considering the principle of intergenerational equity, children could bring a climate litigation claim related to the issues of future generations, since both were directly affected by the current climate prospects of temperature rise (Global Network of Human Rights and the Environment, 2022: 27). The Court concluded that the rates of deforestation in the Amazon and the resulting temperature increases were a violation of the fundamental rights of future generations and ordered the formulation of an intergenerational pact for the life of the Colombian Amazon to adopt measures to reduce deforestation (Donger, 2022: 273; Slobodian, 2020: 570).

However, the government has failed to execute the Supreme Court’s orders promptly and effectively, and deforestation in the Colombian Amazon has continued (Parker *et al.*, 2020: 80-81). The Intergenerational Pact for the Life of the Colombian Amazon has not been created, which has led the plaintiffs to return to the Court to establish that the government has failed to comply with the Court’s orders (Slobodian, 2020: 588).

Finally, the third category focuses on the judicial review of specific regulatory approvals, usually of carbon-intensive or exploration activities, intending to challenge the status quo (Parker *et al.*, 2022: 78).

2. Youth-led Climate Litigation and Intergenerational Equity and Future Generations

In youth-led climate cases, the litigants stress that it is the states' responsibility under domestic and international law to protect, respect and fulfil the rights of children against climate change and environmental harm (Paker *et al.*, 2022: 64). According to Parker *et al.* (2022: 64), these cases represent a “[...] unique subset of rights-based climate change litigation due to their emphasis on intergenerational equity.”

Parker *et al.* (2022: 67) highlight the uniqueness of this subset of cases within the rights turn in climate change litigation due to its emphasis on intergenerational equity. Despite the principle having been recognised as a key part of international environmental law, including the UNFCCC and the Paris Agreement, it does not appear in the CRC, and most states have failed to satisfy the principle of intergenerational equity, creating and sustaining the conditions for the current climate crisis (Donger, 2022: 272; Parker *et al.*, 2022: 67). Nonetheless, the principle is particularly relevant for children, who are the least responsible for the climate crisis and are already suffering from disproportionate harm (Donger, 2022: 272).

Slobodian (2020: 570) argues that the principle of intergenerational equity fits into three components of climate litigation: types of plaintiffs and questions of standing; determination of rights and duties; and fashioning of remedies. Furthermore, the author adds that climate litigation has established the existence of obligations to future generations, which aligns with the principle of intergenerational equity (Slobodian, 2020: 580). These obligations to future generations are founded on three concepts which relate to a particular aspect of intergenerational equity (Slobodian, 2020: 580).

First, the concept of public trust doctrine, which reflects but is not equal to the planetary trust model of intergenerational equity (Slobodian, 2020: 580; 582). While under the first principle, governments are obliged to manage trust resources for the benefit of all citizens, which applies only to public resources under the government's jurisdiction, under the second principle each generation acts as a custodian and a beneficiary of the trust, which applies to all natural resources (Slobodian, 2020: 582).

Secondly, the principle of non-discrimination has been taken to also refer to future generations and intergenerational equity (Slobodian, 2020: 580). The author adds that there is no moral justification for giving preferential treatment to one generation over the others, be it present or future (Slobodian, 2020: 582). Current decision-making processes generally do not take into consideration the rights and interests of future generations, as they are not able to participate in consultations and express their views (Slobodian, 2020: 582). Additionally, children and young people below the voting age also do not have the opportunity to participate in decision-making processes (Slobodian, 2020: 582). As Slobodian (2020: 582) adds, representatives of future generations, both official and unofficial, can try to ensure that future needs are considered, but there is often no legal guarantee.

For example, in *Juliana v. United States*, the plaintiffs argued that children and unborn generations are denied equal protection of the law since they have no voting rights and little or no political power (Slobodian, 2020: 582). The District Judge in *Juliana* declined to address this issue, but other courts are now finding an obligation to consider the interests of future generations in decision-making processes (Slobodian, 2020: 582). Slobodian (2020: 583) adds that the principle of non-discrimination is rarely explicitly considered in climate litigation, but it is implicit in the principle of intergenerational equity and the rights and interests of future generations.

Finally, the obligation to protect, respect and fulfil fundamental rights can be recognised in an intergenerational context (Slobodian, 2020: 580). According to the author, failure to adequately address climate change can be a violation of human rights, and a significant number of climate litigation cases has already found an intergenerational aspect of constitutional rights, including the right to life, the right to property, and the right to a healthy environment (Slobodian, 2020: 583). Several courts have found that the principle of intergenerational equity should be included in the interpretation of human rights and that sustainable development is a fundamental right to meet the needs of future generations (Slobodian, 2020: 583).

For example, in the IACtHR case *Bámaca-Velasquez v. Guatemala* of 2000, the judge developed the spatial and temporal dimensions of human solidarity, focusing on people's duties and obligations towards the generations that will succeed them (Daly, 2022c). In

his separate opinion on the case, Judge Antônio A. Cançado Trindade declared that “Human solidarity manifests itself not only in a *spacial* dimension – that is, in the space shared by all the peoples of the world, – but also in a *temporal* dimension—that is, among the generations who succeed each other *in the time*, taking the past, present, and future altogether.” (Inter-American Court of Human Rights, 2000: 6) (italics in original).

According to Donger (2022: 272), children are well-placed to invoke intergenerational equity in their claims. The plaintiffs of climate cases are using arguments of intergenerational equity not only on behalf of future generations but also for themselves (Slobodian, 2020: 578). For example, in *Demanda Generaciones Futuras*, the Supreme Court of Colombia applied the principle of intergenerational equity to future generations and included the children who brought the action in this argument, ordering the government to create an intergenerational pact for the life of the Colombian Amazon with the active participation of the youth plaintiffs (Slobodian, 2020: 578).

Donger (2022: 272) adds that, as of 2022, all but three youth-led climate cases filed to date had made arguments based on the principle of intergenerational equity, that is, arguments that the action or inaction of governments concerning climate change unlawfully prioritises present generations over future generations.

Furthermore, Parker *et al.* (2022: 79) highlight that youth-led climate cases have created a shared narrative of intergenerational equity that has the potential to affect the social and political order. The authors add that these cases stress the need to adjust legal norms to match the reality of the climate crisis by including future generations and future climate harm within the scope of fundamental rights (Parker *et al.*, 2022: 79).

Moreover, Slobodian (2020: 585) highlights that the principle of intergenerational equity has been interpreted as being connected to existing rights, in particular the rights to life and health, and the right to a healthy environment. It has been suggested that future generations are protected by and may be considered holders of rights, even though it is not clear how they could assert them (Slobodian, 2020: 585). Slobodian (2020: 585) declares that the “[...] mere recognition of the inclusion of future generations within the scope of fundamental rights is enough to create a duty on the part of governments and other actors to respect, protect, and fulfil these rights for future generations.”

Slobodian (2020: 585) adds that developing legal remedies that can protect future generations is not straightforward, and many cases have been dismissed because the plaintiffs have requested remedies that the courts do not have jurisdiction to provide. The author highlights two categories of accepted remedies regarding future generations, the first being the establishment or recognition of transgenerational entities or institutions that represent the rights of future generations, and the second being the integration of the necessities of future generations in planning and decision-making processes (Slobodian, 2020: 585).

Additionally, the establishment of an entity or institution to represent the rights of future generations and promote the implementation of intergenerational equity has already been tried (Slobodian, 2020: 585). In 2015, the Well-being of Future Generations Act was created in Wales, establishing a duty for public bodies to set objectives for sustainable development (Slobodian, 2020: 585). The Act also established the creation of the position of a Future Generations Commissioner to act as a guardian for the interests of future generations (Slobodian, 2020: 585). However, it has been criticised for failing to provide mechanisms to guarantee compliance (Slobodian, 2020: 585).

According to Slobodian (2020: 579), transgenerational groups, such as communities, play a key role in climate cases. These groups are legal entities that exist now and will continue to exist beyond the lifetimes of their individual constituents and can hold rights and bring claims in a way that future people cannot. These groups are better suited to bring cases representing future generations than plaintiffs who seek to represent future generations generically, can assert rights over a longer timeframe, and can better represent the needs of the constituents within each generation (Slobodian, 2020: 579).

The integration of the necessities and concerns of future generations in planning and decision-making processes is the focus of many climate cases (Slobodian, 2020: 586). In this type of climate litigation, the remedy typically includes overturning the authorisation and requesting the appropriate authorities to consider the interests of future generations, leading to the possible implementation of intergenerational equity in the context of climate change (Slobodian, 2020: 587). And although the explicit consideration of the rights and interests may be considered a small step, it can become a useful instrument to

guarantee that the rights of future generations will continue to be considered in the decision-making process (Slobodian, 2020: 587).

3. Challenges of Youth-Led Climate Litigation

As has been mentioned before, children and young people face several challenges and obstacles in youth-led climate litigation. These obstacles can range from structural barriers regarding the access of children to courts to the struggles in ensuring the principle of intergenerational equity and the rights and interests of future generations during the climate proceedings. Even though these challenges are interconnected with each other, for the purposes of clarification, this section will be divided between the challenges of youth-led litigation to child and youth activists, and the challenges concerning intergenerational equity and future generations. It is also important to note that some of these challenges have already been referred to and developed in previous chapters.

Daly (2022b: 21) speaks of a shift in international human rights law. Youth-led climate litigation is influencing the international human rights framework, and the efforts to advocate for the right to a healthy environment are influencing the formal legal arena and transforming traditional approaches to human rights and environmental law (Daly, 2022b: 21). However, Daly (2022b: 21) adds that this influence is, for now, only in terms of applications rather than outcomes.

According to Daly (2022b: 12-13), there are several challenges to applying a human rights framework to climate justice. Climate justice is a fragmented and decentralised arena due to the difficulty of achieving international consensus on how to tackle climate change (Daly, 2022b: 13). Additionally, a state may argue that climate change and environmental harm, as a global phenomenon, are not the responsibility of individual states (Daly, 2022b: 13). The limited possibility for the law of state responsibility to include the collective legal interests of climate litigation also presents a challenge, since the human rights law framework entails that an individual must claim the status of victim (Daly, 2022b: 13).

Daly (2022b: 13) also adds that issues of causation mean that it is difficult to position climate change as a violation of human rights against particular individuals in particular places. It is essentially impossible to work out the causal relationship between the greenhouse gas emissions of a particular country with a specific climate change-related effect and the direct and indirect implications of this to human rights (Daly, 2022b: 13). Despite this, the role of human rights litigation in climate change mitigation efforts is increasing (Daly, 2022b: 13-14).

Daly (2022b: 23) adds that human rights law was not designed to tackle a crisis of the dimensions of the climate crisis, which has caused and will continue to cause unparalleled harm to the environment and human rights, but there is scope within the human rights framework for dealing with the climate crisis. Despite this, we have yet to see the practical implications of the success of climate litigation (Daly, 2022b: 23).

For example, the *Urgenda* case is considered to be the “current archetype of climate litigation” (Daly, 2022b: 15). The applicants relied on the UNFCCC and articles 2 and 8 of the ECHR, on the right to life and the right to private and family life, respectively, and the Dutch Supreme Court deliberated in favour of the plaintiffs (Daly, 2022b: 15). However, this represented a limited victory, since the Court could only order the government to reduce greenhouse gas emissions by at least 25% compared to the levels of 1990 by the end of 2020 (Daly, 2022b: 15; 23). Regarding the *Duarte Agostinho* petition, Daly (2022b: 23) is among the scholars to express the view that, even though the application itself is groundbreaking, a decision in favour of the applicants is not guaranteed.

The improvement of accessibility of human rights law mechanisms is beneficial for child and youth activists and could be considered a success for climate activism, but it also benefits human rights law itself (Daly, 2022b: 23). Through climate activism, the human rights law framework is providing activists, children and young people included, to hold states accountable for their mitigation and adaptation measures (Daly, 2022b: 23).

3.1 Children's rights

Child and youth climate activists have taken their activism to courts through the use of human rights mechanisms (Daly, 2022b: 3). According to Daly (2022b: 3), they have not only changed the perceptions of children and youth as a group but have also changed the procedural arena of international human rights law towards an approach that better encompasses person-environment connections.

Child and youth activists and litigants have pointed out that they are already suffering from the impacts of climate change and environmental harm in the present (Daly, 2022b: 21). They anticipate that climate harm will worsen during their lifetime and argue that if action is not taken in the present, they will continue to suffer harm in the future, as will the future generations, and it is necessary for the debate on climate change to bridge the gap between the decision-makers of the present with the future generations (Daly, 2022b: 21). For example, in 2021, the German Constitutional Court recognised that rights should be defined as “intemporal guarantees of liberty” (Daly, 2022b: 21).

The involvement of children and youth in climate litigation has the potential to advance children's rights both inside and outside courts (Donger, 2022: 285). However, as Donger (2022: 285) notes, this potential is currently underdeveloped, since intergenerational justice focuses mostly on legal arguments and does not focus too much on legal claims specific to children's rights (Donger, 2022: 285).

Countries do not usually include children and young people in climate policy- and decision-making processes (Daly, 2022a: 3). According to Daly (2022a: 3), UNICEF found in 2020 that only 34% of 103 countries with new or revised climate plans and programs could be classified as “child-sensitive” and only in 12% of the countries were children consulted in the drafting process of the climate plans. Additionally, when children and young people are indeed included in the decision-making processes, they can feel a sense of disappointment and disillusionment, and their participation can be merely symbolic and lack meaningful consideration of their views and opinions (Daly, 2022a: 3).

Politically active youth is still frowned upon in many societies (Daly, 2022b: 5). Legally, some national laws prevent children and young people under 18 years of age from

assembling to protest (Daly, 2022b: 5). Daly (2022b: 5) also speaks of a tendency to want to exclude children and youth from politics due to their perceived vulnerability or incompetence, and they are often excluded from the right to vote, meaning that children and young people are lacking in the traditional means of political influence when compared to adults.

According to Daly (2022b: 9-12), youth climate activists are so prominent in climate activism and litigation due to their competence in climate science, online activism, and communication. Children and young people are uniquely positioned in the climate justice movement, growing up with the knowledge of climate change and the growing awareness of extensive environmental degradation (Daly, 2022b: 9). Additionally, since children and young people have less access to traditional media forums, they use various types of media and communication to reach their audiences (Daly, 2022b: 10). However, there is resistance from courts to the exercise of the child's "freedom rights" which, according to Daly (2022b: 6), are the CRC rights to freedom of expression (article 13), freedom of thought, conscience and religion (article 14), to freedom of association and peaceful assembly (article 15), to privacy (article 16), and to a variety of mass media sources (article 17).

Climate litigation allows young people to have meaningful participation in climate justice and Donger (2022: 283-285) develops on the inherent and avoidable risks of children's involvement in climate litigation. According to the author, there is a lack of empirical research and literature on this topic, specifically concerning the experiences of youth plaintiffs in the litigation process and how their climate activism affects international human rights law (Daly, 2022b: 3; Donger, 2022: 283).

According to Donger (2022: 284), most literature on youth-led climate litigation does not refer to the ways climate litigation disempowers child and youth plaintiffs. Children and young people may be better placed to withstand public backlash if they have prior experience in climate advocacy and litigation or have a bigger personal stake in the issue (Donger, 2022: 284). Additionally, the involvement of a youth organisation can be a buffer and support network for the child- and youth-plaintiffs (Donger, 2022: 284).

As Parker *et al.* (2022: 69) note, children and youth do not have a meaningful participatory role in society to express their interests. Furthermore, the authors note that

“[y]oung people are systematically excluded from key decision-making processes relating to climate change, and are often unable or unwilling to vote in elections. Even when they are invited to participate in policy processes, youth participation can be tokenistic and often does not result in a meaningful consideration of their perspectives.” (Parker *et al.*, 2022: 69).

Additionally, most of the contributions of children and young people regarding climate change and environmental harm are underestimated and undermined because they are perceived to be “human becomings” rather than human beings who are already experiencing the impacts of climate change and environmental harm (Parker *et al.*, 2022: 69).

Youth-led climate cases are still scarce due to the legal and situational barriers that children and young people face when accessing court systems, including lack of knowledge, capacity and resources, as well as the reluctance of courts and lawyers to value their contributions to judicial proceedings (Donger, 2022: 268; Parker *et al.*, 2022: 70). Children and young people are usually not informed of the potential legal avenues available to them, and the financial burdens of the process usually exclude litigation as a viable option for most child and youth activists (Donger, 2022: 268).

Donger (2022: 283) stresses that climate litigation is a time- and energy-intensive process, which creates opportunity costs for children and young people who are still in school. Additionally, child and youth activists are exposed to significant levels of criticism and bullying (Donger, 2022: 283). The author notes that climate cases can generate a high level of public scrutiny and opposition, which can also take a toll on plaintiffs (Donger, 2022: 283). Additionally, considering the urgency of the climate crisis, child and youth litigants are still expected to take the burden of seeking out legal representatives and NGOs willing to represent them, which can be a highly costly and time-consuming process (Daly, 2021).

The timelines of climate litigation are long, and the scope and probability of available remedies are limited and, according to Donger (2022: 284), even if a case is successful, there are no guarantees that the lives of the plaintiffs will be measurably improved. Despite this, Daly (2022b: 24) points out that the petitions and cases submitted to regional and international instruments may be legally unsuccessful, but this does not mean that the

petitions and cases will not have an impact on climate litigation and on the international human rights law framework, shaping political discourse around climate change. The actions of children and young people are transforming the international human rights law framework from a human-centred to a more holistic approach (Daly, 2022b: 24).

Parker *et al.* (2022: 64) identify a trend in which youth-led cases are dismissed due to lack of standing at a procedural stage or lack of justiciability and note that the courts' refusal to proceed to the merits of the claims undermines the agency of youth activists and denies their rights to redress and to remedies (Parker *et al.*, 2022: 64). The authors describe "justiciability" as a "[...] set of judge-made rules, norms and principles delineating the scope of judicial intervention in social, political and economic life." (Parker *et al.*, 2022: 83). Even though the concept is different across jurisdictions, Parker *et al.* (2022: 83) highlight that there are two main reasons for finding climate litigation claims non-justiciable. First, that there is not a valid cause of action and the plaintiffs presented broad arguments instead of identifying specific laws and rights (Parker *et al.*, 2022: 83). Second, that courts should not intervene in social and economic policies since they lack the capacity to properly deliver judgement on social and economic rights (Parker *et al.*, 2022: 83).

Despite the fact that children and young people are now recognised as legal persons with their own interests, they still have to approach courts through a guardian *ad litem*, who decides on how to proceed and instructs the lawyer throughout the litigation process (Donger, 2022: 268-269).

According to Donger (2022: 273), one of the main reasons why children are well-placed to advance claims for future generations relies on legal standing, since courts are open to consider children as members of future generations. For example, in *Neubauer v. Germany*, the Court found that the plaintiffs had standing since they were also invoking their own fundamental rights and not asserting the rights of future people (Donger, 2022: 273).

Similarly, in *Demanda Generaciones Futuras*, the Supreme Court of Colombia ruled that rates of deforestation in the Amazon rainforest and resulting temperature increases violated the fundamental rights of future generations (Donger, 2022: 273). Additionally,

the Court noted that future generations, including the plaintiffs who brought the action to the Court, were included in the scope of fundamental rights (Donger, 2022: 273).

In contrast, other courts have been reluctant to recognise the rights of people not yet born and have avoided addressing the legal standing of future generations (Donger, 2022: 274). For example, in *Juliana v. United States*, which included a group of 21 young people and children, represented by their guardians, and a guardian for future generations, the District Court judge declined to address the question of legal standing for future generations because the youth plaintiffs had established current harm (Donger, 2022: 274).

Furthermore, Donger (2022: 274) adds that, while including children as members of future generations has advanced intergenerational equity, it is important to also address the rights and interests of children as citizens of the present generation, with arguments specific to their experiences, since arguments for intergenerational equity do not fully address the disproportionate impact that children of the present generation suffer.

Donger (2022: 280) declares that children and youth claimants are well-placed to advance arguments on the legal protection of future generations while avoiding some of the risks that this approach might create. Despite this, the framing of climate litigation on future generations neglects the importance of the current violations of children's rights caused by environmental harm and climate change (Donger, 2022: 280). The author expects that General Comment No. 26 will assist litigants in relying on children's rights and that the impacts of climate inaction on children's rights will become more difficult to ignore (Donger, 2022: 280).

Additionally, Donger (2022: 280) states that

“Youth-led litigation should, wherever possible, advance arguments specific to children as a demographic as well as arguments for intergenerational equity. [...] One could also imagine climate cases based on the children's right to education, for example. Child-specific arguments are important [...] because they could maximize the likelihood of success [...] and also avoid instrumentalizing children to seek results that incompletely address their experiences.”.

While it is not possible for youth-led climate litigation to always explicitly advance children's environmental rights, some climate cases still waste child rights arguments that

could successfully be used in climate change litigation (Donger, 2022: 275-276). Donger (2022: 276) notes that few children's rights arguments have been invoked in climate litigation, and the cases that do usually focus on the principle of the best interests of the child (Article 3 of the CRC) and age-based discrimination claims.

Daly (2022b: 7) highlights the difficulties in theorising youth-led climate litigation inside and outside the legal context. One of the main reasons for this is that the terminology related to youth-led climate litigation can be contested (Daly, 2022b: 7). For example, the concept of "youth" is usually meant to refer to those between 15 and 24 years old, and "children" are defined to be those under 18 years old, but youth climate activists are both under and over 18 years old, which blurs the line as to whom youth climate activism involves since the law inclines towards binary definitions (Daly, 2022b: 7). It is presupposed that those under 18 years old lack climate competence, and that those over 18 years old must be competent in relation to climate activism (Daly, 2022b: 7). This also means that there are debates on the applicability of the principle of the best interests of the child in litigation where the plaintiffs are over 18 years old (Daly, 2022b: 7).

The claimants of eight youth-led climate cases have invoked the principle of the best interests of the child, but the courts in these proceedings did not explicitly address this argument (Donger, 2022: 276). For example, in *Neubauer*, the German Supreme Constitutional Court only affirmed that the Paris Climate Agreement targets should be implemented in a time-sensitive manner to respect the rights of future generations (Donger, 2022: 276).

Several youth-led cases have used the age-based discrimination argument in climate litigation, but so far without success (Donger, 2022: 279). For example, in *Juliana v. United States*, the plaintiffs argued that the actions of the government violated constitutional non-discrimination guarantees and led to significant risks to children's well-being (Donger, 2022: 279). However, this was rejected by the District Court (Donger, 2022: 279).

According to Daly, Leviner and Stern (2021), *Duarte Agostinho and Others* appears to be the first time that a non-discrimination provision is being used to protect youth as a category in an international and/or regional court, since age discrimination provisions are generally understood to protect older people. This is a new development in international

human rights law, bringing attention to the disproportionate effects the climate crisis has on children and young people, as children's rights narratives rarely position lack of attention to children and young people as a discrimination issue (Daly, 2022b: 19). The petition was fast-tracked by the ECtHR in December 2020 due to the 'importance and urgency of the issues raised' (Daly, 2022b: 20).

Additionally, the applicants have not exhausted domestic remedies, claiming that there is an absence of adequate remedies when considering the urgency of the climate crisis, and it would impose unreasonable burdens on them to pursue domestic remedies in each of the thirty-three states (Daly, 2022b: 20).

De Meulemeester (2023) adds that the message of *Duarte Agostinho and Others* goes beyond the scope of the lawsuit itself, pressuring governments to consider the obligations they have towards their citizens, and young people specifically. Additionally, it shows that children and youth are in a unique position in the climate justice movement (Daly, 2022b: 9).

It is important to note that, while many hope for a landmark ruling on climate change, the case may face procedural barriers for admissibility, as was the case with *Sacchi and Others v. Argentina and Others* (Daly, 2022b: 20). Concerning *Sacchi*, the Committee on the Rights of the Child declared in 2021 that the petition was inadmissible on the ground that the plaintiffs had not exhausted domestic remedies in the national courts (Donger, 2022: 272; Global Network of Human Rights and the Environment, 2022: 9).

In their petition, the applicants outlined why no equivalent cases in domestic courts would succeed. Children and youth face many obstacles when attempting to access justice, and outlined the urgency of the climate crisis and claimed that no single court could provide the remedy sought in the petition against these five countries (Daly, 2021). Daly (2022b: 17-18) points out that, for example, in Turkey, no domestic case law precedent would allow the applicants of *Sacchi and Others* to succeed in having the merits of their arguments assessed by Turkish Courts. Additionally, the rules of procedure of the Committee state that the requirement to exhaust domestic remedies can be bypassed when domestic litigation is considered to be "[...] unreasonably prolonged or unlikely to bring effective relief [...]", but the Committee still considered the lack of exhaustion of domestic remedies as one of the reasons to dismiss the petition (Daly, 2021).

Donger (2022: 279) adds that the age-based discrimination argument can be viable in some jurisdictions. For example, Article 23 of the Constitution of Ecuador explicitly prohibits discrimination based on age, and jurisprudence of the Court of Justice of the European Union and the ECtHR suggests that the scope of the non-discrimination article can include children (Donger, 2022: 279). The author adds that youth-led climate litigation should include ageism claims in their applications as a way to highlight the disparities between children and other age groups in relation to the impacts of climate change (Donger, 2022: 279-280).

The right of children to be heard on issues that affect them (Article 12 of the CRC) is enforceable in eleven jurisdictions in which youth-led cases have been brought (Donger, 2022: 276). However, the right was only invoked in the *Sacchi* petition, when the claimants requested that the respondent states guarantee the child's right to be heard in all efforts to mitigate or adapt to the climate crisis (Donger, 2022: 276). This petition also demonstrated the connections between the impacts of climate action and children's rights, even though the ruling was more focused on admissibility and the decision of the Committee was non-binding (Donger, 2022: 278).

Donger (2022: 281) highlights several benefits of including children and youth as plaintiffs in climate litigation. First, the moral authority and the innovative ideas of young people are reflected in the youth climate movement (Donger, 2022: 281). Second, as recognised in the CRC, children have a right to be heard on issues that affect them, including in judicial proceedings (Donger, 2022: 281). This translates into four participatory rights, the right to be informed, the right to express an informed view, the right to have that view taken into account and, where maturity allows, be a joint decision-maker (Donger, 2022: 282). Additionally, the author notes that by participating in climate litigation efforts, children and young people become active participants in society, asserting their full citizenship (Donger, 2022: 281).

To summarise, Donger (2022: 265) draws a few conclusions from her analysis of the role of children and young people in strategic climate litigation. First, child and youth activists are well placed to bring forth intergenerational justice claims in climate litigation (Donger, 2022: 265). However, it is important to note that, as a legal and social category, children are different from future generations, and the rights of the first are not used to

their full potential in climate litigation (Donger, 2022: 265). Secondly, there is no empirical understanding of how child claimants are affected by litigation and advocacy (Donger, 2022: 265). According to the author, the benefits and risks of the involvement of children in climate litigation are not addressed to their full potential (Donger, 2022: 265).

Donger (2022: 283) notes that there are a few possible drawbacks to the involvement of children and young people in climate litigation. However, these obstacles should not prevent children and young people from being involved in climate litigation; instead, they highlight the necessity for more inclusive legal systems, specifically a child-friendly approach to climate justice (Donger, 2022: 283).

3.2 Future Generations and Intergenerational Equity

The main challenge to the protection of the rights and interests of future generations is that they do not exist (Slobodian, 2020: 589). This raises the issue described by Parfit's paradox of the argument of the "non-identity problem", according to which decisions made in the present affect future generations and determine their identity, and the fulfilment of obligations to future generations can cause them to not exist (Slobodian, 2020: 575).

According to Parfit, effectively addressing climate change and working to improve the lives of future generations could lead to different economic, social, and even demographic conditions, which can affect the existence of future generations and, consequently, their rights (Slobodian, 2020: 575). However, as Slobodian (2020: 575) points out, and as has been analysed in previous chapters of this thesis, the rights of future people are held by future generations as a class, and individuals are born into it and become rights holders.

There are three approaches that can be considered when analysing the representation of future generations in the present day (Slobodian, 2020: 576). First, future generations can be represented by a guardian *ad litem* or another type of representative, such as a specific individual or a civil society organisation who represents the rights and interests of future generations, or even members of the present generation, such as children, who have common interests with future generations (Slobodian, 2020: 576).

Second, future generations are represented when members of the present generation bring forth lawsuits on their own behalf for the harm they will suffer in the future and claim that intergenerational equity also applies to them as well as to future generations (Slobodian, 2020: 576). And third, future people are represented when rights are claimed by transgenerational groups, such as countries, communities, tribes, and organisations that exist now and will continue to exist in the future (Slobodian, 2020: 576).

The urgency and the current impacts of climate change conceal the issue of standing for future generations and seem to declare such standing to be unnecessary (Slobodian, 2020: 578). It is implicitly assumed that the rights and interests of children and future generations are identical and that, for the purposes of standing, it is sufficient to consider the interests of the present-generation plaintiffs (Slobodian, 2020: 578).

An example of this situation is the previously mentioned case of *Juliana v. United States*. While the District Court found that the young plaintiffs had already established current harm, it declined to consider the issue of legal standing for future generations as a separate issue from the legal standing of the children and youth litigants, therefore avoiding to explore the differences between children's rights and the rights of future generations (Daly, 2022c; Donger, 2022: 273; Slobodian, 2020: 577). The plaintiffs met one element of the standing by showing current harm, ranging from evacuation due to flooding to loss of recreation opportunities (Slobodian, 2020: 578).

In conclusion, there are still several challenges and obstacles to youth-led climate litigation in general, but also to its focus on the rights of future generations and the principle of intergenerational equity in particular. Specifically, since this is a recent approach to youth-led climate litigation, there is only a limited amount of literature on the topic, but we can expect that this will improve as more child and youth activists take more cases to court and learn how to navigate national, regional, and international court proceedings.

Conclusions

This thesis has explored the recent wave of child- and youth-led climate activism, with a particular focus on climate litigation and the protection of the rights of future generations in court proceedings, through the use of the principle of intergenerational equity.

Chapter 1 highlighted that children and young people are one of the most vulnerable groups to the impacts of climate change and environmental rights, and that the climate crisis is not only a human rights crisis, but also a crisis of human rights. This chapter also focused on the protection of children's environmental rights in regional and international human rights framework noting that, even though this path has not been extensively developed, there have been important advances in this area, as is the case of the recognition of the Human Rights Council and the UN General Assembly of the right to a clean, healthy and sustainable environment as a human right, and the elaboration of the CRC General Comment No. 26 on children's rights and the environment, with a special focus on climate change.

Chapter 2 focused on the challenges and obstacles of defining future generations, specifically concerning the lack of a universal definition. It also emphasized the concerns that the rights of children can be instrumentalised to advance the rights of future generations, reducing their importance in the international human rights framework, and the concerns that the rights of future generations must be differentiated from children's rights. Additionally, this chapter developed on the categorisation of the rights of future generations as individual or group rights, and how this topic is highly debated between scholars. Finally, Chapter 2 also analysed the 2023 Maastricht Principles on the Human Rights of Future Generations which, despite not being a non-binding document, is expected to have an impact on the protection and inclusion of the rights of future generations in regional and international human rights frameworks.

Chapter 3 explored the definition of the principle of intergenerational equity by American scholar Edith Brown Weiss, and stressed the importance of this principle in youth-led climate litigation, especially in the protection of the rights and interests of future generations.

Chapter 4 analysed the emergence of youth climate activism and climate litigation and how child and youth activists are taking the lead in the protection of the environment. Furthermore, this chapter highlighted the challenges and obstacles of youth-led climate litigation not only for children but also in what concerns the principle of intergenerational equity and the rights of future generations.

Each chapter of this thesis was accompanied by several youth-led climate cases which have shaped and will continue to shape national, regional, and international human rights law frameworks concerning climate change. Additionally, as previously stated throughout this thesis, there are no guarantees that, even if the cases are successful, the lives of plaintiffs will be measurably improved (Donger, 2022: 284). As was seen in *Demanda Generaciones Futuras*, even though the Supreme Court of Colombia requested the government to elaborate an Intergenerational Pact for the Life of the Colombian Amazon, the government has yet to create such a document (Slobodian, 2020: 578).

On the other hand, some cases submitted at regional and international levels, despite being legally unsuccessful, did have an impact on climate litigation (Daly, 2022b: 24). For example, the Sacchi petition was dismissed by the UN Committee on the Rights of the Child due to the failure of the plaintiffs to exhaust all domestic remedies. Despite this, the Committee recognised that States had extraterritorial responsibility, that is, States are responsible for the impacts of their carbon emissions both within and beyond their territory (Children's Legal Centre Wales, 2021).

Recalling once again the research question of this thesis, “Considering the developments and challenges of children’s rights and climate change, how are children and young people ensuring the protection of the rights of future generations and intergenerational equity through climate litigation?”, we can see that, despite the challenges and situational barriers of youth-led climate litigation, child and youth activists are consistently challenging national, regional and international human rights frameworks, and are motivated to continue their activism to ensure environmental protection not only for themselves, but also for future generations.

On a personal note, the development of this thesis emphasised the importance of the inclusion of children and young people in climate litigation and highlighted the positive impacts of youth climate activism. This activism is oftentimes disregarded due to the

perceived immaturity of children and young people, especially those under eighteen years old, and the common perception in society of children and young people as victims rather than as active members of civil society who have the right to have their views heard and to participate in decision-making processes. Additionally, it highlighted that the rights of children enshrined under the CRC are underexplored in the context of climate litigation and there are several rights claims that can be made when children and young people allege violations of the human rights in relation to the climate crisis.

Furthermore, working on this research project stressed the importance of developing relevant literature on the inclusion of future generations rights claims in climate litigation, since it has been shown by several studies that the climate crisis will have more impacts for those born now and in the future. Moreover, this thesis highlighted the importance of the principle of intergenerational equity and its principles on the conservation of options, quality, and access, and how it is connected to youth-led climate litigation and the rights and interests of future generations.

There are still several challenges and obstacles that need to be addressed to improve youth-led climate litigation and the protection of the rights of future generations, including but not limited to the situational barriers that youth climate activists face when taking the cases to courts, and the difficulties in properly defining future generations and how to represent them in climate procedures, due to the fact that they do not yet exist and the existing literature diverges on who exactly can be considered “future generations”.

Despite this, this research project proved useful in emphasising the positive impacts that youth-led climate litigation can have on climate mitigation and adaptation measures, and how this impact can stem from the decisions of the courts and also from the perception of the court proceedings in civil society, encouraging other children or groups of children to present their own cases in court. It highlighted that child and youth climate activism when done through peaceful avenues, can not only be a viable option for the protection of the environment, but can also lead to the inclusion of the rights and interests of future generations in current climate policies, and therefore taking into consideration the importance of the principle of intergenerational equity.

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