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Climate Competence: Youth Climate Activism and Its Impact on International Human Rights Law

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ABSTRACT

Those who are under-18 are not often associated with the exercise of political rights. It is argued in this article however that youth-led climate activism is highlighting the extensive potential that children and young people have for political activism. Moreover, youth activists have come to be seen by many as uniquely competent on climate change. Youth activists have moved from the streets to the courts, utilising national and international human rights law mechanisms to further their cause. They are not the first to do so, and the extent of their impact is as yet unclear. Nevertheless, it is argued here that through applications such as *Saachi* (*an application to the Committee on the Rights of the Child*) *and Duarte Agostinho* (*an application to the* ECtHR) they are shifting the human-centric, highly procedural arena of international human rights law towards an approach which better encompasses person-environment connections.

KEYWORDS: children and youth activism, climate, *Saachi*, *UN Convention on the Rights of the Child*, *Duarte Agostinho*, European Convention on Human Rights

1. INTRODUCTION

Environmental human rights have been accorded greater legitimacy in the past decade than previously and have gained increased recognition as 'real rights'.[1]

More so than other rights, they relate to the rights of future generations,[2] and because of this it is perhaps unsurprising that children and young people have been among the most prominent voices in climate activism. Not only are children going to have to deal with the long-term effects longer than adults, they are worse affected by the hardships caused by climate change in the present. Higher temperatures result for example in increased mortality among children due to

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1 For consideration of the nature and content of environmental human rights, see for example Hiskes, 'The Right to a Green Future: Human Rights, Environmentalism, and Intergenerational Justice' (2005) 27 *Human Rights Quarterly* 1346.

2 Hiskes, 'With Apologies to the Future: Environmental Human Rights and the Politics of Communal Responsibility' (2017) 21 *International Journal of Human Rights* 1401.

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the greater danger of the climate in which they live (approximately 160 million children inhabit areas at risk of drought). The climate crisis also increases their vulnerability to child labour and trafficking.[3]

Children and young people—particularly from Indigenous communities—have long been working to combat climate change but rose quickly and prominently to the forefront of climate activism in 2018 when Greta Thunberg made history as a lone protester outside the Swedish parliament, subsequently becoming the figurehead of a global youth activist movement. More recently young activists have been highly prominent in legal action also and are involved in climate-related applications to numerous national and even international courts.

This rise in youth action has been made all the more striking by the fact that children are often not seen as competent political actors. Yet these climate activities have had the effect of elevating children to be perceived as competent actors in this sphere. These developments have also sparked change within the procedural and individualistic sphere of international human rights law. Remarkably, it appears that the litigation taken in this area—much of it involving children and young people—is pushing the boundaries of the traditional characteristics of international human rights law.

Applications brought by children and young people to the European Court of Human Rights (ECtHR)[4] and to the United Nations (UN) Committee on the Rights of the Child[5] have posed a challenge to many of the usual features of typical legal applications in these forums. Some of the novel features of these cases include multiple child applicants suing multiple respondent states (often states in which they do not live) on the basis of the future-oriented harm anticipated by climate change. Arguably, such novel features stretch human rights law texts to locate a somewhat existential—although simultaneously tangible—environmental crisis within the language of human rights law. There is no certainty that these developments will ultimately transform human rights law. However, there are indications that such actions are already having an impact. The *Saatchi* decision constituted the first time that a UN body found that a state can, in certain circumstances, be held responsible for the impacts of its carbon emissions on the rights of children inside *and* outside of its territory.[6] The ECtHR's fast tracking of the youth application indicates that such applications are being taken seriously.[7]

Youth climate litigation transpires following a number of years in which children and young people have harnessed the participatory potential of the Internet, the accessibility of scientific evidence and the powerful image of the political child in a media-savvy fashion. These activities manifest a 'climate competence', which has garnered unparalleled levels of attention for the climate crisis. The scene has been set for the surprising phenomenon of climate litigation spearheaded by the young. Children and young people, through such climate competence, are causing a shift in international human rights law towards an approach which better encompasses a more holistic approach and better acknowledges the interconnectedness of humans in their environments.[8] In the climate litigation in which these children and young people are engaging,

[3] Office of the United Nations High Commissioner for Human Rights, *Analytical Study on The Relationship Between Climate Change and the Full and Effective Enjoyment of The Rights of The Child*, Thirty-fifth session, U.N. Doc. A/HRC/35/13 (2017).

[4] *Duarte Agostinho and Others v Portugal and Others*, Application No. 39371/20 (2020). Hereinafter *Duarte Agostinho*.

[5] *Sacchi and others v Argentina and others*, Petition Submitted under Article 5 of the Third Optional Protocol to the United Nations Convention on the Rights of the Child (23 September 2019). Hereinafter *Sacchi*.

[6] Nolan, 'Children's Rights and Climate Change at the UN Committee on the Rights of the Child: Pragmatism and Principle in Sacchi v Argentina' *EJIL: Talk!*, 20 October 2021, available at: https://www.ejiltalk.org/childrens-rights-and-climate-change-at-the-un-committee-on-the-rights-of-the-child-pragmatism-and-principle-in-sacchi-v-argentina/ [last accessed 20 December 2021].

[7] Daly, Thorburn Stern and Leviner, 'How children are taking European states to court over the climate crisis—and changing the law' *The Conversation*, 8 April 2021, available at: https://theconversation.com/how-children-are-taking-european-states-to-court-over-the-climate-crisis-and-changing-the-law-158546 [last accessed 20 December 2021].

[8] Engstrom and Powers, 'Embracing an Ecosocial Worldview for Climate Justice and Collective Healing' (2021) 3 *Journal of Transdisciplinary Peace Praxis* 120.

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we perhaps see a slight shift away from the restrictive, individualistic nature of international human rights law. In fact, this may be a welcome catalyst for the international human rights law framework, requiring that it adapt and become better equipped to deal with and recognise the interrelated links between environmental issues and social issues. Such evolution in the international human rights framework harnesses the truth that humans (and therefore human rights) are interlinked to our social and ecological environments.

Children and young people have long been involved in climate campaigns, yet there is little scholarship focusing on how their climate activism is affecting international human rights law. This article considers the climate activism of children and young people and how they have transformed perceptions of themselves as a group. It is outlined that youth activists have moved from the streets to the courts, utilising human rights mechanisms to further their cause. They are not the first to do so, and the extent of their impact is as yet unclear. Nevertheless, it is argued in this paper that they have not just changed perceptions of children and young people as a group—they have also shifted to some degree the human-centric, procedural arena of international human rights law towards an approach which better encompasses person-environment connections.

2. GRASSROOTS MOVEMENTS AND CLIMATE ACTIVISM

A. The Rise of Climate Activist Children and Young People

The transformation of the Earth's atmosphere, oceans, biosphere and nutrient cycles due to fossil fuel use is now beyond the boundaries of a 'safe operating space'.[9] According to a World Meteorological Organization's report, the global average temperature in 2020 was about 1.2°C above pre-industrial level—'dangerously close' to the 1.5°C limit which, according to climate scientists, will stave off the worst impacts of the climate crisis.[10] 2020 was a year of extreme weather globally, with hurricanes, wild fires and heat waves. There are more extreme climate events to come.[11] The World Health Organization estimates that between 2030 and 2050, climate change will cause 250,000 deaths annually due to malnutrition, malaria and heat stress.[12] It is in this context that the phenomenon of 'climate justice' has become a central issue since the 2000s for the broader 'global justice movement'.[13] Climate justice can be defined broadly as actions that address injustices against the entire ecosystem (humans merely being one element).[14] Much of this activity originated around international climate conferences, such as the Copenhagen Climate Summit, where in 2009 it was described at the time by the Guardian newspaper as the largest ever gathering of climate activists the beginning of a global network was occurring.[15]

The primary justice framing of modern climate activism implies a critique on a global scale of social injustices, with an emphasis on the democratic deficit of supranational bodies.[16] Pleyers points to the climate movement as having a strong focus on issues of global governance, while

[9] Goodwin et al., 'Pathways to 1.5 and 2°C Warming Based on Observational and Geological Constraints' (2018) 11 *Nature Geoscience* 102.

[10] 'World on the Verge of Climate "Abyss", as Temperature Rise Continues: UN Chief' *UN News*, 19 April 2021, available at: https://news.un.org/en/story/2021/04/1090072 [last accessed 5 June 2021].

[11] Nugent, '2020 Was a Year of Climate Extremes. What Can We Expect in 2021?' *Time*, 31 December 2020, available at: https://time.com/5922963/climate-change-2021/ [last accessed 5 June 2021].

[12] 'Climate Change and Health' *WHO*, 1 February 2018, available at: https://www.who.int/news-room/fact-sheets/detail/climate-change-and-health [last accessed 14 June 2021].

[13] Pleyers, *Alter-Globalization: Becoming Actors in the Global Age* (2010).

[14] Engstrom and Powers, supra n 8.

[15] Van der Zee, 'An Activist's Guide to Copenhagen' *The Guardian*, 18 November 2009, available at: [last accessed 5 June 2021]. See further Hadden, 'Explaining Variation in Transnational Climate Change Activism: The Role of Inter-Movement Spillover' (2014) 14 *Global Environmental Politics* 7.

[16] Wennerhag, 'Another Modernity Is Possible? The Global Justice Movement and the Transformations of Politics, Distinktion' (2010) 11 *Scandinavian Journal of Social Theory* 25.

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simultaneously emphasising individual responsibility to mitigate the climate crisis through both individual actions and collective efforts 'from below' to promote alternative ways of life.[17] As these activities enter the legal arena, it is perhaps unsurprising that human rights claims have become a strong feature of the movement. Despite the often uncomfortable relationship between the climate crisis and international human rights law, the two phenomena have much overlap. Gearty points to the connections between human rights advocacy and environmental advocacy: 'In their commitment to change, their attitude to power and in their mode of organizing, human rights groups resemble the green and environmental activists who have done so much to bring the need for environmental protection to public attention'.[18] Since 2008, representatives of Indigenous people have been participating in international environmental conferences, as well as engaging in activism at local and national levels. In the past decade, their representatives have lobbied for inclusion in intergovernmental climate negotiations at the UN. It seems predictable then that climate activism, much of it led by Indigenous people, [19] has ultimately involved litigation, often with human rights claims as a basis.

Social movements against climate change are increasingly converging 'from below' on a global scale in action against the crisis.[20] In 2016 young people from Standing Rock and nearby Native American communities launched efforts to stop the Dakota Access Pipeline (DAP), which they considered to be a significant threat to the region's water and something which would harm their way of life forever.[21] Indigenous adults, inspired by the young people, established a camp as a base for direct action. The #NoDAPL hashtag started to trend on social media and, eventually, there were thousands of people at the camps at Standing Rock. In March 2017, the *Standing Rock* Sioux tribe led a protest in Washington D.C., which lasted for days and culminated in the 'Native Nations Rise March'.[22] 2020 saw a huge victory for the Native American communities when a federal court struck down the permit for development of the pipeline and ordered a comprehensive environmental review.[23]

The involvement of children and young people in this particular instance of activism is indicative of a broader evolution in climate activism globally. The climate activism of children and young people became highly visible globally in August 2018, when then 15-year-old Greta Thunberg began her school climate strikes to protest government inaction outside the Swedish parliament. She began the global #fridaysforfuture movement and within a year there were 7 million engaging in school strikes globally.[24] Soon the immutable Thunberg was delivering frank and forthright speeches to world leaders. Children and young people are commonly portrayed as victims in need of protection. Charities in the Global North seeking donations frequently use images of children as a tool to garner sympathy.[25] UN documents and monitoring mechanisms tend strongly towards emphasising children's 'protection' rather than their status as active and potentially political individuals.[26] Yet the climate crisis has repositioned children and young

17 Pleyers, supra n 13.

18 Gearty, 'Do Human Rights Help or Hinder Environmental Protection?' (2020) 1 *Journal of Human Rights and The Environment* 7, at 11.

19 Etchart, 'The Role of Indigenous Peoples in Combating Climate Change' (2017) 3 *Palgrave Communications* 1.

20 Brownhill and Turner, 'Ecofeminism at the Heart of Ecosocialism' (2019) 30 *Capitalism Nature Socialism* 1.

21 Javier, 'A Timeline of the Year of Resistance at Standing Rock' *Splinter*, 14 December 2016, available at: https://splinternews.com/a-timeline-of-the-year-of-resistance-at-standing-rock-1794269727 [last accessed 5 June 2021].

22 Ibid.

23 Lakhani, 'Dakota Access Pipeline: Court Strikes Down Permits in Victory For Standing Rock Sioux' *The Guardian*, 26 Mar 2020, available at: https://www.theguardian.com/us-news/2020/mar/25/dakota-access-pipeline-permits-court-standing-rock [last accessed 5 June 2021].

24 Fridaysforfuture Website, *Strike Statistics: List of Countries*, available at: https://fridaysforfuture.org/what-we-do/strike-statistics/list-of-countries/ [last accessed 5 June 2021].

25 See e.g. Nathanson, 'The Pornography of Poverty: Reframing the Discourse of International Aid's Representations of Starving Children' (2013) 38 *Canadian Journal of Communication* 103.

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people as prominent public activists and litigants, on a global scale.[27] Climate activism is 'thus transforming and empowering a generation of children'.[28]

Social movements have long had children and young people at their heart. Young people were at the centre of efforts against apartheid in South Africa and in the first intifada in the Occupied Palestinian Territories.[29] Children and young people were central to the Arab Spring in 2010. In segregated Alabama, Rosa Parks was not actually the first to be arrested for refusing to give up her bus seat to a white person. In fact it was 15-year-old Claudette Colvin who ultimately was convicted of a crime in relation to that incident.[30] Young people often 'assumed a secondary status'[31] in the civil rights movement, and it was adult Rosa Parks who became the face of the movement. She apparently projected a more convenient message about what equality should look like—one which evidently did not involve children.

This inability of societies to deal with the unexpected phenomenon of politically active youth is visible across many spheres. For example, in the media, Greta Thunberg and other activists have had their competence as well as their sincerity and motivations questioned and undermined by adults from various backgrounds.[32] Legally, some national laws prevent under-18s from assembling for protest.[33] There is a strong tendency to want to exclude under-18s from politics, ostensibly based on their perceived vulnerability or incompetence. Importantly, under-18s are for the most part excluded from what could be said to be the most meaningful feature of political engagement as an individual—the right to vote.[34] Much scholarly work has explored the political competence of children and the forms that their participation might take, including lower voting ages and creating alternative non-electoral mechanisms.[35] Yet the situation remains that under-18s are lacking in the traditional means of political influence as compared with adults.

B. Children's Civil and Political Rights and the CRC

There are also international human rights standards which apply to children's political activity. The UN Convention on the Rights of the Child[36] (CRC) is the international human rights treaty which sets out the full spectrum of rights for children, including almost all civil and political rights, largely taken from the International Covenant on Civil and Political Rights.[37] These provisions include the right to freedom of expression (Article 13); the right to freedom of thought, conscience and religion (Article 14); the right to freedom of association and peaceful

26 See e.g. Nishiyama, 'Between Protection and Participation: Rethinking Children's Rights to Participate in Protests on Streets, Online Spaces, and Schools' (2020) 19 *Journal of Human Rights* 501.

27 See Bowman and Germaine, Research Report: British Council, *Not (Just) a Protest: The Youth Strike for Climate as Cultural Exchange and Collaborative Text* (2021).

28 Rogers, 'Victim, Litigant, Activist, Messiah: the Child in a Time of Climate Change' (2020) 11 *Journal of Human Rights and the Environment* 103.

29 Daly, *Commentary on Article 15 of the UN Convention on the Rights of the Child: The Right to Freedom of Peaceful Assembly and Freedom of Association* (2016).

30 Hall, 'Youth in The Civil Rights Movement!' *America's Promise Alliance*, 11 February 2016, available at: https://www.americaspromise.org/opinion/youth-civil-rights-movement [last accessed 5 June 2021]. She was finally pardoned by a Montgomery County judge in 2021.

31 Tensley and Mitchell, 'Black Women's Roles in The Civil Rights Movement Have Been Understated—But That's Changing' *CNN*, 21 February 2021, available at: https://edition.cnn.com/2021/02/21/politics/black-freedom-movements-past-present/index.html [last accessed 20 June 2021].

32 Daly, 'It Is Time to Accept That Children Have a Right to be Political' *Discover Society*, 4 March 2020, available at: https://archive.discoversociety.org/2020/03/04/it-is-time-to-accept-that-children-have-a-right-to-be-political/ [last accessed 5 June 2021]; Rogers, supra n 28.

33 Daly, supra n 29.

34 Daly, 'Under 18s and the Right to Vote', in Keane and McDermott (eds) *The Challenge of Human Rights: Past, Present and Future* (2012).

35 Tobin, 'Justifying Children's Rights' (2014) 21 *The International Journal of Children's Rights* 395. Dixon and Nussbaum, 'Children's Rights and A Capabilities Approach: The Question Of Special Priority' (2012) 97 *Cornell Law Review*. Archard, *Children: Rights and Childhood* (1993), at 2–4.

36 1989, 1577 UNTS 3.

37 1996, 999 UNTS 171.

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assembly (Article 15); the right to privacy (Article 16) and the right to a variety of mass media sources (Article 17).

In my work providing legal analysis of CRC Article 15, I categorise these as 'freedom rights'.[38] It is useful to differentiate this group from other civil and political rights such as freedom from torture which are rarely questioned in terms of their application to children.[39] Yet there is much resistance evident when it comes to civil and political rights for children which relate to 'freedom'. The Committee on the Rights of the Child has criticised for example Turkish legislation in which it is stated that children 'shall not be entitled to exercise civil rights'.[40] In the context of climate activism, the resistance to the exercise by children of freedom of assembly has been evident all around the world, from Malaysia to Ireland, [41] where Irish policeannounced that anyone bringing a school student into Dublin City Centre for the February 2020 climate strike protest could face criminal charges if the protest 'got out of hand'.[42]

There are some indications that there is a recent shift towards greater recognition of children and young people as holders of political rights and as political actors. The Committee on the Rights of the Child for example held a 'Day of General Discussion' in 2018 on children as human rights defenders,[43] which highlights the many ways in which children take political action around the world. Yet in general the international human rights law framework has largely failed to emphasise and accommodate children's political capabilities. There has been little development of analysis or jurisprudence around rights such as freedom of assembly or freedom of information for children. The focus has been overwhelmingly on the often vague notion of the 'right to be heard' and the accompanying concept of 'children's participation'.[44]

In some ways, rights to participate and to be heard have been transformational for children, particularly considering that before the advent of the CRC there was a strong assumption that children were incompetent and should simply be 'protected'. The inclusion of the right to be heard in the CRC has had some very positive effects—the creation of youth parliaments all over the world, for example, which serve to bring children's views on various issues to the elected representatives of national parliaments. Yet it has been argued that, for some purposes at least, the right to be heard actually creates a substandard version of rights that already exist in the international human rights framework—civil and political rights.[45]

The emphasis on children's participation has likely contributed to the 'freedom' rights of children being overlooked at international level, and for the most part at national level also.[46] This makes the organic nature of child-led climate activism all the more striking and remarkable. This is truly an arena where children and young people have exploded into vibrant, media-savvy (albeit often controversial) political action. It seems that children and young people themselves have found their own way to operationalise the civil and political rights in the CRC relating to

38 Daly, *Commentary on Article 15 of the UN Convention on the Rights of the Child: the Right to Freedom of Peaceful Assembly and Freedom of Association*, supra n 29.

39 It should be noted however that physical punishment of children is defended by many, see further Freeman, 'Upholding the Dignity and Best Interest of Children: International Law and the Corporal Punishment of Children' (2010) 73 *Law and Contemporary Problems* 211.

40 Committee on the Rights of the Child, Concluding observations regarding Turkey, 23 May 2001, CRC/C/SR.701, para. 37. See Article 13 of the Turkish Civil Code of 1926.

41 Daly, 'It Is Time to Accept That Children Have a Right to be Political' supra n 32, at 5.

42 'Gardaí refuse to sanction school student climate strike in Dublin' *Newstalk*, 6 February 2020, available at: https://www.newstalk.com/news/gardai-refuse-climate-strike-963167 [last accessed 6 April 2021].

43 See further Lundy and Templeton, *Children Human Rights Defenders: The Views and Perspectives of Children.* Child Rights Connect, 2018, available at: Https://www.childrightsconnect.org/wp-content/uploads/2018/09/DGD-REPORT_WEB_en_def_web.pdf [last accessed 6 December 2021].

44 Daly, *Children, Autonomy and the Courts: Beyond the Right to be Heard* (2018).

45 Quennerstedt, 'Children, But Not Really Humans? Critical Reflections on the Hampering Effect of the'3 Ps" (2010) 18 *International Journal of Children's Rights* 619, at 630.

46 Ibid., and Daly supra n 44.

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'freedom', such as assembly and association, through climate activism. It is certainly the most visible, and powerful political activity that children and young people have undertaken to date on a global scale.

3. CHILDREN AND CLIMATE ACTIVISM COMPETENCE

To understand why it is now, in the context of youth climate activism, that children and young people are influencing human rights law, it is necessary to consider the extraordinary journey they have made in terms of political activism since 2018 when Greta Thunberg brought particular attention to their efforts. Those under the age of 18 years are generally defined by a legal assumption of incompetence. Yet, as will be considered in this section, children and young people have demonstrated in the sphere of climate activism extraordinary competence in relation to climate science, online activism and media communication.

A. Defining Children and Young People

It can be difficult to theorise youth climate activism both inside and outside of the legal context. One of the reasons for this is that associated terminology can be contested and unsatisfactory. The term 'youth' is often taken to mean those up to their mid-20s, though there is no clear definition.[47] This blurs the line as to what youth activism is and who it involves. Legally, the term 'children' is usually taken to refer to those under the age of 18 years, although many adolescents would not identify with the word. Youth climate activists are both over and under the age of 18, but the law inclines towards binary definitions. This is why for the most part there is a legal presumption of competence for those over the age of 18 years, and a presumption that under this age one lacks competence.[48] The notion of competence is used colloquially to refer one's cognitive abilities, i.e. mental processes such as knowing, judging and evaluating.[49] Yet 18-year-olds vary widely in what they know and in the skills of evaluation that they may have. So too do under-18s, and there is no competence transformation that happens overnight as one turns 18 years. Children and young people will have a vast range of interests, abilities and understandings. This is why, increasingly, it is understood that under-18s should gradually take control and responsibility for exercising their own rights as they age and gain experience. CRC Article 5, for example, states that parents and other responsible adults are to guide children in the exercise of their rights 'in a manner consistent with the evolving capacities of the child'.

Of course, it is conceptually—and potentially legally—problematic that the CRC applies on the face of it only to those under the age of 18 years. Greta Thunberg's activity brought unprecedented levels of attention to the climate crisis. Notably she turned 18 years in 2021 and therefore became an adult legally. The fact that youth climate activism challenges the somewhat arbitrary age of majority of 18 years is interesting both for the purposes of domestic law and international human rights law and is something which I am analysing in detail elsewhere.[50] It will likely become a significant issue in the years to come, as climate litigation by children and young people increases. Questions will arise for example as to the applicability of the principle of the best interests of the child where litigants are over 18 years.

Nevertheless, unsatisfactory definitions should not distract from the power of children and young people working for global environmental change. This indeterminacy of categories

47 United Nations, 'Global Issues: Youth', undated, available at: https://www.un.org/en/global-issues/youth [last accessed 6 April 2021].

48 See further Daly, supra n 44.

49 Daly, 'Assessing Children's Capacity: Reconceptualising our Understanding through the UN Convention on the Rights of the Child' (2020) 28 *International Journal of Children's Rights* 471, at 473.

50 For example, Daly, 'How "Intergenerational" is International Human Rights Law? Conceptual Difficulties in the Quest for Climate Justice' (forthcoming journal article, 2022); and Daly, *Youth Climate Activism and International Human Rights Law* (forthcoming monograph, 2023).

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relating to youth climate activists also points to the fact that the law cannot easily encapsulate the interconnectedness of humans—many of the systemic climate litigation cases involve both under-18s *and* young adults, pointing to the intersections of human groups, human experiences and human interests.

B. From Child Victims to Empowered Youth

In general, those who are children at present will clearly experience the effects of the climate crisis more deeply, and for longer, than older people. The perceived victim status of children—or perhaps a hypothetical, abstract child—has driven much of the climate discourse. This of course mirrors the emphasis in international human rights law (noted above) on children as victims, rather than as active agents who exercise civil and political rights. Rogers illustrates how children have been portrayed as climate victims in the media, in litigation and elsewhere—note for example the focus on child victims during the 2019/2020 Australian megafires.[51] A 2018 survey found that one quarter of the adults asked expressed that the most important reason to tackle the climate crisis was to provide a better life for children, indicating the extent to which people are aware that children will suffer as the planet heats.[52]

Rogers points however to the ways in which children have transitioned from passive victims into important climate actors.[53] She highlights how the climate crisis has become a source of empowerment for many children and young people—they are not relying on adults to speak on their behalf in this context.[54] Twelve-year-old Haven Coleman said for example in 2019: '[w] e are so lucky to get to be the generation that changes the entire system'.[55] Adults have at times expressed surprise at the competence which children have displayed in this endeavour. Perhaps part of the success of the youth climate movement has been that many adults have for the first time seen just how politically competent children can be on a global scale.

There is no doubt that children and young people have been successful in their climate activism in a number of ways. First they have garnered many participants for their movement. Although many children and young people, like many adults, are apathetic about global political issues (climate change included), it is undeniable that the numbers of young climate protesters since 2018 have been unprecedented. As youth across the world make their views loud and clear on the climate crisis, it has become an issue into which other children and young people are then drawn.[56] It is also clear that they have managed to attract much media and public support. David Attenborough has remarked that Greta Thunberg has succeeded in waking the world up to the seriousness of the climate crisis, that her activism had placed climate change as a key topic in the 2019 UK general election and that she had 'achieved things that many of us who have been working on the issue for 20 years have failed to do'.[57] United States research in 2020 has shown that peaceful marches are effective for increasing sympathy with the climate movement (among those who are already of the belief that humans are hastening climate change).[58] This indicates that children and young people are likely changing people's minds about the seriousness of

[51] Rogers, supra n 28, at 105.

[52] Marris, 'Why Young Climate Activists Have Captured the World's Attention' *Nature: News*, 18 September 2019, available at: https://www.nature.com/articles/d41586-019-02696-0 [last accessed 6 April 2021].

[53] Rogers, supra n 28, at 103.

[54] Ibid., at 109.

[55] Quoted in De Pressigny, 'Why are Thousands of Students Striking from School?' i-*D*, 11 February 2019, available at: i-d.vice.comd.vice.com/en_uk/article/kzdz7y/youth-strike-for-climate-change-gretathunberg [last accessed 15 June 2021].

[56] Zummo et al., 'Youth Voice on Climate Change: Using Factor Analysis to Understand the Intersection of Science Politics and Emotion' (2020) 26 *Environmental Education Research* 1207, 1211.

[57] 'Greta Thunberg's father: "She is happy, but I worry"' *BBC News*, 30 December 2019, available at: https://www.bbc.com/news/uk-50901789 [last accessed 5 June 2021].

[58] Bugden, 'Does Climate Protest Work? Partisanship, Protest, and Sentiment Pools' (2020) 6 *Socius: Sociological Research for a Dynamic World* 1.

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the climate crisis. The content of climate policy depends on how risks and uncertainties are perceived by both individuals and organisations. The tendency is towards the status quo, and the spectre of children protesting in the streets certainly challenges the status quo.[59] This unusual phenomenon has likely had an influence on perceptions of the climate crisis and will continue to do so.

Although the overall success of the youth climate movement has yet to be established in terms of practical outcomes, [60] there are at least some indicators of tangible changes emerging. For example, former German Chancellor Angela Merkel credited the youth climate movement with impacting Germany's environmental policies when she backed the introduction of a price on CO_2 emissions as part of efforts to reach the country's 2030 climate targets.[61]

C. Why Children and Young People Have Been Prominent in Climate Activism

(i) Competence in climate science

The lives of children and young people will be shaped by the climate crisis, as they will witness its effects to a much greater extent than older people. As Greta Thunberg points out, though the year 2050 feels very distant right now, by then teenagers such as herself will likely still have half their lives to go.[62] Without adequate mitigation policies, the climate and economies of the world will be immeasurably transformed, with global heating accelerating towards 3C, or possibly even 4C, at the end of the century.[63] So youth are uniquely positioned in the climate justice movement. They are growing up with the knowledge of climate change—learning about it in school, for example, and seeing its effects first hand or in media coverage.[64] Coupled with this there has been direct exposure of many around the globe to climate harms such as increased heat waves, [65] as evidenced by the Portuguese youth litigants in the ECtHR application *Duarte Agostinho*.

The modern phenomenon of the wide availability of scientific research has also been transformative for children and young people. There has been growing public awareness of extensive environmental degradation, due to greater accessibility for the public of scientific research on pollution, climate harm and future projections for the climate.[66] Young people with extensive Internet access have had the ability now more than ever to access this information. Some young people who have devoted their lives to climate activism have even become researchers and writers themselves on climate change. Arjun Marwaha for example, a high school student from California, has extensively researched climate change science and engages in numerous awareness raising activities, including writing the book *Our Changing Earth* to inform young people about available research.[67]

This is indicative of how research is being disseminated and talked about in new ways because of the urgency of the climate crisis. Some researchers have called for their colleagues to move beyond their scientific work to become activists, and because of the seeming lack of success

[59] IPCC, 'Summary for Policy Makers', 2014, available at: https://www.ipcc.ch/site/assets/uploads/2018/02/ipcc_wg3_ar5_summaryfor- policymakers. Pdf [last accessed 5 June 2021].

[60] Han and Ahn, 'Youth Mobilization to Stop Global Climate Change: Narratives and Impact' (2020) 12 *Sustainability* 4127.

[61] Egenter and Wehrmann, 'Merkel Backs National CO_2 Price, Cites Greta-Effect on Policy' *Clean Energy Wire*, 19 July 2019, available at: https://www.cleanenergywire.org/news/merkel-backs-national-co2-price-cites-greta-effect-policy [last accessed 5 June 2021].

[62] Ernman et al., *Svante and Greta Thunberg, Our House Is on Fire: Scenes of a Family and a Planet in Crisis* (2020).

[63] Watts, 'The Environment in 2050: Flooded Cities, Forced Migration—and The Amazon Turning to Savannah' *the Guardian* (30 December 2019) available at: https://www.theguardian.com/environment/2019/dec/30/environment-2050-flooded-cities-forced-migration-amazon-turning-savannah [last accessed 5 June 2021].

[64] Engstrom and Powers, supra n 8, 152.

[65] Skillington, 'Changing Perspectives on Natural Resource Heritage, Human Rights, and Intergenerational Justice' (2019) 23 *The International Journal of Human Rights* 615, at 629.

[66] Ibid.

[67] Marwaha, *Our Changing Earth: Why Climate Change Matters to Young People* (2021).

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of these researchers to influence policy through traditional channels of communication with policymakers. Environmental scientists Gardner and Wordley, for example, outline how they have started to add activism to research, and how they are calling on scientist colleagues to do the same, in order to 'act on our warnings to humanity'. They explain that their call to action has created a significant amount of dialogue, partly because their colleagues recognise that the usual channels of dialogue with politicians are not prompting the urgent policy changes needed.[68]

(ii) Competence in online activism

Youth online activism has been another large part of the success story. Online campaigners can reap enormous awards for less input compared to traditional means of activism such as protesting in person and letter writing. Online activists can reach more people and do not need to go through traditional media channels. This is particularly beneficial for children and young people, who have a lot less access to the adult spheres of public forums (such as news media outlets and engagement with politicians). Not only this, but with online activity available to them, young activists do not have to operate through traditional organisations for political change: 'digital platforms can allow completely new forms of activism to flourish'.[69] The early success of climate advocacy group 350.org, founded in 2008, meant that there already existed a significant bank of organisations with youth climate activists who were familiar with online tactics. The current swathe of young climate activists has grown up with smartphones and social media. The immediacy and image-friendly nature of social media is part of how Greta Thunberg shot to prominence, and she now has close to 5 million followers on Twitter. When Covid struck, activism could continue online, for example a 12-h live stream for Earth Day 2020 during which actors, politicians and others shared messages about climate action. Individual protesters were able to share images of themselves with handmade signs on #ClimateStrikeOnline social media posts.[70]

Online activism has also played a part in the litigation actions of youth climate activists. In 2019 in the midst of the *Juliana v US* case (a lawsuit filed against the US government for failing to act on climate change[71]), for example, the youth-led climate group Zero Hour announced its campaign to help thousands of young Americans to add their names to a young people's amicus brief in support of the case, launching the website www.joinjuliana.org.[72] Competence in the online environment is likely to continue to be a major feature of the success of young climate activists both inside and outside the litigation context.

(iii) The communication competence of youth climate activists

Young climate activists are also demonstrating competence in utilising the media and other means of communication to garner as much attention and support as possible. In the context of the seriousness of the emerging climate crisis and the inadequate global political response, the deep concern expressed by Greta Thunberg and others, so criticised by many adults, has brought the climate crisis much media, and therefore political, attention. The moral outrage of many

68 Gardner and Wordley, 'As Conservation Scientists, We Are Compelled to Rebel Against Extinction—and Researchers Across The World Should Join Us' *The Conversation*, 7 October 2019, available at: https://theconversation.com/as-conservation-scientists-we-are-compelled-to-rebel-against-extinction-and-researchers-across-the-world-should-join-us-124548 [last accessed 5 June 2021].

69 Finnegan, 'Environmental Activism Goes Digital In Lockdown—But Could It Change The Movement For Good?' *The Conversation*, 7 May 2020, available at: https://theconversation.com/environmental-activism-goes-digital-in-lockdown-but-could-it-change-the-movement-for-good-137203 [last accessed 5 June 2021].

70 Finnegan, *Environmental Activism Goes Digital In Lockdown.*

71 *Juliana v United States*, No. 18-36082 (9th Cir. 2020). Under appeal at the time of writing, see http://climatecasechart.com/climate-change-litigation/case/juliana-v-united-states/ [last accessed 5 June 2021].

72 *Zero Hour Launches Nationwide Campaign in Support of Juliana v United States* Youth Plaintiffs for Immediate Release, 19 February 2019, available at: https://static1.squarespace.com/static/571d109b04426270152febe0/t/5c6c48e671c10b10bdcd9422/1550600423322/2019.02.19+OCT+Youth+Amicus+Press+Release.pdf [last accessed 5 June 2021].

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youth climate activists has been famously expressed by Greta Thunberg on many occasions. At the UN summit in 2019 she saw fit to ask world leaders 'how dare you'? in relation to the lack of action on the climate crisis. At COP26 she lambasted them with her interpretation of their approach—'Blah, blah, blah'.[73] There is certainly some level of playing to the audience to achieve their goal of media and political attention, and ultimately action, for the climate crisis. Greta Thunberg, for example, was asked in 2021 whether she really felt angry or whether she was 'putting on a bit of a show?' She answered: 'Well, I mean—both . . . I knew that this was a once-in-a-lifetime opportunity, so I better make the most out of it. So I allowed myself to let the emotions take over'.[74]

The message of youth activists has proven to be a powerful way to make the world sit up and pay attention to the climate crisis. Part of this appears to be the way in which youth are interpreted by adults. Research of Thew, Middlemiss and Paavola research on youth participation at UN climate negotiations indicates that adults perceive youth activists as having greater moral integrity than older persons, as they are not being paid.[75] Greta Thunberg is of course far from the only young person capable of stunning audiences at the UN and further afield. Xiuhtezcatl Martinez—environmental activist and conservationist—became the youngest person at 15 years old to give a 2015 speech at the UN General Assembly. He decided to go off script, abandoning his notes, and at times speaking in his native language;[76] prompting headlines and media attention.[77] He points to the creativity and openness of youth to new ideas: 'One of the benefits of fighting for a cause at a young age is that your ideas have no boundaries. It allows you to use your creativity and imagination to solve problems'.[78] These characteristics are a valuable tool in environmental activism which requires energy, innovation and tenacity. The communication competence that children and young people have drawn upon in their climate activism has positioned many youth activists as authoritative on climate change and garnered the attention necessary to tackle the crisis.

There has been much disingenuous 'concern' for youth climate activists as manipulated or vulnerable.[79] Greta Thunberg famously convinced her own parents of the seriousness of the climate crisis and succeeded in changing their behaviour—and the behaviour of adults around the globe—in relation to climate change.[80] This influencing of the adults around them is a theme to be seen in the stories of other young climate activists also. In a book detailing the *Juliana v United States* legal action, Van Der Voo details the diversity of the children and young people from all over the Unites States, from North to South, from poverty and from well-off families who came together to challenge the government's climate policies.[81] They ranged in age from 11 to 22 years, and some like Greta Thunberg had convinced parents to join them in their cause:

[73] Damian Carrington, '"Blah, blah, blah": Greta Thunberg Lambasts Leaders over Climate Crisis' *The Guardian*, 28 September 2021, available at: https://www.theguardian.com/environment/2021/sep/28/blah-greta-thunberg-leaders-climate-crisis-co2-emissions [last accessed 5 December 2021].

[74] Hook, 'Greta Thunberg: "It Just Spiralled Out of Control"' *Financial Times Magazine*, 31 March 2021, available at: https://www.ft.com/content/6ee4bb03-3039-446a-997f-91a7aef5f137?fbclid=IwAR1hoIPF8or1MzrALwyh5qRZWwv_BcnxmM-lvx-gdJetp98Fn8vmtCbHU6w [last accessed 5 June 2021].

[75] See Marris, 'Why young climate activists have captured the world's attention' *Nature*, 18 September 2019, available at: https://www.nature.com/articles/d41586-019-02696-0 [last accessed 5 December 2021] and Thew, Middlemiss and Paavola, '"Youth is not a Political Position": Exploring justice claims-making in climate change negotiations' (2020) 61 *Environmental Education Research* 102036.

[76] Martinez (with Justin Spizman), *We Rise: The Earth Guardians Guide to Building a Movement that Restores the Planet* (2021).

[77] Steyer, '15-Year-Old Climate Activist Speaks to UN General Assembly' *Huffpost*, 7 Feb 2015, available at: https://www.huffpost.com/entry/xiuhtezcatl-speaks-to-un_n_7715192 [last accessed 5 June 2021].

[78] Martinez, supra n 76 at 51.

[79] Daly, supra n 32.

[80] 'Greta Thunberg's Father: 'She Is Happy, But I Worry', Supra n 57. Thunberg, *Our House Is on Fire: Scenes of a Family and a Planet in Crisis*, supra n 62 at 14–39.

[81] Van Der Voo, *As the World Burns: The New Generation of Activists and the Landmark Legal Fight Against Climate Change* (2020).

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'each young plaintiff joined the case on their own, heard about it from some corner of their own world. Whether the adults followed them more deeply into the fight is beside the point'.[82]

Through the arena of climate activism, children and young people have seized the opportunity to be heard through their own spheres of particular competence, such as the use of digital media platforms for communication and activism. This is an extraordinary phenomenon, considering how children and young people have never mobilised on this international scale on a political issue before. In this way, children and young people are engaging in human rights activism, although it may not always be framed as such. As will be outlined in Section 3, the climate crisis is a human rights issue and is increasingly being treated as such by international human rights law mechanisms. Simultaneously, children and young people are exercising their political rights, including those enshrined in the CRC such as the right to freedom of assembly and association.[83] Another key part of this global campaign has recently emerged—children as international human rights litigators.

4. CHILDREN AND YOUNG PEOPLE AND LITIGATION

A. The Environment and the Human Rights Law Framework

The climate crisis is undoubtedly the foremost threat to humanity and is directly linked to numerous human rights issues both present and future. There is no explicit right to a healthy environment in the Universal Declaration of Human Rights or in any international human rights treaty. There have however been some significant developments since the 1990s, culminating most recently in a 2021 resolution passed by the UN Human Rights Council recognising access to a healthy and sustainable environment as a universal right.[84] John Knox, the first UN special rapporteur on human rights and the environment, posits that the concept of a human right to a healthy environment has developed in three ways.[85] First, rights relating to the environment have been adopted in regional treaties (for example the African Charter on Human and Peoples' Rights) and national constitutions relating to the environment. Boyd lists 100 countries that have directly incorporated a right to a healthy environment.[86]

Second, a right to a healthy environment has emerged through the 'greening' of particular human rights provisions. The rights to life and health have been applied to environmental issues for example via the jurisprudence of the ECtHR in cases such as *Lopez Ostra*.[87] Thirdly, the right has developed through inclusion in multilateral environmental instruments such as the 2015 Paris Agreement—a legally binding international treaty on climate change. The aim of the Paris agreement is to limit global warming to well below 2, preferably to 1.5°C. This binding agreement has provided significant opportunities through which to engage environmental human rights arguments at domestic level and now at regional level also, in cases such as *Duarte Agostinho*.

The use of the international human rights framework for efforts to combat climate change has been inevitable. In 2017, for example, the Office of the High Commissioner for Human Rights prepared an analytical study on the relationship between climate change and children's rights, advising that children's rights and participation are to be built into climate and development strategies.[88] In parallel, climate litigation through a human rights framework has also been a

[82] Ibid., at 11.
[83] Daly, *Commentary on Article 15 of the UN Convention on the Rights of the Child: the Right to Freedom of Peaceful Assembly and Freedom of Association*, supra n 29.
[84] Resolution 48/13. See UN News, 'Access to a healthy environment declared a human right by UN rights council', 8 October 2021, available at: https://news.un.org/en/story/2021/10/1102582 [last accessed 20 December 2021].
[85] Knox, 'Constructing the Human Right to a Healthy Environment' (2020) 16 *Annual Review of Law and Social Science* at 81.
[86] Boyd, *The Environmental Rights Revolution: A Global Study of Constitutions, Human Rights, and the Environment* (2012).
[87] *López Ostra vs. Spain* Application No 16798/90, Merits and Just Satisfaction, 9 December 1994.
[88] Office of the High Commissioner for Human Rights, supra n 3.

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clear route for environmental activism. Human rights is about controlling the abuse of power by states, and about equipping social movements with a language of protest, as well as a platform for change—there is therefore numerous mutually beneficial connections between the fields of human rights and environmental activism.[89]

Applying the human rights framework to climate justice is far from easy of course. Gearty points to the obvious challenges of using the framework to tackle the climate crisis as human rights is an arena concerned with entitlements that flow from being human, rather than anything else.[90] The challenges of international human rights law reflect those of international law more broadly when it comes to climate change. The arena of climate justice is fragmented and decentralised, partly because of the difficulty of achieving international consensus on how best to address climate change but also because of 'the breadth and complexity of international development and economic activity'.[91] The international law framework also struggles with problems associated with the climate crisis because of 'its poly-centric, socio-economically, and socio-politically complex nature'.[92] Although international law is undoubtedly relevant to the issues raised by climate justice, the means through which to deal with the climate crisis were not embedded in international law.[93]

There are challenges for example related to the limited possibility for the law of state responsibility to accommodate the collective nature of the legal interests at stake, as human rights law usually requires an individual to claim victim status.[94] There are perhaps even more significant obstacles relating to the establishment of state responsibility when it comes to international human rights treaties—such treaties apply of course to the relationship between a State and those under its territorial jurisdiction. States are responsible for promoting and protecting the rights of the individuals within its boundaries—limitations on their jurisdiction mean that they will not be expected to do the same for individuals in other jurisdictions (unless a state is exercising 'effective control' over another jurisdiction).[95] As Feria-Tinta Monica notes: 'A State may argue that climate change is a "global phenomenon" and not the sole responsibility of one single State'.[96]

Another significant challenge is the issue of causation. It is often difficult to position global climate change as a human rights abuse against particular individuals in particular places. As Schiffner notes: 'The interpretation of emissions, its quantities and ultimately its impact on alleged damages caused by severe weather events are among the many considerations in climate change litigation'.[97] The Office of the High Commissioner for Human Rights in a 2009 report on the relationship between climate change and human rights expressed the view that it is practically impossible to unravel 'the complex causal relationships linking historical greenhouse gas emissions of a particular country with a specific climate change-related effect, let alone with the range of direct and indirect implications for human rights'.[98] In spite of these many

89 Gearty, supra n 18 at 7.
90 Ibid.
91 International Bar Association, *Achieving Justice and Human Rights in an Era of Climate Disruption,* 2014.
92 Meguro, 'Litigating Climate Change Through International Law: Obligations Strategy and Rights Strategy' (2020) 33 *Leiden Journal of International Law* 933.
93 International Bar Association, supra n 91.
94 Meguro, supra n 92 at 938.
95 See e.g. *Loizidou v Turkey*, Application No 15318/89, Merits and Just Satisfaction, 18 December 1996, para. 52.
96 Feria-Tinta, 'Climate Change Litigation in the European Court of Human Rights: Causation, Imminence and other Key Underlying Notions' (2021) 3 *Europe of Rights & Liberties/Europe des Droits & Libertés* 52, at 58.
97 Schiffner, 'In Climate Litigation, Success Is a Long Shot for Plaintiffs Lawyers, but that Won't Stop Them From Trying' *The National Law Journal*, 1 October 2021, available at: https://www.law.com/nationallawjournal/2021/10/01/pushing-emissions-on-a-court-docket-mass-tort-at-the-intersection-of-climate-change/?slreturn=20211121135202 [last accessed 20 December 2021].

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challenges, human rights litigation is increasingly playing an important role in climate change mitigation efforts.[99]

B. From Activism to Rights-Based Litigation

Research indicates that strategic litigation can be an important tool for human rights campaigns when undertaken as part of a comprehensive strategy in challenging unjust power relations.[100] In the context of grassroots activism, litigation has arisen as a serious route through which to force governments to review their policy priorities in respect of climate change.[101]

In what Peel and Osofsky have suggested is 'a rights turn in climate litigation',[102] there has been an explosion of applications in recent years, with at least 37 countries (and eight international bodies) experiencing at least one climate lawsuit by the time of research conducted in 2020.[103] These cases have been taken against both states and companies and in numerous fora, including national courts, international courts and human rights committees. The Paris Agreement in 2015 was a significant turning point for such litigation. Before this agreement, only five human rights-based climate cases had been filed. By July 2021, Setzer and Higham had identified over 100 human rights-based climate change cases globally.[104] Thirty four of these cases were filed in 2020 or 2021.

Not all of these cases involve youth climate activists. In fact it is Indigenous people who have led the charge in this arena. In 2005 the Inuit community brought a case against the United States to the Inter-American Court of Human Rights, [105] due to the actions of the Unites States having a huge impact on the ecosystem and way of life of Indigenous peoples in the Arctic.[106] Yet it must be emphasised that strategic litigation is probably an even more important tool for children as compared with adults. As noted above children and young people—particularly those under the age of 18—struggle to exercise political rights, not least because those under 18 generally do not have the right to vote. As noted by Nolan, 'legislatures are unaccountable to children due to [children's] unenfranchisement'.[107] Elected representatives will likely feel less pressure to advocate for the interests of children as a group as compared with others who have the power to vote. It is perhaps unsurprising then that litigation has become a key tool for youth climate activists. It seems that the courts have become a forum in which under-18s have started to exercise their CRC political rights on a scale which has not been seen to any extent since the advent of the CRC in 1989.

98 Office of the United Nations High Commissioner for Human Rights, 'Report of the Office of the United Nations High Commissioner for Human Rights on the relationship between climate change and human rights', 15 January 2009, A/HRC/10/61, para 70.

99 Herlitz Bäckman, *Adjudicating Climate Change The Role of Human Rights Litigation in Climate Change Mitigation* (Masters Thesis, Lund University, 2021).

100 Goldson, 'The Value of Strategic Litigation amidst Rising Illiberal Democracies in an Increasingly Authoritarian World' *OpenGlobalRights*, 20 November 2018, available at: https://www.openglobalrights.org/the-value-of-strategic-litigation-amidst-rising-illiberal-democracies/ [last accessed 20 December 2021].

101 Ibid.

102 Peel and Osofsky, 'A Rights Turn in Climate Change Litigation?' (2018) 7 *Transnational Environmental Law* 37.

103 Setzer and Byrnes, 'Global Trends in Climate Change Litigation: 2020 Snapshot' *Policy Report*, July 2020, available at: https://www.lse.ac.uk/granthaminstitute/wp-content/uploads/2020/07/Global-trends-in-climate-change-litigation_2020-snapshot.pdf (last accessed 8 June 2021).

104 Setzer and Higham, (2021) 'Global Trends in Climate Change Litigation: 2021 Snapshot' *LSE, Columbia University, Centre for Climate Change Economics and Policy*.

105 'Petition to the Inter-American Commission on Human Rights Seeking Relief From Violations Resulting from Global Warming Caused by Acts and Omissions of the United States' Climatecasechart.com, 2005, available at: http://climatecasechart.com/climate-change-litigation/non-us-case/petition-to-the-inter-american-commission-on-human-rights-seeking-relief-from-violations-resulting-from-global-warming-caused-by-acts-and-omissions-of-the-united-states/ [last accessed 13 June 2021].

106 According to the 2004 *Arctic Climate Impact Assessment* (p 8), the petition was deemed inadmissible on the basis that the information provided was insufficient to make a determination.

107 Nolan, *Children's Socio-Economic Rights, Democracy and the Courts* (2011).

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The use of litigation in an attempt to implement environmental protection standards is not new, yet this phenomenon of multiple cases in regional and international human rights courts is a recent and exciting one—litigating environmental issues internationally was previously considered next to impossible.[108]

Recent international and regional cases have seemingly grown from increasing national litigation, given the requirement of international bodies that domestic avenues must (usually) be exhausted. In 2011, Children's Trust—an American non-profit organization based in Oregon—began to file lawsuits across the United States. Youth litigants launched climate mitigation lawsuits based on arguments that the public trust doctrine should be applied to the atmosphere.[109] Many cases have been unsuccessful, in part because of the reluctance of courts to interfere in what are perceived as policy matters.[110] In 2020 for example in *Juliana v United States*[111] the Ninth Circuit[112] held that it would exceed a federal court's remedial authority if the court were to order the federal government to adopt 'a comprehensive scheme to decrease fossil fuel emissions and combat climate change'.[113] Yet some important points of law have nevertheless been established, such as recognition that the state has a duty to protect natural resources from climate change under constitutionally grounded principles of liberty and rights to a healthy environment including across time and generations.[114]

Climate cases with human rights as a basis continue in earnest in different national contexts, from Norway to Colombia to Canada.[115] It is possibly the Dutch *Urgenda* case—the 'current archetype of climate litigation'[116]—which has made the greatest impact to date amongst the many climate cases at domestic level. In this case the applicants relied on the UN Climate Convention as well as the European Convention on Human Rights (ECHR Article 2, which protects the right to life, and Article 8, which protects the right to private and family life). It resulted in the Dutch Supreme Court affirming that the Dutch government must reduce greenhouse gas emissions by at least 25% compared to 1990 levels by the end of 2020. Domestic litigation against the state, much of it based on human rights arguments, continues with varied outcomes for example in Ireland [117] and Australia.[118] 2021 has witnessed significant expansion of human rights-based climate litigation. There was success for claimants for example in France, where the Paris Administrative Court found that France had failed to fully meet its goals in reducing emissions, [119] and in Germany where the Supreme Constitutional Court held that the German government's measures in the Climate Protection Act 2019 were insufficient to protect future generations, thereby violating their human rights.[120]

This litigation activity has also been increasing at regional and international levels—note for example the 'People's Climate Case'—*Armando Ferrão Carvalho and Others*[121] against the

[108] Meguro, supra n 92 at 934.
[109] Wood, *Nature's Trust: Environmental Law for a New Ecological Age* (2014).
[110] Rogers, supra n 28 at 111.
[111] *Juliana v United States*, 947 F.3d 1159 (9th Cir. 2020).
[112] This is a federal court that hears appeals from the district courts in a number of US districts, mostly in the West of the US.
[113] '*Juliana v United States*—Ninth Circuit Holds that Developing and Supervising Plan to Mitigate Anthropogenic Climate Change Would Exceed Remedial Powers of Article III Court' 134 *Harvard Law Review* 1929 (10 March 2021).
[114] *Zoe and Stella Foster* et al. *v Washington Department of Ecology*, 16 December 2015, available at: https://www.crin.org/en/library/legal-database/zoe-and-stella-foster-et-al-v-washingtondepartment- ecology [last accessed 5 June 2021].
[115] *Environnement Jeunesse v Attorney General of Canada* (Superior Court, 500-06-000955-183) (11 July 2019) and *La Rose v Her Majesty the Queen* (Federal Court, T-1750-19). See Rogers, supra n 28 for detailed analysis of many of these cases.
[116] O'Neill and Alblas, 'Climate Litigation, Politics and Policy Change: Lessons from Urgenda and Climate Case Ireland' in Robbins et al. (eds) *Ireland and the Climate Crisis* (2020).
[117] *Friends of the Irish Environment CLG v Government of Ireland and the Attorney General* [2019] IEHC 747. See Adelmant *et al.*, 'Human Rights and Climate Change Litigation: One Step Forward, Two Steps Backwards in the Irish Supreme Court' (2021) 13 *Journal of Human Rights Practice*, huab009 and O'Neill and Alblas, supra n 116, at 57.
[118] *Sister Marie Brigid Arthur v Minister for the Environment* [2021] FCA 560.
[119] *Association Oxfam France et ors v France* N °1904967, 1904968, 1904972, 1904976/4-1 [2021].
[120] *Neubauer et al. v Germany* (BvR 2656/18/1 BvR 78/20/1 BvR 96/20/1 BvR 288/20).

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European Parliament and Council. The plaintiffs (10 families from 8 nations) argued among other things that inadequate emission reductions by the EU violate for example the rights to health, education and equal treatment—their petition was found inadmissible in 2021. Also in 2021, Haitian children petitioned the Inter-American Commission on Human Rights arguing that toxic waste disposal in their residential district causes health harms most acutely affecting children.[122] The petition notes that 'climate change magnifies the adverse environmental conditions facing children in Cité Soleil'.[123] They invoke numerous articles of the American Convention on Human Rights such as the right to dignity, and an admissibility determination is awaited.

There will be a focus in the next section on two climate change-related applications—*Duarte Agostinho and Saachi*—in which children and young people are the applicants. These two cases have been selected for particular examination for two primary reasons. First, these petitions constitute the most prominent international/regional climate petitions involving children and young people. Secondly, these petitions in a number of different ways demonstrate a potential shift in the nature of international human rights law. There are indications for example that international human rights law may be changing in a way that better encompasses person-environment connections. It is also evident from these cases that international human rights is becoming more participatory for groups such as youth applicants.

C. *Saachi and Others v Argentina and Others (2019)*—The UN Committee on the Rights of the Child

In 2019 youth activists took a petition to the UN, using the instrument in the international human rights framework which is tailored to the rights of children in particular. Greta Thunberg and 15 other children (then aged between 8 and 17 years) from various nations such as Argentina, Brazil, France, Germany and Turkey submitted a communication[124] to the UN Committee on the Rights of the Child under the Optional Protocol to the Convention on the rights of the Child on a Complaints Procedure (OPIC). They argued in their communication that the five respondent States (Argentina, Brazil, Germany, France and Turkey) had breached their obligations under the UN Convention of the Rights of the Child (CRC) through their failure to tackle climate change. They cited the CRC rights to life (Article 6) and to health (Article 24), and the right of Indigenous children to their own culture (Article 30). They also argued that respondent States failed to adequately consider the best interests of children as a group (Article 3) in their policies in respect of climate change. The application was ultimately deemed in October 2021 inadmissible due to the failure to exhaust domestic remedies.[125]

(i) A groundbreaking case

In spite of the determination of inadmissibility, this application was ground-breaking in many ways, even before the decision was delivered. The fact that it was a group of child (rather than adult) applicants is unprecedented in international human rights law. The nature of the rights issues raised also means that this application stands out as highly unusual within the emerging

121 *Armando Ferrão Carvalho and Others v The European Parliament and the Council*, Filing Date: 2018 Reporter Info: Case no. T-330/18.

122 *Petition seeking to redress violations of the rights of children in Cité Soleil, Haiti* (filed 2021)—Inter-American Commission on Human Rights.

123 Ibid., at 32.

124 See a copy of the petition at Childrenvclimatecrisis.org website, available at: https://childrenvsclimatecrisis.org/wp-content/uploads/2019/09/2019.09.23-CRC-communication-Sacchi-et-al-v.-Argentina-et-al.pdf [last accessed 2 June 2021].

125 See for example Committee on the Rights of the Child, *Decision adopted by the Committee on the Rights of the Child under the Optional Protocol to the Convention on the Rights of the Child on a communications procedure in respect of Communication No. 104/2019*, State Party Argentina, 8 October 2021, CRC/C/88/D/104/2019. See also the remainder of the five (almost identical) separate decisions at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/SessionDetails1.aspx?SessionID=1351&Lang=en [last accessed 3 December 2021].

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and quite new jurisprudence of the Committee on the Rights of the Child. Examination of the jurisprudence of the Committee indicates that applications have almost exclusively involved questions of immigration, deportation and child protection.[126] These are of course all critical children's rights issues. However, the *Saatchi* petition adds a new element of activity relating to the CRC. It was hoped that the introduction of an individual complaints mechanism of the CRC would expand the scope of accepted children's rights issues.[127] As noted above, at the UN level, the children's rights issues covered are usually those which focus on children as victims rather than as active agents, holding civil and political rights as adults do. The substance of the *Saachi* application of course focuses on children as victims of climate change. Nevertheless, the application itself is a unique example of children exercising autonomy and political rights in UN jurisprudence, claiming an active role in addressing a global threat.

The children provided in the petition detailed accounts of the varied ways in which the effects of climate change are having devastating effects on their lives and communities. Petitioner Ranton Anjain, for example, describes how a violent storm destroyed his home in the Marshall Islands.[128] Carl Smith of the Yupiaq Tribe in Alaska describes the impact of global heating on the ability of his Tribe to subsist, and his fears that their way of life would not survive.[129] There was therefore a strong focus in the petition on Indigenous children, their rights and their connection to their natural environment compared with non-Indigenous children. As pointed out in the *Saatchi* petition: '[C] limate change has a unique impact on indigenous children, whose close connection to nature and dependence on wildlife and plants are integral to their livelihoods and their spiritual and cultural practices'.[130] The applicants point also to the intergenerational crisis posed by the destruction of environments and ways of living posed by climate change. This is in line with the emphasis by prominent European youth that the plight of Indigenous people must be given sufficient attention—at a press conference at the 2019 UN Climate Change Conference they worked to redirect media attention on Indigenous youth, stating that '[o] ur stories have been told over and over again .... It's really about [Indigenous youth] .... We talk about our future, they talk about their present'.[131] Given the novelty of the type of applicants, and the justice claims made, it is unsurprising that the initial delivery of the petition received intense media attention.[132] It was certainly of greater interest than any petition to this Committee before and possibly greater than any petition to the UN to date.

(ii) The decision

In October 2021, the UN Committee on the Rights of the Child published its decisions, declaring the complaints inadmissible due to non-exhaustion of domestic remedies. It has been described as 'a convincingly reasoned rejection'[133] on the one hand, considering it is a key principle of international human rights law that domestic avenues have to first be exhausted before a case can proceed to examination on its merits. Yet it has been described as a 'practical illusion'[134] on the other. Çali for example points out that, at least in the case of Turkey, 'there

126 See e.g. Committee on the Rights of the Child jurisprudence, available at: https://www.ohchr.org/EN/HRBodies/CRC/Pages/TableJurisprudence.aspx [last accessed 2 June 2021].

127 See e.g. Daly, supra n 29.

128 Ibid., para. 115.

129 Ibid., paras 141–150.

130 *Saatchi*, para. 92.

131 Jordans and Parra, 'Too Much of a Greta Thing? Activist Urges Focus on Others' *Associated Press*, 9 December 2019, available at: https://apnews.com/article/europe-madrid-ap-top-news-environment-greta-thunberg-baa29614a79cbcd2edb83b9e3f7de90f [last accessed 2 June 2021].

132 See e.g. '16 children, including Greta Thunberg, file landmark complaint to the United Nations Committee on the Rights of the Child' UNICEF, 23 September 2019, available at: https://www.unicef.org/turkey/en/press-releases/16-children-including-greta-thunberg-file-landmark-complaint-united-nations; [last accessed 2 June 2021].

133 Nolan, supra n 6.

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is no domestic case law precedent that would allow these children to have any prospect of success to have the merits of their arguments to be assessed by Turkish Courts, including its Constitutional Court'.[135] Çali questions whether an exception should have been made to the requirement to exhaust domestic remedies in accordance with the 'unlikely to bring effective relief' limb under Article 7 (e) of OPIC.

The Committee did find however that a State party can be held responsible for the negative impact of its failure to mitigate climate change on the rights of children both within and outside its territory. The Committee saw fit to rely on the test for adopted by the Inter-American Court of Human Rights in its 2017 Advisory Opinion, whereby the Court found that in certain circumstances states can be responsible for transboundary human rights violations (in this case, in areas affected in large-scale transboundary infrastructure projects).[136] The Committee opined that this test implied that:

> When transboundary harm occurs, children are under the jurisdiction of the State on whose territory the emissions originated for the purposes of article 5 (1) [jurisdiction] of the Optional Protocol if there is a causal link between the acts or omissions of the State in question and the negative impact on the rights of children located outside its territory, when the State of origin exercises effective control over the sources of the emissions in question.[137]

The Committee, in considering the required elements to establish the responsibility of the State, opined that States parties have effective control over harmful emissions affecting children's rights and therefore have individual responsibility—the collective nature of the causes of climate change does not mean that a States does not have individual responsibility for resulting harm to children elsewhere, where emissions originate within its territory. Jurisdiction was therefore established from the perspective that the potential harm to children's rights from a state's carbon emissions was 'reasonably foreseeable' to the State party. The Committee therefore did not differentiate between responsibility the state might have for emissions directly caused by state actors rather than non-state actors. The Committee also concluded that the petitioners had established that they have experienced a sufficient level of harm in order to justify their victim status.

This application represents an unprecedented approach in a UN decision-making forum to a highly unusual group of litigants—a group of children and young people making human rights claims relating to their environment and their future. It is anticipated that if children do exhaust domestic remedies in a particular country, then a more substantive approach by the Committee will be taken.[138] If this occurs it will likely be a route to the further evolution of international law principles relating to the right to a healthy environment. Furthermore, the applicants in another unprecedented move have now petitioned the UN Secretary General, calling on him to announce that the climate crisis constitute a global level 3 emergency. This would match the level of UN response adopted for the coronavirus pandemic.[139] The climate activism of these

134 Çali, 'A Handy Illusion? Interpretation of the "Unlikely to Bring Effective Relief" Limb of Article 7(e) OPIC by the CRC in Saachi et al.', 1 November 2021, available at: https://www.ejiltalk.org/a-handy-illusion-interpretation-of-the-unlikely-to-bring-effective-relief-limb-of-article-7e-opic-by-the-crc-in-saachi-et-al/ [last accessed 2 December 2021].

135 Ibid.

136 *A Request for an Advisory Opinion from the Inter-American Court of Human Rights Concerning the Interpretation of Article 1(1), 4(1) and 5(1) of the American Convention on Human Rights*, Filing Date: 2016, Reporter Info: OC-23/17.

137 See *Decision adopted by the Committee on the Rights of the Child*, supra n 120, para 10.7.

138 Nolan, supra n 6.

139 Bryant, 'Youth Activists Petition UN to Declare "Systemwide Climate Emergency"' *The Guardian*, 10 November 2021, available at: https://www.theguardian.com/environment/2021/nov/10/youth-activists-petition-un-to-declare-systemwide-climate-emergency [last accessed 3 December 2021].

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young people—and their use of international mechanisms—therefore continues to break new ground at international level.

D. *Duarte Agostinho and Others v Portugal and Others* (2020)—The European Court of Human Rights

In the petition of Duarte Agostinho four children and two young adults from Portugal argue that the inadequate climate policies of 33 European states violate their rights under the European Convention on Human Rights. The case is ground breaking in a number of ways. The first is that never before has a group of youths taken a case to the ECtHR—the climate crisis they argue affects youth disproportionately.[140] Second, the application apparently implicates 'the most countries ever taken to a regional court in a climate change case', [141] pointing to the interconnectedness of states when it comes to the climate crisis, which extends across geographies and borders. The countries named in the complaint include the 27 Member States of the European Union in addition to the UK, Switzerland, Norway, Russia, Turkey and Ukraine. In December 2020 the Court decided to fast-track the petition, recognising the 'importance and urgency of the issues raised', and in February 2021, rejected a request by the 33 governments to reconsider that assessment. At the time of writing (November 2021), those representing the children and young people are preparing responses to the state documents that were submitted in response to the application in May 2021.

The argument of the applicants is that the states' efforts to cut greenhouse gas emissions are inadequate. The young applicants were witnesses to the 2017 Portugal fires in which over 120 people died, and they argue that they are personally affected by the climate crisis. The children and young people are represented by Global Legal Action Network (GLAN) and were identified by a member of staff working for GLAN who is from the same region of Portugal.[142] The children and young people argue that they fear for their futures and that the rising temperatures make everyday life, like education and exercise, very difficult. States are expected to explain in their responses that, where their actions disproportionately affect young people, this is due to objective factors and not to discrimination against young people. States must also outline how they are considering children's best interests in their policies.

As in cases such as *Lopez Ostra*[143] the applicants are relying on ECHR Article 2 (the right to life) and Article 8 (the right to private and family life) to invoke their human rights in respect of environmental damage, read in *Duarte Agostinho* in the context of the 2015 Paris Agreement. Yet a third novel aspect of this case is that the applicants have also invoked Article 14—the right to freedom from discrimination—on the basis that youth are disproportionately affected by climate change. This appears to be the first time that youth has been invoked as a ground for discrimination at the level of international human rights law[144] (in fact it is rarely invoked as a ground for discrimination at national level).[145] This is an exciting development in the international human rights arena, as it calls attention to the position of children and young people as a distinct group who disproportionately lack political power. Children's rights narratives rarely position lack of attention to children and young people as a discrimination issue.

140 See further Global Legal Action Network website: https://youth4climatejustice.org/ [last accessed 3 June 2021].

141 Watts, 'Portuguese Children Sue 33 Countries over Climate Change at European Court' *The Guardian*, 3 September 2020, available at: https://www.theguardian.com/law/2020/sep/03/portuguese-children-sue-33-countries-over-climate-change-at-european-court [last accessed 5 June 2021].

142 See Global Legal Action Network press conference announcing filing of climate case with European Court of Human Rights, 3 September 2020, available at: https://www.youtube.com/watch?v=_PKwTE32UoY [last accessed 12 August 2021].

143 *López Ostra vs. Spain*, supra n. 87.

144 Daly, Thorburn Stern and Leviner, supra n. 7.

145 Daly, Thorburn Stern and Leviner, 'The Paradox of the UN Convention on the Rights of the Child: Article 2 and Discrimination on the basis of Childhood' (forthcoming journal article, 2022).

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The application has many similar features to one submitted subsequently by a group of senior Swiss women. They are similarly making the argument before the same Court that they too are in a position of particular vulnerability regarding climate change, not least because the elderly disproportionately die in heat waves.[146] The Swiss senior application may appear very different to *Duarte Agostinho*, as it focuses on the rights of those at the other end of the age spectrum. Yet taken together these applications point to an exciting trend whereby groups who do not traditionally petition international human rights bodies are mobilised by the climate crisis to make justice claims from their own unique perspectives.

Another fascinating element of *Duarte Agostinho* is the reaction of the court itself. As noted, the application was fast-tracked by the ECtHR[147] when the Court communicated the case. This perhaps points to the court's perception that the importance of the case requires a speedy decision, whether this is because of the attention it has attracted, or whether it is because the court believes that the human rights implications of the climate crisis warrant this. Furthermore, the Court invoked ECHR Article 3, the right to freedom from torture and inhuman and degrading treatment, as well as the right to property in Article 1 of Protocol No. 1 to the Convention.[148] The Article 3 implications of the climate crisis are particularly interesting and important. The climate crisis can cause feelings of fear and anguish among those suffering the worst effects, who may fear greatly for their safety and for the safety of their loved ones, particularly as the situation worsens. Mavronicola points out[149] that the experiences of the *Duarte Agostinho* applicants in relation to the climate crisis correspond in many ways with the elements of inhumanity and degradation as it is defined in Court jurisprudence. The children and young people are for example currently enduring 'prolonged uncertainty'[150] and 'feelings of fear, anxiety and powerlessness'.[151] As a matter of international human rights law the right not to be subjected to torture or ill-treatment is absolute. This means state obligations in this regard are non-displaceable and non-negotiable—a finding of a violation of Article 3 would mean that states would have to take all reasonable steps to mitigate the climate crisis.[152] This lends a powerful new dimension to human rights claims in relation to the climate crisis.

Many hope for a landmark ruling on climate change to succeed the *Urgenda* case, based as *Duarte Agostinho is on ECHR rights*. As with *Saatchi*, the case may not overcome procedural hurdles for admissibility. Unlike the Swiss senior case, the applicants have not exhausted domestic remedies. They argue that there is an absence of an adequate domestic remedy, considering the urgency of climate change, and because it would impose an unreasonable burden on them to pursue domestic remedies in each of the states. The decision of the Court regarding these arguments will determine if the case will be heard on the merits. Even if the case were to be deemed admissible, the ECtHR has held that states have a wide 'margin of appreciation' when it comes to broad policy choices. In *Cordella and Others v Italy* (2019)[153] the ECtHR stated that states have a 'certain' margin of appreciation, but whether this means that the Court is

146 See website of KlimaSeniorinnen Schweiz, available at: https://klimaseniorinnen.ch/english/ [last accessed 4 June 2021].

147 See website of Greenpeace, available at: https://www.greenpeace.org/international/press-release/47031/european-court-of-human-rights-greenlights-swiss-seniors-climate-case/ [last accessed 4 June 2021].

148 See analysis of this novel aspect of the case by Heri, *The ECtHR's Pending Climate Change Case: What's Ill-Treatment Got To Do With It?*, EJIL:Talk! 22 Dec 2020, available at: https://www.ejiltalk.org/the-ecthrs-pending-climate-change-case-whats-ill-treatment-got-to-do-with-it/ (last accessed 4 June 2021).

149 Mavronicola, 'The Future is a Foreign Country: Rethinking State Behaviour on Climate Change as Ill-Treatment' New Approaches (2021) available at: https://www.birmingham.ac.uk/research/cop26/climate-publications/new-approaches/the-future-is-a-foreign-country-rethinking-state-behaviour-on-climate-change-as-ill-treatment.aspx [last accessed 2 December 2021].

150 *MSS v Belgium and Greece*, para. 263.

151 *Volodina v Russia*, para 75.

152 Mavronicola, supra 149.

153 Nos 54414/13 and 54264/15, § 158, 24 January 2019.

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shifting direction on this is as yet unclear.[154] Nevertheless the many novel aspects of this case demonstrate that change is already evident, at least in terms of opening up applications to new groups of litigants, and the invoking of new rights in respect of environmental harm under the European Convention on human rights.

5. A SHIFT IN INTERNATIONAL HUMAN RIGHTS LAW?

A. Human Rights Law that Better Encompasses Person-Environment Connections

The efforts to advocate for a right to a healthy environment is influencing the formal legal arena; transforming traditional approaches to environmental law and human rights.[155] There are a number of successful and pending court cases upholding various rights claims relating to climate change harm. As outlined above, many include youth litigation, and this activity is influencing the international human rights framework, even if only primarily in terms of applications rather than outcomes for now in relation to *Saachi* and *Duarte Agostinho*. The reliance upon international human rights law to litigate environmental issues has involved environmental harm being framed as harm to an individual; that is, litigants arguing that actions harmful to the environment amount to a violation of the litigants' human rights.[156] The other side of that same coin is that the hyper-individualised realm of human rights law is perhaps becoming more capable of encompassing claims which relate to the environment. One powerful element of this shift is that youth activists have brought to human rights a linkage between the environment of present and future generations. Much of the debate about whether there are duties to curb resource use in the present to prevent environmental damage in the future has centred on the concept of future generations, that is, those yet to be born. Yet youth activists and litigants, such as those in *Duarte Agostinho* and *Saachi*, have forcefully made the point that they are here now in the present and have already been harmed. Although *Saachi* did not proceed to its merits, the Committee on the Rights of the Child has already accepted the argument that certain children have victim status due to the devastation wrought by the climate crisis.

They are also arguing that they fully anticipate the harm worsening *in their lifetime*. They argue that, if sufficient steps are not taken now, unacceptable harm will be a certainty for them. This goes some way towards bridging the gap in the climate change debate between adults now and hypothetical humans in the future—we see now that those humans are already here. This was reflected in the 2021 judgment of the German Constitutional Court in relation to a youth climate case in which the court acknowledged that rights should be defined as 'intertemporal guarantees of liberty'.[157] This wording recognises the connection between choices made and consequences experienced past, present and future. It recognises that adults today will endure moderate suffering, but that the young and those not yet born will suffer severe human rights violations in the future if states do not adequately mitigate the climate crisis.[158]

Youth climate activism evokes the interrelated links between ecological issues and social issues and progresses the understanding of the problems, relationships and interconnections between the living environment and well-being.[159] Through such activism, and the consequent

[154] See Eicke, 'Human Rights and Climate Change: What Role for the European Court of Human Rights?' (2021) *European Human Rights Law Review* 262.

[155] Skillington, supra n 65 at 629.

[156] Meguro, supra n 92 at 935.

[157] See unofficial English translation at website of Climatecasechart, available here: http://climatecasechart.com/climate-change-litigation/non-us-case/neubauer-et-al-v-germany/ [last accessed 5 June 2021].

[158] See further consideration of this case by Español, 'Litigating the future: climate rights before the German Constitutional Court' available at https://www.openglobalrights.org/litigating-the-future-climate-rights-before-the-german-constitutional-court/ [last accessed 5 June 2021].

[159] Närhi and Matthies, 'The Ecosocial Approach in Social Work as a Framework for Structural Social Work' (2016) 61 *International Social Work* 490.

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recognition of children as having a legitimate role in political activity and litigation, there is the potential for a greater recognition of responsibility to each other more broadly. Wall argues that proper regard for children's rights in the international human rights law framework will transform that framework, and society more broadly, as the very concept of 'human rights' itself will be reimagined in light of childhood. Human rights—traditionally understood as grounded in modernist ideas of autonomy, liberty, and entitlement—can instead be seen 'in a postmodern circle of responsibility to one another'.[160] Certainly through the climate change applications of these children, issues of interconnection such as responsibility of young and old to one another, the responsibility of Indigenous and non-Indigenous people to each other and the connectedness of people in all states have been brought to the fore in the international human rights law arena.

B. Bringing Greater Public Participation to Human Rights Law: Children as Litigators

Groups of children have not traditionally been litigators in international human rights law, or indeed in any other forum. Yet human rights evolve—there is great potential to shape the narrative around what is considered a 'just claim' in the political arena and in the legal sphere.[161] Climate activism in international human rights law has facilitated attention being given in that framework to the priorities expressed by ordinary citizens. This demonstrates the potential for engaging the international human rights law framework in a more participatory, locally informed, way.[162] An approach to human rights which envisages expanded person-environment connections facilitates recognition of the need to include all voices equally to share their expertise on 'what they need for justice and health in their own individual lives and communities'.[163] Through their climate activism in the broader world, children and young people demonstrated their climate competence in a way which perhaps opened up unprecedented opportunities for accessing the courts. They are now engaging with the international human rights law framework in a way that they never have before. It is very rare for children to be litigants in their own right before the ECtHR. Their needs, their interests and the framing of their rights claims are almost always done through the prism of the adults around them (usually their parents).[164]

An element of democratisation of the courts is evident where climate justice cases have been initiated. Note the celebratory gathering of the *Juliana v US* young people, [165] and the crowds of ordinary citizens who gathered for the High Court hearing of the Climate Case Ireland proceedings.[166] A similar phenomenon is to be seen in the application of the Swiss senior women—this is a group who would not ordinarily be accessing international human rights law courts in this way. Therefore, climate change litigation generally is transforming international human rights law—albeit it is undoubtedly not only youth involvement which is doing this. However, it is clear that of any group, *children* are likely those who have been most excluded from the legal arena generally. Therefore, their involvement in international human rights litigation in this way is undoubtedly transformative of children's rights, and of the human rights law system more broadly, though the extent of its impact is as yet unknown. Of particular note is the competence among children themselves of the need to ensure the prominence of Indigenous

160 Wall, 'Human Rights in Light of Childhood' (2008) 16 *International Journal of Children's Rights* 523.
161 Pantazidou, 'De-Constructing Marginality with Displaced People: Learning Rights from an Actor-Oriented Perspective' (2013) 5 *Journal of Human Rights Practice* 267, at 284.
162 See the work of Gready and Lockey, 'Rethinking Human Rights in York as a Human Rights City' (2019) 90 *The Political Quarterly* 383.
163 Engstrom and Powers, supra n 8, 135.
164 Daly, supra n 44.
165 Van Der Voo, supra n 81 at 11.
166 O'Neill and Alblas, supra n at, 57.

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children inside and outside the court which is both upliftingly inclusive and participatory.[167] As noted above, children's civil and political rights, such as the right to freedom of assembly, are not frequently theorised or litigated. Although these cases did not involve litigation about those freedom rights, it is the organic exercise by children of those rights which have led to these unprecedented applications. In turn, these applications are positioning children as powerful actors on the most serious crisis humanity has ever faced.

The sense of greater accessibility of human rights law mechanisms benefits young people and potentially counts as a success for climate activism but it also benefits human rights law itself. Human rights law can be perceived as a normative framework which not only sets standards for states' obligations in respect of individuals. Through climate activism, human rights law is increasingly providing concrete tools for all, including children, to hold states accountable where they fail to live up to those standards to a greater extent than in the past.[168]

6. CONCLUSION

Human rights law was not designed with the aim of tackling a crisis on the scale of climate change. Yet it is undeniable that climate change has caused, is at present causing, and in the future will continue to cause, unparalleled harm to humans and the environment. There is scope for dealing with the climate crisis within the human rights field—indeed it is already happening. The practical implications of the successes in litigation are yet to be seen. *Urgenda* for example was a limited victory, as the Dutch court could only order a reduction of emissions at a relatively low level. As regards *Duarte Agostinho*, although the application itself is ground breaking, a finding in favour of the applicants is far from guaranteed. Yet such exciting developments nevertheless point to the ability of the law, including human rights law, to be of relevance to efforts to hold governments to account for inadequate climate mitigation policies. Children and young people have tended to be at the heart of many these efforts both inside and outside the courtroom. As I have noted elsewhere, [169] it is incredibly rare for children to litigate on political issues—climate activism has transformed their status as political actors inside and outside the court. Human rights such as the right to health and the right to life are explored and developed in national systems; emerging transformed 'as new perspectives on such rights are dialogically produced and spread across other contexts internationally', raising questions on the boundaries of a just society and who its most relevant subjects are.[170] It seems that the goal of human rights obligations is being given greater clarity, with legal recognition of a responsibility to protect human communities in the long term.[171]

Under-18s are politically disempowered, particularly considering that they generally do not have the right to vote. Therefore, the climate litigation of children and young people constitutes an important strategy for climate activism. It provides them with the voice, visibility and even the power to potentially change existing systemic inequities which they have been denied to date. It has also positioned them as competent actors on crucial political issues. It is not only children and young people that are creating a shift in the international legal sphere. There are numerous litigators in courts, both national and international, making headway in the journey to vindicate environmental rights. Children and young people are however central to international efforts to bridge the gap between international human rights law and the climate crisis—they are

167 *Saatchi*, para. 92.

168 Bakker, 'Baptism of Fire? 'The First Climate Case Before The UN Committee on the Rights of the Child", *Questions of International Law* 77, 31 Jan 2021, available at: http://www.qil-qdi.org/baptism-of-fire-the-first-climate-case-before-the-un-committee-on-the-rights-of-the-child/ [last accessed 5 June 2021].

169 Daly, supra n 44.

170 Bakker, *Baptism of Fire?*, n 168 at 624.

171 Ibid.

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placing their competence to the fore. This has had the effect of surprising adults into noticing the climate crisis more than they otherwise would. It also reminds adults of the interconnectedness of nations, populations and generations.

Their actions at both the ECtHR and under the CRC may well be ultimately legally unsuccessful. Yet one does not have to have succeeded in litigating the meaning of a particular right in order to have triumphed in reliance upon human rights language.[172] To analyse the full impact of climate litigation, it is important to look not only at the legal outcome but also at the way in which the litigation effort shapes political discourse and the policy agenda.[173] The competent action of children and young people is moving the international human rights law framework from a human-centric to a more holistic, contextual worldview—one which adequately takes into account the global connections of humans in a global ecosystem. This will hopefully continue, as human rights can and should be an important tool in tackling the climate crisis.[174]

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172 Gearty, supra n 18 at 20.
173 O'Neill and Alblas, supra n 116 at 58.
174 Engstrom and Powers, supra n 8.