SYMPOSIUM

Youth-Led Climate Change Litigation: Crossing the North-South Divide

By *Lorenzo Gradoni*[*] and *Martina Mantovani*[**]

Abstract: This article provides a critical overview of youth-led climate change litigation, an emerging practice which could go some way towards redressing the injustice the Global South suffers as a result of global warming. It preliminarily explores the political background of such phenomenon, emphasising young people's growing mistrust of adults, their desire to build a global generational alliance, but also the need to ally with older generations in a world where adults generally monopolise power, money and accepted expertise. It then delineates youth-led litigation's distinctive features, both substantive and procedural, highlighting its radicality. Children's and youth's vulnerabilities enable innovative claims under the public trust doctrine, rights-of-nature approaches, and human rights law. Youth-led litigation is no less radical in terms of the procedural avenues it is exploring, which include generational class actions, direct multistate complaints before international adjudicating bodies, and transnational complaints. The article concludes by offering some thoughts on the prospects of youth-led climate change litigation.

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A. Introduction

Youth-led climate change litigation is a relatively recent phenomenon whose dramatic escalation in the last few years is attracting the attention of legal scholars.[1] This article offers an overview of this phenomenon across the North-South divide, highlighting the intersectionality that underpins it: youth, just like poverty and exposure to the harmful effects of global warming, is mainly concentrated in the Global South and is now leading the fight against climate change everywhere, including through sophisticated litigation strategies. On 23 September 2019, the day of the United Nations Climate Action Summit, Greta Thunberg and 15 other minors from twelve states and five continents filed a complaint before the Committee on the Rights of the Child (CRC) to protect their individual rights to life, health and culture, which the plaintiffs described as already compromised by the effects of climate change, crucially as a result of governments' culpable inaction.[2] Since only about a quarter of UN Members ratified the Optional Protocol to the Convention on the Rights of the Child on a communications procedure,[3] the choice of defendants was limited and finally fell on Argentina, Brazil, France, Germany and Turkey[4]. The case offers a remarkable example of a demand for justice crisscrossing the North-South divide. It is indeed the closest we got so far to a worldwide trial against adults. Although the case eventually foundered on the lack of exhaustion of domestic remedies, the CRC, in declaring the case inadmissible and yet within its jurisdiction, offered valuable pointers for a litigation campaign that young people are now pursuing worldwide. In the following, by taking stock of the relevant cases, many of which still pending, we try to pinpoint the drivers and possible trajectories of a global

1 Recent contributions include *Aoife Daly*, Climate Competence: Youth Climate Activism and Its Impact on International Human Rights Law, Human Rights Law Review 22 (2022), p. 1; *Elizabeth Donger*, Children and Youth in Strategic Climate Litigation: Advancing Rights through Legal Argument and Legal Mobilization, Transnational Environmental Law 11 (2022), p. 263. Both of them mainly focus on the rights of the child. For a more comprehensive analysis see *Larissa Parker* / *Juliette Mestre* / *Sébastien Jodoin* / *Margaretha Wewerinke-Singh*, When the Kids Put Climate Change on Trial: Youth-Focused Rights-Based Climate Litigation around the World, Journal of Human Rights and the Environment 13 (2022), p. 64. In this vein, see also the extensive blogpost on which the present contribution is based: *Lorenzo Gradoni* / *Martina Mantovani*, No Kidding! Mapping Youth-Led Climate Change Litigation across the North-South Divide, 23 March 2022, https://voelkerrechtsblog.org/no-kidding/ (last accessed on 25 May 2023), and Verfassungsblog, 24 March 2022, https://verfassungsblog.de/no-kidding/ (last accessed on 25 May 2023).

2 Sacchi et al v. Argentina et al., filed 23 September 2019; decided 22 September 2021, CRC. See note 6 on sources of procedural documents.

3 At the time the communication was introduced, the protocol had 46 parties. Since then, four other states have ratified the Protocol. See https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11-d&chapter=4 (last accessed on 26 June 2023).

4 While the communication was lodged against all of these states simultaneously, the CRC examined it as five separate communications, i.e. one per state.

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phenomenon which could go some way towards redressing the injustice the Global South is suffering as a result of global warming.[5]

Relying mainly on the Sabin Center for Climate Change Law's databases,[6] we inventoried all cases – whether civil, administrative, constitutional or international – in which the plaintiffs are young people complaining that public authorities are not doing enough to combat climate change. Instead of sticking to a definite age threshold, we included all lawsuits a salient feature of which is the applicant's young age. Based on this criterion, we left out cases brought by adults on behalf of future generations,[7] as well as mass cases such as *VZW Klimaatzaak* v. *Belgium*[8] and *Notre Affaire à Tous et al.* v. *France*,[9] which, although counting youths among large numbers of applicants, do not advance arguments relating to youth's vulnerabilities and rights beyond general references to the interest of future generations. By contrast, *A Sud et al.* v. *Italy*,[10] another mass case involving several young people, goes so far in stressing their vulnerability as to state that "by ignoring the right to a stable and safe climate, one would strip of meaning [...] the entire 1989 UN Convention on the Rights of the Child [...], fully focused as the latter is on the stability of present and future conditions of existence".[11]

For the purposes of our investigation, we employed a broad notion of adjudication, such that it encompasses a case that four Australian citizens aged between 14 and 24 submitted

5 On the Global South's positioning within the field of international environmental law see, generally, *Sumudu Atapattu*, Global South Approaches, in: Lavanya Rajamani / Jacqueline Peel (eds.), The Oxford Handbook of International Environmental Law, Oxford 2021, p. 183.

6 Available at http://climatecasechart.com (last accessed on 19 December 2022). Procedural documents mentioned hereafter are from that database, unless otherwise specified. We also referred to *Joana Setzer* / *Catherine Higham*, Global Trends in Climate Change Litigation: 2021 Snapshot, London 2021; UNEP / Sabin Center for Climate Change Law, Global Climate Litigation Report: 2020 Status Review, Nairobi 2020; *Joana Setzer* / *Catherine Higham*, Global Trends in Climate Change Litigation: 2022 Snapshot, London 2022.

7 Maria Khan et al. v. Federation of Pakistan et al., filed 14 February 2019, Lahore High Court (pending); Daniel Billy et al. v. Australia ("Torres Strait Islanders"), filed 13 May 2019, decided 23 September 2022, UN Human Rights Committee.

8 VZW Klimaatzaak v. Belgium, filed 2004; decided 17 June 2021, Brussels Court of First Instance (appeal pending).

9 Notre Affaire à Tous et al. v. France, filed 14 March 2019, decided 14 October 2021, Paris Administrative Tribunal.

10 A Sud et al. v. Republic of Italy ("Giudizio Universale"), filed 5 June 2021, Civil Court of Rome (pending). A summary of the complaint is available (in Italian) at https://giudiziouniversale.eu/wp-content/uploads/2021/06/Executive-Summary-ATTO-CITAZIONE.pdf (last accessed on 26 June 2023).

11 Complaint, note 10, pp. 61-62.

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to three UN Special Rapporteurs.[12] Such complaints are based on law and require the petitioned authority to assess their merits before deciding whether to send a warning to the respondent state. Finally, we have included cases where climate change, though not the main subject of the complaint, is still a key aspect of it. For example, in a case pending before the Inter-American Commission on Human Rights, which chiefly concerns waste disposal, the applicants contend that "climate change magnifies the adverse environmental conditions facing children", calling for additional adaptation measures.[13]

Section B briefly explores the political background of youth-led climate change litigation, emphasising young people's growing mistrust of adults, their desire to build a global generational alliance, but also the need to ally with older generations in a world where adults generally monopolise not only institutional politics and diplomacy, but also money and accepted expertise. Section C provides an overview of youth-led climate change litigation, stressing its radicality. It first locates litigation in time and space to then briefly outline its substantive and procedural features, including its transnational dimension. Section D concludes by offering some thoughts on the prospects of youth-led litigation.

B. The Politics of Youth-Led Climate Change Litigation

Skeptics might think that youth-led climate litigation is but an elaborate expression of Lovejoy's Law, a presumptive law of social psychology named after Helen Lovejoy, the Reverend's wife in *The Simpsons*, to whom we owe the iconic outburst: "Won't somebody please think of the children!".[14] According to Lovejoy's Law, the love for children is likely to be invoked as an emotional tiebreaker when opponents in a political dispute run out of rational arguments. For this reason, adults concerned about global warming may want to recruit children to advance their cause through litigation, in the face of the enduring failure of domestic politics and diplomacy. Litigation involving children as plaintiffs is likely to have a strong media impact. And saying no to a child is even harder before an audience ready to lash out at the insensitivity of fellow adults in robes. The lawyer of Rabab Ali, a now thirteen-year-old girl whose climate case has been pending before the Supreme Court

12 The application, entitled "Human rights harms of the Australian government's Nationally Determined Contribution and inaction on climate change", was submitted on 25 October 2021 to David Boyd, Special Rapporteur on Human Rights and the Environment, Francisco Calí Tzay, Special Rapporteur on the Rights of Indigenous Peoples, and Gerard Quinn, Special Rapporteur on the Rights of Persons with Disabilities.

13 Six Children of Cité Soleil and SKALA Community Center v. Haiti, filed 4 February 2021, Inter-American Commission on Human Rights (pending), Complaint, p. 32.

14 As far as we know, Lovejoy's Law has no currency in scholarly literature. Wikipedia mentions it in the context of an entry on the so-called "think-of-the-children" political rhetoric and considers it as an element of internet and popular culture more generally since 2006. See https://en.wikipedia.org/wiki/Think_of_the_children (last accessed on 19 December 2022). We refer to it here as a starting point for an analysis of youth's changing political consciousness that forms the background to the litigation we are concerned with.

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of Pakistan since 2016, used language in keeping with Lovejoy's Law: "this Hon'ble apex Court must consider the small voice of youth Petitioner and the children of Pakistan as if they were their own children".[15]

While it is too early to say whether Lovejoy's law is producing any effect in this field – rulings like that of the Indian National Green Tribunal in *Ridhima Pandey* v. *India* suggest not[16] – it is undeniable that youth-led litigation has gone mainstream by now. An NGO working on climate litigation and prioritising cases "not already receiving adequate support from other NGOs and founders" avoids involvement in "children's climate cases" precisely for that reason.[17] It is rather young people who do not believe in Lovejoy's Law.[18]

As Ms Thunberg famously told us from the podium of the 24th Conference of the Parties to the UN Framework Convention on Climate Change (COP24), held in Katowice in 2018, "you have ignored us in the past and you will ignore us again".[19] Instead of addressing adults as wise and caring parents – the ideal agents of Lovejoy's Law – Ms Thunberg's speech infantilised them: "You are not mature enough to tell it like it is; even that burden you leave to us, the children".[20] A similar attitude prevails within World's Youth for Climate Justice (WYCJ), a transnational coalition of young adults with its cradle in the Pacific Islands and involving activists from the Philippines, the Caribbean, Brazil, South Africa, and Europe.[21] WYCJ lobbied governments to get the UN General Assembly to ask the International Court of Justice (ICJ) to clarify, in its advisory capacity, "the obligations of states under international law to protect the rights of present and future generations

15 Rabab Ali v. Federation of Pakistan and Another, filed April 2016, Supreme Court of Pakistan (pending), Petition, p. 14.

16 Ridhima Pandey v. Union of India and Others, filed 25 March 2017, decided 15 January 2019, National Green Tribunal, p. 2.

17 Correspondence on file with authors.

18 In Do-Hyun Kim et al. v. National Assembly of the Republic of Korea and President of the Republic of Korea, a case filed on 13 March 2020 with the South Korean Constitutional Court, 19 young South Koreans express dismay at the breakdown of Lovejoy's law: "Considering the intimate and caring relationship between parents and their children […] we find it an unusually miserable and tragic situation in which the interest of the parents' generation and the fate of the children's generation regarding the damage that can be caused by climate change are at such discord and conflict", Application, p. 6.

19 Speech delivered on 12 December 2018, https://youtu.be/VbDnPj0G0wY (last accessed on 19 December 2022).

20 Ibidem. For an extensive analysis of Ms Thunberg's rhetoric, see *Alice Fonseca* / *Paula Castro*, Thunberg's Way in the Climate Debate: Making Sense of Climate Action and Actors, Constructing Environmental Citizenship, Environmental Communication 16 (2022), p. 535. See also *Zoe Bergmann* / *Ringo Ossewaarde*, Youth Climate Activists Meet Environmental Governance: Ageist Depictions of the FFF Movement and Greta Thunberg in German Newspaper Coverage, Journal of Multicultural Discourses 15 (2020), p. 267.

21 For information about WYCJ's goals and activities see https://www.wy4cj.org (last accessed on 19 December 2002).

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against the adverse effects of climate change".[22] The Government of Vanuatu, together with a group of like-minded states, brought a draft resolution to this effect to the General Assembly in early 2023.[23] In their painstaking effort to devise a question at once effective and capable of attracting sufficient consensus, people at WYCJ "value[d] [the] wisdom" of "older generations", with the caveat that "[i]n the end, youth [would] make the decisions".[24] On 29 March 2023, the General Assembly adopted by consensus the resolution requesting an advisory opinion, an outcome that WYCJ enthusiastically welcomed.[25]

Alliances with adults are necessary because climate change litigation is an expensive and knowledge-intensive business. Behind the abundant and generally pro bono supply of top-notch legal services lies an intricate web of funders, including public agencies, individual donors, and financial operators such as the Children's Investment Fund Foundation,[26] whose director has been referred to by Bloomberg as the Greta Thunberg of the hedge fund industry.[27] However, tactical alliance with adults, although indispensable, is not nearly as important for young people as joining forces with their peers worldwide.

Transfixed by Al Gore's film *The Inconvenient Truth* (2006), Alec Loorz from Ventura, California, founded "Kids vs Global Warming" at the age of 12 and later took part in the

22 WYCJ et al., Human Rights in the Face of the Climate Crisis: A Youth-Led Initiative to Bring Climate Justice to the International Court of Justice, 2nd ed., 2022, p. 27. The full report is available at https://www.wy4cj.org/news/wycj-publishes-second-edition-of-flagship-legal-report (last accessed on 19 December 2022). See also WYCJ, Over 1,500 Civil Society Organisations Call On Countries to Support Vanuatu Climate Justice Campaign, 15 May 2022, https://www.wy4cj.org/news/over-1500-civil-society-organisations-call-on-countries-to-support-vanuatu-climate-justice-campaign (last accessed on 26 June 2023); WYCJ, WYCJ participates in Informal Consultation on the Advisory Opinion in Geneva, 8 December 2022, https://www.wy4cj.org/news/wycj-participates-in-informal-consultation-on-the-ao-in-geneva (last accessed on 19 December 2022).

23 On 29 November 2022, 16 states sent a draft resolution to the other UN members, thereby initiating talks that should lead to a decision on the request for an opinion before the close of the 77th session of the UN General Assembly. Germany was part of the group of 18 states that helped prepare the draft but is not among the 16 sponsors of it.

24 As stated in the section "Our Principles and Commitments" of WYCJ's website: https://www.wy4cj.org/our-principles (last accessed on 19 December 2022).

25 UN Doc. no. A/RES/77/276 (2023). The Resolution calls the ICJ not only to clarify the obligations of states but also to spell out the consequences flowing from the breach of such obligations. For WYCJ's reaction, see https://www.wy4cj.org (last accesed on 26 June 2023).

26 See https://ciff.org/priorities/climate-change/ (last accessed on 19 December 2022).

27 *Mark Gilbert*, The Hedge Fund Industry Gets Its Own Greta Thunberg, Bloomberg News Wire, 2 December 2019, https://www.bnnbloomberg.ca/the-hedge-fund-industry-gets-its-own-greta-thunberg-1.1356085 (last accessed on 19 December 2022). See also, for context and analysis, *Ketan Jha*, Networked Public Interest Litigation: A Novel Framework for Climate Claims?, in: Jolene Lin / Douglas A. Kysar (eds.), Climate Change Litigation in the Asia Pacific, Cambridge 2020, p. 38.

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first wave of youth-led climate change litigation in the early 2010s.[28] Mr Loorz had a clear idea of the need to forge a global youth alliance to address an existential threat that adults felt too little about. To this end, he created *iMatter*, a smartphone app with which young people all over the world (i.e. the very few who had access to the necessary technology) could network, exchange information, and organise campaigns and rallies.[29] Global youth solidarity is indeed part of the movement's founding myth. The 2018 docu-manifesto *Youth Unstoppable: The Rise of the Global Youth Climate Movement* – sponsored by Connect4Climate, a World Bank Group Multi-Donor Trust Fund[30] – opens with the then 13-years-old spokesperson for a Canadian NGO addressing a half-empty hall at the 1992 Rio Earth Summit: "I am here to speak on behalf of starving children around the world whose cries go unheard", said Ms Cullis-Suzuki.[31] That speech, which made no mention of climate change, reflected a compassionate attitude of the North towards the South and bristled with Lovejoyan undertones. Unsurprisingly, the Rio Declaration on Environment and Development ended up depicting youth as an unpolitical force of nature which adults must learn to harness for the good of humanity.[32]

More distrustful of adults' feelings, today's youth embrace litigation as a tool of rebellion against adults' unchanging ways.[33] In the Manifesto adopted at the pre-COP26 youth event held in Milan on 28-30 September 2021, young people "[c]all on all countries to advertise laws and sanctions aimed at protecting and safeguarding the environment as well as reducing climate change impacts and implications, including by […] [a]llowing [activists] and indigenous people free access to climate law firms' services especially in the regions where human rights are under threat".[34] Also in Milan, Greta Thunberg drew attention to the nexus between the climate catastrophe and the global inequalities produced by a neo-colonial political economy: "the climate crisis is […] the symptom of a much

28 *Michelle Nijhuis*, The Teen-Agers Suing Over Climate Change, 6 December 2016, https://www.newyorker.com/tech/annals-of-technology/the-teen-agers-suing-over-climate-change (last accessed on 19 December 2022).

29 See Mr Loorz's address at the 2010 Bioneers National Conference: https://youtu.be/JkRDJbuio60 (last accessed on 19 December 2022).

30 The Trust Fund is a GONGO steered by Italy's Ministry for Ecological Transition and Germany's Federal Ministry for Economic Cooperation and Development. See https://www.connect4climate.org (last accessed on 19 December 2022).

31 A video of Ms Cullis-Suzuki's address (also showing adults' reactions as she spoke and after) is available here at https://youtu.be/oJJGuIZVfLM (last accessed on 19 December 2022).

32 According to Principle 21, "[t]he creativity, ideals and courage of the youth of the world should be mobilized to forge a global partnership in order to achieve sustainable development and ensure a better future for all". For background information and analysis see *Magnus Jesko Langer*, Principle 21, in: Jorge E. Viñuales (ed.), The Rio Declaration on Environment and Development: A Commentary, Oxford 2015, p. 519.

33 On this shift in the political subjectivity of children and young people see, generally, *Nicole Rogers*, Victim, Litigant, Activist, Messiah: The Child in a Time of Climate Change, Journal of Human Rights and the Environment 11 (2020), p. 103.

34 Youth4Climate: Driving Ambition Italy 2021, Manifesto, Milan 2021, p. 41, para. 4.3.11(b).

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larger crisis", "a crisis of inequality that dates back to colonialism and beyond".[35] WYCJ, the youth organisation that helped put the issue of climate change on the ICJ's table, refers to itself as "a decolonial and anti-oppressive space".[36]

If youth solidarity across the North-South divide has intensified lately, spawning a global grassroots movement, it is also because prospects of continuous growth have faded: incomes could keep on diverging as long as the rich funded the so-called "fight against poverty" through growth and more growth – a recipe for environmental collapse. It was, again, Ms Thunberg who decisively voiced the feeling that catastrophe looms large and concerns everyone, regardless of residence or income[37] – without forgetting that climate change impacts the Global South more severely, also in the sense that the vast majority of the young live in developing and least-developed countries.[38] There is, indeed, strong intersectionality between young age, poverty, and climate victimhood. As Kenyan climate activist Elizabeth Wathuti told adults gathering in Glasgow for COP26, "Sub-Saharan Africa is responsible for 0.5 per cent of historical emissions; the children are responsible for none".[39] Intersectionality makes of youth-led litigation a global vanguard in the fight for climate justice, which is above all justice for the Global South, regardless of who pursues it and where.

C. The Radicality of Youth-Led Litigation

Youth-led climate litigation has a little more than a decade of history behind it. Although the Supreme Court of the Philippines decided the iconic *Minors Oposa* case,[40] which also concerned the greenhouse effect of deforestation, as early as 1993, that ruling belongs to a different epoch, one far less beset than ours by the riddle of climate justice and where nothing resembling today's youth movement against global warming existed. It was in the United States, in the early 2010s, that youth legal activism against global warming as we

35 A video of Ms Thunberg's address is available at https://youtu.be/ceIE_ehQhtc (last accessed on 19 December 2022).

36 See note 24.

37 As an Australian 18-year-old girl involved in a climate case told the press, "I have struggled with depression and anxiety brought on by the knowledge that without action by our governments, the planet I live on has an expiry date". See *Justine Landis-Hanley*, Young Australians Lodge Human Rights Complaints with UN over Alleged Government Inaction on Climate, 24 October 2021, https://www.theguardian.com/australia-news/2021/oct/25/young-australians-lodge-human-rights-complaints-with-un-over-alleged-government-inaction-on-climate (last accessed on 19 December 2022).

38 According to UN sources, 85 per cent of the young live in the Global South: UNICEF Office of Research, The Challenges of Climate Change: Children on the Front Line, Florence 2014, p. 87.

39 A video of Ms Wathuti's speech is available at https://youtu.be/VMvzJu79WG0 (last accessed on 19 December 2022).

40 Supreme Court of the Philippines, Juan Antonio Oposa and Others v. Fulgencio S. Factoran, Jr. and Eriberto U. Rosario, Judgment of 30 July 1993, p. 3.

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know it today took root before spreading worldwide. Youth-led litigation occurs much more frequently in the Global North, but since 2016 it has been on the rise in the Global South as well.[41] In the following subsections, we give a quick chronological and geographical overview of the relevant cases (I.). We then illustrate, again in summary, the arguments typically resorted to in support of the complaints (II.) and the procedural avenues that young petitioners are exploring (III.).

I. Overview

Starting in 2011, Our Children's Trust (OCT), a non-profit public-interest law firm based in Oregon, undertook a "strategically coordinated national effort" to file complaints with courts in almost every federated state.[42] Most of these actions failed either because they were considered precluded by separation of powers or because they sought to expand the scope of the public trust doctrine in ways that many courts found unconvincing.[43] OCT, which strived to disseminate its litigation model worldwide, now mostly concentrates on *Juliana* v. *US*, a case involving 21 youths and pending before Oregon's federal courts since 2015.[44]

Apart from a complaint filed in 2012 with the High Court in Kampala, Uganda, and still pending,[45] the US maintained a monopoly on youth-led climate litigation until 2013, when the *Urgenda* case reached the District Court in The Hague.[46] In 2016-2018, cases emerged

41 *Jacqueline Peel* / *Jolene Lin*, Transnational Climate Litigation: The Contribution of the Global South, American Journal of International Law 113 (2019), p. 679; *César Rodriguez-Garavito*, Human Rights: The Global South's Route to Climate Change Litigation, AJIL Unbound 114 (2020), p. 40; *Joana Setzer* / *Lisa Benjamin*, Climate Litigation in the Global South: Constraints and Innovations, Transnational Environmental Law 9 (2020), p. 77; *Juan Auz*, Human Rights-Based Climate Change Litigation: A Latin American Cartography, Journal of Human Rights and the Environment 13 (2022), p. 114.

42 For a detailed survey, see *Anna Christiansen*, Up in the Air: A Fifty-State Survey of Atmospheric Trust Litigation Brought by Our Children's Trust, Utah Law Review 73 (2020), p. 867.

43 See *infra* note 88 and corresponding text.

44 Juliana v. United States, 217 F. Supp. 3d 1224, D. Or. 2016; Juliana v. United States, 947 F.3d 1159, 9th Cir. 2020. For an overview of the many procedural ramifications of the case see https://www.ourchildrenstrust.org/juliana-v-us (last accessed on 19 December 2022).

45 Mbabazi et al v. Attorney General and National Environmental Management Authority, filed 20 September 2012, High Court of Kampala (pending).

46 Urgenda Foundation v. State of the Netherlands, filed 20 November 2013, decided 24 June 2015, District Court of The Hague. Subsequently decided in State of the Netherlands v. Urgenda Foundation, 9 October 2018, Court of Appeal of The Hague; State of the Netherlands v. Urgenda Foundation, 20 December 2019, Dutch Supreme Court.

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in New Zealand,[47] Norway,[48] the UK,[49] Canada[50] and, in the Global South, in Pakistan,[51] India,[52] the Philippines,[53] and Colombia,[54] where youth collected what is arguably their most significant victory to date.[55] Since 2019, litigation has been on the rise in Canada,[56] a new case emerged in New Zealand,[57] Australia awakened after the Black Summer,[58]

47 Thomson v. Minister for Climate Change Issues, filed 10 November 2015, decided 2 November 2017, High Court of New Zealand.

48 Greenpeace Nordic Association et al. v. Ministry of Petroleum and Energy ("People v. Arctic Oil"), Oslo District Court filed 18 October 2016, decided 4 January 2018. Subsequently decided in Greenpeace Nordic Association et al. v. Ministry of Petroleum and Energy, 23 January 2020, Borgating Court of Appeal; Greenpeace Nordic Association et al. v. Ministry of Petroleum and Energy, 22 December 2020, Supreme Court of Norway. On which see *Christina Voigt*, The First Climate Judgment before the Norwegian Supreme Court: Aligning Law with Politics, Journal of Environmental Law 33 (2021), p. 697.

49 Plan B Earth et al. v. The Secretary of State for Business, Energy, and Industrial Strategy, filed 8 December 2017, decided 20 July 2018. On 25 January 2019, the Court of Appeal, Civil Division, rejected the appeal against the High Court's denial to hear the case.

50 ENVironnement JEUnesse v. Canada, filed 26 November 2018, decided 11 July 2019, Superior Court of Québec, Chamber for Collective Actions. Subsequently decided in ENVironnement JEUnesse v. Canada, 13 December 2021, Court of Appeal of Québec.

51 Rabab Ali v. Federation of Pakistan, note 15.

52 Ridhima Pandey v. Union of India and Others, note 16.

53 Segovia et al. v. Department of Transportation et al., filed in 2017, decided 7 March 2017, Supreme Court of the Philippines.

54 Future Generations v. Ministry of Environment et al., filed 29 January 2018, decided 12 February 2018, Superior Court of Bogotá (appealed before the Supreme Court of Colombia).

55 Future Generations v. Ministry of Environment et al., Judgment of 5 April 2018, Supreme Court of Colombia. On this case see *infra* section C.II.2.

56 La Rose et al. v. Her Majesty the Queen et al., filed 25 October 2019, decided 27 October 2020, Federal Court of Canada (appeal pending); Mathur et al. v. Her Majesty the Queen in Right of Ontario, filed 25 November 2019, Superior Court of Justice of Ontario (pending). On those cases see *Camille Cameron* / *Riley Weyman*, Recent Youth-Led and Rights-Based Climate Change Litigation in Canada: Reconciling Justiciability, Charter Claims and Procedural Choices, Journal of Environmental Law 34 (2022), p. 195; see further *Lisa Benjamin* / *Sara L. Seck*, Mapping Human Rights-Based Litigation in Canada, Journal of Human Rights and the Environment 13 (2022), p. 178.

57 Students for Climate Solutions v. Minister of Energy and Resources, filed 9 November 2021, decided 24 August 2022, High Court of New Zealand. See *Tracy Neal*, Student Climate Solution Group Explores Further Action after Failed Legal Challenge, New Zealand Herald, 26 August 2022, https://www.nzherald.co.nz/nz/student-climate-solution-group-explores-further-action-after-failed-legal-challenge/UMMOFWRHJBCWH47HSNXGBT2KQ4/ (last accessed on 26 June 2023).

58 Sharma et al v. Minister for the Environment, filed 8 September 2020, decided 15 March 2022, Full Federal Court of Australia. On this case see *Jacqueline Peel* / *Rebekkah Markey-Fowler*, A Duty of Care: The Case of Sharma v Minister for the Environment [2021] FCA 560, Journal of Environmental Law 33 (2021), p. 727.

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and Latin America experienced a significant breakthrough, with cases emerging in Peru,[59] Argentina,[60] Mexico,[61] Ecuador,[62] Brazil,[63] Guyana[64], and Haiti, this last brought before the Inter-American human rights system.[65] Cases arose also in South Korea[66] and South Africa.[67] Meanwhile, in Europe, complaints were filed in Italy,[68] Spain,[69] Poland,[70] again in the UK,[71] and especially in Germany, which seems to have inherited from the US the

59 Álvarez et al v. Peru, filed on 16 December 2019, Superior Court of Lima (pending).

60 Asociación Civil por la Justicia Ambiental v. Province of Entre Ríos et al. ("Delta del Paraná"), filed on 2 July 2020, Supreme Court of Argentina (pending).

61 Youth v. Government of Mexico, filed 2 September 2020, decided 20 May 2022, District Court in Administrative Matters (appeal pending); Julia Habana et al. v. Mexico, filed 21 March 2021, District Court in Administrative Matters, subsequently appealed before the First Circuit Collegial Tribunal and the Supreme Court of Mexico (appeal decided on 7 December 2022); Nuestros Derechos al Futuro y Medio Ambiente Sano et al. v. Mexico, filed 21 March 2021, District Court in Administrative Matters, subsequently appealed before the First Circuit Collegial Tribunal (pending).

62 Herrera Carrion et al. v. Ministry of the Environment et al. ("Mecheros"), filed 18 February 2020, decided 29 July 2021, Provincial Court of Justice of Sucumbío.

63 Six Youths v. Minister of Environment et al., filed 13 April 2021, 14th Federal Civil Court of Sao Paulo (pending); Laboratório do Observatório do Clima v. Minister of Environment and Brazil, filed 26 October 2021, 7th Federal Environmental and Agrarian Court of the Judiciary Section of Amazonas (pending).

64 Thomas and De Freitas v. Guyana, filed 21 May 2021, Supreme Court of Guyana (pending).

65 Six Children of Cité Soleil and SKALA Community Center v. Haiti, note 13.

66 Do-Hyun Kim et al. v. National Assembly of the Republic of Korea and President of the Republic of Korea, filed 13 March 2020, South Korean Constitutional Court (pending).

67 Case No. 56907/21, Africa Climate Alliance et al v. Minister of Mineral Resources & Energy et al. ("#CancelCoal"), filed 10 November 2021, High Court of South Africa, Gauteng Division (pending).

68 A Sud et al v. Republic of Italy, note 10.

69 Greenpeace v. Spain II, filed 28 May 2021, Supreme Court of Spain (pending). The association Jóvenes por el Clima, affiliated to the transnational movement Fridays for Future joined the plaintiffs after the commencement of the proceedings: see https://es.greenpeace.org/es/noticias/juicio-por-el-clima/ (last accessed on 19 December 2022).

70 ClientEarth (on behalf of M.O.) v. Poland, filed in June 2021, District Court (pending).

71 Plan B Earth and Others v. Prime Minister and Others, filed 1 May 2021, decided 21 December 2021, High Court of Justice, Queen Bench's Division (under appeal).

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role of youth-led litigation hub.[72] In the second half of 2022, new lawsuits were brought in Sweden,[73] Indonesia,[74] and Russia.[75]

The first international court to be hit by youth-led climate change litigation was the Court of Justice of the European Union (CJEU) in 2018.[76] The following year, the CRC was the first adjudicative body to receive a complaint by young people against more than one state.[77] Both actions were declared inadmissible. Two multistate cases are currently pending before the European Court of Human Rights (ECtHR). In one case, young people from a single country, Portugal, took action against 33 state parties.[78] In the second and more recent case, young people of different nationalities sued 12 states that are parties to the European Convention on Human Rights (ECHR) and the Energy Charter Treaty (ECT), the applicants' argument being that the protection granted by the ECT to investments in the energy sector (regardless of their impact on climate) hinders the fight against global

72 Four major cases were brought against the Federal Government in 2019: Göppel et al. v. Germany; Steinmetz et al. v. Germany; Yi Yi Prue et al. v. Germany; Neubauer et al. v. Germany, filed January and February 2019, decided 24 March 2021, Federal Constitutional Court. A fifth case was filed on 24 January 2022: Steinmetz et al. v. Germany, Federal Constitutional Court (pending). Building on partial success in some of the federal cases, the ONG Deutsche Umwelthilfe orchestrated ten additional legal actions against federated states: Emma Johanna Kiehm et al. v. State of Brandenburg; Marlene Lemme et al. v. State of Bavaria; Jannis Krüßmann et al. v. State of North Rhine-Westphalia; Otis Hoffmann et al. v. State of Mecklenburg-Western Pomerania; Leonie Frank et al. v. State of Saarland, all filed on 9 September 2021; Alena Hochstadt et al. v. State of Hesse; Tristan Runge et al. v. State of Sachsen; Cosima Rade et al. v. Baden Württemberg; Matteo Feind et al. v. Lower Saxony, filed on 6 December 2021. For an overview of these cases (all decided by the Federal Constitutional Court on 18 January 2022), see Deutsche Umwelthilfe, Wir klagen für mehr Klimaschutz in den Bundesländern!, https://www.duh.de/laenderklimaklagen/ (last accessed on 19 December 2022).

73 Anton Foley et al. v. Sweden ("Aurora Case"), filed 25 November 2022, Nacka District Court (pending).

74 Indonesian Youth et al. v. Indonesia, filed 14 July 2022, National Human Rights Commission (pending).

75 Ecodefense et al. v. Russia, filed 11 September 2022, Supreme Court of Russian (pending), where several of the applicants are members of Fridays for Future.

76 Armando Carvalho et al. v. European Parliament and Council of the European Union, filed 23 May 2018, decided 8 May 2019, General Court; subsequently decided in Armando Carvalho et al. v. European Parliament and Council of the European Union, 25 March 2021, European Court of Justice.

77 Sacchi et al v. Argentina et al., note 2.

78 Duarte Agostinho et al. v. Portugal and 32 Others, filed 2 September 2020, ECtHR (pending). On 29 June 2022, the Chamber to which the case was assigned relinquished jurisdiction in favour of the Grand Chamber. The Sabin Center databases reports that, on 3 March 2021, two cases resembling Duarte Agostinho (also in the sense that the respondent states would be the same) were lodged by two young Italian women: De Conto v. Italy and 32 Others and Uricchio v. Italy and 32 Others. We were unable to find evidence that these cases are (still) pending.

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warming and thus violates the applicants' rights under the ECHR.[79] The ECtHR is also dealing with at least two cases concerning a single state.[80] One case was brought against Norway,[81] whose Supreme Court in 2020 dismissed an action brought by young people against the Government's decision to grant new licences for the exploration of oil resources in the Arctic.[82] The other case concerns the UK, whose Court of Appeal recently ruled that the personal situation of the plaintiff – including their belonging to communities standing on the frontline of the climate, i.e., their ties with the Global South – had no bearing on the interpretation of the scope of the right to family life as guaranteed by the ECtHR.[83] As we already mentioned, since 2021 a case has been pending against Haiti before the Inter-American Commission on Human Rights.[84] To these one should add *Environmental Justice Australia* v. *Australia*, a case filed with three UN Special Rapporteurs,[85] and the advisory proceedings currently pending before the ICJ.[86]

II. Substantive aspects

Litigation involving young plaintiffs can be a weapon in the fight against climate change insofar as the applicants may advance legal arguments that would be unavailable to adults or less effective if raised by them. This section will accordingly focus on legal arguments that use children's and youth's vulnerabilities to enable innovative claims or a progressive

79 Soubeste et al. v. Austria et al., filed 21 June 2022, ECtHR (pending). The case was filed by young people from Belgium, France, Germany, Greece and Switzerland against 12 states, picked from the 40 states that are parties to both the ECHR and the ECT. On the selection criterion see note 125 and corresponding text. The case has a dedicated website: https://www.exitect.org (last accessed on 19 December 2022).

80 The Sabin Center databases recently reported on an application coming from Germany, alleging insufficient implementation of the Neubauer ruling: Engels et al v. Germany, App. No. 46960/22. No additional information is currently available on this case.

81 Greenpeace Nordic et al. v. Norway, filed 15 June 2021, ECtHR (pending). The Sabin Center databases list a second "Norwegian case" whose subject-matter is seemingly identical: The Norwegian Grandparents' Climate Campaign et al. v. Norway. We found no evidence that this case is (still) autonomously pending before the ECtHR.

82 See note 48.

83 Plan B Earth et al. v United Kingdom, filed 19 December 2022, ECtHR (dismissed in January 2023 according to the Sabin Center databases).

84 See note 13.

85 See note 12.

86 See notes 22-23 and corresponding text. We are unaware of any involvement of young activists in the preparation of the request for an advisory opinion submitted to the International Tribunal for the Law of the Sea on 12 December 2022 by the Commission of Small Island States on Climate Change and International Law. See https://www.itlos.org/fileadmin/itlos/documents/press_releases_english/PR_327_EN.pdf (last accessed on 19 December 2022).

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reading of traditional legal doctrines.[87] These are based on the public trust doctrine (1.), the rights of nature (2.), and fundamental rights (3.).

1. Expanding the Public Trust Doctrine

The first wave of US cases (2011), as well as the seminal *Juliana* case (2015), fostered an innovative, expansive reading of the public trust doctrine (PTD), with little success overall.[88] In essence, the PTD posits that the State has a fiduciary duty to preserve certain cultural and natural resources for present and future generations.[89] The plaintiffs argued, in particular, that resources to be so preserved must include the atmosphere and a stable climate. As representatives of "the youngest living generation, beneficiaries of the public trust",they claimed "a substantial, direct, and immediate interest in protecting the atmosphere".[90] They stressed their uniquely vulnerable position as citizens at once excluded from the making of energy policies and disproportionately affected by such policies, which are allegedly at variance with public trust obligations.

Grounded in Roman law and entrenched in the common law tradition, the PTD is relied on across the North-South divide. Similar (if not identical) arguments to those advanced before US courts were made in proceedings instituted in Uganda,[91] Pakistan,[92] India,[93] and

87 Vulnerability arises essentially from the young's physical and psychological characteristics, their social and economic dependency, and their political under- or non-representation.

88 In Chernaik v. Brown, 295 Or. App. 584, for instance, the Court of Appeals flatly rejected the construction of the PTD proposed by the applicants. Conversely, the Supreme Court of Alaska recognized that "the plaintiffs do make a good case" in proposing to include atmosphere among the resources held in public trust. However, the Court ruled that the political question doctrine debarred it from issuing a declaratory judgment to this effect, that is, to determine the content of the fiduciary duty of the State: Kanuk et al. v. State of Alaska, 12 September 2014, Supreme Court of Alaska. The broad construction of the PTD fared no better outside the US. In La Rose et al. v. Her Majesty the Queen et al., note 54, the Federal Court of Canada established the "the existence of the public trust doctrine, as pleaded by the Plaintiffs, is not supported in Canadian law".

89 Historically, the PTD was devised to protect the public's rights to use navigable waterways for fishing, commerce, and navigation. See *William D. Araiza*, The Public Trust Doctrine as an Interpretive Canon, UC Davis Law Review 45 (2012), p. 718.

90 Juliana v. United States, note 44, Complaint for Declaratory and Injunctive Relief, para. 96.

91 Mbabazi et al. v. Attorney General and National Environmental Management Authority, note 45, Complaint for Declaratory and Injunctive Relief, para. 12.

92 Rabab Ali v. Federation of Pakistan and Another, note 15, Petition, p. 1: "The Earth is a legacy left to this youth Petitioner, other children and future generations who will have to endure the inherited Environment degraded […] in violation of the Doctrine of Public Trust".

93 Ridhima Pandey v. India, note 16, Petition, para. 2: "the State and its machinery is a trustee of vital natural resources on which human survival and welfare depend, bound by a fiduciary duty under the Public Trust Doctrine to mitigate climate change".

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Canada.[94] Quite surprisingly, echoes of the PTD are present in the case brought before Italian courts, a civil law country. In this case, the plaintiffs ground the State's fiduciary duty to protect and preserve a stable climate "for present and future generations" in Article 3 of the UN Framework Convention on Climate Change, to which Italy is a party. Alleging dereliction of such duty, youth plaintiffs claim that Italy is also acting in breach of Article 2051 of the Italian Civil Code, which provides for strict tortious liability that holds "everyone" – including the State – liable for injuries caused by "things" in their custody.[95]

2. Future Generations and the Rights of Nature

Young plaintiffs gave a new twist to a legal doctrine that regards "Nature" (usually with a capital initial) and natural resources as "subjects of rights" by reading it in conjunction with the principle of intergenerational equity. In Colombia, a collective of young people, united in the belief of speaking in the name of "the generation that will face the greatest consequences of climate change", obtained the protection of the Colombian Amazon *qua* legal subject.[96] The Colombian Supreme Court acknowledged the failure of the anthropocentric utilitarian philosophy underpinning environmental law and ruled that to effectively protect natural ecosystems an "ecocentric" approach is required, over and above a "biocentric" one.[97] In fact, no effective protection of the biosphere, including future human generations, would be possible without an ethics of inter-species solidarity and the recognition of the "intrinsic value of Nature", that is, ecocentrism.[98] The idea of nature's legal personhood therefore stands as a powerful symbol of a common ethical responsibility towards children, grandchildren, and posterity more generally.[99] In legal terms, this responsibility translates into the granting to children and youth of standing to safeguard their rights and interests as and on behalf of "future generations", as well as the duty to establish appropriate

94 La Rose et al. v. Her Majesty the Queen et al., note 56, Petition for Declaratory and Injunctive Relief, para. 222(d): "defendants have breached and continue to be in breach of their obligation to protect and preserve the integrity of public trust resources".

95 A Sud et al. v. Republic of Italy, note 10, Complaint, pp. 86-89.

96 Future Generations v. Ministry of Environment et al., note 54, Complaint (summary), para. 3. See, for background, *Ivan Vargas-Chaves / Gloria Amparo Rodriguez / Alexandra Cumbe-Figueroa / Sandra Mora-Garzon,* Recognising the Rights of Nature in Colombia: the Atrato River Case, Revista Juridicas 17 (2020), p. 13.

97 Judgment, note 55, para. 2.5.

98 Ibid., para. 2.5.3. Ecocentrism posits that the planet does not belong to human beings and that nature is the utmost subject of rights – rights to be exercised by designated legal representatives, if necessary against the state. For a comprehensive recent overview see *Minhea Tănăsescu*, Understanding the Rights of Nature: A Critical Introduction, Bielefeld 2022.

99 *Alessandro Pelizzon,* An Intergenerational Ecological Jurisprudence: The Supreme Court of Colombia and the Rights of the Amazon Rainforest, Law Technology and Humans 2 (2020), p. 35.

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procedures for the representation or participation of all the stakeholders – including future generations – in decision-making that may affect the rights of nature.[100]

The rights-of-nature approach is becoming popular in the Global South, particularly in Latin America. In Ecuador, young plaintiffs successfully relied on it, facilitated by the express recognition of nature's rights in Article 71 of the Ecuadorian Constitution.[101] Unable to rely on such an express legal basis, young plaintiffs in Peru and Argentina are seeking analogous outcomes by fostering "a progressive reading" of constitutional rights and international (human rights) law.[102] In Mexico, young claimants referred to the Colombian Supreme Court's judgment as authoritative.[103] Beyond Latin America, the rights-of-nature approach may prove successful in jurisdictions such as India and New Zealand, where the legislator or the courts are making room for it.[104]

3. Relying on Fundamental Rights

Most cases brought by youth plaintiffs concern an alleged violation of fundamental rights – such as the right to life, dignity, health, and equality – drawn from either domestic constitutional law or international human rights law, or both. In cases such as *Urgenda Foundation* v. *Netherlands*, *A Sud et al.* v. *Italy*, and *ClientEarth* v. *Poland*, human rights discourse colours claims formally made under the law of torts.[105] It should be stressed, however,

100 Participation in decision-making is in principle ensured by the Intergenerational Pact for the Life of the Colombian Amazon, which is a core element of the Supreme Court's judgment (Judgment, note 55, operative paragraphs). Concerning standing, see ibid., para. 2.1.2. According to *Luisa Gómez-Betancur,* The Rights of Nature in the Colombian Amazon: Examining Challenges and Opportunities in a Transitional Justice Setting, UCLA Journal of International Law and Foreign Affairs 25 (2020), p. 71, the Supreme Court's ruling paved the way to "intergenerational standing", which is "useful in cases where the environmental damage is long-term and grows over time such that future generations are more threatened by irreversible and irremediable damage than the present one". For the opposite conclusion, see Julia Habana et al. v. Mexico, note 61, Decision of the Collegiate Tribunal, p. 13, denying standing because the injury alleged by the plaintiffs was in its view no different from that suffered by the population at large.

101 Herrera Carrion et al. v. Ministry of the Environment et al., note 62.

102 Álvarez et al. v. Peru*,* note 59*,* Complaint, s. III.2; Complaint, Asociación Civil por la Justicia Ambiental v. Province of Entre Ríos et al., note 60. In the latter case, the plaintiffs argue, based on a comprehensive review of precedents from Colombia, Ecuador and India and legislative developments in New Zealand, that a "bloque internacional de protección" of nature *qua* subject of rights has come into existence, such "bloque" being a legal regime from which courts, according to the plaintiffs, may draw general principles and apply them as part of the Argentinean legal system.

103 Julia Habana et al. v. Mexico, note 61, Complaint, para. 458; Nuestros Derechos al Futuro y Medio Ambiente Sano et al. v. Mexico, note 60, Complaint, para. 367.

104 See *Vargas-Chaves* et al., note 96, p. 20; *Stellina Jolly / K.S. Roshan Menon*, Of Ebbs and Flows: Understanding the Legal Consequences of Granting Personhood to Natural Entities in India, Transnational Environmental Law 10 (2021), p. 467.

105 See, respectively, notes 46, 10 and 70.

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that youth-led litigation is not merely a spinoff of the human rights turn in climate change litigation boosted by the Paris Agreement's bottom-up approach to emissions reduction.[106] The rise of youth-led litigation accompanies such turn and operates as its radical edge, in three ways.

Firstly, the young's and especially children's greater vulnerability to the adverse effects of climate change makes it easier to have their status as victims recognised. They are more prone to develop certain physical and mental illnesses that are likely to have more severe consequences when developed at a young age and whose incidence rate is increased by climate change. Secondly, the younger the applicant the longer she or he will endure the effects of climate change, which in turn will become harsher over time. This circumstance gives rise to a claim for equal treatment, which is a distinguishing trait of youth-led litigation, both domestic and international. Given the foreseeable trajectory of global warming and the young's average life-expectancy, the applicants will likely experience greater interference with their fundamental rights than older generations. The CRC recognised the merits of both arguments by stating that children "are particularly affected by climate change, both in terms of the manner in which they experience its effects and the potential of climate change to affect them throughout their lifetimes, particularly if immediate action is not taken".[107]

Thirdly, as already noted, a powerful element of intersectionality underpins youth-led climate change litigation, not only because the vast majority of the young live in the Global South – the part of the world most affected by global warming and the least responsible for it – but also because young people are raising their voice for the rights of "the North's South", that is, to redress the injustices suffered by communities which, due to their economic and social conditions, are more exposed to climate-related risks even as they lead low-impact lives. As the claimants in the *La Rose* case forcefully put it before the Federal Court of Canada, "[c]ommunities of colour, immigrants, Indigenous peoples, those living in coastal areas, those with pre-existing or chronic medical conditions and the economically disadvantaged are disproportionally vulnerable to public health threats due to climate change", and so are the "children and youth" who belong to these disadvantaged communities or groups.[108]

106 *Jacqueline Peel* / *Hari M. Osofsky*, A Rights Turn in Climate Change Litigation, Transnational Environmental Law 7 (2018), p. 37; *Samvel Varvastian*, The Advent of International Human Rights Law in Climate Change Litigation, Wisconsin International Law Journal 38 (2021), p. 369; *Annalisa Savaresi* / *Joana Setzer*, Rights-Based Litigation in the Climate Emergency: Mapping the Landscape and New Knowledge Frontiers, Journal of Human Rights and the Environment 13 (2022), p. 7.

107 Committee on the Rights of the Child, Decision adopted by the Committee under the Optional Protocol to the Convention on the Rights of the Child on a communications procedure, concerning communication No. 104/2019, UN doc. no. CRC/C/88/D/104/2019, 22 September 2021, p. 12, at para. 10.13.

108 La Rose et al. v. Her Majesty the Queen et al., note 56, para. 87.

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III. Procedural Aspects

Youth-led climate change litigation is no less radical in terms of the procedural avenues it is trying out on what is, politically and legally, treacherous ground. Plaintiffs must persuade the court that they have standing to seek judicial intervention in such sensitive political matters and that there are suitable remedies consistent with separation of powers (1.). With a view to enhancing their credibility as bearers of a general interest, young people usually join in collective and even mass actions (in this case together with adults) but less often in genuine class actions (2.). A distinguishing characteristic of youth-led litigation is the attempt to sidestep the limits of domestic proceedings by bringing multistate cases directly before international human rights bodies, access to which requires in principle the prior exhaustion of domestic remedies (3.). A related aspect is youth-led litigation's transnational dimension, which represents a potential site of cooperation and conflict between the Global North and the Global South (4.).

1. Standing and Remedies Sought

The spectre of lack of standing hangs over young plaintiffs. Although they invariably claim to be victims of individual, actual and ongoing harm, with a view to get their legal interest to sue recognised, standing remains often elusive as in several jurisdictions harm caused by climate change is seen as diffuse as opposed to "particularized", that is, specific to members of an age group.[109] These difficulties typically intertwine with issue of justiciability of the claim and the suitability of the remedy sought.

Instead of claiming compensation for a damage deemed too great to remedy, young plaintiffs typically ask courts to enjoin the state to put an end to its illegal conduct, either by adopting emission targets compatible with the objective of limiting temperature increases to 1.5 or 2°C by 2100, relative to pre-industrial levels, or specific policies that should concur to mitigate climate change or protect against its effects. For instance, in *ENvironnement JEUnesse* v. *Procureur général du Canada*, plaintiffs are asking for symbolic compensation of $100 for each member of the class action, i.e. approximately 3.5 million people. As the resulting sum would be too large, they propose to exchange compensation for the adoption of wide-ranging mitigation measures.[110] However, separation of powers may well stand in the way of granting injunctive relief, forcing the plaintiffs to fall back on requests for declaratory relief. In *Juliana* v. *United States*, for instance, the plaintiffs originally asked the court to compel the defendants to devise and implement an emission reduction plan. But as the Court of Appeal ruled that issuing such an injunction was beyond its powers,[111] the

109 See, e.g., the case of Mexico, note 96.

110 ENvironnement JEUnesse v. Procureur général du Canada, note 50.

111 947 F.3d 1159 (9th Cir. 2020).

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plaintiffs filed a motion in the Federal District Court in Oregon seeking leave to confine their complaint to a request for declaratory relief.[112]

2. Collective Complaints and Class Actions

Youth-led climate change litigation is usually about alleged violations of individual rights and yet it is often collective in nature. Most cases involve a select group of plaintiffs, typically less than 20, all young, whereas in mass cases young plaintiffs constitute a minority.[113] Genuine class actions intended to exclusively defend the interests of young people are rarer. In Québec, ENvironnement JEUnesse, an NGO, sought to file a class action on behalf of "All Quebec residents aged 35 and under on November 26, 2018".[114] In *Sharma et al.* v. *Minister for the Environment*, eight young people instituted representative proceedings on behalf of themselves and "all children" born before the action was filed and residing in Australia or "elsewhere".[115] Recent developments in these cases illustrate the hurdles that young plaintiffs may face along this procedural avenue.[116]

In *ENvironnement JEUnesse* v. *Procureur général du Canada* – where, as we have just noted, the large number of represented individuals is instrumental in seeking injunctive relief – the Québec Court of Appeal found the class-delimitation criterion adopted by the plaintiffs arbitrary or unsubstantiated.[117] In doing so, the Court dropped a hint as to how it would have dealt with the unequal treatment grievance at the merit stage, by holding that the "theory of […] age discrimination cannot be accepted […] since the phenomenon of global warming is a reality that affects the entire Canadian population".[118]

Sharma et al. v. *Minister for the Environment* invites reflection on the implications that a generational class action, especially if it fails, could have on subsequent proceedings dealing with the same subject matter. In that case, the Federal Court of Australia considered that, since children lack legal capacity to opt-out from the class action,[119] such action was

112 Plaintiff's Motion for Leave to Amend and File Second Amended Complaint (filed on 9 March 2021, granted on 1st June 2023).

113 E.g., in A Sud et al. v. Republic of Italy, note 10, about 10 per cent of the claimants are minors.

114 ENvironnement JEUnesse v. Procureur général du Canada, note 50, Application for Authorization to Bring a Class Action and to be Designated as a Representative, para. 1.1.

115 Sharma et al. v. Minister for the Environment, note 58, Complaint, para. 1.

116 According to the Sabin Center Databases and several press reports, the case recently brought by Ms Thunberg and some other 600 young activists in Sweden (*supra,* note 73) is also a class action. However, since the documents of the case are only available in Swedish, we avoid any comment on its actual legal basis.

117 Québec Court of Appeal, Judgment of 13 December 2021, paras. 16, 43 and 44.

118 Ibid., para. 43. To this the Court added, somewhat contradictorily, that "[i]f young people will undoubtedly feel the impact more, it is only because they will be affected for a longer period of time".

119 Minister for the Environment v. Sharma, Federal Court of Australia, Judgment of 22 April 2022, para. 10.

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ultimately contrary to their interests, because an order dismissing it would be binding for them as well, and they would be estopped, in future proceedings, from raising all points of fact and law on which the Court itself might have based the finding that the Government was under no duty of care.[120] Rulings like this one do not bode well for youth-led climate change litigation before domestic courts.

3. Multistate Complaints and Previous Exhaustion of Domestic Remedies

To circumvent the limits of domestic proceedings – both in the sense of the procedural difficulties they entail and the limited effects of domestic rulings – young climate activists are bringing their grievances directly before international bodies against several states at once. Multistate cases raise the issue of how to select the states to be sued. In an international setting where consensus on criteria for apportioning the burden of climate change mitigation remains elusive, young petitioners seem to hesitate between historical and current emissions.[121] The plaintiffs before the CRC relied on the latter criterion. They selected the five largest current emitters from among the 46 states then bound by the Additional Protocol,[122] with the sole exception of France, which would be in sixth place after Italy (by a small margin) but enjoys higher international standing.[123] The Portuguese petitioners, by contrast, applied the former criterion. Among the 47 states parties to the ECHR, they first picked the EU Members *en masse* and then singled out the other six defendants based on historical emissions, as evidenced by the fact that three state parties not sued – Bosnia and Herzegovina, Serbia and Azerbaijan, a small oil power – currently emit more than at least one of those selected.[124] The complaint recently filed with the ECtHR against states parties to the ECT targeted only 12 out of 40 "eligible" states, namely those which happen to be, more frequently than others, home to investors who initiated

120 Ibid., paras. 10-11.

121 See, on the issue of burden-sharing, *Gerry Liston*, Enhancing the Efficacy of Climate Change Litigation: How to Resolve the 'Fair Share Question' in the Context of International Human Rights Law, Cambridge International Law Journal 9 (2020), p. 241; *Benoit Mayer*, Temperature Targets and State Obligations on the Mitigation of Climate Change, Journal of Environmental Law 33 (2021), p. 585.

122 See note 3.

123 Lawyers involved in the filing of the case report that the choice fell on France because as one of the countries "which have the worst record in mitigating climate change risks". However, they fail to make any comparison between France's record and Italy's explicit. See *Ingrid Gubbay* / *Claus Wenzler*, Intergenerational Climate Change Litigation: The First Climate Communication to the UN Committee on the Rights of the Child, in: Ivano Alogna / Christine Bakker / Jean-Pierre Gauci (eds.), Climate Change Litigation: Global Perspectives, Leiden and Boston 2021, p. 355.

124 We relied on Our World in Data, https://ourworldindata.org/co2-and-other-greenhouse-gas-emissi ons (last accessed on 11 July 2022).

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arbitration proceedings under the ECT to challenge the lawfulness of public policies aimed at combating climate change.[125]

Multistate complaints are not only designed to make the scope of litigation more commensurate with the issue at stake, but also to bypass the rule of prior exhaustion of domestic remedies. As is known, this strategy failed at the CRC, which reaffirmed the importance of engaging domestic courts first, "because pathways to justice must be built from the ground up".[126] The petitioners in that case were right to point out that a multistate compliant would have failed domestically, because of foreign state immunity. However, the CRC sidestepped the objection by noting that multistate complaints create themselves the problem of immunity and are not "necessary to bring effective relief".[127]

Young plaintiffs may have a better chance before the ECtHR, where they are currently seeking to intercept an exception to the rule of prior exhaustion of domestic remedies by pleading their lack of financial means.[128] In so doing, they can rely on the ECtHR's extensive case law on the importance of taking into consideration the "personal circumstances of the applicants".[129]

4. Transnational Complaints

Until 2018, youth-led climate change litigation has been essentially "domestic", in the sense that the plaintiffs were invariably nationals or residents of the forum state.[130] The so-called *People's Climate Case* brought before the CJEU in 2018 (and definitively dismissed three years later) was the first case formally possessing a transnational character, as the plaintiffs included non-EU citizens from Fiji and Kenya.[131] *Yi Yi Prue et al.* v. *Germany*, one of the cases that the German Constitutional Court joined to the better-known *Neubauer*, involved citizens of Bangladesh and Nepal.[132] Transnational cases often connect the Global

125 The defendant states are Austria, Belgium, Cyprus, Denmark, France, Germany, Greece, Luxembourg, the Netherlands, Sweden, Switzerland, and the United Kingdom. The law firm handling the case clarified to us the selection criterion (communication on file with authors).

126 Committee on the Rights of the Child, Open Letter to the Authors – Re: Sacchi et al v Argentina and Four Similar Cases, p. 3.

127 Committee on the Rights of the Child, note 107, p. 13, at para. 10.18.

128 Duarte Agostinho et al. v. Portugal and 32 Other States, note 78, para. 40.

129 The ECtHR has consistently held that the rule of prior exhaustion of domestic remedies applies "with some degree of flexibility and without excessive formalism" (Mocanu et al. v. Romania, Judgement of 17 September 2014, para. 224). As the ECtHR made clear, regard should be had to the applicant's personal circumstances and vulnerabilities so as not to impose on her a disproportionate burden in terms of cost, time and administrative resources (M.S. v Croatia (No. 2), Judgment of 19 February 2015, paras 123-125).

130 We say "essentially" because, in a way, climate litigation always straddles borders, as do the adverse effects that it seeks to offset.

131 See https://peoplesclimatecase.caneurope.org (last accessed on 19 December 2022).

132 See note 72.

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North to the Global South. In them, voices from the South call out climate injustice, for which the North is largely responsible.

If one understands "transnationality" in a broad and informal way – so as to include cases where the petitioner is a national or resident of the forum state but has a diaspora or migration background and shows concern about the impact of climate change on the country of origin – the phenomenon arose slightly earlier and is more conspicuous. Two cases filed in 2017 and 2021 with UK courts by the London-based charity Plan B and several young petitioners are illustrative of this point.[133] In an application for permission to appeal, the petitioners pointed out that "young people […] with families in the Global South are exposed to disproportionate and discriminatory risk".[134] Taken together, these two English cases feature connections to Algeria, Ghana, Nigeria, Uganda, Mexico, Trinidad and Tobago, and Jamaica. The case recently brought before the ECtHR by Plan B replicates this pattern: most applicants are UK residents with family ties in the Global South, one of whom claims to suffer from post-traumatic stress disorder after having experienced an extreme weather event while visiting relatives in the Philippines.[135]

Most transnational complaints occur within the complex structures of the multistate cases filed with the CRC and the ECtHR. With plaintiffs hailing from 12 different countries and five defendant states, *Sacchi et al.* v. *Argentina et al.*, the case the CRC dismissed, breaks down into a bundle of 56 transnational complaints, 34 against the Global North (of which 10 intra-North) and 22 against the Global South (of which 14 intra-South).[136] Transnational complaints against states in the Global North are prevalent. Within this category, North-versus-North complaints exceed in number the South-versus-North ones because of *Duarte Agostinho et al.* v. *Portugal and 32 Other States* and *Soubeste et al.* v. *Austria et al.*, the multistate cases brought before the Strasbourg Court.[137] It is worth noting that one of the petitioners in the latter case comes from Saint Martin, a French overseas territory in the Caribbean. Furthermore, *Duarte Agostinho* originates from a state with a relatively low per capita income and an emission record that is not nearly as bad as that of many other states in the Global North. But the picture changes if, in calculating Portugal's historical contribution to climate change, its long-standing role as a colonial power were factored in.

The CRC encouraged the filing of transnational complaints by ruling that any state that fails to prevent greenhouse gas emissions compounds a climate crisis that may result in

133 Plan B Earth and Others v. The Secretary of State for Business, Energy, and Industrial Strategy, note 46; Plan B Earth and Others v. Prime Minister and Others, note 70.

134 Plan B Earth and Others v. Prime Minister and Others, note 70, Application, para. 76. The document is available at https://planb.earth/wp-content/uploads/2021/12/Skeleton-CA-permission-final.pdf (last accessed on 19 December 2022).

135 Plan B Earth v. United Kingdom, note 83, Application "Statement of the Facts".

136 Counting only once complaints coming from citizens or residents of the same state.

137 The balance would be even more tilted in favour of North-versus-North cases if the two "Italian" cases mentioned at note 78 were included in the calculation.

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human rights violations anywhere in the world, especially at the expense of children.[138] Professor Wewerinke-Singh persuasively argued that the CRC should have declared the transnational claims made by Marshallese children admissible on grounds of urgency.[139] However, on closer inspection, the CRC should have in principle admitted all the 56 transnational claims, because each defendant states emphatically rejected the notion that it could be held responsible for human suffering that climate change may cause on the territory of other states.[140] Therefore, the rule of prior exhaustion of domestic actions should not have applied to transnational claims.

Of course, domestic courts may not share the governments' opinion and instead follow the CRC's guidance on this issue. However, the *Neubauer* judgment, delivered by the German Constitutional Court months before the CRC's ruling, points in a different direction. For the Court, the claims made by nationals of Nepal and Bangladesh were non-justiciable.[141] The German government's position and the Court's differ. For the government, the state's lack of jurisdiction over transnational claims is obvious and incurable.[142] For the Court, the matter is not as clear-cut, but for all practical purposes the outcome is the

138 Committee on the Rights of the Child, note 107, p. 2. On the usefulness but ultimate inadequacy of an approach based on transnational complaints see *Vincent Bellinkx / Deborah Casalin / Gamze Erdem Türkelli / Werner Scholtz / Wouter Vandenhole*, Addressing Climate Change through International Human Rights Law: From (Extra)Territoriality to Common Concern of Humankind, Transnational Environmental Law 11 (2022), p. 69.

139 *Margaretha Wewerinke-Singh*, Communication 104/2019 Chiara Sacchi et al v. Argentina et al.: Between Cross-Border Obligations and Domestic Remedies: The UN Committee on the Rights of the Child's Decision on Sacchi v Argentina, https://childrensrightsobservatory.nl/case-notes/casenote2021-10 (last accessed on 19 December 2022). See also *Margaretha Wewerinke-Singh*, Litigating Human Rights Violations Related to the Adverse Effects of Climate Change in the Pacific Islands, in: Jolene Lin / Douglas A. Kysar (eds.), note 27, p. 94.

140 See, e.g., Germany's position as reported in 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, concerning communication No. 107/2019, UN doc. no. CRC/C/88/D/107/2019 (22 September 2021), p. 11, at para. 7.4.

141 Neubauer v. Germany, note 72, at paras. 173-181.

142 See Committee on the Rights of the Child, note 140, p. 11: "The State party reiterates that the authors who do not reside in Germany cannot be considered to be within the effective control of the State party for the purposes of establishing jurisdiction. […] The fact that emissions from one State have a general impact on the global climate cannot establish specific jurisdiction with regard to the territory of any other State".

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same.[143] Its judgment has seemingly already produced a chilling effect on such claims: none of the eleven post-*Neubauer* constitutional complaints includes foreign youth among the applicants.[144]

D. Concluding Remarks: What Next?

The CRC's dismissal of *Sacchi et al.* v. *Argentina et al.* caused understandable disappointment among young climate activists.[145] However, the CRC's opinion is not without wisdom, insofar as it promotes extensive recourse to domestic courts, whose rulings are likely to be more consequential than the CRC's, especially when it comes to spurring national governments into action. However, as we have seen, the road of domestic justice is bound to be both long and itself fraught with procedural hurdles.[146] At the UN level, it is unlikely that the Human Rights Committee – before which further major emitters could be sued – would treat the exhaustion of domestic remedies differently from the CRC. As for the ECtHR, however it settles the matter, it is still a regional court. Has the CRC's ruling shattered the dream of a global trial against adults who disobey Lovejoy's Law?

Barring an ecocide trial before the International Criminal Court, the closest one can get to realising such a vision is the advisory proceedings currently pending before the ICJ, where young people could address the bench as co-counsels for states most affected by climate change. WYCJ was wise to pursue this initiative in concert with many states of the Global South.[147] Meanwhile, the global youth movement, in addition to attending adult-dominated diplomatic conferences, should perhaps organise its own meetings to discuss and

143 As the Court explained, "[t]he difference lies in the fact that with overseas cases, the German state would not have the option of implementing adaptation measures as a precaution. […] And yet whether or not the measures are sufficient to protect fundamental rights could only be evaluated by comparing the [mitigation] measures taken with the possible adaptation measures, [since] emission reductions and adaptation measures complement one another and are inextricably linked. In this respect, it would not be possible to ascertain whether a possible duty of protection had been violated. Rather, the Federal Republic of Germany – and the German legislator in particular – would have fulfilled this duty of protection through their international commitment to preventing climate change and through specific measures aimed at implementing the internationally agreed climate action" (para. 181). It seems, therefore, that complaints by foreigners will be non-justiciable for as long as Germany continues to behave reasonably well according to the rules of the international climate change regime. See, for context and further analysis, *Petra Minnerop*, The "Advance Interference-Like Effect" of Climate Targets: Fundamental Rights, Intergenerational Equity and the German Federal Constitutional Court, Journal of Environmental Law 34 (2022), p. 135.

144 See note 72.

145 *Juliane Kippenberg*, Youth Activism on Climate: "I Am More Determined Than Ever" – Activists, Disappointed about UN Rebuff, Take the Fight to COP26, 9 November 2021, https://www.hrw.org/news/2021/11/09/youth-activism-climate-i-am-more-determined-ever (last accessed on 19 December 2022).

146 See *supra* sections C.III.1, 2.

147 See *supra* section B.

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set parameters for allocating mitigation burdens among states.[148] It should be clear by now that, despite Lovejoy's Law, intergenerational love does not yield equity.[149]

Solidarity with those most impacted by global warming is more likely to emerge from an assembly of young people, in which, if only for demographic reasons, demands from the Global South should carry overwhelming political weight. If, unlike adults entangled in all sorts of interests, the young can agree on a general scheme for emissions reduction, that scheme could serve as a touchstone for coordinating claims before domestic courts. Once complaints concerning emissions reduction targets – which are now prevalent – come to incorporate Global South's viewpoints, there would be no need to involve foreign claimants in domestic proceedings: young people in the North would defend the interests of their counterparts in the South, based on a global compact on the allocation of mitigation burdens.

The CRC's ruling may have encouraged youths from the Global South to file transnational claims with domestic courts in the North, but a powerful institution like the German Constitutional Court disallowed such actions. Since the risk of seeing them rejected is high, it may be worth taking it only if plaintiffs from the Global South seek compensation for the damage caused by abnormal weather events, instead of joining in the claim for prospective remedies, which local plaintiffs can press by themselves in accordance with the compact. Wealthy backers of climate litigation could support the filing of such cases on an experimental basis, helping Global South youth to sue for damages states with dismal emission reduction records and, why not, private corporations as well.

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148 See, relatedly, *Leslie-Anne Duvic-Paoli*, Re-imagining the Making of Climate Law and Policy in Citizens' Assemblies, Transnational Environmental Law 11 (2022), p. 235.

149 Compare *Nicole Rogers*, Intergenerational Care and Judg(e)ment in a Time of Climate Change, Griffith Law Review 31 (2022), p. 312.

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