

Climate Change, Children's Rights and the Rights of Future Generations

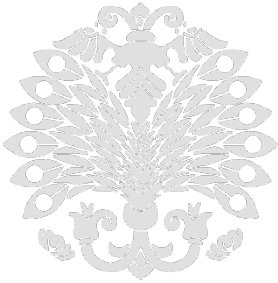
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ABSTRACT

The children's right to a healthy, clean, and sustainable environment is intrinsically linked to climate change. Among various international legal instruments, the Convention on the Rights of the Child (CRC) stands out as a critical framework for safeguarding children against rights violations arising from climate change. The right to a healthy, clean, and sustainable environment intersects with numerous CRC provisions. This study argues that CRC provisions, particularly the principle of the best interests of the child, can and should be strategically employed in climate litigation. The CRC is also pivotal for recognizing the rights of future generations—often mentioned in landmark climate cases but still debated as to whether they hold a rights-bearing status. Failing to acknowledge the rights of future generations as integral to child rights presents a significant obstacle to effectively securing the right to a healthy, clean, and sustainable environment for children. This study argues that relevant CRC articles can be utilized in climate litigation to encompass the rights of future generations, thereby more effectively upholding the rights of children today and those who will be born in the future.

Keywords: Climate Change, Right to Healthy, Clean and Sustainable Environment, Children's Rights, Future Generations



Received 23.07.2024
Accepted 30.08.2024
Publication Date 15.09.2024

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Cite this article: Bulat, D. (2024). Climate change, children's rights and the right of future generations. *Contemporary Issues of Communication*, 3(2), 165-172.

<https://doi.org/10.62425/conicom.1520699>



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Introduction

Climate change represents the most significant danger confronting the world's children and young people. Children are less capable of withstanding extreme weather events and are more vulnerable to toxic chemicals, temperature fluctuations, and diseases (UNICEF MENA, 2022). However, children's rights are future rights (Bauer, 2014). A clean, healthy, and sustainable environment is a fundamental human right and essential for children to enjoy a wide range of their rights fully ('CRC General Comment 26', 2023, p.8). In the decision-making process, considering climate change and the children's rights, if children's rights are not placed unequally with a special weight on the children's scale, a fair balance, cannot be achieved (Serozan, 2017, p.5).

The environmental degradation, including the impacts of the climate crisis, significantly impairs the enjoyment of the rights in the Convention on the Rights of the Child (CRC), especially for children in vulnerable situations or those residing in regions heavily affected by climate change. From conception through adulthood, children's brain development, lung health, immune systems, and other critical functions are influenced by the environment in which they are raised (UNICEF, 2023). Furthermore, the survival of over one billion children is severely jeopardised, as they reside in countries at extremely high risk due to the climate crisis (UNICEF, 2021). This can violate the rights of both current and future generations of children.

Method

This desk-based research study focuses primarily on the CRC as its core international legal source. Additionally, climate litigation cases are examined to analyse the subject matter. The CRC and the Children's Rights Committee's approach to the environmental rights of children serves as the foundational framework for elucidating this right to the environment, its interconnections with other CRC provisions, and the rights of future generations.

Legal Framework

The CRC is the sole UN human rights treaty that explicitly connects the right to health with the environment. Article 24(2)(c) mandates that States acknowledge children's right to the highest attainable standard of health (Daly, 2023, p.145). In addition to the CRC, considerable efforts have been made to apply international human rights law to address the climate crisis and broader environmental issues.

Paris Agreement, a legally binding accord, acknowledges climate change as "an urgent and potentially irreversible threat to human societies and the planet". These efforts include non binding instruments useful for interpreting the rights enshrined in human rights treaties. The Human Rights Council's and UN General Assembly's resolutions affirm the right to a clean, healthy, and sustainable environment. These were followed by General Comment No: 26 by the UN Committee on the Rights of the Child in 2023, focusing on children's rights and the environment, particularly concerning climate issues. Still, there is a significant shortage of political action to address the climate crisis. However, it has provided a foundation for litigants worldwide to challenge their governments in court over inadequate climate mitigation policies, frequently using human rights arguments (Daly, 2023, p.133).

Interconnection of CRC Rights

The right of children to a "healthy," "clean," and "sustainable" environment -referred to hereafter as the right to environment- is enshrined in Article 24(2) of the Convention on the Rights of the Child (CRC) and acknowledged by the CRC Committee (Daly, 2023: p.145). Although this right is not explicitly detailed in the CRC, it is evident that it encompasses obligations for both state and corporate actors to respect, protect, and fulfil this right ('CRC General Comment 26', 2023: 91). In addition to Article 24(2)(c), which mandates measures to combat disease and malnutrition in light of environmental pollution risks, a substantial portion of CRC provisions are either directly influential in addressing climate change or are significantly affected by it, both presently and in the future (Arts, 2019, p.221).

The Convention supports the right to environment with the help of the connections with various rights, including the right to life, survival, and development (Article 6); the right to an adequate standard of living (Article 27); and the right to education, which encompasses fostering respect for the natural environment (Article 29) ('CRC General Comment 26', 2023, p.63). Moreover, the general principles and provisions related to displacement and disaster situations can also be linked to the right to a healthy environment. The Committee has associated several CRC rights with this concept, and further interpretations of the specific challenges children face may uncover additional connections to CRC rights.

The CRC is built upon four key principles: non-discrimination, the best interests of the child, the right to survival and development, and the right to participation. These principles serve as guiding pillars for interpreting the CRC (UNICEF, 2019). Children's right to a healthy environment is intrinsically connected to all these principles, making it essential for safeguarding children's rights.

Environmental degradation hinders children's ability to reach their full developmental potential, directly linking to Article 6 and impacting numerous other rights outlined in the Convention ('CRC General Comment 26', 2023, p.23). The effects of environmental harm disproportionately affect specific groups of children, including Indigenous children, children from minority groups, children with disabilities, and those living in disaster-prone or climate-vulnerable areas. This highlights the connection between the right to a healthy environment and the non-discrimination principle of CRC Article 2 ('CRC General Comment', 2023, p.14).

Children's perspectives should be actively sought and given substantial consideration in developing and implementing measures addressing long-term environmental challenges that profoundly affect their lives. This makes it particularly important for child participation in policymaking and climate litigation to realise their right to be heard as enshrined in CRC Article 12 ('CRC General Comment 26', 2023, p.26).

Furthermore, child participation in policymaking can be supported by the best interest principle in Article 3. In addition to being a substantive right and legal principle, the best interest of the child also serves as a procedural rule ('CRC General Comment 14', 2013: 2). This aspect can be pragmatically applied in climate litigation, using the principle as a tool to compel states to establish procedures that prioritise children in the decision-making process (Daly, 2023, p.151).

Climate Change Litigation

One of the earliest instances of modern climate litigation occurred in the United States, where the non-profit organisation Children's Trust initiated lawsuits nationwide involving children and youth as plaintiffs. The plaintiffs contended that the government's failure to mitigate the climate crisis adequately violated children's constitutional rights. They also argued for applying the public trust doctrine to the atmosphere. This doctrine, rooted in ancient Roman civil law and English common law, posits that certain resources are preserved for public use and that the government bears a fiduciary duty to protect them (Rodgers et al., 2022, p.13).

An important step was taken in the *Oposa v Factoran* case, which mentioned the rights of future generations. Antonio Oposa established an environmental rights organisation and represented 43 village children in an effort to halt deforestation in the Philippines. The petitioners, minors, claimed to represent not only their own generation but also generations yet unborn. The court held that they could indeed file a class suit on behalf of themselves, their peers, and future generations. This standing was grounded in the concept of intergenerational responsibility with respect to the right to a balanced and healthful ecology (*Oposa v Factoran*, 1993).

Another important case concerning the rights of future generations is the *Demanda Generaciones Futuras v. Minambiente* (2018). The plaintiffs, consisting of children and youth, acted on behalf of future generations. They sought a remedy that included public participation in developing an intergenerational plan to end deforestation. A detailed analysis of the principle of intergenerational equity emphasised that environmental preservation is crucial for safeguarding the rights of both current children and future

generations (*Demanda Generaciones Futuras v. Minambiente*, 2018). Parallel to this, in *Klima Seniorinnen v Switzerland* (2020), European Court of Human Rights (ECtHR) highlights the obligation to protect the rights of the present and future generations. This principle underscores the importance of taking measures today to ensure that the rights of future generations are protected, recognising that today's environmental decisions have long-term impacts.

As a substantive right and legal principle, environmental decisions typically affect children, and the best interests of the child should be a primary consideration ('CRC General Comment 26', 2023, p.16). The best interests principle played a central role in a 2019 climate petition to the CRC Committee. Greta Thunberg and 15 other children argued that five respondent states had failed to meet their CRC obligations by not taking adequate measures to mitigate climate change. Additionally, the petition highlighted other rights such as the right to life (Article 6), the right to health (Article 24), and the right of indigenous children to preserve their culture (Article 30) (*Sacchi, et al. v. Argentina, et al.*, 2019). Although this case did not result in a finding of violations due to procedural reasons, it underscores that CRC provisions can and should be utilised to advocate for children's rights in climate change litigation.

Numerous landmark climate litigation cases involving children, such as *Sharma and others v. Minister for the Environment* (2021), *People v. Arctic Oil* (2020), and *Duarte Agostinho and Others v. Portugal* (2024), have emerged. However, the CRC is not sufficiently cited nor raised as a basis for violation by the applicants in these cases. The key principles of the CRC, particularly the best interests of the child and other articles related to the right to environment, could be instrumental in advancing arguments in climate litigation cases, especially for the rights of future generations. The principle of taking the best interests of the child as a primary consideration has international recognition and incorporation into many national legal systems, which makes it especially beneficial. Highlighting the best interests principle in climate advocacy and litigation improves the chances of favourable outcomes and emphasises the significance of adopting a children's rights-based approach in addressing climate issues (Daly, 2023, p.136).

Rights for the Future Generations

Every generation has a duty to future generations to ensure that the planet's natural and cultural resources are left in no worse condition than they were inherited (Weiss, 1992, p.26). However, climate change and rising temperatures make this a significant challenge. Children born in 2020 are expected to face a two- to sevenfold increase in extreme events, particularly heat waves, compared to those born in 1960, based on current climate policy pledges (Thiery et al., 2021). This creates an intergenerational divide. Intergenerational equity can be understood as fairness or justice between generations (Mary Robinson Foundation, 2015, p.1). As the most severe human rights impacts are anticipated in the future, litigants in climate cases are increasingly invoking the principle of 'intergenerational equity' to advocate for the rights of future generations (Daly, 2023, p.134).

There is ambiguity regarding whether the rights of future children can be protected under the CRC. The "children" whose best interests should be considered are all individuals under 18 within the jurisdiction of a State party ('CRC General Comment 14', 2013, p.4). Additionally, in practice, the Committee has focused on the rights of children who are already born. Consequently, it can be generalised that international human rights law applies to children who are born rather than those still unborn. According to this argument, although future children will acquire these rights once they are born, they do not hold CRC rights before birth (Nolan, 2022). Parallel to this, the ECtHR did not base its decisions on the rights of future generations. Instead, it focuses on addressing the obligations required to address the fair distribution of intergenerational responsibilities (Netto, 2024). Therefore, unborn children do not currently possess rights under international human rights law

However, when considering the rights of children, the temporal nature of climate change and its long-term effects must be taken into account. Unlike other external factors that can potentially violate children's rights, the impacts of climate change unfold over an extended period, and reversing these effects also takes considerable time (NASA, 2021). Therefore, actions taken by state parties to protect the rights of

currently born children may not have a tangible impact during the child's own childhood. To safeguard the right to environment for the existing children, it is essential to consider the rights of future generations. Without this perspective, protecting these rights would be impractical. Only the symptoms of climate change would be partially addressed, while the root causes and the need to ensure the preservation of cultural and natural resources would remain unaddressed.

Whether existing is a prerequisite for being recognised as a right-holder should be considered (Netto, 2024). To contextualise the idea of seeing the rights of future generations intricate to the rights of children within the CRC, the interpretation of the term "children" is pivotal. The word "children" can be understood in a way that includes a grey area to consider unborn children as well. Article 1 of the Convention, which defines a "child," does not specify the beginning of childhood, leaving room for interpretation. This ambiguity allows for a broader understanding of the term "child."

The term "children" implies that the right to have their best interests considered extends to each child individually and to children as a collective or group ('CRC General Comment 14', 2013: 4). In other words, "children" should encompass both those individual children living today and the abstract 'children' including the ones to be born in the future. Protecting the best interests of children can be seen as a broader obligation to safeguard children as a collective and abstract concept rather than limiting the definition of a child to individuals who exist today. This interpretation supports a more inclusive approach to children's rights, ensuring that future generations are also considered in decision-making processes.

This approach aligns with the CRC Committee's stance. The Committee acknowledges the principle of intergenerational equity and the needs of future generations ('CRC General Comment 26', 2023, p.11). While the immediate rights of present children demand urgent attention, future children also have the right to the fullest realisation of their human rights. States are responsible for addressing foreseeable environmental threats resulting from their actions or inactions, even if the full impact may not be evident for years or decades ('CRC General Comment 26', 2023, p.11). Although the Committee's approach does not explicitly define future generations, this ambiguity can be advantageous. The term "future generations" can be more effectively used and advocated without a specific definition, as defining it would be limiting and counterproductive. The characteristic indefinability of "future generations" is crucial, as the Committee points out that the effects of environmental actions can manifest over various time frames.

Challenges

The challenge with recognising the rights of future generations under the CRC lies in the abstract and expansive nature of the term "future generations." Protecting the rights of future generations expands state obligations. Given that the right to environment is interconnected with many CRC rights, the scope of protections and obligations broadens significantly. The lack of a clear definition for future generations negatively impacts both the application of environmental rights to future generations and the consideration of these rights as integral to the rights of children (Nolan, 2022). Considering that the General Comments are soft law documents, their implementation and the indicators of such implementation are often vague, reducing their credibility.

Another ambiguity arises from the individual and case-by-case assessment of the child's best interests. Investigating the best interests of the unborn child individually would be very challenging and unrealistic. Despite this ambiguity, using Article 3 in climate change litigation concerning children can still be very effective. The principle of the child's best interests can bridge the rights of children today with those of future generations (Daly, 2023, p.153). Firstly, its broad and inclusive nature aligns well with the concept of intergenerational equity. Secondly, due to its adaptable and evolving characteristics, the principle can address the shifting needs of future generations.

The dilemmas arise regarding how to account for the best interests of future generations whose needs are not yet clearly established and whose best interests, once born, may be unpredictably different (Netto, 2024). The lack of a clear definition for "future generations" further complicates the ability to evaluate how the rights of current children and future generations might differ or align in terms of scope, content,

or practical application (Nolan, 2022). The challenge arises when the interests of future generations conflict with those of children currently born. For instance, while the best interests of children presently born may necessitate enhanced food production to secure adequate nutrition, the best interests of future generations may align with curbing industrial activity and minimising environmental waste.

While scientific and environmental advancements may offer some solutions, considering the best interests of future generations inherently involves ambiguities and dilemmas. Balancing these interests may sometimes compromise the rights of today's children. As the best interests of children currently born are more concretely understood compared to the abstract and anticipated needs of future generations, it can be argued that the needs of the born children might be prioritised. Nevertheless, addressing this dilemma falls outside the scope of this study. Furthermore, internationally recognising the rights of future generations as integral to children's rights is essential for addressing these dilemmas.

Conclusion

Just as we are obligated to leave a natural environment that is safe and healthy for future generations, we must also ensure a legal environment that supports and protects children's rights (Serozan, 2017, p.54). However, the current legal framework lacks clarity regarding the right to a sustainable environment and the obligations to safeguard future generations' rights. Furthermore, the current legal framework for protecting the rights of children against the adverse effects of climate change does not urgently necessitate the establishment and enforcement of affirmative State responsibilities. Although various CRC provisions and principles can be related to environmental protection, the Convention is not sufficiently invoked in climate change litigation involving children. The concept of state obligations to protect children from climate change under environmental rights is still emerging and remains abstract, with significant grey areas and dilemmas.

In light of these discussions, it can be argued that the rights of future generations must be firmly protected. However, protecting children's rights as a collective group cannot be effectively achieved without considering the best interests of future generations. The importance of these obligations becomes increasingly evident as the long-term impacts of climate change become apparent. Still, it is ambiguous under which framework the rights of future generations should be protected. Expanding the rights of current children to include protections for future generations is essential for safeguarding children's rights in the future. The temporal nature of climate change necessitates a more holistic and flexible approach to interpreting children's rights compared to other rights under the CRC Convention.

Climate change is a relatively new and evolving issue that significantly impacts children's rights. As Serozan says, many of the principles in CRC, which, when put into practice, can transform children's worlds into fairy tale realms, are reminiscent of good millennium wishes written in ice. Children, who are solemnly praised as the highest values of our society and the strongest guarantors of our future, are unfortunately still deprived of most of their material and spiritual values in the reality of concrete contemporary life (Serozan, 2017: 53). Analyzing the state's obligations to realise the right to a healthy environment using the same tools and interpretations applied to other CRC rights is insufficient to effectively provide children with this right in the context of the present day. Climate change presents unique and unprecedented threats to children's rights, necessitating a more flexible and adaptive approach to understanding and addressing these challenges.

We don't inherit the earth from our ancestors; we borrow it from our children (Arslan, 2021). However, climate change, which unfolds over long periods and reveals its effects only after significant time has passed, poses a substantial challenge to ensuring a sustainable environment for future generations. These impacts are challenging to reverse once established. Unlike other rights, the right to environment necessitates considering the rights of future generations due to the complex and evolving nature of climate change. Without this consideration, efforts to safeguard the best interests of current children will be undermined by the long-term consequences of past state actions. Therefore, it is essential to protect future generations' rights and the environment we have borrowed from them as a fundamental obligation.

Peer-review: Externally peer-reviewed.

Conflict of Interest: The author has no conflicts of interest to declare.

Financial Disclosure: The author declared that this study has received no financial support.

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