

Youth and law drafting

Developing quality youth participation in legislative processes and courtrooms

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Introduction

In this chapter we engage the issue of youth participation from a rarely applied perspective in the context of youth research: human rights-based climate legislation and litigation. We take forward the idea presented in the Introduction about young people's societal participation being closely linked to their well-being and consider how young people can be more firmly included in decision making over climate change policies and, thereby, over their own future. Our argument is, and here we agree with many other scholars, that young people are endowed with rights which young climate activists increasingly use in innovative ways to influence decisions that profoundly frame their future life prospects and well-being (Daly 2022; de Moor et al., 2020; Wahlström et al., 2019).

Our interest in exploring young people's participation in climate change policies stems from our background as legal scholars with a special interest in human rights law. Within the framework of the ALL-YOUTH project, we have especially focused on how human rights-based arguments can be used to promote children's and young people's societal participation. Related to this interest, we argue in this chapter that there are good reasons why young people should be given more opportunities to participate in legislation that impacts their lives. Moreover, regarding young people's right to participate in climate issues, our discussion is linked to the ongoing debate on sustainability and intergenerational justice. Like many other scholars we too have been intrigued by how young people's climate activism has lately influenced and refocused this debate (Daly 2022). Intergenerational justice has turned into a tangible issue in young people's speeches and actions by referencing the many perils that the climate crisis has already caused and that will continue to disproportionately affect in the future (Knappe & Renn 2022). Young people's participation in climate change policies through lawsuits is a fascinating phenomenon that has scarcely been studied so far.

The focus of the chapter is twofold: first, to consider young people's societal participation from the viewpoint of law drafting, making the argument that public participation in legislation can be taken as a basic democratic right, one that is currently not well established in most democratic countries but that we claim is

important to bring forward. Second, to “flip the coin”, we will discuss how young people have utilised the existing human rights law framework to make their worry over the climate crisis publicly visible and globally push governments to take more effective climate measures. We will present and discuss two cases in which such law-related stand taking by youth is evident, one in the context of amending the 2015 Finnish Climate Change Act and the other in the context of a 2020 lawsuit filed by a group of Portuguese youth in the European Court of Human Rights (ECtHR).

Our perspective on youth societal participation can be characterised as structural and institutional. However, this does not mean that we appraise institutional participation as being above other forms and arenas of participation. We fully acknowledge that young people’s societal participation is multifaceted, as attested by the many studies reported in this book. However, it is important, from the viewpoint of democracy, that young people maintain a relationship with societal institutions and their legal basis and that they can feel able to influence those institutions when needed. This too is part of building a sustainable society and future.

The overall ambition of our study is to develop a multifaceted research approach on youth societal participation by combining aspects of youth research and legislative research and highlighting the importance of the legal basis for the societal agency and well-being of young people and, through them, for future generations.

Human rights-based participation in climate change policies

The chapter is based on the observation that relatively little research exists on youth participation in legislative drafting and its meaning for young people’s societal and political agency (Albrecht et al., 2021; Checkoway & Gutiérrez 2012, 3; Gasparri et al., 2021). Youth climate activism has brought fascinating new dimensions to this, challenging researchers and decision makers to rethink how we should understand young people’s political competences and agency. Participation rights per se are, of course, well-known. Universal human rights, political and social rights and, more recently, environmental rights provide, in principle, a strong basis for citizen participation and political decision making in society. Additionally, the participation rights of children and young people are designated by the 1989 Convention on the Rights of the Child, which is widely ratified worldwide and further supplemented by national legislation. For example, in Finland these rights are safeguarded by the national constitution, Youth Act, Child Welfare Act and legislation on education. Moreover, a national child strategy was created in 2021 to promote these rights (Ministry of Justice 2020, 18). A similar emphasis on citizen participation can also be found in international and national agreements on sustainable development goals. Since the 1992 Rio Declaration on Environment and Development it has been widely acknowledged that all environmental issues should involve the participation of concerned citizens (United Nations 1992) and that states should invest

more effort in engaging the public in environmental decision making (Bunders et al., 2010).

While the participation rights of children and young people are well established, the importance and political potential of such rights do not appear to have been properly understood until recently. We would like to draw attention to three points that are relevant here and that underpin our own discussion in this chapter.

First, it can be considered somewhat curious that citizens' participation rights have not been understood to include engagement in law drafting and parliamentary discussions around laws, even as new forms of participatory democracy have gained great popularity. Many countries and the European Union allow the practice of citizen initiative, which can be seen as one way to impact legislation, but it is still an indirect means of influence in which citizens have no control over how the initiative is treated in the parliament if or once it is submitted. The right of citizen initiative is, moreover, generally restricted to adult citizens. Young people are also affected by age restrictions on election participation, which is generally set at 18, another indication that there are significant structural barriers to young people's participation and agency (Beckman 2018; Wall 2021).

The Convention on the Rights of the Child requires that children and young people be consulted in all decisions that affect their lives, a requirement variably met in different countries and administrative practices. Thus, there are good reasons why young people in particular should be offered the opportunity to participate in drafting laws that affect their lives, like for example, climate laws most definitely do. At the same time, participation in law drafting provides one answer to the problem, often highlighted in research, that youth participation in decision-making processes is typically tokenistic. The problem of tokenism, at least to some extent, recedes in legislative consultations because the results of consultations must somehow be taken into account in the law drafting.

Second, one cannot fail to pay attention to the rising phenomenon of climate litigation in which children and young people have played a prominent role. A growing number of young people around the world have sued governments, pension funds and large companies over their perceived failures to respond effectively to the climate crisis, making the argument that the inaction of current and past decision makers destroy their future (Parker et al., 2022). Heiskanen and Sormunen (2020) point out that court appeals are a well-established means for the international human rights movement to seek judicial redress in situations in which national laws do not guarantee the necessary rights. What is remarkable about the recent court appeals, as Daly (2022, 2) notes, is that they involve multiple child applicants suing multiple respondent states (often states where they do not live) to make bold demands for more effective climate change policies. Over 1,000 national climate lawsuits are currently pending worldwide, many involving children and young people (Sabin Centre for Climate Change Law 2022).

Third and more specifically, what particularly interests us as legal scholars is that the recent court cases indicate that human rights and their accountability

mechanisms can be utilised to defend climate change-related human rights while simultaneously tying these rights to the question of intergenerational justice. Intergenerational justice can be understood briefly as a form of distributive justice in which present generations hold an obligation towards future generations not to pursue policies that create benefits for themselves but impose costs on those who will live in the future (Knappe & Renn 2022). It may be noted that basing a legal argument on the connections between the rights of children and youth on the one hand and intergenerational justice on the other has been considered challenging in legal practice, mainly because it has been difficult to show a direct linkage between current circumstances (how they affect children now) and between the experiences of unborn and thus unknown generations. Much has already been debated about how future generations should be defined (Beckman 2016).

It is intriguing for legal scholars how lawsuits brought by children and young people have managed to provide connections between topics that have been priorly addressed separately and that together make up complex arguments about how climate change already affects young people's well-being and futures. This then foregrounds the demand that governments and other powerful actors should remedy the harmful situation now, not in years to come (Sanson & Burke 2020). Many of the already reported cases have successfully linked the arguments on human rights, the perils of climate change and intergenerational justice, and the courts are increasingly responsive to them. Thus, legal scholars have started to refer to a "rights turn" in climate change litigation (Peel & Osofsky 2018). Moreover, due to the time lag of anthropogenic climate change, an increasing number of theorists have called for new legal principles that recognise the intergenerational connection among human societies and articulate the rights and corresponding duties that underpin intergenerational equity (Weston & Bach 2009). For example, to Daly (2022, 2–3), such a development rightfully challenges the traditional procedural and individualistic character of the international human rights law framework, pushing it towards a more holistic approach that better acknowledges the interconnectedness of humans with their environments.

Commenting on the role of young people in the discussion on intergenerational justice, Knappe and Renn (2022) point out that even if the issue has long been debated, young climate activists have succeeded in politicising the debate and "translating" it into speech and concern for global climate justice. Climate justice refers broadly to actions that address injustices against the entire ecosystem, humans merely being one element in it (Daly 2022, 3). In Knappe and Renn's reading, young people have not been taken seriously in sustainability policies, and intergenerational justice has appeared as something like an imagined relationship between the older generations (who have political power now) and the unborn generations. This approach has been effectively questioned, and abstract future generations have been reinterpreted or reconstructed to be closer and directly linked to the present generation of young people. This new framing has been underlined and reinforced by the already visible impacts of global climate change, such as the more frequent occurrence of extreme weather events (Daly 2022, 9.)

Hearing Finnish youth in climate change legislation and intervening in the Portuguese youths' litigation case: data and methods

The first set of data discussed in the chapter was produced by carrying out a citizen survey in relation to the Ministry of Environment's amendment of the 2015 Finnish Climate Change Act (609/2015). The Climate Change Act is framework legislation that the government wanted to reform to introduce a target of zero emissions by 2035 and negative emissions by 2050 and to update the framework for organising climate policies among different Finnish authorities (Finnish Government 2019). The Act also aims to improve public participation and access to information on climate policies. Citizen participation has been an integral part of the Act's objectives from the start, and participatory rights have been granted to all citizens regardless of age, consequently providing also children and young people an opportunity to express their views on topical climate issues.

The survey, designed by ALL-YOUTH and the Ministry of Environment, was part of a legislative consultation process, and its responses were to be used in amending the legislation. The legislative tradition in Finland emphasises transparent and participatory consultation procedures to enable hearing from interest groups and citizens (Airaksinen & Albrecht 2019; Tala 2005, 132). Young people and indigenous peoples were chosen as the special groups to be heard in this case. Among other citizens (N = 2,458), 389 young people aged 18–25 responded to the Webropol survey, accessible online for five weeks in the autumn of 2019 through the Ministry's webpage and various social media channels. The survey inquired about the respondents' views of their opportunities to participate in climate policy, about the current Climate Change Act and about the needs for changing it. The survey was semi-structured; in addition to simple “yes”, “no” and “I don't know” answers, open commentary was possible. The language choices were Finnish, Swedish, English and three Sami languages.

The survey answers were analysed by calculating response frequencies and interpreting open responses qualitatively. However, the results are not generalisable as the survey was not based on a representative sample. Instead of presenting the results in detail (see Albrecht et al., 2021), we will here highlight what young people think about Finnish climate policy more generally and reflect on the wider meaning of their ability to participate in legislation over climate change policies.

After these notions we will turn to a very different and internationally well-known case to explore young people's participation in climate change policies from another legal angle. Six Portuguese young people filed a climate case in the European Court of Human Rights in September 2020 against 33 states, claiming that those states had violated their right to life by not tackling the climate crisis well enough and demanding more ambitious actions from them (*Duarte Agostinho and others v. Portugal and 32 other states*). The young applicants made a powerful argument by tying together the 2017 forest fires in Portugal that caused tremendous material and economic damage and took many human lives, human-caused climate

warming and insufficient and ineffective decisions by the states to mitigate climate change, thereby claiming that their human rights have been fundamentally violated and their futures have been rendered uncertain and insecure.

In November 2020, the Strasbourg Court asked the respondent states to take a stand on whether there was a violation of the Convention's articles that protect freedom from torture or inhuman or degrading treatment, the right to privacy and the right to property. The Court then fast-tracked the case, which is priority treatment in which a case is processed and decided in an expedited order (see Sabin Centre for Climate Change Law 2022). The Court also allowed permission for third-party interventions, which is a practice in which the Court permits parties with relevant experience and expertise to intervene in its cases to assist the Court in its decision making. ALL-YOUTH and Tampere University Public Law Research Group made one of those interventions. In the discussion, we explain the reasons and argumentation behind our intervention.

Observations on youth climate change participation through legislation and human rights-based argumentation

Finnish young people's views on the Climate Change Act

Looking first into the Finnish case of the drafting of the Climate Change Act, the main demands from the respondents aged 18–25 can be encapsulated in the following points: the ambition of the Climate Change Act and its concrete measures to curb global warming need to be increased and the timetable tightened; the legislation should be more binding on other actors in society besides public authorities, such as companies; climate policy should be based on science and up-to-date research; and the opportunities and tools for children and young people to influence climate legislation need to be increased.

These demands show that young people are well aware of and concerned about climate change. Their responses differ somewhat from other respondents' answers: they are more serious about climate change than other age groups and demand more often concrete action and binding legislation on various actors in society, which the following comments portray:

We need to act NOW! We need BIG deeds and BIG changes!

It should be binding to a wider group of actors, so that the targets of Finland would actualise.

These observations echo the results of other studies of young people's climate concerns and anxieties (e.g., Piispa & Myllyniemi 2019). They similarly reiterate the arguments made by young climate activists about the gravity of the situation and the need to react to it swiftly and effectively, as well as their criticism of the states' overly lax climate policies. We also interpret the respondents' climate-related

knowledge and understanding to indicate that they have followed the public debate on climate activism and may have participated in climate protests themselves.

The majority of respondents also believe that science should be listened to when formulating climate policies. Different perceptions of climate change emerged in the responses, although the proportion of those who were sceptical about or denied the scientific basis of climate change was lower than with other age groups.

Again, this observation lines up well with earlier research on how young climate activists have demanded a firmer position for scientific knowledge as a basis for climate decisions (see Chapter 7 for an elaboration of this point). Many young people have developed scientific competence in climate issues, which has occasionally surprised adult experts and decision makers and generated controversial reactions. Not all adults want to accept and take seriously the knowledge and views especially of underage climate activists, even ridiculing them on public arenas. Young people have also struggled to obtain updated information on climate policymaking. Gasparri and others (2021, 101–102) argue that young people have been pivotal in denouncing the lack of transparency in international climate change negotiations and pushed for meetings to be open to more observers, including civil society organisations. Despite such efforts, young people’s right to seek information from their governments is constantly challenged. The restrictions on comprehensible information limit young people’s ability to hold governments and other stakeholders to account, which this quote from a young respondent reflects:

I haven’t received any possibility to influence or even enough information on the climate crisis other than that of my own initiative.

Regarding influencing climate policies, the survey, like previous studies, suggests that young people’s climate concerns tend to increase their interest in participating in climate change mitigation and public debate (Albrecht et al., 2020; Piispa & Myllyniemi 2019). However, judging by the survey, young people lack information on where and how to participate in climate “politics”. This is to say that, on the one hand, young people are usually familiar with personal climate-friendly lifestyle and consumption choices in their private lives, and many are willing to limit their material well-being and economic growth due to climate change. Some respondents also mention voting in elections and surveys, like the one in question, as potential means of participation. Otherwise, however, they consider their opportunities to influence climate issues limited, and institutional influencing seems especially foreign to them. Most young respondents agree that children and young people should be given more opportunities to participate in climate-related decision making. They also state that young people’s voices should be genuinely heard alongside the formal hearings:

I can tell my opinion and vote. Thus, I can participate, but I am afraid that my contribution has no weight.

I can make climate actions in my everyday life and participate in demonstrations, but the government will make the final decisions.

The Finnish Climate Change Act case indicates that involving young people in law drafting is indeed possible when political will to this exists. This has not always been the case. Minors in particular are not treated as capable citizens, and their political agency has been viewed with suspicion (e.g., Daly 2022). However, attitudes are gradually changing, and more opportunities are opening for young people as well. This change has been influenced especially by the Convention on the Rights of the Child and by the accumulating research knowledge according to which children and young people have the knowledge, interest and competence to participate when it is meaningful, concrete, comprehensible and impactful. Nevertheless, many adult actors are still sceptical about children's and young people's autonomous agency, as the recent years' examples of young climate activists show. We will return to this question shortly.

In our view, young people could be more regularly involved in law drafting, particularly on issues that affect their lives. This, of course, is not the customary way of thinking about democracy. It has long been assumed that in a representative democracy, legislative power must reside in elected parliamentarians, not in voters (not to mention minor non-voters). However, when we think about this question from the long-standing objective to develop more participatory democracy, opening public access to law making might even appear as a logical step and increase the political system's transparency and legitimacy. Yet some questions need be solved for young people, such as where and how to best reach them, what kind of information they need and how it should be communicated (legal language is often technical and complex). It is also important for many young people that the space for participation is safe and, in the context of the digital environment, anonymous (see Chapter 2). Institutional participation may also easily appear top down and uninteresting from the young people's perspective. A process that allows no interaction and debate between the parties and raises no public interest may mean that participation lacks the ability to affect and emotionally grip young people, hence appearing uninspiring to them (see Chapter 10). This contrasts with the practice of public parliamentary debates that can be heated and inspiring. This contrast raises the question whether public involvement in law drafting could or should be made interactive and dialogical. Still, issues like these do not mean that involving young people in law making is unimportant. On the contrary, it is crucial for a sustainable society to ensure that young people, among other citizens, do not become marginalised from key political processes, debates and decisions that affect their lives.

Portuguese young people in the European Court of Human Rights – and ALL-YOUTH's intervention in the case

We encounter a very different legal and political context in the second case of young people's participation in climate change policies. Nevertheless, young

people share worries about climate change and views of how it should be addressed on both occasions. We will first present the *Duarte Agostinho* case, then introduce the ALL-YOUTH's and Tampere University's intervention in it, and lastly discuss the case's significance for young people's societal participation, especially as an example of a tool based on the international human rights framework.

The *Duarte Agostinho* application is a 13-page document in which applicants put forward "facts" related to the case, "alleged violations of the Convention" and responses to the required "compliance with the admissibility criteria". The document is accompanied by a 20-page Annex with further arguments and evidence. All in all, the application's length exceeds well over 600 pages. The stated goal of the application is to seek a legally binding decision from the ECtHR that would require European governments to take urgent action to stop the climate crisis. The young applicants demand that European countries adopt much deeper and more immediate cuts to emissions released within their borders and overseas.

The applications' most foundational argument is that climate change is already interfering with the applicants' right to life, their right to respect for their private and family lives and their right not to be discriminated against (Articles 2, 8 and 14 of the European Convention of Human Rights, respectively). Regarding the first argument, the applicants claim that climate change affects their right to life simply by creating a risk to it, a risk that is projected to increase significantly over the course of their lifetimes. The text refers to the forest fires, worsened by climate change, which killed over 100 people in Portugal in 2017. The Appendix states that:

Immediate action is required to prevent or mitigate, to the extent possible, the risks (of yet greater magnitude) that the Applicants stand to endure later in their lives [...]. The Court's assessment of these risks [...] must be undertaken bearing in mind the precautionary principle, the concept of intergenerational equity, and the requirement (under Article 3(1) of the UN Convention on the Rights of the Child) that the "best interests of the child" must be a primary consideration.

According to the second argument presented, climate change affects the applicants' right to privacy, meaning also their physical and mental well-being. As the text mentions, Portugal has recently experienced more intense and prolonged heat-waves resulting from climate change, which have disrupted young people's ability to exercise, to spend time outdoors and sleep properly. Furthermore, extreme events are expected to dramatically worsen over time if the current policy path is not changed. Moreover, as a result of facing such a future, climate change is taken to necessarily impact the applicants' mental health. They worry and are anxious about the world in which they and their families will have to live.

The third major argument relates to the fact that so far states have been unable to agree globally on what they must do to stop global warming at 1.5 degrees, as agreed in the 2015 Paris Agreement. The text claims that no globally shared understanding exists of what each state's "fair share" of the burden sharing is. Thus,

states have taken advantage and chosen self-serving interpretations of their share. The collective outcome, then, is that the 1.5 degrees target cannot be reached. The applicants demand that the ECtHR must resolve the uncertainty around the fair share question in favour of their view, not in favour of the states. This argument is meant to prevent states from escaping their responsibility for the harm caused by climate change through emissions cuts that are collectively too weak to stop the climate crisis.

The application presents numerous other facts and arguments, but we can see already from these few excerpts how the case seeks to link several complicated phenomena and concepts: the effects of climate change on the environment and human well-being, human rights and their violations; the vulnerability of children and young people in the face of the climate crisis; the transboundary responsibility of the states for the repercussions of climate change; requests for immediate action; and the responsibility for intergenerational justice defined in a new, broader way. These elements are constructing a complex line of argument not only to appeal to the Court but also to influence public discussion about what kind of climate policies states should pursue. Young people are using their voices in an exceptional way here, which has amazed (and annoyed) many adult observers and researchers.

We next bring forth arguments from our own intervention in *Duarte Agostinho* that support the justification and argumentation of the case. Our intervention (ALL-YOUTH and Tampere University 2021) in the case was motivated by the research carried out in ALL-YOUTH, where we have sought to develop more youth-centred ways of exploring young people's societal participation and well-being, relying crucially on the idea of sustainability. The following arguments are especially relevant for the present discussion. First, we appeal to the evolutive character of the Convention on Human Rights, arguing that it should follow the times and consider whatever relevant new knowledge and understanding emerge in science and society:

Our aim is to contribute to developing principles (in order) for the Court to interpret in accordance with the object and purpose of the Convention and following an evolutive approach recognizing the Convention as a living instrument which should be interpreted in light of present-day conditions. In our submission, we aim to discuss particularly the life phase of youth and its vulnerability in climate change and how this should be taken into account in the Court's analysis.

(ALL-YOUTH and Tampere University 2021, 2)

Second, we point to the already existing scientific consensus and international trends in climate change litigation that provide guidelines for how states should act to mitigate the climate crisis.

The applicable framework for state responsibility can be structured on established principles of international environmental law. Possible risks to the environment and the right to health, the precautionary principle, along with the

principles of harm avoidance and common but differentiated responsibilities, provides a justification and guidelines for states to take actions. The principle of sustainable development, with environmental protection and the conservation of natural resources its central elements, is inextricably linked to an adequate standard of living. Moreover, the principle of common concern of humankind creates the link between climate change prevention and, inter alia, core human rights, children's rights and intergenerational justice.

(ALL-YOUTH and Tampere University 2021, 3)

Third, we allude to the earlier acknowledgement by the Court according to which the 2005 Aarhus Convention constitutes a strong international commitment on the right to information, participatory rights and access to court. There is evidence that, while children's and young people's participation have been taken seriously in some countries, other Aarhus convention's provisions remain unfulfilled. For example, there are problems with the possibility of challenging actions before the national courts in climate issues. *Duarte Agostinho* litigation also mentions that questioning climate policy in court is particularly difficult for young people.

Fourth, we argue that climate change causes structural human rights problems because it disproportionately impacts those who have contributed least to the problem, such as young people in the Global South and future generations. We consequently need to take seriously the issues related to intergenerational justice, acknowledging that the substantial risks to health, security of food supply, availability of water, housing, agriculture and natural ecosystems affect younger generations more than older generations.

Because young people and children do not have the same opportunities to influence and participate in climate change related decision-making, vulnerability of young people and children should be taken into account while striking a fair balance relevant to assessing whether states have failed in their positive obligations. A further relevant factor to be considered is that children and young people are less independent to protect themselves from the negative impacts of climate change by reason of not being able to take concrete measures like migration or other necessary safeguards.

(ALL-YOUTH and Tampere University 2021, 6)

Whereas the outcome of the Portuguese youth case is still unknown at the time of writing, its significance as the first step in the European level climate litigation is already imminent. This can be deduced when looking at the other interveners who include, for example, the Council of Europe Commissioner for Human Rights, the UN Special Rapporteur on Human Rights and the Environment, Amnesty International and Save the Children. The intervention procedure in the case can be seen to strive for generating dialogue between the Court and the international human rights network and to develop new interpretative principles that lower the threshold for national-level climate litigation. It also suggests that the Court's aim

is to reinterpret the Convention, originally drafted in 1950, to better reflect today's key societal problems and developments. There needs to be relevant practice from all the major human rights bodies in order to consider the emerging consensus that climate change is an important human rights issue.

Now, what can we learn from this case? As mentioned already, *Duarte Agostinho* is significant in many ways, but we especially want to draw attention to two conclusions: what the case educates us about the societal agency and political competence of young climate activists and its reliance on human rights-based argumentation; and how the case challenges the whole human rights law framework to take into account the relationship of human beings to their environment, an important innovation in this field that may have far-reaching legal and political consequences.

The role of children and young people in the complaint and the public attention it has received gives researchers and decision makers a serious reason to rethink their perceptions of children's and young people's political agency and how it should be explored. It can be argued that never before have children and young people had so much power – albeit, especially in legal action, with the support of emphatic adults. They are practically “changing the world”, especially if the lawsuit goes through and obliges dozens of states to tighten their climate targets and actions. Daly (2022, 4–5) argues that the case, and youth-led climate activism in general, is highlighting the extensive potential that children and young people have for political activism. Moreover, youth activists have come to be seen by many as uniquely competent on climate change. The climate crisis has repositioned children and young people as prominent public activists and litigants, even on a global scale; while in the past they often been portrayed as victims in need of protection, and the human rights monitoring mechanisms have tended to emphasise children's protection rather than their status as active and potentially political individuals.

Nevertheless, despite all their significance, young people's climate complaints and climate activism should not be overestimated, and their agency be regarded too naively (see Chapter 8). There are still many barriers to young people's participation that should not be overlooked. For example, young people do not generally have the necessary knowledge, procedural, financial and social resources to be able to prepare and file appeals on their own without professional adults' support. Gasparri and others (2021, 101) point out that young people's engagement in formal accountability mechanisms is made extremely challenging by issues like the high costs of legal action, hierarchical social norms relating to gender and social status, lack of support from adults and civil society and young people's lack of legal standing to file lawsuits. For example, *Duarte Agostinho* was initiated by a law firm whose employee contacted and recruited suitable young people from an area where wildfires raged. We should therefore pay more attention to the presence of representatives of the older generations participating in the actions and networks when evaluating young people's climate activism. This can be seen as an important aspect of intergenerational cooperation and learning, which can have a crucial role in discussions over intergenerational justice (see Chapter 3 for this kind of argument).

Several scholars have argued that the international human rights law framework has generally failed to emphasise and accommodate children's and young people's political capabilities. According to Daly's critique, analysis or jurisprudence is scarce around rights such as freedom of assembly or freedom of information for children. The focus has been overwhelmingly on the vague notion of the children's and young people's "right to be heard" and the accompanying concept of "children's participation" that has likely contributed to the "freedom" rights of children being overlooked. This, to Daly, makes the organic nature of child and youth-led climate activism all the more striking and remarkable. It seems, then, that children and young people have found their own way to operationalise the civil and political rights relating to "freedom", such as assembly and association, through climate activism.

The second point we can bring home from young people's climate activism and litigation is that they seem to be provoking changes in the entire international human rights law framework, challenging the traditional individual-focused approaches. The result is that human rights law may become more capable of encompassing claims that relate to human beings' relationship to the environment. Another powerful element in this shift is that youth activists have brought to human rights a linkage between the environment of present and future generations that has expanded the view on intergenerational justice. They also argue that they anticipate the harm to worsen in their lifetime and claim that if sufficient steps are not taken now, unacceptable harm will be a certainty for them, which goes some way towards bridging the gap in the climate change debate between adults now and hypothetical humans in the future.

Conclusion

Our starting point in this chapter has been that there is too little discussion of the legal basis for youth participation and its importance in both legislative and youth research. We have contributed to this debate by presenting and discussing two different cases in which young people have been involved in the climate policy debate and decision making. We would like to make a few last points to conclude.

Participation in law drafting and filing court appeals are strong forms of institutional participation. They differ from many other forms in that they cannot, by definition, remain (at least completely) tokenistic. The final decisions are communicated in one way or another to the involved parties in both cases. Moreover, many researchers have drawn attention to how human rights-based climate litigation and movements are empowering youth in a remarkable way. They have educated young people that there is more life and meaning in democracy than just voting. For example, young climate activists have often turned to everyday political actors and influencers in society in general. As young people's action for the climate becomes more public and their participation gains more visibility and recognition, they are also more easily invited to take part in institutional debates. Young activists have also had a significant impact on the public debate on climate

issues in widening the discussion towards a broader moral debate on the rights and responsibilities of both individuals and collectives in relation to a sustainable future (Haywards 2021, 3–4).

However, from a critical perspective, young people's participation through legal means can be very demanding and require a lot of personal resources, time, knowledge and long-term commitment, which often is not practically possible for young people without the support of adult actors. We should therefore pay more attention to how participation through legal means affects the well-being of children and young people. It may be presumed to strengthen their self-confidence and agency, yet it can also feel stressful and adding to their responsibilities. We can detect a dilemma here: children and young people have the right to be heard and taken seriously in matters that affect their lives, but they may lose some of that free and secure childhood and youth to which they are also entitled when they push to use that right.

Nevertheless, it is possible to conclude with Gasparri and others (2021, 105), that young people's demands and activism for climate justice have reinforced the intersection between climate change and human rights. Young people are pioneers through their actions in ensuring that a human rights-based approach to climate change is translated into policies and practice. Policymakers and educators, youth workers and other members of the adult population who interact with young people in diverse spheres of life to encourage such efforts must then create opportunities for young people to meaningfully engage in decision making and ensure that they do not face discrimination. They should bear in mind their responsibilities to younger generations in terms of intergenerational justice, which should be understood not only as our duties to unborn future generations but also to children and young people now. Young people have been leading the way, and, ultimately, it is now the time for adult actors to support and join them as allies in this action.

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