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Wewerinke-Singh, M.; Garg, A.; Agarwalla, S.

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In Defence of Future Generations: A Reply to Stephen Humphreys

Margaretha Wewerinke-Singh,^{*}  Ayan Garg^{**} and
Shubhangi Agarwalla^{***}

Abstract

In this reply to Stephen Humphreys, we challenge the dismissal of future generations as a locus of responsibility for present generations. Drawing from diverse sources such as indigenous law, environmental jurisprudence and practice, we demonstrate that global discourse on intergenerationality is broader and more nuanced than Humphreys suggests. Our response highlights the importance of incorporating diverse perspectives to enrich discourse and promote an inclusive approach to the progressive development of international law. Further, we contend that ‘future generations’ discourse has emancipatory power, offering potential for reshaping international law based on a vision of justice and solidarity across time and space. We call for increased dialogue and collaboration among scholars, practitioners and frontline communities to ensure that future generations discourse remains grounded in real-world experiences. By persistently interrogating and developing our understanding of responsibilities owed to future generations, we can imagine and cultivate a more inclusive – and, hence, more promising – approach to addressing climate change and related global crises.

1 Introduction

In his article ‘Against Future Generations’, Stephen Humphreys argues against the use of ‘future generations’ discourse as a locus of establishing responsibility for present

^{*} Associate Professor of Sustainability Law, University of Amsterdam, the Netherlands; Of Counsel, Blue Ocean Law, Hagåtña, Guam. Email: m.j.wewerinke@uva.nl. Wewerinke-Singh serves as lead counsel for Vanuatu in the advisory proceedings on climate change before the International Court of Justice, together with Julian Augon, and was a member of the drafting group of the Maastricht Principles on the Rights of Future Generations. However, the views expressed in this article are personal.

^{**} Bachelor of Arts and Bachelor of Laws candidate, National Law University, Delhi, India; Intern, Blue Ocean Law, Hagåtña, Guam. Email: ayan.garg20@nludelhi.ac.in.

^{***} LLM candidate, Yale Law School, New Haven, CT, United States; Founder, *International Law and the Global South Blog*. Email: shubhangi.agarwalla@gmail.com.

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generations. His article raises important concerns. Most notably, it points out that an over-emphasis on the future can come at the expense of present concerns and that certain invocations of future generations can be parochial and hypocritical. While we agree with Humphreys on these points, we reject his conclusion that future generations discourse should be dismissed altogether. In defence of future generations, we argue that an emphasis on future generations does not necessarily lead to the negative effects that Humphreys predicts. Moreover, invoking future generations can enhance the relevance of international law by fostering more inclusive approaches premised on long-term thinking. This renewal of hope for the transformative potential of international law and its institutions in addressing the greatest challenges of our time is a key motivation for our reply.

Our reply builds on the premise that a rigorous evaluation of future generations discourse from a climate justice perspective requires engaging with a diverse array of sources and conversation partners. It is vital to hear the perspectives of those who disproportionately bear the brunt of climate change impacts while having reaped minimal benefits from the industrial and economic processes that have caused (and continue to exacerbate) the crisis.¹ As such, we problematize Humphreys' almost exclusive reliance upon scholarship produced by white, male scholars based at elite institutions in the global North.² We maintain that incorporating diverse voices and perspectives not only enriches the discourse but also provides an opportunity to rethink international law and its role in the pursuit of climate justice.³

¹ See Gonzalez, 'Environmental Justice, Human Rights, and the Global South', 13 *Santa Clara Journal of International Law* (2015) 151; Mugambiwa, 'What Justice? Whose Justice?: Rethinking Climate Justice through Climate Change Impacts and Options for Adaptation in Africa', 26(1) *TechHub Journal* (2021) 761; Scandrett, 'Climate Justice: Contested Discourse and Social Transformation', 8(4) *International Journal of Climate Change Strategies and Management (IJCCSM)* (2016) 477; Meikle, Wilson and Jafry, 'Climate Justice: between Mammon and Mother Earth', 8(4) *IJCCSM* (2016) 488; Powless, 'An Indigenous Movement to Confront Climate Change', 9(3) *Globalizations* (2012) 411; Fisher, 'The Emerging Geographies of Climate Justice', 181(1) *The Geographical Journal* (2015) 73; Chakrabarty, 'Postcolonial Studies and the Challenge of Climate Change', 43(1) *New Literary History* (2012) 1.

² Humphreys, 'Against Future Generations' 33(4) *European Journal of International Law (EJIL)* (2022) 1065, n. 2 (which provides a list of sources relied upon, including several books by Henry Shue, Oxford professor of politics and international relations; several articles by Simon Caney, University of Warwick professor of political theory; several contributions to edited collections such as 'Climate Ethics: Essential Readings (2010)' by Stephen Gardiner, University of Washington professor; and 'Intergenerational Justice' by Axel Gosseries, Université Catholique de Louvain professor, and Lukas Meyer, University of Graz's philosophy professor. This non-exhaustive list is not to take away from the intellectual rigour of the work of these authors but simply to illustrate that there is much room for greater diversity and representation.

³ Our argument resonates with Michelle Staggs Kelsall's call for a disordering of international law, turning away from dominant liberal frames while bringing into focus excluded knowledge so as to reimagine international law and practice. In connection with the climate crisis, the process of incorporating diverse perspectives and practices that emphasize the value of solidarity, relationship and entanglement into our understanding of international law seems particularly fitting and worthwhile. See Kelsall, 'Disordering International Law', 33(3) *EJIL* (2022) 729. On the need to rethink international law's relationship with the natural world, see also U. Natarajan and J. Dehm (eds), *Locating Nature: Making and Unmaking International Law* (2022).

In an effort to lead by example,⁴ our reply draws from sources as varied as indigenous laws, to legislative bills, to litigation strategies adopted by large ocean states.⁵ These examples illustrate, first, that the global discourse on intergenerationality and responsibilities towards future generations is far more diverse and expansive than Humphreys acknowledges. The diverse perspectives and practices reflected in these otherized sources not only have intrinsic value but also provide answers to Humphreys' concerns about systemic injustices. Together, they demonstrate that a concern with future generations can bring about tangible positive effects, steering clear of the concerns that Humphreys raises. Second, a future generations-based framing of climate justice has emancipatory power for actors who have thus far remained at the margins of international law. By rejecting future generations discourse altogether, we risk losing its potential to shape international law based on a vision of justice and solidarity across time and space.

2 Embracing Temporal Continuum(s) for Climate Justice

Humphreys' article rightly points out that determining when the 'present' ends and the 'future' begins is challenging.⁶ We argue that this ambiguity presents an opportunity: by examining climate injustices through a lens that connects the past, present and future, we can embrace continuity and draw inspiration from the diverse practices, beliefs and epistemologies of indigenous peoples and traditional communities.⁷ Rather than viewing ambiguity as a weakness of future generations discourse, we can use it to broaden our perspective to see how injustices and responsibilities stretch across time.⁸ This approach offers an opportunity to reimagine international law and

⁴ At this point, acknowledging our own positionality is fitting. Originating from the Netherlands and India, our backgrounds encompass legal studies and work in academic institutions within the global South and the global North. We recognize that, despite our differing origins, we have each benefited from existing power structures and privileges, enabling us to engage in discourse with a specific language and ethos that remains exclusionary to many. In this piece, we neither assert ownership over the materials referenced nor claim a monopoly on perspective. Instead, our intention is to use our limited privilege to highlight diverse viewpoints and contribute to the ongoing discourse on intergenerational equity within the realm of international law.

⁵ See 'Vanuatu ICJ Initiative', available at www.vanuatuicj.com/.

⁶ Humphreys, *supra* note 2.

⁷ Rebecca Tsosie observes that '[a]lthough each indigenous Nation possesses its own knowledge and understanding, there are many parallels ... most indigenous peoples maintain the concept of caring for the land in a way that benefits the current people, as well as future generations. The relationship of indigenous peoples to their traditional environment is intergenerational, linking the current people to their ancestors and to the future generations'. Tsosie, 'Climate Change and Indigenous Peoples: Comparative Models of Sovereignty', 26 *Tulane Environmental Law Journal* (2013) 239, at 244; see also Tsosie, 'Tribal Environmental Policy in an Era of Self-Determination: The Role of Ethics, Economics, and Traditional Ecological Knowledge', 21 *Vermont Law Review* (1996) 225, n. 270.

⁸ See also S. Wilson, *Research Is Ceremony: Indigenous Research Methods* (2020), at 7 (stating that 'the shared aspect of an Indigenous ontology and epistemology is relationality. ... The shared aspect of an Indigenous axiology and methodology is accountability to relationships').

its institutions as more relevant and timely,⁹ poised to tackle the intricate and interconnected challenges of the past and present while building towards a more just and sustainable future.¹⁰

The Native American and Māori communities have much to offer on how the interconnectedness of past, present and future may be approached.¹¹ The Great Binding Law of the Iroquois Confederacy provides that Confederate Lords must ‘have always in view not only the present but also the coming generations, even those whose faces are yet beneath the surface of the ground – the unborn of the future Nation’.¹² This responsibility is explained by Oren Lyons, former chief of the Onondaga Nation: ‘We are looking ahead, as is one of the first mandates given to us as chiefs, to make sure and to make every decision that we make relate to the welfare and well-being of the seventh generation to come.’¹³ In some Māori cultures, intergenerationality necessitates that decisions be made ‘with reference to the likely impact on the “mokopuna’s mokopuna” – literally four generations hence, but encompassing all future descendants’.¹⁴ The conceptions of temporality (such as the idea of ‘spiralling’ time) that shape indigenous law reject the construction of the past, present and future as separate or exclusively linear temporal categories.¹⁵ Another example of

⁹ César Rodríguez-Garavito, ‘Human Rights 2030: Existential Challenges and a New Paradigm for the Human Rights Field’, in Nehal Bhuta *et al.* (eds), *The Struggle for Human Rights: Essays in Honour of Philip Alston* (2021) 328; César Rodríguez-Garavito, *Litigating the Future: Climate Rights before the German Constitutional Court* (2021), available at www.openglobalrights.org/litigating-the-future-climate-rights-before-the-german-constitutional-court/ (referring to M. Bjornerud, *Timefulness: How Thinking Like a Geologist Can Help Save the World* [2018]).

¹⁰ See also E. Tuck and M. McKenzie, *Place in Research: Theory, Methodology, and Methods* (2015), at 157 (pointing out that ‘[i]ronically, the human induced collapse of ecosystems that has been enabled through non-relational understandings of validity is functioning as a form of the earth “talking back” in ways that may compel the greater uptake of relational understandings and approaches to legitimacy in research and social life’).

¹¹ To be clear, our discussion does not purport to universalize these examples. We take seriously the call of anti-colonial scholars such as Max Liboiron for place-based methods that eschew universalism but still leave room for knowledge ‘to work outside of the place of its creation’, based on the understanding that ‘[t]hings that generalise can still be place-based and have differences, despite similarities’. See M. Liboiron, *Pollution Is Colonialism* (2021), at 152–153. See further M. Ferdinand, *Decolonial Ecology: Thinking from the Caribbean World* (2021), at 244 (pointing out that environmental justice is ‘not a matter of being done with the universal, but of being done with this vertical universalism that makes the West the measure of all culture and history, the one that looms over, establishes, dominates, in favor of ... a universal that gathers, that listens, and that celebrates encounter’).

¹² This obligation is found in Law 28 of the Constitution of the Iroquois Nations. See Parker, ‘The Constitution of the Five Nations’, 184 *New York State Museum Bulletin* (1916) 1, at 38–39.

¹³ Oren Lyons, ‘An Iroquois Perspective’, in C. Vecsey and R. W. Venables (eds), *American Indian Environments: Ecological Issues in Native American History* (1980) 171, at 173.

¹⁴ K. Warne, *Uncle Tangaroa and the Mokopuna: Are We Selling Future Generations down the River?* (2015), available at www.nzgeo.com/stories/uncle-tangaroa-and-the-mokopuna/.

¹⁵ Nor does spiralling time foreclose linear or future-oriented thinking. Whyte, ‘Indigenous Science (Fiction) for the Anthropocene: Ancestral Dystopias and Fantasies of Climate Change Crises’, 1(1–2) *Environment and Planning E: Nature and Space* (2018) 224, at 230; M. Stewart-Harawira, *The New Imperial Order: Indigenous Responses to Globalization* (2005), at 42; see also the discussion on P. I. Bacca, ‘Indigenizing International Law: Inverse Legal Anthropology in the Age of Jurisdictional Double Binds’ (2018) (PhD thesis on file at the University of Kent, Paris).

this may be found in the International Treaty to Protect the Sacred from Tar Sands Projects, which was signed on Ihanktonwan homelands.¹⁶ Article V of this treaty provides: 'We affirm that our laws define our solemn duty and responsibility *to our ancestors, to ourselves, and to future generations*, to protect the lands and waters of our homelands.'¹⁷

It is worth recalling how indigenous perspectives on future generations have been given effect in a rich body of jurisprudence on ancestral land rights from the Inter-American Court of Human Rights, starting with its ruling in *Case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua* in 2001.¹⁸ In finding a breach of the indigenous community's right to property resulting from commercial logging, the Court emphasized that:

Indigenous groups, by the fact of their very existence, have the right to live freely in their own territory; the close ties of indigenous people with the land must be recognized and understood as the fundamental basis of their cultures, their spiritual life, their integrity, and their economic survival. For indigenous communities, relations to the land are not merely a matter of possession and production but a material and spiritual element which they must fully enjoy, even to preserve their cultural legacy and transmit it to future generations.¹⁹

The intergenerational dimension of ancestral land rights was further developed in cases such as *Yakye Axa Indigenous Community*, where the Court emphasized the importance of effective safeguards for indigenous peoples' land ownership – such as community development funds and programmes – so as to enable them to transmit their culture to future generations.²⁰ Additionally, in *Saramaka People v. Suriname*, intergenerational equity served as a basis for the right to restitution of such land.²¹ In this case, the Court held that not only indigenous peoples but also tribal communities are entitled to the protection of ancestral lands, enabling them to transmit their distinct traditions to future generations.²² Finally, in *Bámaca-Velásquez v. Guatemala*, the Court interpreted the concept of 'solidarity' as involving past, present and future generations and forming the basis of rights and reparations.²³

¹⁶ 'International Treaty to Protect the Sacred From Tar Sands Signing Ceremony', *Intercontinental Cry* (2013), available at <https://intercontinentalcry.org/international-treaty-to-protect-the-sacred-from-tar-sands-signing-ceremony/>; Dehm, 'Carbon Colonialism or Climate Justice: Interrogating the International Climate Regime from a TWAIL Perspective', 33 *Windsor Yearbook on Access to Justice* (2016) 126, at 159.

¹⁷ *Ibid.*

¹⁸ IACtHR, *Case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua*, Judgment (Merits, Reparations, Costs), 31 August 2001. All IACtHR decisions are available at www.corteidh.or.cr/index.php/en/jurisprudencia.

¹⁹ *Ibid.*, at 149.

²⁰ IACtHR, *Case of the Yakye Axa Indigenous Community v. Paraguay*, Judgment (Merits, Reparations, and Costs), 17 June 2005; see further *Comunidad Yanomami*, Case no. 7615, Resolution no. 12/85 (1985), at 62; *Maya Indigenous Community of the Toledo District v. Belize*, Case 12.053, Report no. 40/04, Inter-Am. Doc. OEA/Ser.L/V/II.122 Doc. 5 rev. 1 (2004), at 149.

²¹ IACtHR, *Sawhoyamaya Indigenous Community of the Enxet-Lengua People v. Paraguay*, Merits, Reparations and Costs, 29 March 2006, at 378.

²² IACtHR, *Case of the Saramaka People v. Suriname*, Preliminary Objections, Merits, Reparations, and Costs, 28 November 2007, para 95.

²³ IACtHR, *Case of Bámaca-Velásquez v. Guatemala*, Merits, 25 November 2000, at 23.

While the inter-American jurisprudence cited here does not directly address climate change, we argue that there is an inextricable connection between land rights and climate justice. In their concurring opinion in *Mayagna (Sumo) Awas Tingni Community v. Nicaragua*, Judges A.A. Cançado Trindade, M. Pacheco Gómez and A. Abreu Burelli emphasize the ‘intertemporal dimension of what seems to us to characterize the relationships of indigenous persons of the Community with their lands’.²⁴ In their view, strengthening the spiritual and material relationship with the land is vital for preserving the legacy of past generations and passing it on to future ones. This, in turn, highlights the importance of conservation over the simple exploitation of natural resources.²⁵ They add: ‘The concern with the element of conservation reflects a cultural manifestation of the integration of the human being with nature and the world wherein he lives. This integration, we believe, is projected into both space and time, as we relate ourselves, in space, with the natural system of which we are part and that we ought to treat with care, and, in time, with other generations (past and future), in respect of which we have obligations.’²⁶ This integration, as emphasized by the judges, is essential to climate justice discourse. Climate justice discourse recognizes the profound impact of climate change on indigenous communities and their territories, such as losses and damages resulting from irregular and extreme weather events linked to climate change. Simultaneously, the traditional knowledge and conservation practices of indigenous peoples have a crucial role to play in legal responses to climate change and related global crises. However, these perspectives often face neglect or dismissal within scientific and legal circles.²⁷

A notable development that underscores the potential for the integration of indigenous knowledge and reasoning within international law is the recent adoption of the Maastricht Principles on the Human Rights of Future Generations.²⁸ These principles were crafted by experts from diverse backgrounds, incorporating input from civil society groups, indigenous communities and academics worldwide.²⁹ They explicitly recognize the rights of future generations to live in a healthy environment,

²⁴ *Mayagna (Sumo) Awas Tingni Community*, *supra* note 18, Separate Opinions of Judges A.A. Cançado Trindade, M. Pacheco Gómez and A. Abreu Burelli.

²⁵ *Ibid.*, para. 9.

²⁶ *Ibid.*, para. 10.

²⁷ See further J. Hernandez, *Fresh Banana Leaves: Healing Indigenous Landscapes through Indigenous Science* (2022).

²⁸ See A. M. Suárez Franco and S. Liebenberg, *The Maastricht Principles on the Human Rights of Future Generations* (2023), available at www.globalpolicy.org/en/multilateralism. On Indigenous struggles for land, Winona LaDuke is inspiring: ‘Despite our meager resources, we are winning many hard-fought victories on the local level. We have faced down huge waste dumps and multinational mining, lumber, and oil companies. And throughout the Native nations, people continue to fight for Mother Earth for future generations.’ W. LaDuke, *All Our Relations: Native Struggles for Land and Life* (2015), at 4.

²⁹ Groups that kick-started the initiative in 2018 include La Via Campesina, the International Indian Treaty Council, Child Rights International Network, Fundación Savia, World Future Council, Friends of the Earth, ESCR-Net, EarthJustice and Amnesty International. The draft principles received both written and oral feedback through several rounds of consultation involving some 182 organizations and experts from around the world. Principles 6(d), 7, 20(c)(vi) and 24(d) of the Maastricht Principles, in particular, strongly recognize the linkages between past, present and future injustices. See Suárez Franco and Liebenberg, *supra* note 28, at 60–61.

equitable access to natural resources, preservation of cultural heritage and more.³⁰ By highlighting the importance of correcting past and present injustices as part of intergenerational equity, the Maastricht Principles promote the development of legal frameworks reflecting the critical insight that justice must be realized along a continuum of time.

Engaging with and respecting diverse sources, including indigenous beliefs and practices, is important as a matter of both epistemic and material justice.³¹ As Hiroshi Fukurai has argued, allowing these often subordinated beliefs and practices to have a central role in one's analysis can unlock a markedly different understanding of international law.³² Such an understanding is likely to be more attuned to the underlying causes of the climate crisis and better equipped to confront them head on.³³ This more inclusive perspective involves locating the origins of future generations discourse spatially beyond the boundaries of Stockholm and Rome and temporally far before the institutional environmentalism of the 1970s.

In conclusion, the apparent potential for accommodating indigenous knowledge and reasoning within international law underscores the importance of engaging with diverse sources when constructing frameworks for intergenerational justice. Recognizing the value of these diverse sources allows us to broaden our temporal perspectives and grasp the interconnectedness of the past, present and future. In the subsequent section, we will explore how this engagement with diverse epistemologies and practices is already serving as a wellspring of inspiration in the practice of international law, guiding us in developing legal frameworks and interpretations that are more temporally inclusive and better equipped to tackle the intricate and interconnected challenges of our era.

3 Emancipatory Power and Legal Imagination

In highlighting the potential risks of a focus on future generations' rights in climate debates, Humphreys suggests that it may 'elide numerous existing loci of responsibility in climate matters' and 'tends to fold those to whom responsibility is owed in the present into those owing responsibility and so annihilates the former's claim to a present and a future alike'.³⁴ These are essentially empirical claims, asserting that in

³⁰ *Ibid.*

³¹ Among many other authors, Anne Orford argues for the recognition of indigenous law as a unique source of international law, asserting that '[i]nternational law must itself be understood as plural within the legal spaces of the South if justice is to be possible'. Orford, 'Ritual, Mediation and the International Laws of the South', 16(2) *Griffith Law Review* (2007) 353.

³² Fukurai, 'Original Nation Approaches to "International" Law (Onail): Decoupling of the Nation and the State and the Search for New Legal Orders', 26(1) *Indiana Journal of Global Legal Studies* (2019) 199, at 200.

³³ See also The Red Nation, *The Red Deal: Indigenous Action to Save Our Earth* (2021), at 146 ('[t]here is no reason why Indigenous revolutionaries can't lead us in [the] collective transition to the future. There is also no excuse to continue to side-line Indigenous people or knowledge simply because of the racism and ignorance that underwrites so much of what counts for radical or revolutionary politics').

³⁴ Humphreys, *supra* note 2, at 1092.

the ‘real world’, marked by division and conflict, shifting the focus from the present to the future might conceal existing responsibilities to the detriment of already vulnerable actors.

It is true that future generations discourse is not, and cannot be, a panacea against all the divides and inequalities that permeate debates on climate justice. We share Humphreys’ frustration with the German Federal Constitutional Court’s regression to national-territorial jurisdiction in the *Neubauer* case,³⁵ where it declined to examine Germany’s responsibility for climate harms occurring in Bangladesh and Nepal. This outcome seems inconsistent with the otherwise expansive interpretation of fundamental rights as ‘intertemporal guarantees of freedom’ and may even be seen as parochial and hypocritical.³⁶ The judgment may further be criticized, as Lys Kulamadayil has done,³⁷ for its apparent brushing off of Germany’s responsibility for historical emissions. However, the outcome and approach in *Neubauer* cannot solely (if at all) be attributed to its future generations framing. Other factors, such as the Court’s adherence to traditional principles of national jurisdiction or hesitance to venture into complex transnational legal issues, likely played a significant role in the decision.

But, most importantly, *Neubauer* is by no means representative of the full spectrum of climate litigation.³⁸ The constructive power of intergenerational thinking can be observed elsewhere, particularly in the global South, which offers a rich tapestry of diverse perspectives and legal approaches. For example, in stark contrast to the German Federal Constitutional Court’s stance in *Neubauer*,³⁹ the Colombian Supreme Court’s landmark decision in *Lozano Barragán*⁴⁰ places intergenerational equality and

³⁵ See generally *Neubauer v. Germany*, Bundesverfassungsgericht (BVerfG), Order of the First Senate, Case nos. BvR 2656/18/1, BvR 78/20/1, BvR 96/20/1, BvR 288/20, 24 March 2021. Discussed in Humphreys, *supra* note 2, at 26–27 ([w]hile the possible positive knock-on effect for Bangladeshis of future German mitigation policy was flagged, the court did not recognize any German responsibility for current impacts in Bangladesh nor any concrete obligation to assist present (much less future) generations there through adaptation, technology or otherwise’).

³⁶ *Ibid.*, at 54; see also Rodríguez-Garavito, *Litigating the Future*, *supra* note 9; Kotzé, ‘Neubauer et al. versus Germany: Planetary Climate Litigation for the Anthropocene?’, 22(8) *German Law Journal* (2021) 1423.

³⁷ L. Kulamadayil, *Between Activism and Complacency*, *International Law Perspectives on European Climate Litigation* (2021), available at <https://esil-sedi.eu/between-activism-and-complacency-international-law-perspectives-on-european-climate-litigation/>.

³⁸ In UNCRC, *Sacchi et al. v. Argentina*, Case no. CRC/C/88/D/104/2019 (2021), para. 10.7 (for example, the United Nations Convention on the Rights of the Child Committee advanced a more expansive understanding of states’ obligations towards children outside their territories, noting that ‘when transboundary harm occurs, children are under the jurisdiction of the State on whose territory the emissions originated ... if there is a causal link between the acts or omissions of the State in question and the negative impact on the rights of children located outside its territory, when the State of origin exercises effective control over the sources of the emissions in question [and] the alleged harm suffered by the victims [was] reasonably foreseeable to the State party at the time of its acts or omissions’).

³⁹ M. Niehaus, *Protecting Whose Children?: The Rights of Future Generations in the Courts of Germany and Colombia* (2022), available at <https://voelkerrechtsblog.org/protecting-whose-children/>.

⁴⁰ *Andrea Lozano Barragán, et al. v. Presidencia de la República et al.*, Sentencia de la Corte Suprema de Justicia del 5 de abril del 2018, MP Luis Armando Tolosa Villabona, STC 4360-2018, Radicación no. 11001-22-03-000-2018-00319-01.

solidarity at the forefront.⁴¹ It recognizes future generations as rights holders, declares the Amazon a subject of rights and orders the government to formulate and implement an ‘intergenerational pact for the life of the Colombian Amazon’.⁴² As Paola Acosta Alvarado and Daniel Rivas-Ramírez point out, the Court’s reasoning represents ‘heterodox legal reasoning grounded in “decolonial” thinking’,⁴³ with far-reaching implications for the protection of collective rights in Colombia. Humphreys characterizes this ruling thus: ‘[S]urely the exception that proves the rule.’⁴⁴ But who sets out the rules and exceptions?

Although space limitations prevent us from providing an in-depth engagement, we would like to highlight a few more cases that illustrate how courts in the global South are enriching and progressing the discourse on future generations’ rights.⁴⁵ Future generations-inclusive litigation in domestic courts not only holds the potential for spurring more ambitious and equitable climate action but can also connect local and global movements seeking to advance climate justice agendas and provide helpful prods to international climate negotiations.⁴⁶ In these ways, it is an increasingly potent and valid mode of resistance against the cleavages in responsibility for climate change that rightly trouble Humphreys in his article. The cases below illustrate our main contention: that future generations discourse has emancipatory power and fosters legal imagination, without necessarily negating present responsibilities or obscuring the complex dynamics of climate politics.

A Future Generations in Domestic Climate Litigation

Climate litigation in the global South is distinct in many ways: it benefits from generally looser rules of standing, constitutionally empowered judiciaries and a tendency to be more rights based.⁴⁷ It is primarily this last point that enables courts in the global South to make authoritative and creative pronouncements. The *Minors Oposa v. Factoran* case was foundational to the development of future generations jurisprudence and still serves as a testament to the potential of intergenerational climate justice.⁴⁸ The claimant group of children in *Oposa* sought to interrupt ongoing large-scale deforestation through the cancellation of timber licence agreements. The Supreme Court of the Philippines granted standing to the claimant group on the basis

⁴¹ Alvarado and Rivas-Ramírez, ‘A Milestone in Environmental and Future Generations’ Rights Protection: Recent Legal Developments before the Colombian Supreme Court’, 30(3) *Journal of Environmental Law* (2018) 519, at 524.

⁴² *Andrea Lozano Barragán, et al., supra* note 40.

⁴³ Alvarado and Rivas-Ramírez, *supra* note 41, at 519; see further ‘Lozano Barragán and Others v. Presidency of the Republic of Colombia and Others’, 193 *International Law Reports* (2021) 443.

⁴⁴ Humphreys, *supra* note 2, at 5.

⁴⁵ For an overview of the growing jurisprudence, see Bertram, ‘“For You Will (Still) Be Here Tomorrow”: The Many Lives of Intergenerational Equity’, 12(1) *Transnational Environmental Law (TEL)* (2022) 1.

⁴⁶ Iyengar, ‘Human Rights and Climate Wrongs: Mapping the Landscape of Rights-based Climate Litigation’, Special Issue, *Review of European, Comparative and International Environmental Law* (2023) 1, at 7–8.

⁴⁷ Setzer and Benjamin, ‘Climate Litigation in the Global South: Constraints and Innovations’, 9(1) *TEL* (2020) 77.

⁴⁸ Supreme Court of Philippines, *Oposa v. Factoran*, G.R. no. 101083, 30 July 1993, 224 SCRA 792.

of future generations' rights, holding that intergenerational equity was inherent to the provisions of the Philippines' Constitution, which spoke of a 'rhythm and harmony with nature'.⁴⁹ This not only fostered long-term policy reform in the Philippines but also inspired courts (and other actors) across the world to explore the potential of the law to advance climate justice over time. Several cases from around the global South have since adopted and developed *Oposa's* understanding. A particular trend that courts have been following, at least since *Oposa*, is of reading the rights of future generations into their constitutions. The growing inclusion of future generations' rights in constitutions worldwide, and especially in the global South,⁵⁰ signals that many more courts and other actors in the litigation process are about to join, diversify and enrich this global conversation.

We first turn to Pakistan. In *Leghari v. Pakistan*, the Lahore High Court ordered the establishment of a national Climate Change Commission, noting, *inter alia*, that the Pakistani Constitution implicitly contained international principles of intergenerational equity.⁵¹ On this basis, the Court ordered several regulatory outcomes in the face of delay and inaction on climate change adaptation by government agencies. Subsequently, in *Maria Khan et al. v. Federation of Pakistan*, a coalition of women successfully filed a petition in the same court on behalf of themselves as well as future generations, compelling the Pakistani government to enforce the Paris Agreement.⁵² The coalition's application recognizes a meaningful solidarity between women and future generations: both groups do not rightfully own the responsibility of adapting to climate change and yet have to bear it nonetheless because of their marginalization.⁵³ The claimants' invocation of future generations' rights shows how climate injustice affects vulnerable groups across time; thus, the fight for climate justice in the present is in consonance with, necessary even, for climate justice in the future. *D.G. Khan Cement Company v. Government of Punjab*, wherein the Supreme Court of Pakistan upheld a bar on the construction of new cement plants in environmentally fragile zones, consolidated this jurisprudence by powerfully stating: "Through our pen and jurisprudential fiat, we need to decolonize our future generations from the wrath of climate change, by upholding climate justice at all times."⁵⁴

⁴⁹ *Ibid.*

⁵⁰ To illustrate, the following countries provide for the protection of the rights of future generations in their constitutions at varying degrees of justiciability: Argentina (Article 41 of the Argentine Constitution), Hungary (Preamble of the Hungarian Constitution), Germany (Article 20A of the German Constitution), Norway (Article 112 of the Norwegian constitution), South Africa (Bill of Rights in the South African Constitution), Tunisia (Articles 42 and 129 of the Tunisian Constitution). See generally R. Araújo and L. Koessler, *The Rise of the Constitutional Protection of Future Generations* (2021), available at www.legalpriorities.org/research/constitutional-protection-future-generations.html.

⁵¹ Lahore High Court, *Ashgar Leghari v. Federation of Pakistan*, Case no. 25501/2015, Order of 4 September 2015.

⁵² Lahore High Court, *Maria Khan et al. v. Federation of Pakistan et al.*, Writ Petition no. 8960/2019, 15 February 2019; Paris Agreement on Climate Change, UN Doc. FCCC/CP/2015/L.9/Rev.1, 12 December 2015.

⁵³ *Maria Khan et al.*, *supra* note 52.

⁵⁴ Supreme Court of Pakistan, *D.G. Khan Cement Company v. Government of Punjab*, 2021 SCMR 834.

Turning to Nepal, in *Shrestha v. Office of the Prime Minister et al.*, the Supreme Court cited the need to address climate justice concerns for current and future generations, in accordance with the principle of intergenerational equity, to compel the Nepal government to enact comprehensive climate legislation in line with its international legal obligations.⁵⁵ This case eventually led to the adoption of Nepal's Environment Protection Act, 2019 and Forests Act, 2019. These were ground-breaking victories for climate justice, both in the present and for the future. And yet, the case still 'largely escaped public attention' (or, rather, was denied attention for global-systemic reasons).⁵⁶

Other examples are from India. In *State of Himachal Pradesh and Others v. Ganesh Wood Products and Others*, the Supreme Court of India prohibited new manufacturing units using cut trees, observing that 'after all, the present generation has no right to deplete all the existing forests and leave nothing for the next and future generation'.⁵⁷ In *Goa Foundation v. Union of India & Ors.*,⁵⁸ the Supreme Court created a de facto trust fund for future generations by limiting the amount of mineable minerals.⁵⁹ India's National Green Tribunal has held that intergenerational equity is inherent in the right to the environment⁶⁰ and has enforced this understanding by ordering the regulation of vehicle traffic, reforestation and the saving of disappearing glaciers. The tribunal has also set aside orders approving the clearing of forestland, invoking future generations' rights.⁶¹ The shift of focus from the present to the future in these cases does not mean that these legal victories have no effect on the former; it is really quite the opposite. In the absence of competent government action, litigants are able to seek urgent and pressing climate justice through judicial protection by using the powerful device of future generations' rights.

In Africa, the High Court of Kenya applied the principle of intergenerational equity to water pollution in *Waweru v. Republic of Kenya*, emphasizing the importance of preserving natural resources for future generations and highlighting the need to formulate and maintain 'ecologically sustainable development that does not interfere with the sustenance, viability and quality of the water table and the quality of the river waters'.⁶² In its invocation of the principle of intergenerational equity, the Court made it a point to stress that the present generation is legally obliged to maintain and enhance 'the health, diversity, and productivity of natural resources ... for the benefit of future generations'.⁶³ The case sets a precedent for courts to consider the long-term

⁵⁵ Supreme Court of Nepal, *Shrestha v. Office of the Prime Minister et al.*, NKP 2075 (2018), 61(3), Decision no. 10210.

⁵⁶ Bertram, *supra* note 45, at 15, n. 83.

⁵⁷ Supreme Court of India, *State of Himachal Pradesh and Others v. Ganesh Wood Products and Others*, 6 SCC 363 (1995).

⁵⁸ Supreme Court of India, *Goa Foundation v. Union of India & Ors.*, Writ Petition (Civil) no. 435 of 2012, Judgment (21 April 2014).

⁵⁹ For further discussion, see Basu, 'Intergenerational Equity Case Study: Iron-ore Mining in Goa', 52(5) *Economic and Political Weekly* (2017) 18.

⁶⁰ National Green Tribunal Delhi, *In re Court on Its Own Motion v. State of Himachal Pradesh* (9 May 2016).

⁶¹ National Green Tribunal of India, *Sudiep Shrivastava v. Union of India*, Appeal no. 73/2012 (2014).

⁶² High Court of Kenya, *Waweru v. Republic of Kenya*, (2006) 1 KLR (E&L) 677–696.

⁶³ *Ibid.*

impact of environmental degradation and calls for more expansive approaches to legal protection of the environment for future generations. Similarly, the High Court of South Africa has noted that intergenerational justice in the context of climate change necessitates the ‘rejection of short-termism’ and requires the state to consider the long-term impact of pollution on future generations.⁶⁴ The Court further found that the constitutionally protected right to a healthy environment could be invoked solely for the benefit of future generations, indicating that potential violations are sufficient to establish a violation of the right.⁶⁵ This groundbreaking approach lowers barriers to justice for plaintiffs in environmental cases, premised on the responsibility of the present generation to prevent future harm.

Still, courts can indeed be parochial actors, and Humphreys rightfully highlights that a concern with future generations may take on a parochial nature. Addressing parochiality in law requires innovative approaches, such as the one seen in *Fischer v. Comuna Dique Chico-Amparo*.⁶⁶ In this case, the Court emphasized the importance of environmental education and ordered the teaching of its decision, which prevented inorganic fumigation around the claimant school’s area, in nearby schools. Notably, this decision aimed to strengthen intergenerational equity⁶⁷ and bring informed, diverse and hitherto silenced or unheard stakeholders – children, in this case – into the conversation. By maximizing inclusivity, we can combat parochiality. Recognizing solidarity between presently vulnerable groups and future generations is an important way of bringing these groups into the conversation.

The growing awareness and commitment by activists, lawyers and courts to address the climate crisis through the lens of intergenerational equity are evident in these developments. Adopting the language of future generations’ rights in such cases indicates that discourse around future generations may be embraced not merely as an abstract concept but also as a tangible and vital part of the struggle for environmental and climate justice. This is not to suggest that the use of future generations discourse in climate litigation necessarily serves emancipatory purposes or promotes climate justice by default. However, as more states in the global South adopt similar legal frameworks and policies, the collective impact on climate justice can be substantial, setting precedents for other states to follow suit.

Juan Auz astutely points out that, in climate litigation cases, remedies delivered by courts in the global South may sometimes appear to be at odds with climate justice principles: states ordered to provide remedies are not the world’s main polluters and

⁶⁴ High Court of South Africa, *GroundWork Trust & Vukani Environmental Justice Alliance Movement in Action v. Minister of Environmental Affairs & Others*, Case no. 39724/2019, [2022] ZAGPPHC 208 (2022), para. 41; see also Constitutional Court of South Africa, *Fuel Retailers Association of Southern Africa v. Director-General: Environmental Management, Department of Agriculture, Conservation and Environment, Mpumalanga Province and Others* [2007] ZACC 13 (where the Constitutional Court interpreted the concept of sustainable development. The authors thank Sandra Liebenberg for bringing this case to their attention).

⁶⁵ *GroundWork Trust*, *supra* note 64, para. 82.4.

⁶⁶ Tribunal Superior de Justicia de Córdoba, *Fischer, Diego Agustín y otros c/ Comuna Dique Chico-Amparo* (2021) Order No. 50 of 13 April 2021, 522–540.

⁶⁷ B. M. Damián, ‘Fischer Diego Agustín y otros c/Comuna Dique Chico-Amparo’ (2020) (Final graduation project, on file with the Universidad Siglo).

may even lack the capacity and resources to implement those remedies.⁶⁸ To avoid a situation where states contributing the least to climate change bear the heaviest burden in providing remedies to victims, it is imperative that remedies ordered in climate litigation cases address 'the complex and multi-layered nature of the climate problem and the concomitant justice questions it raises'.⁶⁹ For courts in the global South that are entrusted with adjudicating cases against the state, this could entail integrating obligations of international assistance and cooperation into their rulings. For instance, a defendant state could be mandated to exhaust all efforts to seek international assistance and cooperation, particularly from those states that are major polluters or financial institutions that could provide appropriate funding.⁷⁰ By emphasizing the importance of international cooperation, these rulings can promote a more collective and equitable approach to addressing the challenges of climate change.

Transnational climate litigation cases focusing on the responsibility of multinational corporations offer another avenue for confronting climate injustice. A prime example is the Carbon Major Inquiry conducted by the Philippines Human Rights Commission. This inquiry investigates the responsibility of 47 of the world's largest fossil fuel companies for alleged human rights violations resulting from climate change.⁷¹ The legal framework for the inquiry included the right to a balanced and healthful ecology that the commission, referencing *Oposa v. Factoran*, noted is constitutionally guaranteed for present and future generations.⁷² Against this backdrop, the commission emphasized 'the harrowing situation of the Filipino people who have suffered, will continue to suffer, and have yet to suffer as they are deprived of their human rights by the myriad effects of climate change'.⁷³

Through extensive fact-finding missions, community dialogues, expert reports and testimonies, the Philippines Human Rights Commission established that the carbon majors have made quantifiable and significant contributions to the global climate crisis. Despite being aware of the climate risks posed by their products as early as 1965, they spent decades and millions of dollars sowing uncertainty about climate science and actively obstructing climate action, driven by greed rather than ignorance.⁷⁴ Although these findings are not legally binding, the evidence and analysis are likely to inform future court cases and impact global discourse on climate justice.⁷⁵ More broadly, the inquiry demonstrates that future generations discourse and litigation can

⁶⁸ Auz, 'Two Reputed Allies: Reconciling Climate Justice and Litigation in the Global South', in C. Rodríguez-Garavito (ed.), *Litigating the Climate Emergency* (2022) 145.

⁶⁹ *Ibid.*

⁷⁰ *Ibid.*, at 52.

⁷¹ *In re Greenpeace Southeast Asia and Others*, Case no. CHRNI-2016-0001 (9 September 2019) (Philippines) (carbon majors).

⁷² *Ibid.*, at 67.

⁷³ *Ibid.*

⁷⁴ *Ibid.*

⁷⁵ Savaresi and Hartmann, 'Using Human Rights Law to Address the Impacts of Climate Change: Early Reflections on the Carbon Majors Inquiry', in J. Lin and D.A. Kysar (eds), *Climate Change Litigation in the Asia Pacific* (2020) 73.

effectively target the main culprits of the climate crisis, transcending national boundaries and addressing the complex and multi-layered nature of the problem.

In addition, international courts and tribunals hold particular promise when it comes to addressing the structural and global dimensions of climate injustices. By transcending national boundaries and adopting a more comprehensive approach to the obligations of states, international judicial bodies can, at least in theory, tackle the complexities of climate change more effectively and foster cooperation between states. They have the potential to foster more equitable approaches by taking into account scientific evidence to ascertain historical responsibilities,⁷⁶ recognizing the disparities between the global North and South and enhancing the understanding of the interconnectedness between the needs and rights of present and future generations.⁷⁷ As we move to the next section, we will briefly explore some of the emerging landscape of international climate litigation, illustrating the potential role of international courts and tribunals in advancing future generations discourse and related legal developments towards climate justice.

B Future Generations in International Climate Litigation

International climate litigation can seek to hold actors in the global North directly accountable for actual or projected climate harm, and future generations discourse can play a mobilizing role in such litigation. A prime example of this can be found in the Pacific Islands region, where law students initiated an international campaign in mid-2019 urging Pacific Island leaders to seek an advisory opinion on climate change from the International Court of Justice. From the start, the rights of present and future generations featured prominently and inseparably in their campaign.⁷⁸

This focus on intergenerational equity was vividly illustrated in September 2022, when children across the large ocean state⁷⁹ of Vanuatu took to the streets, carrying signs reading 'Intergenerational Equity' and '#EndorseTheICJAO'.⁸⁰ During this march, Ni-Vanuatu artists released the 'Climate Justice Song', and youth activists spoke passionately about the need to 'save this planet for future generations'.⁸¹ The youth movement's use of future generations discourse highlights its social significance and mobilizing power, illustrating how actors who have been traditionally kept at the margins of international law decision-making are adopting and employing this discourse.

⁷⁶ For a comprehensive analysis of judicial engagement with science in international environmental dispute settlement, see K. Sul yok, *Science and Judicial Reasoning: The Legitimacy of International Environmental Adjudication* (2022).

⁷⁷ Iyengar, *supra* note 46, at 6.

⁷⁸ 'Pacific Island Students Fighting Climate Change', available at www.pisfcc.org.

⁷⁹ Chan, "'Large Ocean States': Sovereignty, Small Islands, and Marine Protected Areas in Global Oceans Governance', 24 *Global Governance* (2018) 537.

⁸⁰ Radio New Zealand, *Vanuatu Children Push Climate Justice Message* (2022), available at www.rnz.co.nz/international/pacific-news/475561/vanuatu-children-push-climate-justice-message.

⁸¹ Department of Climate Change Facebook Live, *Vanuatu March and Launching for the Climate Justice Song* (2022), available at <https://m.facebook.com/Vanuatudepartmentofclimatechange/videos/492568295687016/>.

When Vanuatu decided to build a coalition of states in support of the youth initiative, the focus on intergenerational equity was retained. The resolution adopted by the United Nations General Assembly on 29 March 2023 not only addresses the immediate consequences and future risks of climate change but also delves into historical responsibilities; it asks about:

the legal consequences ... for States which, by their acts and omissions, have caused significant harm to the climate system and other parts of the environment, with respect to: (a) States, including, in particular, small island developing States, which due to their geographical circumstances and level of development, are injured or specially affected by or are particularly vulnerable to the adverse effects of climate change and (b) Peoples and individuals of the present and future generations affected by the adverse effects of climate change.⁸²

By incorporating both present and future generations, the question reflects the core principle of intergenerational equity, which demands that the needs of future generations be considered alongside the needs of the present generation. This approach matters because it ensures that states with a long history of high greenhouse gas emissions and other environmentally harmful activities cannot escape accountability for their actions, while simultaneously emphasizing the responsibility of each generation to prevent further harm and protect the interests of future generations. In this way, the legal question encapsulates the notion that climate justice must account for historical responsibilities as part of intergenerational equity, ultimately promoting a more comprehensive and just approach to addressing the global climate crisis.⁸³

The request for an advisory opinion from the Inter-American Court of Human Rights on Climate Emergency and Human Rights, filed by Colombia and Chile in January 2023,⁸⁴ represents another potentially important development in the evolution of future generations discourse and jurisprudence. The request not only highlights the differentiated impacts of climate change on various regions and population groups but also acknowledges the importance of considering future generations as part of states' obligations to correct past injustices. In particular, the request asks about states' obligations to act 'both individually and collectively to guarantee the right to reparation for damages generated by their actions or omissions in the face of the climate emergency, taking into account considerations of equity, justice and sustainability'.⁸⁵ This holistic approach to reparation aligns with the generally progressive jurisprudence of domestic courts in Latin America and the jurisprudence of the Inter-American Court of Human Rights itself.⁸⁶

⁸² United Nations General Assembly, Request for an Advisory Opinion of the International Court of Justice on the Obligations of States in Respect of Climate Change, UN Doc. A/RES/77/276 (2023).

⁸³ On climate reparations as a future-oriented project, see also O. O. Táíwò, *Reconsidering Reparations* (2022).

⁸⁴ *Request for an Advisory Opinion on Climate Emergency and Human Rights to the Inter-American Court of Human Rights from the Republic of Colombia and the Republic of Chile* (2023), available at https://climate-laws.org/geographies/international/litigation_cases/request-for-an-advisory-opinion-on-the-scope-of-the-state-obligations-for-responding-to-the-climate-emergency.

⁸⁵ *Ibid.*

⁸⁶ *Ibid.*

The previous section provided a flavour of how Latin American domestic courts have been at the forefront of developing legal principles to protect the environment and ensure environmental climate justice, often incorporating the rights of future generations in their decisions. The advisory opinion that was requested has the potential to build on this progressive jurisprudence and contribute to a more coherent and unified approach to climate justice across the region. Furthermore, the Inter-American Court of Human Rights has a history of groundbreaking rulings and advisory opinions, such as the advisory opinion on the environment and human rights, which established the concept of an inter-American right to a healthy environment.⁸⁷ This latest advisory opinion could extend the Court's jurisprudence by elaborating on the relationship between human rights, climate change and future generations, further solidifying the legal basis for intergenerational equity in the region.⁸⁸

Through initiatives such as these two advisory opinion requests, actors from the global South are taking bold steps towards grappling with some of the key distributive questions related to climate change. In particular, clarifying the legal consequences of states' acts and omissions in relation to climate change could open new doors towards accountability for past, present and future climate harm. These initiatives also serve as examples of how international cooperation and solidarity can be leveraged to advance climate justice and youth leadership, whereby intergenerational equity serves as a conceptual device for progressing a broader climate justice agenda.

In closing, it is important to emphasize that our presentation of these diverse perspectives and practices is not meant to advocate for a blanket acceptance of future generations discourse, nor is it meant to conceal its equally diverse critiques.⁸⁹ Instead, we encourage future scholarship to engage with these critiques, both in theory and practice, while considering the emerging discourse on future generations within and beyond the courtroom. By doing so, we can better understand the complex interplay between intergenerational equity and climate justice and how these concepts can work in tandem to address the pressing challenges posed by climate change. Embracing this diversity of thought and action will contribute to the development of a more robust and responsive legal framework for tackling the global climate crisis.

⁸⁷ IACtHR, *Request for an Advisory Opinion from the Inter-American Court of Human Rights Concerning the Interpretation of Article 1(1), 4(1) and 5(1) of the American Convention on Human Rights*, Advisory Opinion OC-23/17, 15 November 2017.

⁸⁸ See also J. Auz and T. Viveros-Uehara, 'Another Advisory Opinion on the Climate Emergency? The Added Value of the Inter-American Court of Human Rights', *EJIL: Talk!* (2 March 2023), available at www.ejil-talk.org/another-advisory-opinion-on-the-climate-emergency-the-added-value-of-the-inter-american-court-of-human-rights/.

⁸⁹ Kyrre Kverndokk, for example, draws on a body of queer theory and literary criticism to uncover the heteronormative reproductive futurism lying at the foundation of claims of future generations' rights. See Kverndokk, 'Talking About Your Generation: "Our Children" as a Trope in Climate Change Discourse', 50(1) *Ethnologia Europaea* (2020) 145.

4 Conclusion

In this reply, we have called for a more nuanced and imaginative understanding of the role that future generations discourse can play in endeavours to advance climate justice, particularly within international law. While we acknowledge the potential pitfalls associated with an over-emphasis on the future at the expense of present concerns, as pointed out by Humphreys, we have demonstrated that this discourse can be employed in ways that avoid these drawbacks and contribute positively to the broader climate justice movement. Throughout our reply, we have illustrated how engaging with a wider range of sources and perspectives, particularly from the global South, reveals a more inclusive and diverse future generations discourse. This engagement allows us to identify strategies and approaches that address both present and future concerns while avoiding the window dressing or greenwashing, parochialism and hypocrisy that Humphreys criticizes. Moreover, our analysis has shown how future generations discourse can provide marginalized or disadvantaged groups with a platform to assert their rights and to demand climate justice.

The robust jurisprudence emerging from the global South illustrates that intergenerational climate justice is not an abstract concept but a practical actionable component of the broader struggle for climate and environmental justice worldwide. As we look forward, we believe that the discourse on future generations should be embraced and developed further in order to enrich our epistemologies and legal systems, including international law. However, it is crucial for international law scholars and practitioners to remain vigilant in critically examining the ways in which future generations are invoked, addressing the potential limitations, contradictions and concerns and ensuring that the discourse and legal developments advance, rather than impede, the pursuit of climate justice on a global scale.⁹⁰ Additionally, we call for increased dialogue and collaboration among scholars, practitioners and affected communities to ensure that future generations discourse remains grounded in real-world experiences and orientated towards the pursuit of justice across time and space. By persistently interrogating and refining our understanding of responsibilities owed to future generations, we can start to imagine an international legal order that, in its increased inclusivity, is equipped to address climate change and related global crises.

⁹⁰ This connects with the broader imperative to question the ways in which law may contribute to ecologically or socially destructive practices, as highlighted in a wealth of scholarship from the critical legal studies, feminist and Third World Approaches to International Law traditions. See, e.g., J. Dehm, *Reconsidering REDD+: Authority, Power and Law in the Green Economy* (2021); N. Tzouvala, *Capitalism as Civilisation: A History of International Law* (2020); J. Linarelli, M. E. Salomon and M. Sornarajah, *The Misery of International Law Confrontations with Injustice in the Global Economy* (2018); S. Humphreys, *Theatre of the Rule of Law: Transnational Legal Intervention in Theory and Practice* (2010); S. Humphreys, *Ungoverning the Climate* (2020), available at https://eprints.lse.ac.uk/106616/1/TLT_Humphreys_Ungoverning_the_Climate_final_CLN.pdf.

