**1.** Some countries have recognized the need to incorporate human rights elements into their climate change legislation: The UK Climate Change Act 2008 which establishes a legally binding target to reduce greenhouse gas emissions by at least 80% by 2050, compared to 1990 levels. It also requires the government to produce regular reports on the risks posed by climate change to human health, and the impact of its climate policies on vulnerable groups. The Climate Change Response (Zero Carbon) Amendment Act 2019 from New Zealand): establishes a target to achieve net zero emissions of greenhouse gases by 2050. It also requires report on the impact of climate change on vulnerable groups, including indigenous communities. The Climate Change Act 2016 (Philippines): establishes a framework for the government to address the impacts of climate change on human rights, including the right to life, health, food, and water. The Climate Change and Sustainable Energy Act 2019 (Scotland): This act establishes a legally binding target for Scotland to achieve net-zero greenhouse gas emissions by 2045. It also includes provisions to ensure that the government considers the impact of its climate policies on vulnerable communities, including low-income households and communities of color.

**2.** Climate change legislation should explicitly frame a connection to human rights obligations in order to recognize and address the significant impact of climate change on individuals and communities: right to human health, right to a clean air, water, and food, as well as protecting biodiversity and ecosystems necessary for human well-being, protection of indigenous peoples, children, women, the elderly, and marginalized communities and participation and access to information. Climate change legislation should align with international human rights commitments, such as the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights. This ensures coherence and reinforces the legal basis for addressing climate change as a human rights issue.

**3.** In the context of climate change, the concept of loss and damage refers to the irreversible harm and adverse impacts that occur as a result of climate change impacts. In that way, policymakers should consider in the law: recognition and definition of it on its legislation, should prioritize risk reduction and adaptation measures to minimize the occurrence and severity of loss and damage, establish financial mechanisms, liability and compensation, international cooperation etc.

**4.** This difference is an application of the principle of common but differentiated responsibilities, in which those countries that emit more greenhouse gas would be more responsible than others. This would look like these countries applying more mitigation measures and having more rick goals for diminishing its emissions.

**5.** The climate change litigations are considering and applying a direct link between the possible breach human rights and climate change, as this will hinder access to education, health, changes in economics, especially those dependent of plantation, and also the force immigration due to environmental issues.

**6.** The recent national decisions in regard to climate litigation considered human rights as a direct link to the consequences of climate change and recognized that it can affect basic rights of indigenous peoples, women and children, as seen in [Declic et al. v. The Romanian Government](http://climatecasechart.com/non-us-case/declic-et-al-v-the-romanian-government/), [Fridays for Future v. Augsburg](http://climatecasechart.com/non-us-case/fridays-for-future-v-augsburg/), [Anton Foley and others v Sweden (Aurora Case)](http://climatecasechart.com/non-us-case/anton-foley-and-others-v-sweden-aurora-case/) and others.

**7.** The major barriers are the effective access to justice for those who are the most affected by climate change, especially if we consider international responsibility of states and transnational companies. We could see as an example Vanuatu's request for advisory opinion in the International Court of Justice in regard to climate change. In the matter of access to justice we could take into consideration the Brazilian case of Mariana's dam disaster which caused a major environmental shift and damaged the life of the local population. This case is considered to be the largest ever filed in English Courts, as the company responsible for said disaster is Anglo-Australian.

**8.** Whereas it is right to state that most difficulties faced by climate litigants are similar throughout the world, it is possible to discern barriers that seem to arise from different jurisdictions. For instance, the lack of national laws and policies poses a barrier to climate litigation. Countries that have adopted climate change laws which explicitly articulates a national commitment to mitigation goals provide a better means to those seeking for climate justice, serving as a basis to question the government's actions[[1]](#footnote-1). In those that lack specific policies the plaintiffs have increased difficulty to articulate and demand climate mitigation and adaptation. Furthermore, the lack of proper studies and dissemination of information, can affect the understanding of the importance of climate change, adaptation, mediation and therefore climate litigation. This often leads to a lower number of cases and creates argumentative barriers. These barriers can be identified when analyzing the Global South. In the Global South the environmental issue has always been perceived as a luxury, and States tended to focus on immediate needs and economic development[[2]](#footnote-2). Moreover, the deficiency in financing technical studies and maintaining environmental institutions led to a weak base for environmental policy making[[3]](#footnote-3). Consequently, when analyzing the number of climate litigation cases and studies throughout the world, about 76% of all the studies and published articles on climate litigation are from the Global north, leaving the Global South with only 26%[[4]](#footnote-4). Accordingly, of the more than 2.000 cases of climate litigation identified by the Sabin Center’s Climate Change Litigation databases, the south takes up to only 88 cases[[5]](#footnote-5).

**9.** Although Brazil holds a constitution considered one of the most modern with respect to the environment and has already committed through international treaties to fight climate change, as a State from the Global South it still lacks the foundation to properly understand the issue. The deficiency in strong institutions and technical studies led to a low number of cases which in consequence led to a scarcity of discussions on the subject by the courts. Moreover, the cases presented in court up to this point in its majority were plead from 2020 forward and have yet to be concluded. Thus, in view of the facts presented, the Brazilian judiciary can be deemed as insufficient considering that the discussion is still recent, and all its possibilities and ramifications were not thoroughly considered.

**10**. There are several ways to enhance the support for climate change litigation and improve its effectiveness: One crucial aspect is to strengthen the legal frameworks that establish climate change litigation in order to recognize the rights of individuals and communities affected by climate change and provide clear channels for seeking legal remedies; collaboration is another key factor in advancing climate change litigation, by fostering collaboration between legal organizations, environmental groups, and other stakeholders involved in climate change litigation, resources can be pooled, knowledge and experiences can be shared, and efforts can be coordinated to achieve common goals; Allocating sufficient funds and resources can assist individuals and organizations pursuing climate-related legal cases; Increase public awareness and understanding of climate change issues and the role of litigation in addressing them by engage in public campaigns, and educational initiative; additionally, encouraging legal professionals to provide pro bono or reduced-cost services to individuals and communities affected by climate change is an effective way to enhance access to justice.

**11.** Climate change litigation faces various challenges that can hinder access to the courts. One of the primary obstacles is establishing standing to bring a case because of the complication to establish a direct and personal harm. The harm caused by climate change is often diffuse, impacting large populations rather than individual plaintiffs. Moreover, climate change litigation can encounter opposition from governments, corporations, or other powerful entities with a vested interest in maintaining the status quo. These entities may employ legal strategies to delay or dismiss cases, challenge presented evidence, or use legal tactics to discourage litigants and deter litigation efforts. Financial burdens also pose a significant challenge in climate change litigation. Due to the complex nature of these cases, extensive research, the need for expert witnesses, and lengthy legal proceedings, the associated costs can be substantial. Legal fees, court expenses, and the potential for appeals make it difficult for individuals or communities without significant financial resources to pursue climate change lawsuits. Another challenge is jurisdictional complexity. Climate change is a global issue that transcends borders, and determining which courts have jurisdiction to hear a case can be intricate.

**12.** Intergenerational justice in the context of climate change and human rights has been applied in several legal documents, from domestic to national levels. As an example on an international level, there is the Stockholm Declaration of 1972, in which it recognizes in its first principle that “Man [...] bears a solemn responsibility to protect and improve the environment for present and future generations”.[[6]](#footnote-6) Moreover, taking into considerations national constitutions, Brazil in 1988 shows a remarkable example of the development of the intergenerational justice for climate change and human rights, as it implements in its constitution the principle of intergenerational justice, as articles 225 ensures that “Everyone has the right to an ecologically balanced environment, a common good essential for the people for a healthy quality of life, imposing on the Government and the community the duty to defend and preserve it for present and future generations.”[[7]](#footnote-7) Finally, domestic legislation regarding such an idea is thriving as States look forward to the upkeep of the environment for future generations. For instance, brazilian legislation n° 9.985, in its article 2, II, enacts that “For the purposes set forth in this Law, nature conservation means: the management of the human use of nature, including the preservation, maintenance, sustainable use, restoration and recovery of the natural environment, so that it can produce the greatest benefit , on a sustainable basis, to current generations, maintaining its potential to satisfy the needs and aspirations of future generations, and ensuring the survival of living beings in general”[[8]](#footnote-8)

**13.** Intergenerational justice is the doctrine which understands that generations have certain duties with each other, as it takes into consideration that the acts of a previous generation has effects on the future ones. Climate change is one of the major problems encountered by the international community, while human activity grows vertiginously, the possibility of life on earth is being swiftly more difficult. Such difficulties are an obstacle for enhancing the spread of human rights around the globe. As poorer communities struggle with high temperature and water scarcity, due mainly for the advancement of the acts of the ones in the present and future. Taking it into consideration, intergenerational justice is a concept that shows a new perspective for the human community to understand life on earth, as humans in the present are responsible for the humans in the future, and have the responsibility to make life possible for future generations.[[9]](#footnote-9)

**14**. The concept of intergenerational justice has been incorporated into climate change litigation globally. This concept can be found in many lawsuits ruled by diverse jurisdiction, being the State of Netherlands v Urganda[[10]](#footnote-10) considered one of the most relevant cases worldwide. In this occasion, the Dutch Supreme Court justified the determination that the Netherlands must reduce its greenhouse gas emissions by at least 25% by the end of 2020 observing the articles 2 (the right to life) and 8 (the right to respect private and family life) from the European Convention on Human Rights (ECHR), by considering that the positive obligation of the state to implement policies to mitigate threats to the welfare of Dutch residentes, must be applied regardless of the fact that the consequences may not be noticeable until a few decades later. Likewise, the Brazilian Constitution, in its article 255[[11]](#footnote-11), have ensured the right to an ecologically balanced environment and its duty to preserve it to the present and future generations since its promulgation in 1988. This understanding have been applied since its addition to the constitutional text, taking relevant spot in the discussion concerning the collapsing of the Mariana’s and Brumadinho[[12]](#footnote-12) dams remarking the responsibility of the State to inspect potentially hazardous activities such as Mining, as well as the Company’s (Samarco and Vale in the present matters) obligation to conduct its activities with care for sustainability once the right to a balanced environment is an universal right that transcends generational limits as expressed in the constitution.

**15.** There are many options available to enshrine the principle of intergenerational justice in international Law, being one relevant measure the adoption and expressed application of this principle in the making of International Agreements, Conventions, and Recommendations. In that way, the countries that sign those documents are bound to its provisions and obligations, encouraging the Parties to develop domestic legislation and poaligned with the principle.

**16.** Intergenerational justice refers to the idea that present generations should act responsibly to ensure the well-being and sustainable development of future generations. It involves considering the long-term impact of current decisions on the environment, resources, and social systems. To incorporate intergenerational justice, states can adopt measures such as (i) recognizing the right to a healthy environment in their constitutions, guaranteeing every individual the right to live in a balanced and ecologically sound environment; (ii) incorporating Sustainable Development Goals into their national legislation; (iii) promote education and awareness campaigns to foster a culture of sustainability and intergenerational responsibility; and (iv) ensuring public participation in decision-making processes that affect the environment and future generations by providing mechanisms for public consultation and access to justice.

**17.** Good practices that allow youth to be represented in courts and have their views and concerns properly expressed in the judicial process include (i) establishing specialized youth courts or divisions within existing courts that focus on cases involving young individuals. These courts can have judges and staff trained in dealing with youth-specific issues; (ii) creating programs that provide legal representation or advocacy services specifically for young people. These programs can ensure that youth have access to legal advice, support, and representation throughout the judicial process; (iii) encouraging meaningful youth participation in decision-making processes related to the justice system. This can involve involving youth representatives in policy discussions, consultations, and committees; (iv) implementing educational programs that inform young people about their legal rights, court processes, and avenues for expressing their concerns; and (v) establishing an inclusive and supportive legal environment that respects the rights of young individuals and ensures their voices are heard and considered during court proceedings.

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3. *id* [↑](#footnote-ref-3)
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10. https://www.iucn.org/news/environmental-law/202108/courts-step-intergenerational-climate-justice [↑](#footnote-ref-10)
11. Brazil. (1988). Constitution of the Federative Republic of Brazil [Constituição da República Federativa do Brasil] “Article 225. Everyone has the right to an ecologically balanced environment, which is an asset of common use and essential to a healthy quality of life, and both government and community shall have the duty to defend and preserve it for present and future generations“ [↑](#footnote-ref-11)
12. https://www.pucrs.br/direito/wp-content/uploads/sites/11/2020/08/luana\_megiolaro.pdf [↑](#footnote-ref-12)