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Submission for 2024 Special Rapporteur's Call for inputs on "The Right to Development"

This submission, signed by the civil society organization Ruptura¹, presents contributions about the right to development in the Brazilian context, focusing on the Right to Development of children and future generations.

Ruptura is a Brazilian-based non-governmental organization dedicated to the production, promotion and dissemination of studies and actions for the construction of a more just and equitable society, focusing, in a systemic and interdisciplinary way, on issues related to the protection of rights of Nature, human rights and socio-biodiversity; confronting the climate emergency; socio-environmental effects of corruption and organized crime; and aspects that connect victimology and sustainability.

The right to development of children and future generations

1. What does the right to development mean for children in line with the relevant policy frameworks and normative instruments? What about the right to development of future generations?

The right to development, especially for future generations, must include the right to the well-being and opportunities necessary for a dignified life, which is primarily based on the access to an ecologically balanced environment and climate. In this sense, there are understandings that there is a fundamental right to the climate² and ecological balance in the 1988 Brazilian constitutional text from a mitigated anthropocentric perspective³. By overcoming six of the nine planetary boundaries that allow human life to operate at safe levels⁴ the right to development is compromised not only for present generations, especially children, but also for future

¹ www.projeturuptura.org

² STOLL, Sabrina Lehen. *Direito fundamental à proteção climática*. Blumenau: Dom Modesto, 2023.

³ DALLA RIVA, Leura. *Structural challenges to the rights of Nature's protection in Latin America: a comparative study between Ecuador and Brazil*. Tese de Doutorado. Doutorado em Direito Comparato e Processi di Integrazione. Università degli studi della Campania Luigi Vanvitelli, Italia, 2024, in press; SARLET, Ingo; FENSTERSEIFER, Tiago. *Direito Constitucional Ecológico, Direito Constitucional Ecológico*. Constituição, direitos fundamentais e proteção da natureza. 5. ed. São Paulo: Thomson Reuters Brazil, 2021.

⁴ ROCKSTRÖM, J. *et al.* Safe and just Earth system boundaries. *Nature* vol. 619, p. 102–111, 2023. Available at: <https://doi.org/10.1038/s41586-023-06083-8>. Accessed: 13 mar. 2024.



generations, according to international documents that have established the concept of "sustainable development" since the 1990s⁵.

2. How are the human rights of children and future generations impacted by development-related decisions (e.g., related to economic development or new technologies) made by the present adult generation? Please provide examples from your country or area of work.

It is necessary to think about the human rights of children and future generations when discussing the impacts of economic development and new technologies. Environmental impacts, climate change and migration from places affected by air, water and soil pollution are decisions that directly affect the health of children and future generations. A recent Brazilian example is the dam collapse in Brumadinho, Minas Gerais. Climate disturbances such as greenhouse gas emissions resulting from economic activities can accelerate climate change, directly impacting the living conditions of future generations. An example of this is the metropolis of São Paulo (SP, Brazil), where poor air quality is disrupting the public health system due to the increase and acceleration of lung diseases. Climate inequality and limited access to public facilities have long-term impacts on the opportunities and well-being of children and future generations. Mechanisms of environmental racism also operate in this regard, perpetuating the socio-economic and cultural exclusion of the young black population, particularly young black women. Finally, economic instability is often associated with disputes over natural resources and territories, which can lead to armed conflicts and social instability. For example, the exploitation of minerals in indigenous territory, deforestation to expand agricultural plantations, which occurs in all Brazilian biomes. However, the use of digital technologies, mobile devices and digital educational platforms can provide access to quality education even in remote areas.

3. How to ensure a meaningful participation of children and future generations in development-related decisions at all levels (e.g., in policy formulation or impact assessment)? Are there any existing good practices or models?

The social participation of different social groups must be sought and encouraged in the political process of confronting climate change, as this enables better quality projects, especially with the participation of the most vulnerable groups⁶. Among these groups, children deserve greater attention. In terms of health and impacts under current and future climate scenarios, the children group tends to be one of the most affected, given their greater fragility (as well as the elderly group)⁷. In this way, children have an important political role as a risk group.

Therefore, the challenge of including them within the public policy process must be addressed. A limiting factor occurs within the institutionalization of the State, since policy making and policy decision making end up being more restricted to public agents, of which children are not included. The process of listening to them also becomes more difficult as participatory processes usually consider the participation and opinion of adults,

⁵ UNITED NATIONS. Declaração do Rio sobre Meio Ambiente e Desenvolvimento. 1992. Available at: https://www5.pucsp.br/ecopolitica/projetos_fluxos/doc_principais_ecopolitica/Declaracao_rio_1992.pdf. Accessed: 14 mar. 2024.

⁶ MILANEZ, B.; FONSECA, I. Justiça climática e eventos climáticos extremos: uma análise da percepção social no Brasil. *Revista Terceiro Incluído*, Goiânia, v. 1, n. 2, p. 82–100, 2011.

⁷ SALDIVA, P. *Vida urbana e saúde: os desafios dos habitantes das metrópoles*. Editora Contexto. São Paulo. 2018.



whether through NGOs or residents' associations, for example. However, the development of listening processes and leadership spaces for young people must be sought and built, having positive impacts when achieved⁸.

Among these actions, we can explain what is proposed by the CoCriança group. The NGO emerged at the Faculty of Architecture and Urbanism of the University of São Paulo (FAU USP), in 2017, composed of undergraduate students who inquired about the presence and activity of children in public spaces and how the city enhanced or not children's actions, whether in the occupation of space or in its construction as a political activity⁹. The group's intention was to give new meaning to open spaces in Brasilândia, on the outskirts of São Paulo, seeking to place children as a social group¹⁰, therefore, agents to be considered. From this experience, we can see that there is enormous potential for children's political agents to build spaces and policies that are truly meaningful and relevant for the construction of more socially just futures.

4. How to integrate an intersectional approach to the participation of children to ensure that differentiated impacts on children due to various discriminations, exclusions or vulnerabilities are considered? Kindly share any good practices.

Integrating an intersectional approach to the participation of children involves recognizing and addressing the unique and diverse experiences of children based on multiple intersecting identities such as race, ethnicity, gender, disability, socioeconomic status, and more. Here are some good practices to ensure that differentiated impacts on children due to various discriminations, exclusions, or vulnerabilities are considered: A) Diverse Representation: Ensure that decision-making bodies, advisory panels, and forums for children's participation reflect diverse identities and experiences. This includes actively seeking participation from marginalized groups and providing platforms for their voices to be heard. B) Intersectional Analysis: Conduct thorough intersectional analysis to understand how different forms of discrimination and vulnerabilities intersect and impact children's experiences. This involves examining how factors such as race, gender, disability, and socioeconomic status intersect to create unique challenges and opportunities for children. C) Inclusive Programming: Develop inclusive programs and initiatives that address the specific needs and concerns of diverse groups of children. This may involve providing targeted support, resources, and services to children facing multiple forms of discrimination or exclusion. D) Capacity Building: Provide training and capacity-building opportunities for stakeholders involved in children's participation to understand and address intersectional issues effectively. This includes sensitizing facilitators, educators, policymakers, and other relevant actors to the complexities of intersectionality. E) Accessible Platforms: Ensure that platforms for children's participation are accessible to all children, including those with disabilities or from marginalized backgrounds. This may involve providing accommodations such as sign language interpretation, accessible materials, and alternative formats for participation. F) Empowerment and Agency: Empower children to advocate for their rights and participate meaningfully in decision-making processes. This involves fostering a supportive environment where children

⁸ SARMENTO, Manuel Jacinto, FERNANDES, Natália; TOMÁS, Catarina. Políticas Públicas e Participação Infantil. Educação, Sociedade e Cultura, n° 25: 183-206. 2007.

⁹ ALBARDIA, M. Protagonismo infantil na América Latina: metodologias participativas na vida das crianças das classes populares. Dissertação de Mestrado apresentando ao Programa de Pós-Graduação Integração da América Latina da Universidade de São Paulo. São Paulo. 2019.

¹⁰ QVORTRUP, Jens. Nove teses sobre a infância como um fenômeno social. Pro-Posições. Vol. 22, n. 1, p. 199 – 211. 2011.



feel safe to express themselves and where their opinions are valued and acted upon. G) Collaborative Partnerships: Foster partnerships with organizations and agencies working on intersecting issues such as gender equality, racial justice, disability rights, and socioeconomic inclusion. Collaboration allows for a more holistic and coordinated approach to addressing intersectional challenges. H) Data Collection and Monitoring: Collect disaggregated data on children's experiences and outcomes to identify patterns of discrimination and exclusion. Monitoring progress over time helps track improvements and gaps in addressing intersectional issues. I) Policy Integration: Integrate intersectionality into policies, frameworks, and guidelines related to children's rights and participation. This involves mainstreaming intersectional approaches across all levels of governance and decision-making. J) Continuous Learning and Adaptation: Stay open to feedback, learn from experiences, and continuously adapt approaches to better address intersectional challenges in children's participation. This requires a commitment to ongoing reflection, evaluation, and improvement.

5. What measures should be taken to protect and empower child human rights defenders?

Faced with the deficiency of current instruments and mechanisms for protecting human rights defenders and the growing number of death threats against them, we should initially consider involving the state in conjunction with society through the support of social power and structures capable of promoting validation and strengthening protection mechanisms for defenders through a broad campaign to recognize and value them. Public policies must also be articulated that aim to overcome the structural problem that creates the vulnerability of the defender or social movement, based on the recognition that everyone must promote and protect human rights.

Thus, in addition to the promotion of physical, technological, and political structures by the state, active citizenship capable of guaranteeing the protection of human rights must be strengthened through governance structures, technologies, infrastructure, public policies, and transparency of information by the public authorities, which can mitigate the violence practiced against defenders. To this end, the training process must be based on social and environmental policies capable of overcoming the challenges of social inequalities and environmental racism, as well as the formulation of security strategies and plans with specialized procedures by the various state bodies.

6. How to create child-friendly judicial and non-judicial remedial mechanisms to address violations of children's rights in the context of development policies, projects, or programmes?

The active participation of civil society in strategic litigation on a wide variety of issues is recent. The involvement of young people in lawsuits and legal proceedings as plaintiffs or whistleblowers of non-compliance with established rights is even more recent. Over time, young people have gone from being mere objects of protection to being holders of rights. However, it should be noted that, despite the advances in human rights instruments that recognize the specificity of young people, there are still gaps in the procedures specific to this group, including judicial and extrajudicial mechanisms. Regarding the climate field, for example, the procedure CRC/C/88/D/105/2019, filed with the United Nations Committee on the Rights of the Child, can be established as an emblematic case for the participation of children and adolescents in legal and political bodies¹¹.

¹¹ As said by: SETZER, Joana; BYRNES, Rebecca. Global trends in climate change litigation: 2020 snapshot. The London School of Economics and Political Science, 2020. Available in: <https://www.lse.ac.uk/granthaminstitute/publication/global-trends-in-climate-change-litigation-2020->



With regard to the filing of lawsuits involving climate issues, which are closely related to the rights of future generations, the theory of intergenerational equity¹² and the idea of climate justice¹³, according to updated data from the Sabin Center for Climate Change Law at Columbia University, USA, 988 climate litigation cases have already been identified in the USA and a further 564 cases have been analyzed in 40 other countries, including Brazil¹⁴. This data shows a growing number of lawsuits and administrative measures involving issues related to global climate change. However, the procedural instruments available at international level are not suitable for today's demands, which have unique characteristics and undeniable urgency, requiring swift processing and forceful responses, which are therefore incompatible with the procedural instruments available. There is an urgent need to implement a specific regulatory system that recognizes their vulnerability, defining minimum standards, filling in legal gaps that could weaken their protection, and reaffirming the indivisibility of human rights. Regarding extrajudicial issues, it is of the utmost importance to develop recommendations and procedures that guarantee the meaningful participation of these minority groups in decision-making processes at all levels¹⁵. Accessible complaints mechanisms are needed, which are publicized in schools and accessible without the need for third-party intermediation. The creation of an ongoing monitoring¹⁶ system is key to tracking progress in the practical implementation of these commitments and supporting states in promoting inter-state cooperation and other sectors of society, with specific recommendations on protection. Therefore, it must be understood that issues related to "time", "scope" and "obligation" are fundamental to the effectiveness of litigation procedures and decisions, and that it is equally important to strengthen the protection of young people's rights and guarantee their access to services and decision-making spaces, so it is necessary to promote a paradigm shift in the

snapshot: Another observable trend in human rights and climate litigation is a proliferation of cases involving young people who are using the courts to hold governments and states to account for the effects of climate change now and for future generations. An example is the legal complaint filed on 23 September 2019 before the UN Committee on the Rights of the Child by 16 young people, including youth climate activist Greta Thunberg, against the states of Argentina, Brazil, France, Germany and Turkey (Sacchi et al v. Argentina et al) (Setzer; Byrnes, 2020).

¹² As theorized by WEISS, Edith B. *Climate Change, Intergenerational Equity, and International Law*. Vermont Journal of Environmental Law. Vermont: United States, v. 09, p. 615-627, 2008, three are the pillars to the intergenerational equity approach: options, quality, and access. The first, comparable options, means conserving the diversity of the natural resource base so that future generations can use it to satisfy their own values. The second principle, comparable quality, means ensuring the quality of the environment on balance is comparable between generations. The third one, comparable access, means non-discriminatory access among generations to the Earth and its resources.

¹³ In the book organized by LOUBACK, Andréia Coutinho; LIMA, Letícia Maria R. T. (org.). *Quem precisa de justiça climática no Brasil?*. Observatório do Clima e Clima e Gênero, 2022, "we understand that climate justice seeks to recognize the social inequalities experienced due to the climate debt of the countries of the Global North to the countries of the Global South, historical and current emissions, the demands and rights of vulnerable populations and the end of greenhouse gas emissions, so that this does not impede the development of the poorest nations" (translated by the authors).

¹⁴ Sabin Center for Climate Change Law – Columbia Law School. Climate Change Litigation Database. Available in: <https://climatecasechart.com/>. Access in: 25 dec. 2022.

¹⁵ The follow General Comment emphasizes the importance of respecting and facilitating the right of children to express their views freely on all matters affecting them, and for these views to be given due weight according to the age and maturity of the child: UN. Committee on the Rights of the Child. General comment no. 12 (2009), The right of the child to be heard. Available in: <https://digitallibrary.un.org/record/671444?v=pdf>; also verified in this report, that reinforces the right of children to participate in decisions by national and local governments in all matters that affect their lives: Save the Children International. The Right of Children to Participate in Public Decision-Making Processes. 2020. Available in: https://resourcecentre.savethechildren.net/pdf/the_right_of_children_to_participate_in_public_decision-making_processes-save_the_children_0.pdf/.

¹⁶ The Commission stressed the importance of a monitoring system for effective implementation of the Convention, with a multi-faceted approach, integrating different levels of government and civil society, as well as independent monitoring by national human rights institutions, NGOs and others: UN. Committee on the Rights of the Child. General comment no. 5 (2003), General measures of implementation of the Convention on the Rights of the Child. Disponível em: <https://digitallibrary.un.org/record/513415?ln=en&v=pdf>.



authorities¹⁷, encouraging an attitude of openness to learning and active listening to children's voices¹⁸, which recognizes their perspectives and needs.

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¹⁷ The Interamerican Commission on Human Rights stresses the importance of considering children and adolescents as active participants in the promotion, protection, monitoring and enforceability of their rights. CIDH. Hacia la garantía efectiva de los derechos de niñas, niños y adolescentes: Sistemas Nacionales de Protección OEA/Ser.L/V/II.166. Doc. 206/17. 30 noviembre 2017. Parágrafo 342. Disponible en: <https://www.oas.org/es/cidh/informes/pdfs/nna-garantiaderechos.pdf>.

¹⁸ That is a position reinforced by the Fridays for Future leader and most prominent voice in the book: THUNBERG, Greta. *No One Is Too Small to Make a Difference*. Londres: Penguin Books Ltd., 2019, Kindle edition.