British Institute of International and Comparative Law

Editor's Note to the Second Issue of the BIICL Climate Law and Litigation Blog Series

Crisela Bernardino

Becoming Good Ancestors: Courts, Corporations, and Intergenerational Equity

"Our greatest responsibility is to be good ancestors." — Jonas Salk

In an era of unprecedented climate risk, these words echo with a simple yet profound truth, resonating deeply in our time of ecological reckoning. More than an ethical ideal, this principle has increasingly found expression in law, asking us to reimagine our responsibilities—not just to each other, but to generations yet unborn.?This second installment of BIICL's Climate Law and Litigation Blog Series thoughtfully navigates two intertwined paths within climate change law and litigation: the principle of intergenerational equity, and the emerging complexities of corporate accountability as particularly highlighted by the European Union's proposed "Omnibus Package" of amendments to corporate sustainability due diligence and reporting directives.

Intergenerational Equity: Litigation for a Living Future

For decades, advocates have tried to articulate our duty to future generations by safeguarding environmental integrity and resource availability. The?Brundtland Report?of 1987 famously defined **sustainable development** as "meeting the needs of the present without compromising the ability of future generations to meet their own needs," planting the seed of intergenerational responsibility in global policy. The 1992?Rio Declaration echoed this ethic, affirming that the right to development must be fulfilled so as to **equitably** meet the needs of present and?future generations. The 2015 Paris Agreement preamble explicitly lists "intergenerational equity" among the considerations for Parties' climate action.

Yet, as straightforward as this may sound, the notion of future generations as legal rights-holders is conceptually challenging. Critics point out that those who are not yet born cannot speak for themselves or claim rights in a court of law. Philosophers describe a "non-identity problem": actions we take now to protect future people may alter?who?comes into existence, complicating the idea of specific unborn individuals holding rights. One legal approach to navigate this is to treat future generations as a collective class of rights-bearers into which individuals will be born - effectively recognizing a continuum of human rights across time. This approach, exemplified by the Maastricht Principles on the Human Rights of Future Generations (2023), seeks to bridge moral responsibility and legal doctrine by asserting that even if future persons cannot voice claims today, current generations still owe them enforceable duties grounded in justice and universal human rights. In practice, this framework is increasingly reflected in global governance: numerous national constitutions and international instruments already embed intergenerational duties, and contemporary initiatives are enforcing them (for example, the UN General Assembly's 2023 request for an ICJ advisory opinion on climate change explicitly invokes States' obligations to people of present and future generations).

As atmospheric carbon kept rising and time kept ticking, intergenerational equity could no longer stay a noble sentiment on paper; it is becoming a matter of survival, increasingly contested through legal action. Reflecting on insights from expert gatherings at King's College London, **Megan Bowman, Jenny Driscoll, and Franka Pues** trace the evolution of youth-focused litigation, revealing how courts worldwide—from Montana to Germany to Portugal —are increasingly acknowledging the profound injustice of shifting today's climate burdens onto future shoulders. These legal actions highlight that courts are evolving into spaces where young people—who cannot vote or easily influence policy, yet will live longest with the consequences of climate inaction—are turning in unprecedented ways to assert their right to a healthy environment.

Still, the quest for climate justice across generations is far from confined to Europe. In the Global South, the principle of intergenerational equity is emerging as a powerful framework to address a stark imbalance: those who have contributed least to global warming often stand to suffer the most, now and in the future. **Emmaqulate Kemunto Morang'a** eloquently portrays how

this global imperative resonates with unique intensity in Africa. In Nigeria, for example, courts have begun to relax strict rules of standing so that concerned citizens can sue to protect the environment for present and future generations. In Uganda, a group of children and teens filed a lawsuit (*Mbabazi v. Uganda*) arguing that the government's failure to enact robust climate adaptation measures violates the **public trust and constitutional duties** owed to the young and unborn. And in South Africa's celebrated? *#CancelCoal?case*, activists succeeded in stopping the government from proceeding with a new coal-fired power plant, with the High Court holding that such a project would trample the constitutional right to a healthy environment?for present and future generations.

Meanwhile, across the Atlantic, Brazil offers a striking example of how high courts can become architects of intergenerational equity in practice.?**Gabriel Wedy and Rafael Moreira** take us into the chambers of Brazil's Supreme Federal Court, which in recent years has emerged as a bold guardian of the future. In a landmark judgment in 2022 known as the Climate Fund case, Brazil's Supreme Court ruled that the national government has a constitutional duty to actually implement its climate policies - in this instance, by reactivating and funding a long-neglected Climate Fund intended for mitigating climate change. The Court anchored its decision in the Brazilian Constitution's article 225, which guarantees the **right to an ecologically balanced environment for both present and future generations**, and it invoked the **principle of?non-regression**?(no backsliding) in environmental protection. In doing so, it not only ordered the government to fulfill its legal duties, but also affirmed that climate commitments cannot be treated as optional.

And the Climate Fund decision was just the beginning. In subsequent rulings, the Brazilian Supreme Court tackled the protection of the Amazon rainforest and the Pantanal wetlands, two vital biomes under threat from deforestation and fires. The Court scrutinised government failures to prevent environmental devastation and deemed such failures an unconstitutional omission, because they sacrifice long-term environmental health for short-term economic interests. In these cases, the justices effectively narrowed the discretion of the administration, insisting that economic or political expediency cannot justify robbing future generations of their natural heritage. Brazil's highest court, through these decisions, has woven the language of?intergenerational justice?into the very fabric of its jurisprudence - making it clear that in Brazil, the idea of?being *good ancestors* now carries the force of law.

The recognition of intergenerational equity as a legal principle has had far-reaching practical implications in courts: it has overcome justiciability hurdles (*Neubauer et al v. Germany* 2021)), expanded standing to those speaking for the future (*Center for Oil Pollution Watch v. NNPC* (2018)), deepened the reasoning behind finding state duties or rights violations (*#CancelCoal?case* (2024)), and shaped remedial orders that look to the long term (e.g., reactivating Brazil's Climate Fund rather than merely awarding reparations, and establishing a Youth Advisory Board to guide transportation decarbonisation). This marks a significant shift in legal thought - treating the rights of future generations not as an abstract ideal, but as an enforceable standard by which the legitimacy of today's climate policies are judged.

Yet, translating intergenerational principle into practice?remains nuanced. Judges are cautious about how far they can go in imposing concrete obligations and granting remedies for the benefit of future people. In the high-profile youth climate lawsuit? *Juliana v. United States?* (2020), young plaintiffs (and a guardian for future generations) sued the federal government for failing to curb emissions, arguing it violated their constitutional rights to a livable climate. The Ninth Circuit Court reluctantly dismissed the case, not because the threat was unreal, but because the sweeping remedy sought—an order requiring the government to develop and implement a comprehensive plan to phase out fossil fuels—was deemed beyond the court's constitutional authority.

In the Philippines—home to the landmark *Oposa v. Factoran* (1993) that first recognized the minors' "personality to sue on behalf of the succeeding generations" "based on the concept of intergenerational responsibility"— subsequent jurisprudence reflects a cautious application of this principle. Important clarification came from within the Oposa decision itself, via a separate concurring opinion by Justice Florentino Feliciano. When Justice Feliciano warned against overreading the *Oposa* decision, he suggested that the Supreme Court's recognition of intergenerational standing was tied to the existence of a particular legal right or injury, not a blank check to litigate any policy on behalf of future generations. If?every?citizen (present and future) is effectively a co-party, one risks diluting the personal stake required for a case or converting a generalized grievance into a justiciable issue. *Oposa* undeniably broke new ground by formally acknowledging?intergenerational responsibility?in the context of environmental protection the?legal mechanism?by which the Court achieved this was more conservative than the rhetoric suggests.?*Oposa* did not invent a wholly new legal right for the unborn; it enforced an existing constitutional right (*to a balanced and healthful ecology*) in a forward-looking way. The common mythos surrounding?Oposa?- that it gave voice to "generations yet unborn" in a court of law - is true in spirit but should not be misunderstood in law. It did not confer legal standing on unborn generations. The unborn cannot literally walk into court, but?*Oposa* ?shows that judges can, in appropriate circumstances,?allow the present generation to litigate in contemplation of the rights of the future. It is a nuanced precedent: one that certainly?expanded the concept of standing, but did so by?*clarifying the extent of an existing right.* As such,?*Oposa's* legacy is both inspirational and subject to precise clarification—a case where poetic judicial language about future generations must be balanced against the legal reasoning that actually underpins the decision.

Justice Marvic Leonen, in a 2015 environmental case (*Resident Marine Mammals v. Reyes*), questioned whether Oposa's doctrine still serves a unique purpose now that the Supreme Court's 2010 Rules of Procedure for Environmental Cases *explicitly* allow any Filipino citizen to sue on behalf of the environment, including for generations yet unborn?. He warned that continuing to lean too heavily on *Oposa's* broad principle may be unnecessary and even risky, precluding future generations from addressing their unique concerns in their own contexts?. In his keynote during BIICL's Asian Summit on Corporate Climate Litigation, Justice Leonen reiterated that over-reliance on *Oposa's* broad principle might unintentionally restrict the autonomy of future generations by presuming current perspectives and interests align with those yet unborn.

This judicial caution in the Philippines underscores the deeper philosophical, ethical, and legal complexities inherent in intergenerational equity. At its core is the profound uncertainty about future individuals—their identities, values, and needs—which complicates defining precise obligations. Future technology could resolve today's challenges in unforeseen ways; conversely, new vulnerabilities might arise. Another critique questions the very legitimacy of representing future generations in the democratic and legal spheres. *Who exactly speaks for those yet unborn, and can such representation truly be legitimate?* Some voices caution that prioritizing future concerns might dilute our attention to pressing current injustices (or *intra*generational inequity) such as poverty. They argue instead that addressing intragenerational inequalities inherently create conditions beneficial for generations to come. Yet others insist that without explicitly embedding duties toward future generations in law and policy, short-term interests will persistently eclipse long-term needs.

Fundamentally, the "fog of the future" makes moral and legal clarity challenging. The precautionary principle argues for acting now to prevent irreversible harm, even amid uncertainty. Critics, however, point out that our abstract understanding of future needs may provide only a weak foundation for concrete legal duties. The German Federal Constitutional Court in 2021 sidestepped these philosophical dilemmas by invoking the ***future* rights of the present generations**, perhaps offering a pragmatic middle path that honors both present responsibilities and future possibilities. Cases like Colombia's landmark 2018 Amazon Decision go even further. There, the Colombian Supreme Court not only sided with young plaintiffs against rampant deforestation, but also declared **the Amazon rainforest itself a subject of rights**.

The underlying question endures: can we ensure meaningful legal protection for the future generations?within?our present legal system, without upending traditional notions of who can hold rights and rule of law principles? In navigating these enduring debates, we confront not only our duties to the future but also our understanding of ourselves as part of a broader continuum.

Corporate Accountability: Developments and Rollbacks

But governments are not the only actors with obligations to the future. What about corporations, whose decisions can shape the climate as profoundly as any nation's policies? Here, too, the terrain of accountability is shifting. A new tool on the horizon is the European Union's?Corporate Sustainability Due Diligence Directive (CSDDD), particularly Article 22, which seeks to hard-wire long-term sustainability into corporate governance.? Here, corporations are not only encouraged but legally compelled to produce concrete climate transition plans aligned with the Paris Agreement's 1.5°C target.?This innovation could prove pivotal in courtrooms. **Elbert de Jong** reflects on the Dutch court's ruling in the?*Milieudefensie v. Shell? case*, which for the first time recognised a corporation's duty of care to reduce emissions in line with global benchmarks. That case made history by ordering Shell to cut its emissions, yet it struggled with a thorny question: how to set specific targets for a single company, especially for indirect (scope 3) emissions, without clear legislative guidance. Now imagine a world where Article 22 of CSDDD is in force and companies themselves must publish concrete, science-based emissions targets in their transition plans. A plaintiff in a future climate lawsuit could point to a company's own promises - its own officially mandated plan - and ask the court to hold the company to it. The amorphous idea that businesses should do their part for future generations gains teeth: it becomes an enforceable commitment, measured not by abstract ideals but by self-defined metrics and deadlines. In this way, the?CSDDD?heralds a new chapter in corporate accountability.

And yet, progress is seldom linear. Even as the ink dries on ambitious measures like the CSDDD, political currents can shift beneath our feet. **Maja Frontczak**, in her piece on the EU's proposed omnibus reform package, sounds a note of caution about recent moves that could?roll back?sustainability obligations. In early 2025, the European Commission unveiled an "Omnibus Package" of amendments, presented under the banner of simplifying regulations and easing burdens on business. On its face, this Omnibus proposal aims to streamline laws such as the Corporate Sustainability Due Diligence Directive (CSDDD) and Corporate Sustainability Reporting Directive (CSRD). But Frontczak and many observers worry that behind the technocratic language of "simplification" lies an alarming regression. For instance, one proposal would radically narrow the scope of due diligence, absolving companies from looking beyond their most immediate suppliers for human rights or environmental harms. Another would soften the requirement for companies to sever ties with partners engaged in serious abuses, suggesting suspension and dialogue in lieu of decisive action.

What's at stake here? Critics argue that these changes would gut the hard-won principles of the original laws - the very principles meant to ensure companies cannot turn a blind eye to sweatshops or deforestation deep in their supply chains. Frontczak warns that if such amendments pass, they risk turning the Green Deal's bold vision into an?*"empty concept."?* In plain terms, a directive like the CSDDD, once hailed as a breakthrough for?corporate climate accountability, could be hollowed out, leaving future generations with more lofty promises but fewer tools to hold anyone to them. This push-and-pull between advancement and retrenchment in EU law is a sobering reminder that the fight for climate justice can just as easily move backward as forward - and that vigilance and critique are as necessary as new ideas.

Indeed, this tension in climate governance is on full display today. On one side, as **Sabrina Bruno and Mario Manna** note in their blog on the EU's Omnibus Package, concerted corporate lobbying under the guise of "simplification" has driven a political rollback of sustainability commitments - narrowing the CSDDD's due diligence scope and diluting the CSRD's reporting reach. On the other side, **Raphaël Beermann and Chiara Arena**, in their analysis of climate litigation as a social corrective, illustrate how civil society is using the courts to counter such backsliding. Climate lawsuits are increasingly being deployed to redistribute climate-related risks and costs back onto major emitters, effectively forcing companies to internalise harms they once externalised. This wave of litigation not only holds businesses financially accountable for their contributions to the climate crisis, but also exposes how poorly many corporate risk frameworks have accounted for the mounting threat of climate litigation. In essence, while some corporate accountability tools are being blunted in policy arenas, others are being sharpened in courtrooms.

Join the Unfolding Conversation About Climate Justice Across Time

For all the differences in these stories—from youth plaintiffs in Montana and Nairobi, to corporate boards in Europe, to Supreme Court justices in Brasília—they are united by a profound common thread of hope and urgency. Each is an expression of the same truth: the climate crisis has collapsed the distance between present and future, and the demand for justice bridges generations. The principle of intergenerational equity, once a lofty theme for constitutional preambles and U.N. declarations, is now being chiselled into legal doctrines and judicial orders, case by case, country by country.

This blog series is an invitation to explore that transformation in depth. Each of the seven essays that follow offers a unique lens on how our laws and institutions are evolving—sometimes haltingly, sometimes boldly—to honor our responsibilities to those who will inherit the outcomes of today's choices. You will find insightful reflections on?**youth-focused legal strategies** (in Bowman et al.'s? *Accelerating Climate Justice*),?**on-the-ground perspectives**?from regions where the stakes are highest (in Morang'a's chronicle of African climate justice, and Wedy & Moreira's account of Brazil's judicial vanguard), analyses of corporate climate accountability? tools (in de Jong's discussion of the CSDDD's promise and Beermann and Arena's analysis of judicial redistribution of financial risks back onto major polluters), and critical examinations of **policy?backlash and rollback**?(in Frontczak's exposé of the EU Omnibus amendments and Bruno and Manna's detailed exploration of the political maneuvering behind the EU's regulatory retreat).?Taken together, these pieces form a rich mosaic of ideas, case studies, and emerging tools—from climate transition plans to constitutional litigation—all converging on a pressing question: *How can we ensure that the?rights of future generations?are respected and protected in the here and now?*

Author:

Crisela Bernardino is a Research Fellow at the British Institute of International and Comparative Law (BIICL). She co-edits BIICL's Climate Law and Litigation Blog Series alongside Ivano Alogna and Anthony Wenton. The blog series builds upon their ambitious project in collaboration with legal scholars, practitioners, and other experts from all around the world to build an open-access Global Toolbox on Corporate Climate Litigation.

URL: https://www.biicl.org/blog/106/editors-note-to-the-second-issue-of-the-biicl-climate-law-and-litigation-blog-series

© 2026 BIICL | A company limited by guarantee | Registered in England No. 615025 | Registered Charity No. 209425