

Children/youth climate advocates ‘doing’ rights themselves: Post-paternalism for the UN Convention on the Rights of the Child?

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Child/youth climate advocacy reveals the paternalism of much of our approach to the CRC. We are experiencing ‘post-paternalism’, I suggest here, involving grassroots action from children (for the first time, on a global scale), rather than well-meaning adults ‘giving’ children their rights. Future approaches to the CRC must reflect this.

The climate crisis poses an existential challenge to humanity. Children/youth are affected disproportionately by the climate crisis for a number of reasons, including the fact that they may suffer irreparable physical and mental harm in ways that adults will not. It is little wonder that children and youth have expressed their frustration with the failure of adults to adequately curb carbon emissions. As 12 year old Colombian and experienced environmental activist Francisco Manzanares said this year: ‘I believe that this model of an adult-centric society that basically does not take children into account must change. What needs to change is how we recognise and listen to the voice of children’ (CERI, 2022).

He participated in the COP27 Global Stocktake session, (which examines progress on implementing the Paris Agreement) -thanks to Costa Rica gvt negotiators who quoted his work+invited him to the table. This is one of the rare occasions children have directly been included in #COP negotiations.

For the first time, COP will have a [Youth Envoy](#), Omnia El Omrani, a final-year medical student at Ain Shams University in Egypt, who will help to ensure that youth climate advocates can meaningfully participate at COP27. And in another first, children and young people also have their own [pavilion](#), a space where a particular group can run their own events at COP. Greater recognition in general has been given to the importance of young people’s concerns on climate crisis over the past few years. And young activists have long been working to secure environmental change. Young people from indigenous communities, for example, such as US environmental activist [Xiuhtezcatl Martinez](#), have worked hard to draw attention to the climate crisis. They were doing this even before the phenomenal success of Greta Thunberg’s solo vigil before the Swedish parliament, and the movements sparked by her.

In the face of the unprecedented global threat of climate crisis, there has been a wave of child/youth climate action which has been transformative for how many perceive children, including protests, lobbying and strategic litigation. This disruption, I argue, means that the arena of the international law on children’s rights is inevitably challenged and changed. Adults’ approach to the UN Convention on the Rights of the Child (CRC) framework is frequently paternalistic, and this is brought into focus. The response in this post-paternalist era requires efforts, including by rights commentators, to consider how to approach and interpret that instrument anew.

The CRC and paternalism

The CRC is in many ways a ground breaking document for children's rights – the right of children to be heard (and due weight to be accorded to those views) for example, is enshrined in Article 12. Yet that instrument can be used in a very paternalistic way. Paternalism can be defined as restricting the freedoms or responsibilities of subordinates whilst claiming that it is in their best interests to do so (Oxford English Dictionary, 2016). The paternalistic approach to children is perhaps to be seen in the fact that the principle of the best interests of the child – a crucial principle to call attention to children's distinct needs, but also one which can be used to sideline children's wishes – is the most incorporated right in the CRC at national level (Lundy *et al.*, 2017).

The emphasis on the principle is arguably not matched by attention to other rights which would mitigate paternalism. The right of children to be heard in all matters affecting them, and the right to have due weight given to those views, was a transformative right introduced by the CRC. It is being implemented more than ever, particularly due to the impact of the Lundy Model which insists that children have space, voice, audience and influence (Lundy, 2007). This state of the art approach means that children's voices are more frequently heard in policy and other arenas. Yet problems remain in relation to implementing that right, including the fact that adults and organisations remain its gatekeepers: 'ultimately weighing and judging the abilities of children and young people to participate based on their age, maturity or perceived best interests' (Templeton, Cuevas-Parra and Lundy, 2022).

This gatekeeping seems very far from the grassroots action of child/youth climate advocates who have themselves taken the reins across public spaces, the media, and now the courts. Children/youth have come together, in their locales, but also as a collective, all over the world; demanding change from politicians, business leaders, and all adults. Children have frequently been key to movements for change, including in Apartheid South Africa and in child/youth movements for labour rights (Wall 2022; Daly, 2016; Liebel, 2012). Yet the 2018 explosion of child/youth activism brought this to a global scale (Neas *et al.*, 2022). It has also involved children taking litigation at national and international level to an unprecedented degree.

Tisdall and Cuevas-Parra say of child activism generally: it 'is not reliant on adults: child activists take the space and demand the attention, rather than relying on adults to do so' (2021:11). It has demonstrated the power of *children/youth themselves* deciding what is best. Children and youth have always been political, but their global climate action has made this somewhat mainstream.

Post-paternalism for the CRC?

It seems that we are in an era of what I suggest is 'post-paternalism'. Across numerous countries, children/youth climate activists are no longer waiting for adults to uphold their best interests, or relying on adults to facilitate their right to be heard. Thunberg said to world leaders in 2019- 'We will not let you get away with this ... change is coming, whether you like it or not.' In fact some children/youth are angry and frustrated with rights processes – including with the UN committee on the rights of the child, which declined to fully consider a climate petition (*Saachi*) by applicant children (as they had not gone through national courts first). Raina Ivanova, one of the 16 youth who had brought the case said: "I feel extremely left alone by the Committee on the Rights of the Child [the] UN body who is supposed to help uphold our rights." There are other, more complicated disruptions – a distinct lack of engagement with

the CRC is evident in child/youth climate cases (Donger, 2022), likely because of the legal difficulty of arguing for children's rights when some litigants are over 18 years, or turn 18 during proceedings.

The Article 12 CRC right of children to be heard has indeed been groundbreaking, but it has likely prevented in-depth examination of other principles which could be transformative for how societies see and treat children and youth. CRC Article 2 enshrines the fundamental principle of nondiscrimination. It is widely accepted that children should not be discriminated against on the basis of race, gender or other characteristics. However it is much less understood or accepted that children, as opposed to adults, can be discriminated against on the basis of childhood. It is taken as a given that adults and children should be treated differently. So what does equality for children actually look like? Under 18s are on average more vulnerable than adults, and this will justify some differential treatment, but blanket discrimination must be better interrogated in the discipline of children's rights - including by the UN committee on the rights of the child (Daly *et al.*, 2022). One example of discrimination is that children are denied the right to vote, whilst adults and older people apply policies which result in using up the resources which this younger group needed for a healthy and prosperous future. Questions on what equality is for children are not easy to resolve, but there is an enormous deficit whilst they remain largely ignored; and this contributes to the sidelining of children in the climate crisis.

It is possible that we are seeing a move towards more radical thinking about children in this regard. The Supreme Court of New Zealand recently ruled that those age 16 and up should be permitted to vote, relying on the principle of nondiscrimination. Portuguese child/youth applicants to the European Court of human rights (in the *Duarte Augustinho* application) have argued that it is discrimination against youth that the 33 countries implicated in the application have failed to adequately curb carbon emissions. We may be on a journey towards greater equality for children and youth.

[Approaching the CRC differently in the climate crisis](#)

The challenges of temporality in relation to the CRC must also be tackled. How can we as academics frame the under/over 18 divide? How can we provide concrete suggestions as to how to deal with it, so that children's rights are still legally relevant to young adults fighting for climate justice? Again the issues are conceptually and practically challenging, but without unpacking them, we risk rendering the CRC less relevant than it could or should be.

This exciting – albeit challenging – time for the international children's rights law framework requires that we respond to a post-paternalist world. Children's rights authors have long pointed to the need to combat paternalism in children's rights. Hanson and Nieuwenhuys (2013) are proponents of 'living rights, or the lived experiences in which rights take shape'. Vandenhole (2012) notes the top-down approach to international rights law, and argues for prioritising children's local needs and issues as the starting point for rights interpretation. Liebel (2020) encourages decolonising children's rights, and overcoming paternalism through the pursuit of fundamental changes in the power structure of society, and adult-child relationships. These and other approaches to children/youth as equals must be examined by those of us who work closely with the CRC. We must also challenge further under-theorised areas such as what it means for the CRC that it does not include a right for children to vote, and why the principle of non-discrimination is so under-utilised for adult-child discrimination (Daly *et al.*, 2022).

Moreover, we must ensure that as complex as these questions are, children and young people take the lead in answering them. Academics, including the academic author here, have to work harder to bring complex human rights concepts to children/youth in a way that reflects the realities of their lives. We must ask them what we can do to be allies as they create their own meanings and interpretations of their rights (Merry, 2006). In this way we ensure that the international children's rights law framework stays as attuned as possible to children's needs and experiences as we work intergenerationally, and learn from each other, to combat the greatest threat to humanity yet.

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<https://theconversation.com/cop27-how-young-climate-activists-are-changing-international-human-rights-law-193906>

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