

Litigation by young people to hold governments to account for climate damage

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INTRODUCTION

Children are disproportionately impacted by direct and indirect effects of climate change. Failure of governments to implement prevention, mitigation and adaptation strategies to address the physical, behavioural and social damage caused by the climate crisis is a violation of children’s rights to life and optimal survival and development. Legal strategies are increasingly being adopted by young people to hold accountable those responsible for such structural violence and violations of rights. These legal strategies, including litigation in regional, national and international courts, demonstrate the importance of providing agency to young people, whose current and future lives will be profoundly impacted by climate change.

International scientific and policy-generating bodies have for decades informed governments about the climate crisis and what must be done to address it. Systematic dissemination of information about climate change and the disproportionate impact of its consequences on children have proved inadequate to bring about changes in government behaviour to significantly reduce greenhouse gas emissions. How can we hold governments, decision-makers and associated actors accountable for both negligent inaction and actions that perpetuate climate violence against children?

BREAKTHROUGH EVENTS

Recent events have demonstrated the potential for legal actions to hold governments accountable for perpetuating and abetting climate threats to children. In

August 2023, the U.N. Committee on the Rights of the Child explicitly recognised children’s right to a clean, healthy and sustainable environment in General Comment 26 (*Children and the environment with a special focus on climate change*), calling on states to afford children direct access to justice for its enforcement. In the same month, the US district court in the state of Montana ruled that 16 plaintiffs, ranging in age from 5 to 22, have ‘the right to a clean and healthful environment’, as guaranteed in the state constitution. The court further declared that current state legislation preventing agencies from taking climate change into account when conducting environmental reviews of projects emitting greenhouse gases violated this constitutional right of the young plaintiffs. This case remains under appeal.

In June 2024, child and youth plaintiffs won a historic settlement with the Department of Transportation in the US State of Hawai’i, including agreement to decarbonise the transport system. Most recently, in August 2024, a coalition of South Korean citizens, including numerous young people, won a judgement from the Constitutional Court directing the government to bolster its climate policies to honour the rights of future generations.

These breakthroughs contributed to a continuum of climate-related lawsuits that have been increasing steadily for over two decades. More than 2300 had been filed worldwide by 31 May 2023.¹ While roughly two-thirds of these cases have been filed in the USA, new climate litigation has recently been filed in over 60 other jurisdictions.²

Among the advantages of litigation is that judicial courtrooms and tribunals have the gravitas to make binding findings of fact, set precedents in their interpretation of the law and compel compliance with the orders they deliver. By international standards, governments are the duty-bearers under rights-based provisions and are responsible for regulating the private

sector and its resulting emissions. Because court cases allow for both sides to present their strongest arguments, the impartial nature of proceedings is more likely to be ensured than through comparable procedures in the political branches of government. Filing a lawsuit, regardless of the case’s outcome, can also beneficially allow injured parties to have their complaints heard in public. Campaigning and use of social media alongside court action have increased awareness of and support for both the cases themselves and climate action more broadly.

THE POWER OF YOUNG PLAINTIFFS

Despite being disproportionately affected by the climate crisis, young people have limited access to remedial political processes. Litigation presents a meaningful opportunity for them to challenge governmental destabilisation of the climate system on which their current and future lives depend.^{3 4} In her recent overview of children’s participation in the protection of their well-being, Kata Dozsa observes that ‘litigation has evolved recently as a major vehicle for children as active climate citizens to hold governments or other duty-bearers to account for not complying with climate responsibilities’.⁵

There are several reasons for considering young people as powerful voices to file cases against governmental actors that facilitate harmful climate impacts.

- ▶ Young people typically have relatively strong legal cases to bring into court given the disproportionate harms accruing to them from climate change.
- ▶ The symbolism of young people suing the government sworn to protect them out of concern for their future is narratively powerful.
- ▶ Many young people around the world are authentically motivated by climate change as an issue deeply affecting their generation, resulting in activism ranging from organising local rallies to presenting to heads of state in international fora.

There are, however, legal obstacles complicating young people’s litigious actions, particularly in establishing legal standing, the absence or inadequacy of climate legislation and the time litigation requires.

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THE CURRENT STATE OF YOUNG PEOPLE'S ENGAGEMENT IN CLIMATE LITIGATION

As the involvement of young people in climate litigation has spread globally, litigation is increasingly incorporating international principles into requests for relief. And there are increasing attempts to hold countries responsible for not fulfilling their international legal obligations.

Young people are also engaging international bodies such as the European Court of Human Rights, Inter-American Court on Human Rights, U.N. Committee on the Rights of the Child and U.N. Human Rights Committee. They have driven forward a request to the International Court of Justice for an advisory opinion on obligations of national governments with respect to climate change. This shift towards non-contentious appeals to the world's highest legal authorities to clarify countries' legal obligations indicates a new phase in global climate advocacy. The responses of high-level courts and tribunals could substantially support future climate litigation.

CONCLUSION AND WAYS FORWARD

Formal litigation is an effective strategy to hold governments responsible for climate-related structural violence against children and youth as evidenced by prominent successes in South Korea and the U.S. states of Hawai'i and Montana in the past 2 years. In recent decades, children and youth, with support from adults, have encountered both successes and failures as this legal approach has spread worldwide. Ongoing experience will determine how to strengthen this strategy and how it can be complemented by other forms of action.

Owing to the differing receptivity to climate cases in various jurisdictions, a piecemeal approach to climate litigation that targets individual and national jurisdictions will struggle to achieve universal levels of action required to combat the climate crisis. Cases filed in international and regional court systems that cover numerous countries affect multiple jurisdictions at once. International legal approaches to achieve favourable judicial determinations on climate action could have a more scalable and comprehensive impact, even though the resulting advisory opinions and decisions are not enforceable beyond the soft power of the international legal system. At the same time, national-level and state-level and municipal-level climate cases remain important to achieve appropriate climate action locally. A multi-level and multisector approach that incorporates different actors pursuing various strategies could improve the chance of achieving climate action necessary to preserve and protect the rights of young people in the face of structural violence committed by their governments.

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