

THE EARTH BELONGS TO PRESENT AND FUTURE GENERATIONS – CHILDREN CAN BRING LEGAL CLAIMS IF ADULTS WILFULLY DAMAGE THE ENVIRONMENT

Lianhe Zaobao, 28 April 2024

Translation by APCEL



Every year, on 22 April, the world celebrates Earth Day, which was initiated by former US Senator Gaylord Anton Nelson to raise societal awareness of environmental problems, to accelerate conservation efforts, and to ensure that Earth is liveable for future generations. In this issue of “Explain the Law, Examine the Law”, we hear from the United Nations Environment Programme (UNEP) Law Division Director, an environmental lawyer, and an environmental academic to understand the environmental rights that children enjoy, and also discuss the global trends in climate litigation.

Human activities continue to result in carbon emission and damage to the natural ecology. Though children are least responsible for causing the climate crisis, they are the group most severely affected by the triple threat of climate change, biodiversity collapse and environmental pollution.

The United Nation’s Committee of the Rights of the Child General Comment No. 26 (2023) released last August recognised for the first time that children have the right to live in a clean, healthy and sustainable environment. Pictured on 27 February 2024, a child carries their toy tractor on the streets to protest against the European Union’s climate measures.

Last August, the United Nation’s Committee of the Rights of the Child released General Comment No. 26 (2023) to call upon states to take urgent action and protect children from suffering the worsening effects of climate change. This is the first time that the Committee has recognised that children have the right to live in a clean, healthy and sustainable environment,

comprehensively interpreting the obligations of state parties to the Convention on the Rights of the Child.

196 state parties, including Singapore, have ratified the Convention. The latest General Comment No. 26 states that if states parties have not adopted urgent measures to address climate change, children ought to have the means to assert their rights and initiate litigation.

The General comment focuses on children’s rights and could catalyse legal action and promote change



UNEP Law Division Director Patricia Kameri-Mbote: The General Comment provides significant assistance to children who are seeking justice for climate change and environmental pollution.

Kameri-Mbote said in an interview with Lianhe Zaobao that, while the General Comment is not legally binding, it has the power to catalyse legal change, and drive the implementation of multilateral environmental agreements.

Kameri-Mbote also said, “The General Comment urges states and businesses to take decisive action to address climate change and environmental pollution, and clearly outlines their obligations to respect the right of children to a healthy environment.”

In order to limit the global temperature increase to within a 1.5 degrees Celsius increase above pre-industrial levels, the world must reduce 43% of its greenhouse gas emissions by 2030 at the latest, and achieve net zero emissions by 2050.

Associate Professor Jolene Lin, Director of the Asia-Pacific Centre for Environmental Law (APCEL) at the National University of Singapore said, the Paris Agreement, which is a consensus reached by 195 signatory states, clearly states the climate goals.

Lin said, “In order to fulfil the goals, states must decarbonise as soon as possible and transition to low-carbon economies. The so-called “failure to take urgent action” refers to the government’s failures to invest into renewable energy sources by governments, to phase out coal, and to formulate the right policies to garner investments that will address the future climate crisis and achieve the collective goals.”

75% fear the future Children and youth’s voices should be taken seriously

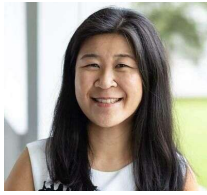
Lin said, “The General Comment clarified that if governments do not strengthen their climate commitments and take the necessary measures, individuals including children can exercise legal recourse, for example by bringing businesses or governments to court.”

“Climate litigation offers people an opportunity and platform to use legal means to make governments and businesses adopt the appropriate measures to address climate change.”

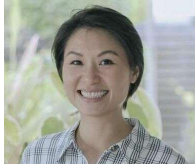
Dr Michelle Lee, Lecturer in Political Science at NUS, said, “Climate policies have historically been formulated by adults with little or even no consultation of children; hence many climate politics are unable to represent the interests of children or meet their needs. This issue is increasingly receiving more attention.”

“Climate change has the greatest impacts on children; it does not only result in long-term environmental impacts, but also triggers widespread climate anxiety and affects their daily lives. A global survey indicates that 75% of children and youth respondents think that the future is a

fearful one. 45% of respondents admitted climate change has negatively affected their daily lives and functioning.”



Associate Professor Jolene Lin, Director of the Asia-Pacific Centre for Environmental Law (APCEL) at the National University of Singapore (NUS): “Climate litigation offers people an opportunity and platform to use legal means to make governments and businesses adopt the appropriate measures to address climate change.” (Image from interviewee)



Dr Michelle Lee, Lecturer in Political Science at NUS: “People should not view climate litigation as being enemies against the government, as that is dangerous.” (Image from interviewee)



Priscilla Soh, a Partner in Singapore law firm Rajah & Tann Asia’s Sustainability and China-Related Investment Dispute Resolution Practice Areas: “General Comment No. 26 emphasises that present generations have caused environmental impact to future generations, and hopes that legal entities and businesses can take this strong signal into account when making decisions.”

Climate litigation should emphasise the impacts of the environment on future generations

Priscilla Soh, a Partner in Singapore law firm Rajah & Tann Asia’s Sustainability Practice Area, said: “Environmental impacts may only surface a few years or a few decades later. As the future generation, children have to bear the harm caused by the present generation. General Comment No. 26 acknowledges that the rights of children are contingent upon whether there is a clean, healthy and sustainable environment.”

Soh is also a Partner in the firm’s China-Related Investment Dispute Resolution Practice Area. She said, the Committee for the Rights of Children explained that when children encounter environmental problems, they should be able to exercise their rights, and outlined that states should provide access to justice pathways for children, including by implementing child-friendly complaint mechanisms.

The General Comment pronounces that states should remove any barriers for children to initiate proceedings themselves, adjust the rules of standing and empower national human rights institutions with mandates to receive complaints from children. In addition, as litigation is a lengthy process, children should have access to free legal and other appropriate assistance, such as effective legal representation. Children should also have the opportunity to be heard in any judicial or administrative proceedings affecting them.

Nine youths sue the German government to prompt amendments to the Federal Climate Protection Act

Kameri-Mbote said, “While the General Comment may not directly impact climate litigation, it provides significant assistance to children who are seeking justice for climate change, environmental pollution and related issues.”

Soh is, however, of the view that it is difficult to determine whether General Comment No. 26 will promote further climate litigation. What is certain is that it emphasises the environmental impacts that the present generation has caused for the future generation. She hopes that legal entities and businesses can take this strong signal into account when making decisions.

According to Lin, in general, the core argument in climate litigation could be that governments or businesses have not met their prior promises to implement measures to address climate change. Another core argument in climate litigation is that the government or business has already fulfilled their promise, but they can and should make a greater contribution to mitigating climate change.

One of the landmark climate lawsuits is the lawsuit brought by nine youths in 2020 against the German government. The youths claimed that the emissions reductions targets set by the German government were insufficient to keep global warming to within 1.5 degrees Celsius.

On 24 March the following year, the German Federal Constitutional Court issued its ruling that the Federal Climate Protection Act lacked provisions on how to update the emissions reductions targets after 2030 and part of the legislation was contrary to the basic rights stipulated in the constitution. Therefore, the Court ordered the judicial authorities to introduce such provisions.

The Court opined that the present generation cannot be allowed to spend a disproportionate amount of the carbon budget, when it is bearing relatively less responsibility for reducing emissions. Otherwise, future generations would have to bear the huge burden of reducing emissions and lose a great amount of freedom in their lives.

The German Federal Climate Protection Act came into effect on 31 August 2021, setting out the targets to reduce greenhouse gas emissions by 65% and 88% in 2030 and 2040 respectively, against the baseline of 1990 emissions levels. It also sets out targets to achieve greenhouse gas neutrality by 2045, and negative greenhouse gas emissions by 2050.

Climate cases are increasing around the world, but there is no public interest litigation system locally

According to UNEP's "Global Climate Litigation Report: 2023 Status Review", from 2017 to 2022, the number of climate lawsuits worldwide increased by 1,296 cases. As of 31 December 2022, there were 2,180 climate cases worldwide. Among these cases, 1,522 were filed in the United States. Asia's climate cases formed 6.8% of the total number, with Indonesia having the greatest number of cases – 12 cases.

Based on the data, compared to Western countries, the trend of climate litigation does not appear to be forming in Asia. However, Kameeri-Mbote is of the opinion that while it is difficult to determine commencing climate litigation is more difficult in a particular region, the data shows that climate litigation is gaining momentum. The number of jurisdictions in which climate litigation has occurred has increased from 24 in 2017 to 65 in 2022.

Greenwashing lawsuits can be considered climate litigation

To date, there has been no climate lawsuit locally. Lin said, if one commences a climate lawsuit against the government with the core argument that it did not fulfil its climate promises or it can do more, the chances of succeeding are unlikely. This is because the Singapore government often fulfils its promises and even goes beyond to make greater contributions than its promise. As for whether the government can do more, during the Industrial Revolution, Singapore did not

exist as a state and it would be relatively difficult to measure its contributions to climate change in a scientific way.

However, she pointed out that greenwashing-related cases could be classified as climate lawsuits, and the developments in this area deserve our attention. “Greenwashing” refers to a corporate proclaiming that it has made contributions towards environmental protection, or achieved green labelling for its products, but in reality, this is not the case, and the business has intentionally deceived or misled the public.

Lin said, overall, the challenges of commencing climate lawsuits include preparing a comprehensive argument which may take many years, and the high costs of litigation.

She pointed out that in other states where climate litigation has occurred, the lawsuits were commenced via a public interest litigation system, which reduces litigation costs. The aim is to make it affordable for the public. However, the local courts do not have such a system in place.

Climate litigation should not be viewed as hostile

Lee believes that people should not regard climate litigation as being enemies against the government, as that is dangerous. Climate change is an important tool for enhancing environmental governance, and is also a tool that the government can use to promote its interests, for example, to catalyse the formulation and development of climate solutions through climate litigation.

Lin points out that all lawsuits, including those involving child abuse, the death penalty, homosexuality, bisexuality and transgender persons, have political overtones, because the essence is to investigate why society has befallen into the present situation.

Lin says, “A number of people think that climate litigation is about fighting against the government, but they need not adopt this standpoint. I believe that in Singapore, climate litigation can help the government achieve its climate targets. For example, Singapore is intensively developing carbon credits and the carbon market, but whether the carbon market will operate effectively depends on the transparency of the entire system. Climate litigation may eliminate any fraud in the market and punish the offenders, which helps to establish a stronger carbon market”.

Kameri-Mbote believes that climate litigation is one pathway to correct the shortcomings of governments and businesses in responding to climate. In some areas, there have been large-scale social movements which increase people’s awareness of climate change; some have contributed to improving climate governance and realising better outcomes.