

SDG 13

Climate Justice - How climate change battles are increasingly being fought, and won, in court

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It is difficult to overstate the threat that climate change poses to sustainable development, equality and the enjoyment of human rights. Rising global temperatures have already contributed to the degradation of natural resources that millions of people rely on for their food security, livelihood and well-being. They have driven increasingly severe droughts, floods, wildfires and super-storms. Climate change increased the intensity of Typhoon Haiyan, the strongest typhoon in recorded history, which resulted in the deaths of approximately 7,000 people in the Philippines and the damage or destruction of more than 1 million homes. Climate change is also expected to amplify other threats, including an increase in the risk of vector-borne diseases and profound levels of stress upon critical physical infrastructure.

In 2015, governments committed to SDG 13: “Take urgent action to combat climate change and its impacts” as part of the 2030 Agenda for Sustainable Development and the Paris Agreement on climate change. In the two years since those agreements were adopted, the world has experienced the highest temperatures of any year ever recorded (in 2016)¹ and extreme weather has continued to wreak havoc across the globe, including the devastating impact of Hurricanes Irma and Maria in the Caribbean and lethal flooding across the Indian subcontinent.²

Despite these warning signs, governments are lagging dangerously behind the pace of action needed to keep temperatures below the threshold agreed in the Paris Agreement – that is, to hold the increase in global average temperature to well below 2°C and to pursue efforts to limit the temperature increase to 1.5°C above pre-industrial levels. The pledges governments have currently made to reduce greenhouse gas emissions set us on a path to a 3.2°C rise in average temperature,³ which would mark a catastrophic new reality in which the poorest and most marginalized countries, communities and individuals suffer the worst impacts. Further, neither the 2030 Agenda nor the Paris Agreement create effective mechanisms to hold governments accountable when they breach these commitments.

A new approach to accountability

The enormous gap between the promises made by governments in the context of climate change agreements and their actions to date has spurred a new approach to accountability: national-level litigation. Court cases that seek to ensure that governments incorporate climate change into their decision-making processes, for example when approving energy infrastructure, are not new: a recent survey stated that by 2017, nearly 900 climate change cases, broadly defined, had been filed.⁴ However, in the last few years there has been a

1 NASA (2017).

2 King (2017).

3 See: <http://climateactiontracker.org>

4 UNEP (2017).

significant increase in a new generation of climate change cases – those that seek to challenge the systemic climate change policy of governments, whether with respect to mitigating or adapting to climate change.

Among the most successful of these cases is a landmark case against the government of the Netherlands in 2015.⁵ The case, which was brought by a Dutch sustainability NGO (Urgenda Foundation) and 900 individual plaintiffs, led the Hague District Court to order the government to reduce its greenhouse gas emissions by 25 percent compared to 1990 levels by 2020. The judges in the case relied on the scientific findings of the Intergovernmental Panel on Climate Change (IPCC), international political commitments and legal principles, and principles of Dutch civil law to conclude that the Dutch government's climate policy amounted to hazardous negligence. The judgment and the campaign accompanying the case have transformed climate change policy-making in the Netherlands to the point that a new centre-right coalition government has set one of the most ambitious climate change policies in the EU.

Just a few months after the judgment in the Urgenda case was rendered, a Pakistani farmer was successful in his argument before the Lahore High Court that the Pakistani government was not doing enough to address and adapt to the local impacts of climate change, which threatened the country's food, water and energy security.⁶ The court agreed and ordered the government to fully implement its National Climate Change Policy. The court also convened a Climate Change Commission to oversee the government's progress.

Since 2015, climate change cases that challenge the inadequacy of government climate change policies have been filed in countries including Belgium, Switzerland, New Zealand, UK, Norway, India, Colombia, and the USA. These cases are anchored in a range of human rights, constitutional, environmental, civil

and administrative legal principles. In the US, for example, 21 young people are suing the federal government on the basis that the government's policies endanger the climate and infringe upon their rights to life, liberty and property.⁷

Litigation is also increasingly being used as a tool to enforce the responsibility of private sector actors – particularly the fossil fuel industry – for their part in perpetuating the climate crisis. At the instigation of Filipino citizens and international NGOs, the Philippines Human Rights Commission is currently investigating the accountability of 50 fossil fuel companies, including Chevron, ExxonMobil and Rio Tinto, for the human rights impacts of climate change.⁸ A court in Germany is also in the process of hearing a ground-breaking case brought by a Peruvian farmer against the Germany utility company, RWE, for its part in emitting greenhouse gases that have led to glacial melt in the Peruvian Andes that threatens his home and livelihood.⁹ More than a dozen US counties and cities are also suing so-called 'carbon majors' (fossil fuel companies that together are responsible for approximately two-thirds of cumulative global carbon emissions between 1854 and 2010) for the costs associated with adapting to climate change, including rising sea levels and damage from extreme storms.¹⁰

The volume of cases seeking political accountability for commitments to address climate change, and corporate accountability for knowingly contributing to the climate crisis, can be expected to escalate in the coming years. Each year, the impacts of climate change are felt more widely and acutely. At the same time, our ability to attribute specific events and impacts to anthropogenic climate change is also becoming increasingly sophisticated.

5 www.urgenda.nl/en/themas/climate-case/

6 Ashgar Leghari v Federation of Pakistan, 4 September 2015 (WP No. 25501/2015, High Court of Lahore).

7 Juliana et al. v USA et al, US District Court for the District of Oregon Case No. 6:15-cv-01517-TC.

8 www.greenpeace.org/seasia/ph/press/releases/Landmark-human-rights-hearings-against-fossil-fuel-companies-begin-in-the-Philippines/

9 www.theguardian.com/world/2017/nov/14/peruvian-farmer-sues-german-energy-giant-rwe-climate-change

10 Heede (2014).

These developments, together with growing public impatience at the gulf between the words and deeds of political and corporate leaders makes litigation an increasingly effective tool for advancing action on climate change.

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