CORA Cork Open Research Archive
Cartlann Taighde Oscailte Chorcaí

Title	Child/youth climate litigation: tracking children's rights and and children's impact
Authors	Daly, Aoife;Muller, Liesl Heila
Publication date	2025-07-01
Original Citation	Daly, A. and Muller, L. (2025) 'Child/youth climate litigation: tracking children's rights and and children's impact', Washington & Lee Law Review 82(3), pp. 1049-1072. https://scholarlycommons.law.wlu.edu/wlulr/vol82/iss3/7
Type of publication	Article (peer-reviewed)
Link to publisher's version	https://scholarlycommons.law.wlu.edu/wlulr/vol82/iss3/7/
Rights	© 2025, the Authors.
Download date	2026-10-30 18:25:04
Item downloaded from	https://hdl.handle.net/10468/17895

UCC
University College Cork, Ireland
Coláiste na hOllscoile Corcaigh

Washington and Lee Law Review

Volume 82 | Issue 3 Article 7

Summer 2025

Child/Youth Climate Litigation: Tracking Children's Rights and Children's Impact

Aoife Daly
University College Cork, aoife.daly@ucc.ie

Liesl Muller
Centre for Child Law, liesl@lhr.org.za

Follow this and additional works at: https://scholarlycommons.law.wlu.edu/wlulr

Part of the Environmental Law Commons, Human Rights Law Commons, International Law Commons, and the Juvenile Law Commons

Recommended Citation

Aoife Daly and Liesl Muller, *Child/Youth Climate Litigation: Tracking Children's Rights and Children's Impact*, 82 Wash. & Lee L. Rev. 1049 (2025).
Available at: https://scholarlycommons.law.wlu.edu/wlulr/vol82/iss3/7

This Article is brought to you for free and open access by the Washington and Lee Law Review at Washington and Lee University School of Law Scholarly Commons. It has been accepted for inclusion in Washington and Lee Law Review by an authorized editor of Washington and Lee University School of Law Scholarly Commons. For more information, please contact christensena@wlu.edu.

Child/Youth Climate Litigation: Tracking Children's Rights and Children's Impact

Aoife Daly and Liesl Muller*

Abstract

Children and youth have been engaging extensively in climate action around the world. They have been doing this by protesting in the streets, talking with governments, and most recently by taking climate litigation against governments and companies. In this Article, these climate cases are considered from a children's rights perspective. Using the Youth Climate Justice database, fifty cases are analyzed to consider two aspects of climate litigation—the children's rights involved in the case, and the significance of the outcomes of the cases. It is concluded that climate cases are a new form of child participation in society, and that child participation has moved from (1) being something primarily aimed at benefiting children to (2) a phenomenon that can benefit the human rights of all.

Table of Contents

INTRODUCTION 1050

I. CHILDREN'S RIGHTS AND CLIMATE CASES 1052

* This research is part of the Youth Climate Justice project funded by the European Research Council under the European Union's *Horizon 2020 Framework Programme for Research and Innovation* (Grant agreement No. 101088453). The Authors would like to thank Esther Montesinos Calvo Fernández for assistance with graphics, and the participants of the April 2025 *Frontiers of Children's Rights* workshop (of the Centre for Family Law and Children's Rights, University College Cork) for feedback on an earlier draft.

II. EXAMINING CHILD/YOUTH PARTICIPATION IN CLIMATE CASES 1056
A. *UNCRC Rights in Climate Applications or Judgments* 1057
1. Indirect References to UNCRC Rights 1058
2. Direct References to UNCRC Rights 1062
B. *Outcomes* 1063

CONCLUSION 1071

INTRODUCTION

In recent years a surge in climate litigation cases has been evident worldwide. Much of this trend is related to the commitments of governments under the 2015 Paris Agreement (a legally binding international treaty on climate change).[1] Courts have emerged as key actors in climate litigation, shaping the direction of law and governance toward a more comprehensive approach to the climate crisis.[2] Many climate cases involve marginalized communities such as children or youth, Indigenous people, and those in the Global South taking legal action primarily against governments but increasingly against corporations.[3] The representation options available to children and youth are very limited as opposed to older people who can engage in voting or run for elected office. It is unsurprising then that children and youth are such a prominent part of the landscape of climate litigation. It has become an attractive means through which young climate advocates can assert rights claims.[4]

Climate litigation has therefore become a crucial avenue for some children and youth to participate in their peer groups,

1. *See* Paris Agreement, art. 2, Apr. 22, 2016–Apr. 21, 2017, 3156 U.N.T.S. 79 (stating that its objective "aims to strengthen the global response to the threat of climate change").

2. Louis J. Kotzé et al., *Courts, Climate Litigation, and the Evolution of Earth System Law*, 15 GLOB. POL'Y 5, 6 (2024) ("[W]e posit that courts, as key actors in the rapidly growing landscape of climate litigation, are already shaping law and governance trajectories, beyond the narrow confines of domestic law, towards a more comprehensive earth system-oriented paradigm."); *see infra* Part II.

3. *See infra* Part II.

4. *See infra* Part II.

in their communities, and in justice systems. In this Article, these climate cases are considered from a children's rights perspective. We take 'children' to mean those under eighteen years. It is unusual for children to be involved in litigation on an issue of social justice. Their participation in legal proceedings until recently has been almost exclusively in relation to family law, child protection, and criminal proceedings.[5] Their involvement in climate litigation is therefore transformative and requires analysis on several fronts. The extent to which children's rights are cited in these cases is a crucial issue which requires analysis. All the countries of the world (except for the U.S.) have ratified the UN Convention on the Rights of the Child[6] (UNCRC) and therefore agreed to abide by its principles. This instrument should therefore be an important consideration in climate cases which involve children or their interests.

Using the Youth Climate Justice database,[7] fifty climate cases involving children and youth (up to age twenty-five) are analyzed to consider two aspects of climate litigation.[8] First, as children are involved in many of these cases, this Article analyzes the ways in which the courts consider children's rights, and specifically the UNCRC.[9] Setzer and Higham emphasize that in climate cases generally, around half involve a legal success in favor of the environment, and around half do not.[10] This Article considers the levels of success that child and youth-involved climate cases enjoy.[11]

---

5. Ton Liefaard, *Child-Friendly Justice: Protection and Participation of Children in the Justice System*, 88 TEMPLE L. REV. 905, 909 (2016).

6. Convention on the Rights of the Child, *opened for signature* Nov. 20, 1989, 1577 U.N.T.S 3 (showing that the United States has not ratified the convention).

7. *Case Law Database*, U. COLL. CORK, https://perma.cc/7XSS-J7LD (last updated June 24, 2025).

8. *See infra* Part II.A.

9. *See infra* Part II.B.

10. JOANA SETZER & CATHERINE HIGHAM, GLOBAL TRENDS IN CLIMATE CHANGE LITIGATION: 2024 SNAPSHOT 21 (2024) [hereinafter 2024 SNAPSHOT], https://perma.cc/Z4NX-K6HF (PDF) (reporting that "about 57% of decided cases have favorable outcomes").

11. *See infra* Part II.B.

I. CHILDREN'S RIGHTS AND CLIMATE CASES

The climate crisis is undoubtedly a children's rights issue as its consequences affect numerous rights under the UNCRC, including the right of children to health (Article 24),[12] and to access education (Article 28).[13] The United Nations International Children's Emergency Fund (UNICEF) stated in 2015 that "[t]here may be no greater, growing threat facing the world's children—and their children—than climate change."[14] Children are among those most affected by the climate crisis. They generally suffer greater damage from hazards such as pollution, heat, and deprivation, as compared to adults, because of their rapid rate of development toward adulthood.[15] They are economically disadvantaged as compared with adults.[16] They will also generally live longer with the worst effects of the climate crisis compared to those of us who are adults today.[17] For example, those born in 2020 will be up to seven times more likely to experience extreme weather events than those born in the 1960s.[18]

The UNCRC outlines a comprehensive list of rights to which all children are entitled.[19] The most prominent is arguably the principle of the best interests of the child, which outlines that in all matters affecting children, their best

12. Convention on the Rights of the Child, *supra* note 6, art. 24.

13. *Id.* art. 28; Susana Sanz Caballero, *Children's Rights in a Changing Climate: A Perspective from the United Nations Convention on the Rights of the Child*, 13 ETHICS SCI. & ENV'T POL. 1, 3 (2013) (contextualizing the impact of climate change on children's rights that are granted by the Convention on the Rights of the Child).

14. UNITED NATIONS CHILDREN'S FUND, UNLESS WE ACT NOW: THE IMPACT OF CLIMATE CHANGE ON CHILDREN 6 (Nicholas Rees & David Anthony eds., 2015), https://perma.cc/E9GH-4L2V (PDF).

15. Nick Watts et al., *The 2019 Report of* The Lancet Countdown *on Health and Climate Change: Ensuring That the Health of a Child Born Today Is Not Defined by a Changing Climate*, 394 THE LANCET 1836, 1836–37 (discussing the health effects of climate change on children).

16. *Child Poverty*, UNICEF, https://perma.cc/4BEZ-8WEX (last visited June 24, 2025).

17. Wim Thiery et al., *Intergenerational Inequalities in Exposure to Climate Extremes*, 374 SCI. 158, 158–59 (2021) (predicting that future generations will experience more severe weather events).

18. *Id.* at 158.

19. Convention on the Rights of the Child, *supra* note 6.

interests must be a primary consideration.[20] The next most prominent principle is the right of children to be heard.[21] Article 12 outlines that children should be heard in all matters affecting them and their views given due weight in accordance with their age and maturity.[22] Article 12 has been transformative for the involvement of children in various matters affecting them personally and politically.[23] It has had a remarkable impact on law, policy, and language and has been implemented in many countries around the world.[24] It has also increased acceptance that children should be heard in court and other arenas.

Climate litigation has emerged as a key avenue to tackle the actions of governments, and increasingly corporations, in relation to carbon emissions.[25] Setzer and Higham define climate litigation as applications "brought before judicial and quasi-judicial bodies that involve material issues of climate change science, policy, or law."[26] Definitions of climate litigation further suggest it is any litigation pertaining to climate change (directly or indirectly), and involve litigation which is both strategic and routine.[27] In a context where national and international regulatory regimes have proven ineffective to combat the climate crisis,[28] climate litigation can fill a lacuna between promises and action at both the national and international level. Such litigation can be a key tool for

20. *Id.* art. 3.

21. *Id.* art. 12.

22. *Id.*

23. *See* LAURA LUNDY ET AL., UNICEF, U.N. CONVENTION ON THE RIGHTS OF THE CHILD: A STUDY OF LEGAL IMPLEMENTATION IN 12 COUNTRIES 4 (2012), https://perma.cc/W2XU-SWAQ (PDF). The authors found that Article 12 was the second UNCRC right most likely to be incorporated in national law.

24. *Id.* (discussing the impact of Article 12 on domestic legislation).

25. *See infra* Part II.B.

26. SETZER & HIGHAM, 2024 SNAPSHOT, *supra* note 10, at 7.

27. Maria E. Lessa, *Climate Litigation as Strategic Litigation*, 55 ENV'T L. REP. 10056, 10056 (2025).

28. *See* Press Release, Security Council, Climate Change Exacerbates Existing Conflict Risks, Likely to Create New Ones, Assistant Secretary-General Warns Security Council, U.N. Press Release SC/14260 (July 24, 2020) (urging nations to accelerate implementation of the 2015 Paris Agreement).

challenging unjust power relations,[29] and may force governments to review policy priorities in relation to climate change.[30] Litigation is just one tool in the efforts to tackle the climate crisis, and it comes with limitations including insufficient attention to adaptation, as well as difficulties with ascertaining standing and causality.[31]

Setzer and Higham provide a snapshot of global trends in climate change litigation around the world up to summer 2023.[32] In their outline across fifty-five countries, 2,666 climate litigation applications had been made.[33] Approximately 70% of these cases have been filed since 2015, the year the Paris Agreement was adopted.[34] More cases have been filed in the United States than in all other countries around the world; 129 of 233 applications in 2023 were in the US.[35] Climate cases span various areas of the law, including tort law, public trust doctrine, and human rights.[36] Jodoin and Wewerinke-Singh found that by December 2023, of all applications filed, 174 have been rights-based.[37]

There is some existing research which breaks down climate cases to examine certain factors involved, including the countries from which the cases originate, the types of litigators, and the likelihood of success.[38] It is useful to

29. James A. Goldston, *The Value of Strategic Litigation Amidst Rising Illiberal Democracies*, OPEN GLOB. RTS. (Nov. 20, 2018), https://perma.cc/L34Y-7W2T.

30. *Id.* (emphasizing the psychological and incidental impacts of strategic litigation).

31. CÉSAR RODRÍGUEZ-GARAVITO, LITIGATING THE CLIMATE EMERGENCY: HOW HUMAN RIGHTS, COURTS, AND LEGAL MOBILIZATION CAN BOLSTER CLIMATE ACTION 24 (2023) (discussing the difficulties with establishing causality and standing in climate litigation).

32. SETZER & HIGHAM, 2024 SNAPSHOT, *supra* note 10, at 10.

33. *Id.* at 10–11.

34. *Id.* at 10; Paris Agreement, *supra* note 1.

35. SETZER & HIGHAM, 2024 SNAPSHOT, *supra* note 10, at 10.

36. Sébastien Jodoin & Margaretha Wewerinke-Singh, *Legal Mobilization in a Global Context: The Transnational Practices and Diffusion of Rights-Based Climate Litigation*, 59 L. & SOC'Y REV. 17, 29–36 (2025) (discussing various narratives or theories that may be employed in climate litigation cases).

37. *Id.* at 18. These were across forty-seven countries' domestic courts and thirteen international and regional bodies.

38. *See infra* notes 39–44 and accompanying text.

consider this research as a backdrop to the examination in this Article of youth climate cases, the participation rights of children, and the significance of these cases for human rights generally. Researchers at the London School of Economics annually report on climate cases, providing a numerical analysis of the number of cases filed, where and by whom, as well as a qualitative assessment of trends in the types of cases filed.[39] Setzer and Higham note in their 2023 report that climate change litigation is having a significant impact on climate governance—in over half of the 549 cases in which a decision has been reached (whether interim or final), there have been outcomes favorable to climate action.[40]

There has also been some in-depth analysis of youth climate cases in recent years. Parker et al. in 2021 examined thirty-two such cases and identified three types of youth-focused cases, including (1) those focused on insufficient efforts to meet climate commitments; (2) those insufficiently implementing mitigation and adaptation measures; and (3) those relating to specific regulatory approvals that are expected to have significant climate impacts.[41] They also identified a trend whereby applications are deemed inadmissible—the vast majority of decided youth climate cases at that time.[42] Donger outlined in 2022 the types of arguments used in youth climate change cases and raised some points to consider in relation to children's involvement in such litigation.[43] She also considered this litigation from a children's rights perspective.[44] She ascertained that two principles are

39. SETZER & HIGHAM, 2024 SNAPSHOT, *supra* note 10, at 1 (focusing on statistically analyzing cases filed in 2023).

40. JOANA SETZER & CATHERINE HIGHAM, GLOBAL TRENDS IN CLIMATE CHANGE LITIGATION: 2023 SNAPSHOT 4 (2023), https://perma.cc/WNR7-JHF6 (PDF).

41. Larissa Parker et al., *When the Kids Put Climate Change on Trial: Youth-Focused Rights-Based Climate Litigation Around the World*, 13 J. HUM. RTS. & ENV'T 64, 64 (2022).

42. *Id.* ("We also identify a worrisome trend in which youth-focused cases are dismissed due to a lack of justiciability or standing at a procedural stage.").

43. Elizabeth Donger, *Children and Youth in Strategic Climate Litigation: Advancing Rights Through Legal Argument and Legal Mobilization*, 11 TRANSNAT'L ENV'T L. 263, 270–80 (2022).

44. *Id.* at 274.

prominent arguments in youth climate cases: (1) the right of children to have their best interests as a primary consideration, and (2) the right of children to freedom from age-based discrimination.[45]

II. EXAMINING CHILD/YOUTH PARTICIPATION IN CLIMATE CASES

The Youth Climate Justice (YCJ) project at University College Cork, funded by the European Research Council, provides the means to examine climate cases from a children's rights perspective.[46] There are a number of other climate case databases such as those of the Sabin Centre, for example.[47] The YCJ project adds value by breaking down these cases into factors of interest to those concerned with the rights of children and youth.[48] The database sources applications filed in judicial or quasi-judicial bodies at international, regional, and national levels that both explicitly refer to both climate change and human rights in their submissions or decisions, and reference or relate to children, youth, young people, and/or future generations.[49] These cases are then broken down to identify factors such as: (1) whether children's rights are referenced in an application or judgment directly or indirectly; (2) the number and ages of the children and youth involved; (3) the outcome of the case; and (4) how children and youth were involved/participated in proceedings.[50]

These points are ascertained by reading case documents, news stories, and in some cases conversations with those involved. As Donger notes, we have an incomplete picture of children's participation in climate cases without empirical research into the experiences of these children and youth, with

45. *Id.* at 276.

46. *Case Law Database*, *supra* note 7.

47. *Climate Change Litigation Databases*, SABIN CTR. FOR CLIMATE CHANGE L., https://perma.cc/R3CH-C6GF (last visited June 24, 2025). The Center kindly currently permits the YCJ project to use their abstracts in our work.

48. *Case Law Database*, *supra* note 7 (allowing users to search cases using several filters).

49. *Id.*

50. *Id.*

explicit focus on a children's participation rights perspective.[51] Such research is presently being conducted by the YCJ project and will be published in the coming years. The conclusions about these climate cases are drawn with the awareness that such conclusions are based on data primarily gathered via desk research.

There are of course numerous factors which are of interest in these cases such as the climate science used in applications. For the purposes of this article, however, two factors will be examined—the ways in which children were involved, and the significance of the outcomes of the cases.

A. *UNCRC Rights in Climate Applications or Judgments*

The data in the YCJ database indicates that over half of youth climate cases do indeed have litigants who are under the age of eighteen, and therefore children.[52] This is significant for children's rights for a number of reasons, including the fact that it has been identified that children's rights as a strategic argument are not prominent in youth climate cases.[53] The fact that most cases have litigants who are technically children renders this even more problematic, as it is possible that other arguments are receiving attention rather than the UNCRC. With all countries in the world (except the US) having ratified the UNCRC,[54] it is crucial that children's rights are prominent in cases in which they are litigants.

The YCJ database identifies instances when particular UNCRC rights are cited in either applications or judgments.[55] In many cases, however, arguments are made (or judgments rendered) which are highly relevant to UNCRC rights, but this is not made explicit in the case or application. These reasons

51. Donger, *supra* note 43, at 281 (discussing how a lack of empirical research into children's participation in climate cases "inhibits the development of best practices . . . whether to involve children at all").

52. *Case Law Database*, *supra* note 7.

53. Aoife Daly, *Intergenerational Rights Are Children's Rights: Upholding the Right to a Healthy Environment Through the UNCRC*, 41 NETH. Q. HUM. RTS. 132, 151 (2023) ("One reason for the lack of prominence of the CRC in such cases is likely that there is increasing reliance on the right to a healthy environment.").

54. Convention on the Rights of the Child, *supra* note 6.

55. *Case Law Database*, *supra* note 7.

include lawyers being unfamiliar with children's rights, the UNCRC not being incorporated into the particular legal system (and therefore not justiciable), and other reasons.[56] The database therefore also identifies when arguments or judgments are made which relate to particular UNCRC rights, although these rights may not be referenced explicitly.[57] This is because one of the purposes of the database is to assist those researching children's rights and climate cases, and another purpose is to highlight the links between children's rights and climate cases.

1. Indirect References to UNCRC Rights

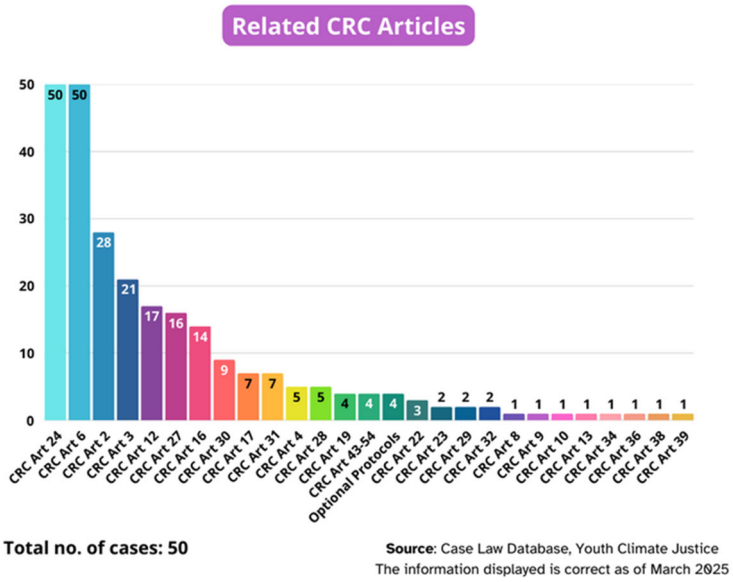

FIGURE 1: UNCRC RIGHTS RELATED TO APPLICATIONS OR JUDGMENTS

Figure 1 outlines those arguments or judgments that are made which relate to particular UNCRC rights, although these

56. Daly, *supra* note 53, at 147.
57. *Case Law Database*, *supra* note 7.

rights may not be referenced explicitly.[58] The UNCRC right noted in the YCJ database as most relevant to youth climate cases is Article 24, the right of children to a healthy environment.[59] It is relevant to arguments or judgments in all cases. This is relatively predictable, considering all climate cases relate to environmental harm. The next most relevant right is UNCRC Article 6, the right to life, survival, and development.[60] The climate crisis is inherently a threat to the right to life, survival, and development of all humans, and therefore each application was found to have relevance to this right in some way.[61]

The principle of nondiscrimination/equality for children, which is included in UNCRC Article 2, has been a prominent theme in youth climate cases.[62] It was deemed relevant in the YCJ database in twenty-eight of these cases.[63] Climate policies tend to favor older persons, in that children and youth will in the future have less options and will have to lower carbon emissions much more dramatically than those who are adults today.[64] It makes sense, therefore, that many cases center on arguments relating to discrimination against children and youth. As noted above, this is a stunning turn of events considering an almost total lack of attention to the nondiscrimination argument for children and youth in other arenas.[65] Arguments relating to the principle of the best interests of the child are relevant in twenty-one climate cases.[66]

---

58. *See supra* Figure 1.

59. Convention on the Rights of the Child, *supra* note 6, art. 24.

60. *Id.* art. 6.

61. *See supra* Figure 1.

62. Convention on the Rights of the Child, *supra* note 6, art. 2; *see supra* Figure 1.

63. *See supra* Figure 1.

64. Zeke Hausfather, *Analysis: Why Children Must Emit Eight Times Less CO2 Than Their Grandparents*, CARBONBRIEF (Apr. 10, 2019), https://perma.cc/N48P-M5UT.

65. Aoife Daly, *Nondiscrimination/Equality and Children's Rights in the Climate Crisis*, *in* TREATED LIKE A CHILD—AGE DISCRIMINATION AND CHILDREN'S RIGHTS (Aoife Daly, Pernilla Leviner & Rebecca Thorburn Stern eds., Brill 2025).

66. *See supra* Figure 1.

The next most prominent UNCRC article in terms of themes appearing in applications or judgments is Article 12, the right of children to be heard, and it is relevant in the applications or judgments in seventeen cases.[67] It arises in relation to (1) standing on behalf of other children and future generations, or to overcome issues relating to admissibility,[68] (2) as a basis for a remedy which allows children greater participation in climate-related decision-making outside the court,[69] and (3) as a basis for the judicial review of climate-related decisions in which children were not consulted.[70]

The next most relevant right (in sixteen cases) *is* Article 27, in which it is stipulated that states will recognize the right of every child to a standard of living.[71] The climate crisis of course hugely interferes with the right of many children to a good standard of living, as it interferes with education, employment, and many other factors necessary to ensure that children and their parents can live in dignity.[72] UNCRC Article 16, the right that "[n]o child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence," is the next most relevant right, being

67. Convention on the Rights of the Child, *supra* note 6, art. 12; *see supra* Figure 1.

68. In *Waratah Coal v. Youth Verdict*, for example, the court relies on Article 12 to support the finding that the plaintiffs have standing to represent future generations. *Waratah Coal Pty Ltd v Youth Verdict Ltd & Ors [No. 6]* (2022) 21 QLCR 1 (Austl.).

69. For instance, in *Sacchi v. Argentina*, the petitioners cite Article 12 specifically in their request for relief, where they ask the U.N. Committee on the Rights of the Child to recommend that the respondent States "ensure the child's right to be heard and to express his or her views freely, in all international, national and subnational efforts to mitigate or adapt to the climate crisis and in all efforts taken in response to [this] communication." U.N. Docs. No. CRC/C/88/D/104/2019 (Nov. 11, 2021).

70. In *M.E.V. v. Finland*, for example, the U.N. Committee on the Rights of the Child found that Finland violated the rights of Sami Indigenous people to culture and land by granting mineral exploration permits on their territory without an impact assessment or an adequate participation process. The Committee stressed the importance of locating this reasoning in Article 12. U.N. Docs. No. CRC/C/97/D/172/2022 (Jan. 16, 2025).

71. Convention on the Rights of the Child, *supra* note 6, art. 27; *see supra* Figure 1.

72. Caballero, *supra* note 13, at 3–8 (discussing the impact of climate change on children's educational, food, and housing rights).

associated with fourteen cases.[73] This is the equivalent of Article 8 of the European Convention on Human Rights (ECHR), the right to private and family life.[74] This article of the ECHR has been utilized as something of a catch all for arguing that states have positive obligations to take action to protect individuals' rights in various ways.[75] It is perhaps more suited to the principle of evolutive interpretation than other rights, as it can encompass social phenomena such as evolving notions of what constitutes family life. It has proven useful for arguments around environmental rights.[76] Article 31,the right of the child to rest and leisure and to engage in play and recreational activities, was relevant in seven cases.[77] For example, in the *Agostinho v. Portugal*[78] case, the children and youth emphasized how increasing heat waves prevented them from engaging in sports and other activities.[79] Although they did not directly reference UNCRC Article 31 in their application, the claims they made were highly relevant to Article 31.

73. Convention on the Rights of the Child, *supra* note 6, art. 16; *see supra* Figure 1.

74. Convention for the Protection of Human Rights and Fundamental Freedoms, art. 8, *opened for signature* Apr. 11, 1950, C.E.T.S. No. 5.

75. *See* EUROPEAN COURT OF HUMAN RIGHTS, GUIDE ON ARTICLE 8 OF THE EUROPEAN CONVENTION OF HUMAN RIGHTS 21 (2020), https://perma.cc/7CEJ-ZCHM (PDF) (citing other cases and discussing that "private life" as it is used in Article 8 "is a broad concept incapable of exhaustive definition").

76. *See, e.g.*, LCB v. United Kingdom, App. No. 23413/94, ¶ 44 (June 9, 1998), https://perma.cc/J3J5-VMJA (arguing that the "State's failure to measure her father's individual exposure to radiation" constituted a violation of Article 8); Erein Klimaseniorinnen Schweiz v. Switzerland, App. No. 53600/20, ¶¶ 316–18 (Apr. 9, 2024), https://perma.cc/N2HM-2H6D (arguing that Switzerland had a duty to mitigate the harmful effects of climate change under Article 8).

77. Convention on the Rights of the Child, *supra* note 6, art. 31; *see supra* Figure 1.

78. App. No. 39371/20 (Apr. 9, 2024), https://perma.cc/5A7Y-E76A.

79. *Id.* ¶ 26.

2. Direct References to UNCRC Rights

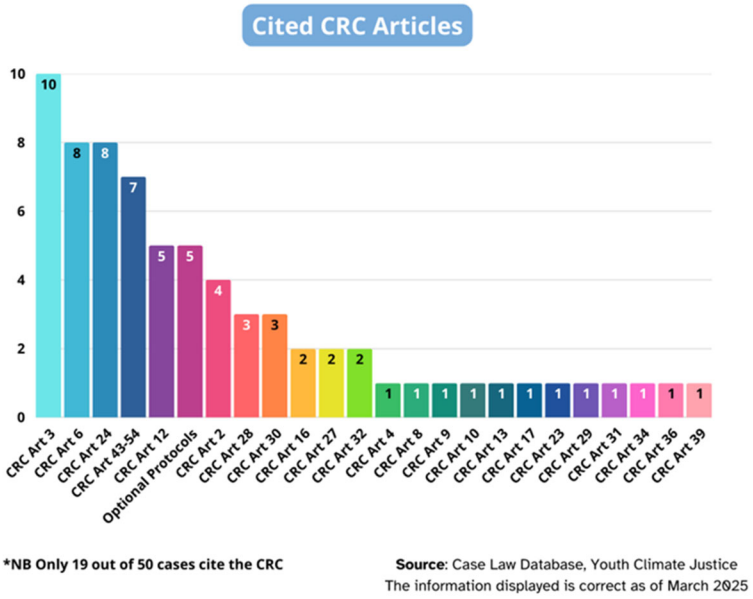

FIGURE 2: UNCRC RIGHTS CITED IN APPLICATIONS OR JUDGMENTS

Of great interest are the instances in climate applications or judgments where the rights of the UNCRC *are* explicitly referenced in some way. The most referenced right of the UNCRC is Article 3, the principle of the best interests of the child.[80] As the most prominent right of the UNCRC, and one of huge relevance to the climate crisis,[81] it makes sense that it would hold a position as the most-cited right. The failure of states to mitigate the climate crisis is arguably the leading threat for the best interests of children around the world, above all other matters. The fact that it is cited in only

80. Convention on the Rights of the Child, *supra* note 6, art. 3; *see supra* Figure 2.

81. *See* Daly, *supra* note 53, at 146 ("The right of children to have their best interests included as a primary consideration in matters affecting them is a crucial right for a group who frequently have decisions about their interests made by adults.").

one-fifth of youth climate cases,[82] however, speaks to the fact that it is underused in a context when, as noted above, all the countries of the world (except for the US) have ratified the UNCRC and therefore agreed to abide by the principle of the best interests of the child. The right to life, survival, and development,[83] as well as the right to healthy environment,[84] are the next most cited rights.[85]

Despite the high level of reliance on argumentation relating to nondiscrimination and equality for children and youth, only four cases make direct reference to UNCRC Article 2.[86] This perhaps highlights the lack of use of Article 2 for this purpose (generally, in all cases concerning children/youth). It also highlights that litigators are using equality provisions in domestic rather than international law in national level cases, to have the best chance of legal success. It also points to the prevalence of those over and under eighteen years of age working together in youth climate cases, which would likely render reliance on a children's rights instrument unattractive.[87]

B. *Outcomes*

One of the main issues affecting children's participation in climate cases is that admissibility is frequently preventing them from accessing courts at all. As noted above, Parker et al. in 2021 pointed to a trend in youth climate cases whereby applications were dismissed at a procedural stage due to a lack of justiciability or standing.[88] YCJ figures indicate that this is indeed still the case as of 2025. Of the thirty-four climate applications in the YCJ database in which the matter of admissibility had been decided, thirteen had been deemed inadmissible, and twenty-one went to or were going to full

82. *See supra* Figure 2.
83. Convention on the Rights of the Child, *supra* note 6, art. 6.
84. *Id.* art. 24.
85. *See supra* Figure 2.
86. *See supra* Figure 2.
87. Daly, *supra* note 53, at 152.
88. *See supra* notes 41–42 and accompanying text.

trial.[89] It is of course the case that numerous applications in general cases do not go to full trial. Yet it is still notable that there is a high rate of inadmissibility decisions, and that child/youth litigants can be left very disappointed.[90]

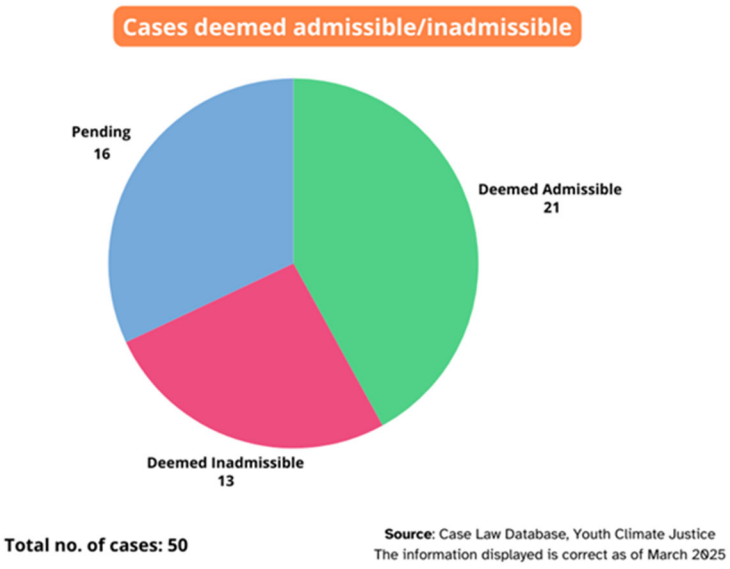

FIGURE 3: CASES DEEMED ADMISSIBLE OR INADMISSIBLE

There have been some significant legal successes in recent years, however. Figure 4 indicates that of the thirty-four cases decided, thirteen had claims granted, seven were partially granted, and fourteen were not granted at all.[91] This means that in twenty of thirty-four cases, claims were granted or partially granted.[92] In terms of numbers, then, the database indicates that in twenty of thirty-four decided cases, outcomes were favorable in terms of what was requested.

89. *See infra* Figure 3. Sixteen climate applications in the YCJ database were still pending at the time of the data analysis.

90. Aoife Daly et al., *Climate Action and the UNCRC: A 'Postpaternalist' World Where Children Claim Their Own Rights*, 4 YOUTH 1387, 1399 (2024).

91. *See infra* Figure 4.

92. *See infra* Figure 4.

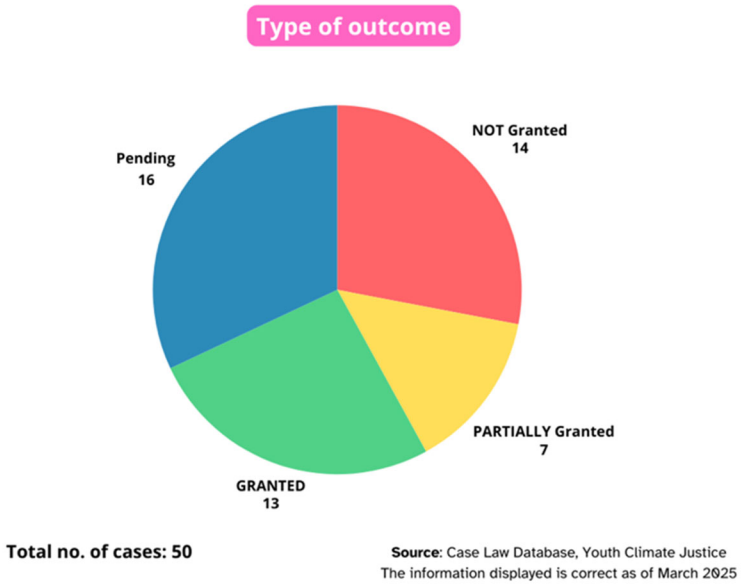

FIGURE 4: WHETHER PETITION RESULTED IN DESIRED OUTCOME

This indicates a higher success rate in climate cases involving children/youth as opposed to climate cases generally, when one considers the figures of Setzer and Higham provided above.[93]

To reflect on the type of change that can be brought about by success in such cases, it is insightful to consider, for example, the application of *Navahine F. v. Hawai'i Department of Transportation*.[94] In this application, the question of whether the outcome was in line with the claim was not answered because the case settled before it went to a full trial.[95] The settlement involved a highly satisfactory outcome from the perspective of climate justice in that Hawai'i agreed to actions to bring transportation sector emissions to zero by

93. *See supra* note 10 and accompanying text.

94. Joint Stipulation and Order Re: Settlement at 1, Navahine v. Dep't of Transp., No. 1CCV-22-0000631 (Haw. Cir. Ct. 2023). A copy of the Joint Stipulation and Order can be accessed in the University College Cork Case Law Database.

95. *Id.*

2045.[96] The settlement agreement includes "a concrete and comprehensive statewide plan" by May 2025 to reduce greenhouse gas emissions, and it provides for specific opportunities for the youth plaintiffs and the public to provide comments and feedback on the plan and on annual updates.[97]

Existing research in 2024 indicated that youth climate cases are on average slightly less successful than cases not involving children and youth.[98] When examining outcomes outlined in the YCJ database, however, it appears that youth climate cases now seem to be slightly more successful on average than general climate cases that do not involve children and youth.

There have been some significant victories in youth climate cases in recent years. A landmark ruling from the US in the case of *Held v. State of Montana*[99] has been described as the "first big win" for the US youth-led climate litigation movement.[100]

96. *Id.* at 4–5.

97. *Id.* at 5.

98. Daniel Ziebarth, *Existing Challenges and Possible Pathways for Case Success in Climate Litigation with Human Rights Claims*, 55 ST. MARY'S L.J. 511, 515 (2024) ("[Y]outh-based claims and claims based upon current wellbeing and future wellbeing are not particularly conducive to case success.").

99. 560 P.3d 1235 (Mont. 2024).

100. *Id.* at 1260 (finding that the plaintiffs had standing "to challenge the injury to their constitutional right to a clean and healthful environment"); Sam Bookman, Held v. Montana*: A Win for Young Climate Advocates and What It Means for Future Litigation*, CAL. RIVER WATCH (Aug. 30, 2023), https://perma.cc/YY3J-S2CN.

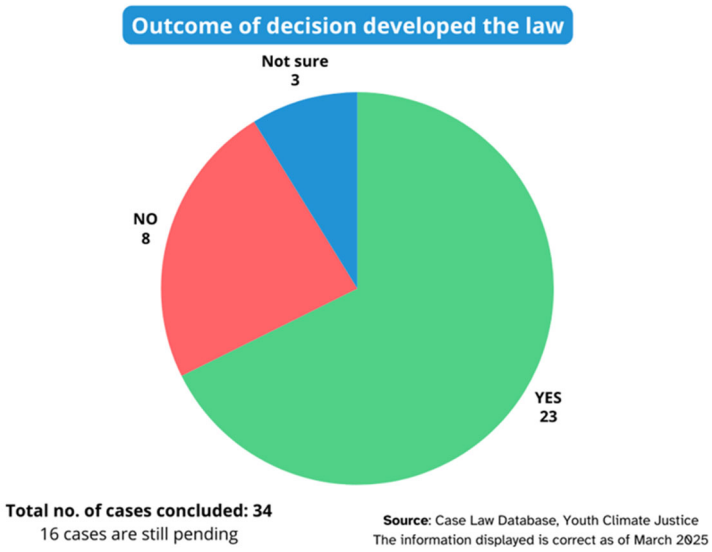

FIGURE 5: WHETHER THE OUTCOME DEVELOPED THE LAW

The failure of many applications to progress the law belies the impact of these applications and cases. There have been some truly exciting outcomes which have had an impact on the law. The significance of many of the youth climate cases, even those which have not proceeded to trial, have been outlined above.[101] *Held* has been a huge win for climate litigation, "as it shows that climate litigation with youth-based claims can reshape foundational principles of long-standing legal institutions."[102]

It is useful to add here that there have also been significant legal successes for many of the other youth climate cases. The *#CancelCoal* case[103] was initiated by various non-governmental organizations (NGOs) in the High Court of South Africa to challenge the government's decision to include new coal-fired power.[104] The applicants used children's rights

101. *See supra* notes 91–100 and accompanying text.

102. Dan Ziebarth, *Situating* Held v. Montana *in the Youth Climate Litigation Movement*, 8 U. VIENNA L. REV. 179, 202 (2024).

103. *Afr. Climate All. v. Minister of Min. Res. & Energy* 2024 ZAGPPHC 1271 (High Ct. S. Afr. Gauteng Div., Pretoria).

104. *Id.* at 2.

arguments to highlight the effects of this decision on the right to a healthy environment.[105] The High Court held that the government had failed to meet its constitutional obligations by (among other things) omitting any assessment of the decision's impact on children's health and well-being.[106] The decision underscores the child's constitutional right to have their interests considered in matters affecting them. Environmental and climate-related decisions are such matters. It also places emphasis on the child's right to be consulted on such matters, and the state's duty to protect the well-being of its citizens generally.[107] This case sets a precedent for future legal challenges and emphasizes the need for transparent and participatory decision-making processes. Another example of success against coal mining was *Waratah Coal v. Youth Verdict*[108] in Australia. In 2022, the development of the coal project in question would violate various human rights including the right to life, the protection of children, and the right to culture of First Nations People.[109] South Africa appears to be leading the way in many respects, as it does when it comes to constitutional social rights generally. In *Minister of Environmental Affairs v. Trustees of Groundwork Trust (#DeadlyAir)*,[110] the court in 2022 upheld the right to a healthy environment, and recognized duties to future generations, as well as the right of children to have their

105. *See* NICHOLAS KING, CLIMATE CHANGE IMPLICATIONS FOR SA'S YOUTH 1 (2021), https://perma.cc/3BUB-WJWW (PDF) ("All of these impacts together will dramatically alter the lives and prospects for today and tomorrow's youth, who will suffer significant harms . . . .").

106. *Afr. Climate All.*, 2024 ZAGPPHC para. 26 ("[I]n the absence of proof of the consideration of the effect of the decision to permit an additional 1500 megawatts of new coal-fired power to the grid on children . . . . There has been no compliance with the first respondent's obligations under the Constitution.").

107. *Id.* para. 24.

108. *Waratah Coal Pty Ltd v Youth Verdict Ltd & Ors [No. 6]* (2022) 21 QLCR 1 (Austl.).

109. *Id.* at 14.

110. *Minister of Env't Affs. v. Trs. of Groundwork Tr.* 2025 (4) SA 98 (SCA) (S. Afr.).

interests considered paramount in every matter concerning the child.[111]

Even though the journey of *Juliana v. United States*[112] is now over, it inspired numerous other climate petitions. For example, it inspired *Navahine* plaintiff Mesina D.[113] Because of the *Juliana* case, "young people everywhere now know they can raise their voices and demand the protection of their constitutional rights to life and liberty."[114] Even earlier than this, in the Philippines case of *Oposa v. Factoran*[115] in 1993, which aimed to stop deforestation, the court held that the rights of future generations are justiciable through current generations, that the right to a balanced and healthful ecology is fundamental, and that the state had an obligation to preserve it.[116] This groundbreaking case has been relied upon by many subsequent cases across different jurisdictions.[117] Another slightly earlier case in 2018 involved the Colombian Supreme Court ruling in favor of young plaintiffs who sued the government, holding it accountable to meet its international climate-related commitments to reduce deforestation in the Amazon region.[118]

There have also been more successes in youth climate cases in Latin America and Asia in the past few years. In the Mexican youth climate application of *Nuestros Derechos al*

111. These rights were confirmed in 2025 when the Minister's appeal was dismissed. Press Release, Ctr. for Env't Rts., Minister's #DeadlyAir Appeal Dismissed (Apr. 15, 2025), https://perma.cc/T97J-PY2A.

112. 947 F.3d 1159 (9th Cir. 2020).

113. Aoife Daly & Liesl Muller, *How Kids Are Using the Courts to Force Action on Climate Crisis*, RTÉ (Apr. 10, 2025), https://perma.cc/8YND-H2EJ.

114. Press Release, Our Child.'s Tr., Supreme Court Denies Cert in *Juliana*; Legacy of Youth-Led Climate Lawsuit Lives On (Mar. 24, 2025), https://perma.cc/9YQD-6ERS (PDF).

115. G.R. No. 101083, 224 S.C.R.A. 792 (July 30, 1993) (Phil.).

116. *Id.* at 7 ("We find no difficulty in ruling that they can, for themselves, for others of their generation and for the succeeding generations, file a class suit.").

117. Ma. Socorro Z. Manguiat & Vicente Paolo B. Yu III, *Maximizing the Value of* Oposa v. Factoran, 15 GEO. INT'L ENV'T L. REV. 487, 494–95 (2003).

118. Corte Suprema de Justicia [C.S.J.] [Supreme Court], Sala. de Casación Civil, abril 5, 2018, M.P: L.A. Tolosa Villabona, Expediente 11001-22-03-000-2018-00319-01 (p. 1) (Colom.).

Futuro y Medio Ambiente Sano et al. v. Mexico[119] in 2022, the court recognized the standing of NGOs to defend the right to a healthy environment and held that the Mexican government had a duty to reduce fossil fuel use, to increase clean energy, and to meet its international commitments to reduce greenhouse gas emissions.[120] In *Woodpecker et. al. v. South Korea*,[121] South Korea's Constitutional Court declared a provision of the country's climate law unconstitutional, marking the first partial victory in climate litigation in Asia, and deciding in favor of more robust climate protection measures in Korea.[122] In another success, in the Opinion of the National Human Rights Commission on the Climate Crisis and Human Rights (South Korea),[123] a complaint was filed by a group which included children.[124] It was held by the Commission in 2023 that the state had obligations to mitigate climate change, and the current response was insufficient to protect human rights.[125]

It must also be noted that *Navahine* in Hawai'i was incredibly groundbreaking in two ways. First, it was the first settled climate justice case in the world (although it was settled only days before it was due to go to trial).[126] And one hopes that more youth climate cases will be settled in this way to avoid the lengthy and contentious processes that have been

119. Nuestros Derechos al Futuro y Medio Ambiente Sano, Juzgado de Distrito [JD], Amparo No. 204/2021 (Mex.).

120. *Nuestros Derechos al Futuro y Medio Ambiente Sano et. al., v. Mexico*, UNIV. COLL. CORK, https://perma.cc/9WKN-9UW8 (last updated Apr. 28, 2025).

121. Hunbeobjaepanso [Const. Ct.], Aug. 29, 2024, 2022Hunma854 (consol.) (S. Kor.).

122. *Woodpecker et. al., v. South Korea*, UNIV. COLL. CORK, https://perma.cc/B8KB-7NQB (last updated May 23, 2025).

123. S. Kor. Nat'l Hum. Rts. Comm'n, Opinion on the Climate Crisis and Human Rights (Jan. 1, 2023).

124. *Id.* at 5; *Opinion of the National Human Rights Commission on the Climate Crisis and Human Rights (South Korea)*, UNIV. COLL. CORK, https://perma.cc/FPX2-PFC9 (last updated Apr. 28, 2025).

125. S. Kor. Nat'l Hum. Rts. Comm'n, *supra* note 123, at 19–25.

126. *See* News Release, Office of the Governor, Historic Agreement Settles Navahine Climate Litigation (June 20, 2024), https://perma.cc/EV2Q-WP29.

seen particularly in the US.[127] But secondly, the settlement order involved a provision that a voluntary youth council must be established to consult with youth on an ongoing basis—a process that will stretch on for decades.[128] This understanding of the importance of consulting children and youth in environmental matters affecting them is a true step forward, and it is hoped that it will serve as a standard for how to proceed after youth climate cases in other jurisdictions. When children and youth serve as leaders in the climate crisis both inside and outside the courts, it is important that their input is valued and supported in all arenas, but particularly in the follow-up to climate cases.

The many youth climate cases which now exist do not have success through legal victories only, but also through extra-legal impacts. Such cases help raise awareness and strengthen the position of climate advocates to confront the fossil fuel sector and complacent governments. There is much power in the image of a child tackling the climate crisis. As Donger notes, "a case with an institutional face may garner less public attention or empathy than one with a human face."[129]

CONCLUSION

The climate crisis is having catastrophic effects on the rights and interests of children. Climate litigation is one important avenue to combat the climate crisis, and children and youth are increasingly a key part of efforts in this arena. The data in the YCJ database indicates that children and youth, many of them under eighteen, are litigants in climate cases. This is significant for children's rights. Children's participation rights have been increasingly mainstreamed through the decades because of the acceptance of Article 12—the right to be heard. That children are now being heard in courts and other fora throughout the world on matters relating to the environment and the climate crisis is significant indeed.

127. *See, e.g.*, Juliana v. United States, 947 F.3d 1159 (9th Cir. 2020), *cert. denied*, 145 S. Ct. 1428 (2025).

128. Exhibit A: Settlement Agreement and Release at 9, Navahine v. Dep't of Transp., No. 1CCV-22-0000631 (Haw. Cir. Ct. 2023).

129. Donger, *supra* note 43, at 285.

It seems that children's participation rights is no longer simply a children's rights issue—it is being used to progress the rights of humankind more broadly.

However, children's rights (and particularly UNCRC rights) as a strategic argument are not always explicit in youth climate cases. As children are the litigants in many of these cases, it should be considered whether children's own rights are receiving sufficient attention in such cases.

Although not all climate cases involve explicit reference to children's rights, all the cases discussed are strongly relevant to children's rights, and to human rights more broadly. It is also clear that most decided youth climate cases now have some element of success for the environment; even those cases without an element of environmental success inevitably have important social consequences in terms of raising awareness of the climate crisis.

Climate change has consequences for how humans live and interact with one another and their environment. It is therefore not just changing our physical landscape, but it is also shaping the legal environment, and particularly our understandings of constitutional and human rights. Children and youth are playing an important role in legal responses to the failure of governments and corporations to mitigate the climate crisis, consequently defending the human rights of everyone in the process.