

Rights Education and Children's Collective Self-Advocacy through Public Interest Litigation

Sonja Grover

Lakehead University, Canada.

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Sonja Grover

sonja.grover@lakeheadu.ca

Lakehead University, Canada.

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I. Introduction: Educating Children on Legal Advocacy in Furthering their Best Interests

This paper seeks to make the case that human rights education for children does not fully support the notion of children's agency if discussion of child participation almost exclusively focuses on various forms of civic engagement, without properly addressing the issue of children advancing their rights through the courts through civil litigation. Sections one and two of the paper present the author's view on the potential of child-led public interest litigation in advancing children's rights and how and why educating children about this topic has a relevance to the CRC right to education and, specifically, the right to participation. In sections three and four a specific landmark child-led climate change case is discussed; the *Juliana et al vs. the United States et al.* case. The *Juliana* case is but one example of an international case which, if presented in child-friendly terms, could provide material for the curriculum of a human rights education program that teaches children about collective child self-advocacy through the courts. It is not the intention of this paper thus to address the ways in which human rights education deals with the entire broad range of CRC child rights nor to discuss the innumerable diverse ways in which child participation rights may be expressed and honored in different contexts.¹

It is recognized in the Convention on the Rights of the Child (CRC) that the right to education includes, among other things, the right to receive an education directed to "The development of respect for human rights and fundamental

freedoms, and for the principles enshrined in the Charter of the United Nations' (Convention on the Rights of the Child (CRC, 1990, Article 29 b). The Convention also stipulates that such an education affirm the child's need to live in peace, tolerance and friendship with all peoples and acknowledge gender equality (CRC, 1990, Article 29 d). There is also an imperative to respect the natural environment (CRC, 1990, Article 29 e). It is here suggested, however, that human rights education for children, in particular in respect to their participation rights, often falls short, even in democratic states. Children are generally not educated about domestic potential civil judicial, quasi-judicial and administrative avenues for remedying specific, systemic violations of their rights. However, pursuing legal action may be a viable option, especially in a democratic state, and such an option may not, in the particular circumstance, pose any foreseeable risk to the child litigants and any adult allies: on the contrary, it is likely to be in children's long-term best interests. This is not to suggest that the courts and other legal avenues in democratic states are particularly responsive to employing, in part at least, a children's human rights frame in considering the social and legislative contexts that negatively impact children. Nor is it to suggest that highly vulnerable groups, including children and others, can access and achieve justice in civil cases through the courts without, in most instances, a struggle. In fact, this author has recently contributed to a work intended to better inform the judiciary and counsel about the value of a children's human rights legal analysis in child-relevant court cases (Grover, 2017). However, if children are to enjoy the benefits of living in a constitutional democracy that provides the rule of law, it is important that they know about the court option in seeking a civil remedy for violation of their human rights, and that they be inspired to use it when appropriate. This is not to argue that justice will inevitably be delivered in every case. It is to suggest rather that the struggle for that justice, through the courts and other legal mechanisms, is vital if children's fundamental human rights are to be respected and honored and the status quo, which often reflects systemic child rights violations, is to be effectively highlighted and challenged. It is also the case that if children are to be authentically educated on human rights by "living" their democracy, it may be necessary for them to exercise their independent legal rights and inherent legal personality through civil litigation.

The author, at the same time, fully acknowledges that children's participation and protection rights can be advanced through child and youth civic action and civil protest, and that there is considerable academic literature about such action (see Lundy, L Orr, K., Emerson, L., Lundy, L., Royal-Dawson, L. and Jiminez, E., 2016; for a discussion on levels of engagement with societal issues and educating the young for the common good, see Westheimer, J, 2015). Consider, for instance, a 2018 example of civil protest, led by the student survivors of a mass gun shooting at their high school in Parkland, Florida that left 14 students and three staff dead. Herculean leadership efforts were made by the young Parkland survivors, who mobilized other child survivors of school shootings and gang violence, as well as large numbers of the general public across the United States. These efforts created an effective lobby for certain gun control measures. The gun control social movement initiated by the Parkland students also gave a prominent voice to children of color significantly affected by gun violence, such as the African-American child population of Chicago.

...rather than reject Parkland students because they are more privileged, we welcome their passion and praise them for their message of unity and inclusion of others, whose lives are arguably more threatened and less secure (Editorial Board Iowa State Dailey April 2, 2018).

The anti-gun violence civil protests included two other actions: a national school walkout for 17 minutes to mark and honor the 17 killed in the Parkland Florida incident (Iowa State Dailey, April 2, 2018); and a march on the Florida legislature to demand legislation which would provide tighter gun controls and include mental health resources for persons who posed a safety risk. As a result, the State of Florida passed its first piece of gun control legislation in 20 years (Wright and the Associated Press, 2018). Not unexpectedly, the National Rifle Association has filed a federal lawsuit in an effort to strike down the legislation “The NRA is arguing that the new [Florida] law violates citizens' rights to bear arms, protected under the second amendment of the US constitution” (Wright and the Associated Press, 2018). This author would argue that there is a need for counsel to represent the children of the Marjory Stoneman Douglas High School, Parkland, Florida mass school shooting, as well as other schoolchildren across the United States, in order to obtain *amicus curiae* status in this case. This is in order that these children can also have legal standing in the case, and have a direct voice in presenting arguments relating to their professed constitutional interest in securing a ban on assault weapons in private hands in the United States, as well as various other essential gun control measures.

In the second half of this paper, a legal case involving U.S. child complainants is discussed. In this case, children are recognized as a class who are advancing their best interests and those of future generations in the U.S. courts. Such case exemplars can be valuable pedagogical tools for young people’s human rights educators. It is contended that human rights education should include educating children on a range of opportunities for self-advocacy, including collective child advocacy through the courts. The case that is discussed is *Juliana et al. v the United States et al.* (September 10, 2015); a *youth-led* class action about children’s right to a healthy environment that is safe from the devastating effects of climate change. This paper, however, discusses the *Juliana* case in order to focus on the possibility of children’s self-advocacy through collective public interest litigation; the focus is not on children’s interest in environmental protection per se. The trial date in the federal court for the *Juliana* case is set for October 29, 2018. There is little doubt that there will be appeals from both sides, so the procedural history may be a long one.

It may seem odd to select a U.S. constitutional case as a case exemplar of children as a class pursuing public interest litigation to advance child rights. It can be added that the U.S., though a signatory to the Convention on the Rights of the Child since 1995, has not yet ratified the treaty. It should be recognized, however, that there is no necessary correlation between ratification of the CRC and substantive progress through the courts in vindicating children’s constitutional rights (Pare, 2017). Furthermore, it should be recalled that certain precedent-setting U.S. Supreme Court decisions have affirmed important selected child human rights as constitutionally protected, such as the right of student free speech in public

schools, if the expression of the right to protest does not materially disrupt the functions of the school (*Tinker v. Des Moines Independent Community School District*, 1969). In the *Tinker* case, in December 1965, young people wore black armbands to school to silently protest the U.S.'s continued involvement in the Vietnam War, and to support a Christmas truce proposed by U.S. Senator Robert F. Kennedy. The children were suspended from school as they refused to remove their armbands and were told they could only return if they no longer wore them. The students returned without the armbands in the New Year, at the end of the pre-planned protest period. The U.S. Supreme Court majority in the case famously held that "It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate." (*Tinker v. Des Moines Independent Community School District*, 1969, Majority opinion, para 506). The majority in *Tinker* further found that:

These petitioners ...neither interrupted school activities nor sought to intrude in the school affairs or the lives of others. They caused discussion outside of the classrooms, but no interference with work and no disorder. In the circumstances, our Constitution does not permit officials of the State to deny their form of expression (*Tinker v. Des Moines Independent Community School District*, 1969, Majority opinion, para 514).

Interestingly, 49 years after the *Tinker* decision, some U.S. school districts planned to suspend students or otherwise penalize them for walking out of school and staying out for a period of 17 minutes as part of a nation-wide peaceful youth protest against gun violence, after the Parkland school shooting. Some other school districts sought to dictate the contours of deemed "acceptable" student protest as something other than a 17 minute walkout: Washoe County School District in Nevada, for instance, barred the walkout and suggested other forms of student civic engagement to protest gun violence, such as "tying ribbons on the school fences or observing moments of silence" (Andone, D., 2018). Clearly, young people's peaceful efforts to advocate in their own best interests are often constrained by adults in authority; this constraint is largely based on the status of the protestors as children.

The *Juliana* case is an important example of public litigation that serves the best interests of children as a class. It also serves the public more broadly, addresses the question of intergenerational justice and speaks to the valuable advocacy efforts of children on central societal issues. While the specific case discussed here is American, there are examples of child-led climate change cases in other countries: e.g. in the Philippines where a 1992 children's case was instrumental in stimulating the passage of legislation protecting remaining rainforests (Gibbons, E.D., 2014, at p. 28, see also Ganguly, 2017). There have been other successful cases brought by child plaintiffs on other environmental issues. One example was a class action concerning lead contamination of water in Flint, Michigan; this contamination had a disproportionately adverse affect on children and other highly vulnerable groups (Higgins, 2018). It is clear that there is global concern about environmental issues affecting children and, internationally, there are instances of children being supported to exercise their agency through collective litigation.²

II. Children’s Article 12 CRC Participation Rights and Access to a Civil Remedy for Systemic Human Rights Violations

It is here suggested that the existence of Article 12 of the CRC (1990) has, in practice, rarely led to sufficient attention being given to children’s right to more active participation in the courts and in quasi-judicial processes, participation that would enable them to seek domestic civil remedies for human rights violations they have suffered.

Despite their innate expertise on matters of right and wrong, we have observed that children’s capacity to understand, participate in and contribute to “legal” issues is often underestimated, and that there is reticence on the part of many adults to allow children to participate in the legal arena. The United Nations Convention on the Rights of the Child (UNCRC), to which Canada is party, guarantees the right of children to be heard in judicial and administrative proceedings that affect them—yet there remains a woeful lack of legislation and policy to ensure that the rights of children to participate are upheld in a meaningful way (King, Wattam and Blackstock, 2016).

One barrier to children asserting their rights through the domestic courts is that rights education for children has not focussed on self-advocacy through the legal mechanisms that can challenge systemic social injustice affecting children. The emphasis has instead been on raising a general awareness of rights:

The perception that rights education is seen as political provides a strong rationale for the minimal uptake of embedding children’s rights education in curricula. Actions of inequality and injustice enacted by states can be questioned and challenged, potentially placing schools in opposition to the state, and hence we witness states excluding children’s rights in curricula regardless of multiple international imperatives ... *those schools that do employ rights education focus on content rather than advocacy* what Tibbitts refers to as a values and awareness approach to HRE, whereas advocacy work follows a transformative approach...(Phillips, 2016, p. 10, emphasis added)

Let us, for a moment, look more closely at the specific wording of CRC Article 12 (CRC, 1990) and why it might be that the text has encouraged such a restrictive view of child participation, insofar as actual child self-advocacy of legal rights is concerned.

CRC Article 12 refers to the child expressing his or her views, those views being weighed by the decision-making body, according to the child’s age and maturity. Generally, Article 12 of the CRC is understood as standing for the proposition that children are entitled, as of right, to have the opportunity in various

arenas, including the legal one, to be heard on matters that might significantly affect them. However, human rights education has rarely engaged with the strongest interpretation of Article 12, the interpretation that also includes the right of the individual child or a child collective to advance his/her (their) legitimate interests as complainant(s)/litigant(s) in seeking a civil remedy through a judicial or quasijudicial process for State infringement of his/her (their) human rights. Yet, as the Children’s Rights International Network (CRIN) notes:

Access to justice is a human right, but it is also what makes other rights a reality. For children’s rights to be more than a promise, there must be a way for those rights to be enforced. *Access to justice for children means that children, or their appropriate advocates where applicable, must be able to use and trust the legal system to protect their human rights*’ (Children’s Rights International Network, 2016, p.5, emphasis added).

However, the focus in interpretations of CRC Article 12 has been on children, outside of any judicial or quasi-judicial mechanism, simply voicing their considered opinions and providing input on a number of political and civic issues that might impact them. In the civil legal context the emphasis has been on children ‘being heard’ as witnesses, giving testimony and perhaps articulating preferences and points of view. Children have not been seen as litigation parties or intervenors with a legal standing. Listening to children’s voices and collaborating with child activists in school and community decision-making and projects to improve social justice and the quality of life of children and other vulnerable populations is, of course, in itself highly valuable (see Cuevas-Parra, P., Stephenson, P., Harris, S. & Tao Joiner, T., 2017; Scottish Children’s Parliament, 2018). However, at the same time, children’s access to and active participation in judicial and quasi-judicial mechanisms to seek civil remedies, especially for continuing violations of their fundamental human rights, is necessary if they are to be fully socially integrated as persons with agency, legal personality and human dignity. In the author’s view, child rights education has not adequately addressed the matter of children’s potential participation in domestic or international judicial or quasi-judicial mechanisms in order to vindicate their human rights. A more robust interpretation of the notion of the child ‘being heard’ in the legal context must include a consideration of the individual child or child collective as litigant in efforts to advance his/her (their) basic human rights.

There is significant work to be done if children are to be given adequate access to judicial and quasi-judicial processes at the national and international levels. At the national level, we can note that there are few countries in the world that give persons under the age of 18 direct access to the courts without a representative acting as a litigation guardian - that is “where there are no age restrictions on children bringing cases on their own behalf, with the courts deciding on matters of representation if deemed to be in the child’s best interests” (Child Rights International Network, November 2015, p.7). Furthermore, in only 14 nation states is there a requirement in law that parents or other litigation guardians act in the best interests of the child in any legal action (Child Rights International Network (CRIN) November 2015, p. 8). Thus the child’s inherent legal personality is, in effect, in many instances, undermined. There is a need, therefore,

for vigorous advocacy efforts to improve children's access to national judicial and other mechanisms that are empowered to provide a civil remedy to children for child human rights violations. It is important that children's rights education takes up the issue of the barriers that stand in the way of children receiving, through judicial or quasi-judicial mechanisms, civil remedies for child rights violations. Child-led activism should also be supported. The Children's Rights International Network has, based on extensive research, set out a number of recommendations that would greatly improve children's access to the courts and other mechanisms that could provide a civil remedy for rights violations, including an assurance that:

children of any age have standing to initiate legal proceedings in their own name without a representative, and have the option to appoint a representative of their choosing if they so wish...various forms of collective action are permitted, without any limitations, which do not require individual child victims to be involved, including opt out class actions and proceedings brought to enforce the rights of a group or class of children... (CRIN, 2016, p.1)

A 2015 UNICEF survey of 26 countries on the implementation of child rights education articulated that children's rights education means:

- 'educating children about their rights (i.e. teaching them about the UN Convention on the Rights of the Child);
 - educating children through their rights (i.e. respecting their rights in the processes of schooling);
 - educating children for rights (i.e. empowering them to take action for rights)'
- (Jerome, Emerson, Lundy and Orr, 2015, p. 74, Appendix 2).

What is clear from the aforementioned CRIN (2015) global report on children's access to justice is that some progress has been made - especially in some relatively conflict-free, stable countries - in educating children about their rights and in respecting their rights, especially in the school setting. However, it is equally clear that there has not been adequate progress, even in relatively peaceful states, in teaching children about the possibility of advancing their rights through available judicial or quasi-judicial mechanisms. Neither is there much evidence of supporting children to do so, especially when it comes to seeking civil accountability for systemic violations of child group rights. In this respect, children's rights education is far from realizing its potential as a vehicle for empowering children to contribute to reshaping their futures.

Education is much more than an entry to the job market. It has the power to shape a sustainable future and better world. Education policies should promote peace, mutual respect and environmental care. (United Nations Secretary-General, Ban Ki-moon, cited in Jerome, L., Emerson, L., Lundy, L. & Orr, K., 2015, p. 10, emphasis added)

The argument here is that a children’s rights education that truly and fully supports children’s efforts to “shape a sustainable future and a better world’ (United Nations Secretary-General, Ban Ki-moon, cited in Jerome, L., Emerson, L., Lundy, L. & Orr, K., 2015, p. 10) requires two things: firstly, education about child rights issues that are ripe for child advocacy through legal action; and, secondly, opportunities for children to participate in what CRIN has termed strategic child rights case litigation, as well as in other strategies involving legal advocacy (CRIN, 2018). CRIN has developed a guide to various forms of legal advocacy for children’s rights that can be adapted to form part of the curriculum, as well as other material for child rights education (CRIN, 2017). In addition, CRIN has highlighted the need for children’s human rights defenders to ‘ensure children know how to assert their rights’ (CRIN, 2016, p.3); this can be partly addressed through the education system and a children’s rights curriculum that is integrated with the regular curriculum.

Let us now turn to an example of strategic child rights litigation. This involves a landmark child-led class action case directed to safeguarding the environment *Juliana et al. vs. the United States et al.* <https://www.ourchildrenstrust.org/us/federal-lawsuit/>. Such a case exemplar, in which children as a class are litigants, can serve as a useful human rights educational tool for a number of reasons: it can raise awareness of the potential for child public interest advocacy through the courts; it can facilitate children’s understanding of legal mechanisms through which civil remedies for systemic child human rights abuses can be sought; it can inspire and empower young people to exercise their legal personalities and assert their legal rights in their own best interests and, potentially, the interests of future generations of young people.

III. Child Rights Education: *Juliana et al. vs. the United States et al.* as a Curriculum Case Exemplar of Collective Child-Led Legal Action

Let us now look at how a child rights case can be used as resource material in a children’s rights education curriculum. We will consider *Juliana et al. vs. the United States et al.* This case has valuable pedagogical potential, for several reasons: (i) it can raise children’s awareness of their own agency; it shows children seizing the opportunity to lead on a key human rights issue, and is thus an example of collective child legal action directed to furthering children’s best interests; (ii) it can raise public awareness of child rights issues (i.e. the disproportionate adverse effect of climate change on children); (iii) it can enhance public appreciation and understanding of the scope of child participation rights, which include children’s right to fully participate in civil legal actions in search of remedies for human rights violations.

The *Juliana et al. vs. the United States et al.* case (2015) concerns (i) the effects of climate change, particularly on children, and (ii) the failure of the U.S. federal government to take adequate measures to protect the environment, and hence its failure to protect the best interests of today’s and tomorrow’s U.S. children. The American government has failed to ensure the children of the future a healthy physical environment and climate in which to survive and thrive. This child-led legal case, which addresses climate change, is of particular interest for many reasons. These include the fact that some of the arguments made were articulated in terms of a child rights perspective. This perspective is especially apposite, since children are particularly vulnerable to the short and long-term adverse impacts of climate

change. Children's health and safety can be threatened and their schooling disrupted. Globally, the impacts of climate change on children are even more severe in poorer countries (e.g. see Ahdoot, S. and Pacheco, S.E., 2015, Children in a Changing Climate (CCC) Coalition (2016) and the UNICEF annual report (2016)).

Juliana et al. vs. the United States et al. is a child-led class action law suit brought by 21 young people (<https://www.ourchildrenstrust.org/meet-the-youthplaintiffs/>). In their first amended complaint, the child plaintiffs argued that the United States has known for many years that global warming due to CO₂ pollution is in large part attributable to the burning of fossil fuels. However, this practice persists, creating alarming levels of such pollution (*Juliana et al. vs. the United States et al.* 2015, para 1). The child plaintiffs contended that ultimately this practice of burning fossil fuels in such amounts as to pollute the atmosphere "would destabilize the climate system on which present and future generations of [the]...nation [the U.S.] depend for their wellbeing and survival... with the damage persisting for millennia" (*Juliana et al. vs. the United States et al.* 2015, para 1). The complaint also made specific reference to projects harmful to the environment because of their large CO₂ emissions, such as the Jordan Cove liquefied natural gas project terminal in Coos Bay, Oregon, approved by the U.S. Department of Energy (*Juliana et al. vs. the United States et al.* 2015, para 1).

The child plaintiffs alleged that certain of their inalienable rights under the U.S. Constitution had been and were continuing to be violated by the U.S. federal government's alleged failure to protect the environment from undue levels of carbon dioxide emissions, through its relatively unbridled support of the fossil fuel industry. Specifically, the children argued that their constitutional right not to be deprived of life, liberty or property without the benefit of due process had been infringed. This argument was based on the damage to their health and to their environment caused by unsafe CO₂ levels. This pollution was a result of the U.S. federal government's policy of allowing the fossil fuel industry to operate so as to significantly endanger the health of the environment. The essential fact was that they, as children, had no significant influence on the government's handling of this matter (*Juliana et al. vs. the United States et al.* 2015, para 278). The children also maintained that their property rights were affected and unconstitutionally infringed, in that climate change was affecting sea levels and this endangered the land on which they currently made their homes (*Juliana et al. vs. the United States et al.* 2015, para 287). They argued for a specific level of CO₂ emissions, one that scientists judge consistent with the maintenance of a safe, habitable environment "Plaintiffs assert that a reduction of global CO₂ concentrations to less than 350 parts per million is possible, but action must be taken immediately to prevent further ocean acidification and ocean warming" (*Juliana et al. vs. the United States et al.* 2016 at p. 2).

Interestingly, the children also argued that the Federal Government had, in exercising sovereign control of the level of CO₂ emissions, assumed responsibility for ensuring that children's constitutional rights to life, liberty and property should not be endangered. However, the government had failed to carry out its duty to protect the welfare of the child plaintiffs and that of future generations through its disregard for the effects of CO₂ emissions on the environment:

In assuming control of our nation’s atmosphere, air space, the federal domain, fossil fuels, and climate system, *Defendants have imposed severe limitations on Plaintiffs’ freedom to act on their own behalf to secure a stable climate system and, therefore, have a special relationship with Plaintiffs, and a concomitant duty of care to ensure their reasonable safety.* By their affirmative acts resulting in dangerous interference with a stable climate system, Defendants have abrogated their duty of care to protect Plaintiffs’ fundamental rights to life, liberty, and property. *In their custodial role, Defendants have failed to protect Plaintiffs’ needs with respect to the climate system in violation of the Fifth Amendment (Juliana et al. vs. the United States et al. 2015, para 286, emphasis added).*

Of course, the child plaintiffs’ contention was correct. There were “severe limitations” on their “freedom to act on their own behalf to secure a stable climate system”, since they had no direct or significant role in decisions about the fossil fuel industry, and whether or not any protective measures regarding the climate and the environment would be implemented by the U.S. federal government (in terms of more stringently regulating the industry and/or transitioning to renewable energy sources) (*Juliana et al. vs. the United States et al. 2015, para 286*). At the same time, the legal case brought against the federal government was *in itself* an action by the children to “act on their own behalf to secure a stable climate system” (*Juliana et al. vs. the United States et al. 2015, para 286*). The children contended that their constitutional right to and interest in life, liberty and property could not be outweighed by the interests of the fossil fuel industry (*Juliana et al. vs. the United States et al. 2015, para 289*).

The child plaintiffs also argued that their right to equal protection of the law, embedded in the due process clause of the Fifth Amendment of the U.S. Constitution, was also violated. The U.S. federal government had failed to protect the environment and hence safeguard the child plaintiffs and future generations from the effects of climate change, a magnitude of change that had not existed in the past to pose a significant threat to previous generations.

The affirmative aggregate acts of Defendants in the areas of fossil fuel production and consumption have caused and are causing irreversible climate change. *As a result, the harm caused by Defendants has denied Plaintiffs the same protection of fundamental rights afforded to prior and present generations of adult citizens. The imposition of this disability on Plaintiffs serves only to disrespect and subordinate them (Juliana et al. vs. the United States et al. 2015, para 292, emphasis added).*

In court, the children also advanced the proposition that, in the context of the case, they should be considered a distinct class of vulnerable persons entitled to special protection under the law. This was because they, as children, had no political power they could exercise by voting to influence government policy towards the fossil fuel industry. They were powerless to ensure for themselves a safe environment and protection from the disastrous effects of climate change:

Plaintiffs are separate suspect classes in need of extraordinary protection from the political process pursuant to the principles of Equal Protection. ...*Defendants have a long history of deliberately discriminating against children and future generations in exerting their sovereign authority over our nation's air space and federal fossil fuel resources for the economic benefit of present generations of adults. Plaintiffs are an insular minority with no voting rights and little, if any, political power or influence over Defendants and their actions concerning fossil fuels (Juliana et al. vs. the United States et al. 2015, First Amended Complaint, para 294, emphasis added).*

The children also argued that the U.S. federal government, by allowing the U.S. fossil fuel industry to pollute the atmosphere to the extent that it does, violates the *public trust* by failing in its duty to protect the natural environment, as it is required to do in the public interest (*Juliana et al. vs. the United States et al. 2015, First Amended Complaint, para 307-310*).

Clearly, the *Juliana et al. vs. the United States et al. (2015)* landmark child-led collective legal action (attempting to secure a safe environment for current and future generations of children) is a case exemplar that can serve as a powerful vehicle for educating children not only about their fundamental human rights (i.e. their right to life, good development, health and safety), but also about their inherent right to access mechanisms for achieving justice in the form of a civil remedy for any significant violation of their particular human rights, as children (an especially vulnerable group), and, more generally, as 'persons' before and under the law.

IV. Conclusion

Collective child-led legal actions such as *Juliana et al. vs. the United States et al. (2015)* are highly relevant case exemplars for child human rights education. Case law material can be part of the curriculum, if it is made 'child-friendly' and adapted for younger and older pupils. Such class action lawsuits by and for children demonstrate young people's engagement with social justice issues and how they exercise their participation rights in the legal arena, often in conjunction with adult allies (as with *Juliana et al. vs. the United States et al., 2015*, where collective legal action was made possible through the American NGO 'Our Children's Trust'). Educating children about such collective legal actions is essential in highlighting systemic violations of children's human rights by government and in illustrating children's agency as rational actors. The children in *Juliana et al. vs. the United States et al. (2015, para 296)* argued that the courts were, *in practice*, the only domestic vehicle through which they could realistically seek redress for the effects of climate change. That is, redress for the harm they contend is being done to their well-being and the wellbeing of future generations if the U.S. federal government continues to allow the fossil fuel industry to pollute the atmosphere and create a CO² level that exceeds the limit scientific experts judge conducive to a sustainable, healthy environment:

Plaintiffs have no avenues of redress other than this Court, as Plaintiffs cannot challenge or alter the acts of Defendants concerning fossil fuels. Plaintiffs will disproportionately experience the irreversible and catastrophic impacts of an atmosphere and oceans containing dangerous levels of CO₂ and a dangerous destabilized national climate system. The adults living in our country today will not experience the full scope of catastrophic harms that will be experienced by Plaintiffs (Juliana et al. vs. the United States et al., 2015, para 296 emphasis added).

The child plaintiffs in the *Juliana et al. vs. the United States et al.*, 2015 case (*Juliana*) have garnered support from many members of the scientific community and the general public who are deeply concerned about the adverse impact of the current rate and nature of climate change. Notwithstanding this, however, the child plaintiffs in *Juliana* rightly emphasized that since they were too young to vote, they relied on the courts for protection as a vulnerable class in the context of climate change (see Grover, 2011 on the politics of voting age):

As Plaintiffs include citizens presently below the voting age and future generations, this Court should determine they must be treated as protected classes, and federal laws and actions that disproportionately discriminate against and endanger them must be invalidated (Juliana et al. vs. the United States et al. 2015, para 297, emphasis added).

Climate change and permissible levels of air pollution by the fossil fuel industry have been formulated and advanced by government as issues of social policy, political choice and government regulation rather than as basic human rights issues. This view has become so ingrained that there is some acceptance of the fact that the economic interests of certain industries have overridden the broader, longterm public interest, rooted in core democratic values. It is only now, at this late stage, that more collective legal actions are being taken to vigorously challenge government actions that significantly harm the environment and compromise human rights. The *Juliana et al. vs. the United States et al.* 2015 case is one example of a child-led effort to do something about this. In this connection, it is interesting to note that in *Juliana et al. vs. the United States et al.*, part of the argument of the defendants was that the child plaintiffs had purportedly raised “non-justiciable political questions, and they fail[ed] to state a constitutional claim” (*Juliana et al. vs. the United States et al.* 2016 , p. 4). The District Court judge, however, disagreed that the children had raised ‘nonjusticiable’ political questions:

The debate about climate change and its impact has been before various political bodies for some time now. Plaintiffs give this debate justiciability by asserting harms that befall or will befall them personally and to a greater extent than older segments of society (Juliana et al. vs. the United States et al. 2016, p. 8, emphasis added).

The court need not dictate any regulations, only direct the EPA [Environmental Protection Agency] to adopt standards that prevent the alleged constitutional harm to the youth and future generation plaintiffs, should plaintiffs prevail in demonstrating such is possible (*Juliana et al. vs. the United States et al.* 2016, p. 14)

The child plaintiffs in *Juliana et al. vs. the United States et al.* (2015) have thus successfully advanced climate change as a human rights issue, rather than one that can be reduced to social policy and discretionary government choice. Their action was ruled to be one that can be decided in the courts. The case will now proceed to be heard in detail on its merits in a federal court. Furthermore, the child plaintiffs have successfully articulated the issue of the inordinately high levels of CO₂ emission and its devastating effects on the natural environment as a children's rights issue. The lower U.S. federal courts accepted the proposition that the child plaintiffs and future generations are and will be the people most affected by global warming.

The child plaintiff group in *Juliana et al. vs. the United States et al.* (2015) was ethnically diverse; it included indigenous children and children of other ancestries. All of the named child plaintiffs had been personally impacted by climate change in significant ways and these details were presented to the court in the amended complaint. The court was also informed that many of the child plaintiffs had a longstanding interest in climate issues and a record of environmental activism prior to their involvement in the Juliana case (*Juliana et al vs. the United States* , First Amended Complaint, U.S. District Court of Oregon, 2015, pp. 6-36). This testifies to the shared and unifying purpose that children of various cultures, class backgrounds and ancestries can have in advancing their interests - as children and as human rights defenders in their own right - through collective legal action in the courts. Such child-led legal cases are instructive tools in child rights education for a number of reasons: (i) they highlight children as agents of positive social change; (ii) they teach about the CRC rights involved in the particular case; (iii) most significantly, they encourage children whose human rights have been violated, especially when there is widespread systemic infringement, to exercise their participation rights by engaging in self-advocacy through the courts (in addition to participating in civic actions such as petition campaigns or peaceful civil protest).

It is also relevant to note that the lead attorney in the Juliana case reported it was important to her that:

the kids all volunteered to participate -- and that this was really their movement, not hers. I've [referring to herself; the lead attorney] spoken to most of the child plaintiffs in the federal case, and it's clear to me that they want to be involved in this case. Some had to convince their parents to let them sue Obama and the federal government [now the lawsuit continues against the Trump administration]. Many were already environmental activists before they heard about this lawsuit. And they're better versed in climate policy than most adults you'll meet (Sutter, J.D., 2016).

Ultimately, the *Juliana et al. vs. the United States et al.* case may be determined by the U.S. Supreme Court. It may be that the U.S. Supreme Court will

consider that children - present and future - are a special class of “collective victims” of the effects of climate change, disproportionately affected by it. As such, the Court may decide that children are entitled to special protection and remedial action (i.e. a massive reduction in CO² emissions) that would lead to an environmental recovery which would help to ensure their survival and prospects in a healthy natural environment in the future. Such collective action in the courts, as opposed to mostly or exclusively relying on civic engagement initiatives, may help to bring about an enhanced perception of children as fully active members of the community. There may then be also a greater appreciation for the significant transformational contribution children potentially can make in advancing respect for human rights. As mentioned earlier, there have been successful international examples of collectives of children acting through civil litigation to vindicate their basic human right to a clean environment. The same strategy can be part of a repertoire that can be applied to other child human rights issues. Children and young people all over the world are entitled to be educated about child-led public interest civil litigation action, and their own efforts should be supported. We must never lose sight of the fact that children’s education rights include the right to “... preparation...for responsible life in a free society.” (CRC, Article 29 (d)).

Notes

¹ Note that the CRC complaint mechanism, the Optional Protocol to the Convention on the Rights of the Child on a communications procedure (CRC-OP3; the third CRC Optional Protocol, 2014), does not in fact allow for collective child complaints against a State Party for violations of the CRC or one or both of the accompanying first two protocols (Grover, 2015). However, at the same time: 'Child-led organizations or groups fall within the [UN] definition of "competent bodies" that can provide expert advice on the actual implementation of the Convention' (Committee on the Rights of the Child, 2014). The latter fact, however, does not obviate the need to provide for children's participation in the CRC-OP3 mechanism not only as individuals or small groups where each individual member is identified, but also as part of various child collectives attempting to advance the human rights of the particular collective that filed the complaint.

² Class action child litigation can also be a useful strategy in attempting to improve government services for children, so that government agencies involved better safeguard children's human rights (i.e. see McMullen, E., 2017).

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