

HOW TO SUE YOUR COUNTRY



M**I**
@mothersinvent



Maeve: You are my hammer.

Tessa: *(Laughs)*. That's what I'm here for.

Maeve: That's what they call you, Tessa "The Hammer" Khan.

[Music Transition]

Maeve: And Tessa "The Hammer" Khan - I've called on you to help me out. Because I've been inspired by you and others, and I want some tips on how to sue my country..

Maeve: So the last time we spoke to was, um, well, I just feel like I want to be honest with the listeners that you and I have been talking in the interim as well. Um, do you admit that we've become?...

Tessa: *(Laughs)*. Yeah, I admit it. I didn't really want to go public about it, but it's true. We're friends.

Maeve: I want to introduce you to our listeners. You're an international human rights lawyer and you're one of the founders of the Climate Litigation Network.

Tessa: Yeah, the climate litigation network supports people around the world who are trying to hold their governments legally accountable for the climate crisis.

[Music Transition]

Tessa: So the Climate Litigation network was established by, Urgenda, the Urgenda foundation, which is a Dutch NGO in the aftermath of their initial victory against the government of the Netherlands in 2015 in, what was then the first and only case in the world in which a government has been ordered by a court to increase the overall ambition of its greenhouse gas emissions reduction plan.

Maeve: It was huge. It was huge.

Tessa: Yeah, it was huge. Yeah, exactly.

Maeve: And I mean, lucky for us, you're a long standing friend of our podcast. We first spoke to you on our very first episode. And it was called [All Rise](#). And I remember that because we discussed how you came to really like focus on climate litigation. I really, I remember it hearing about your work and then hearing about all these voices of people, young and old individuals and groups who'd taken on their governments in legal battles over climate change.

[Montage from Episode 1 - Archive from Our Children's Trust]

Sarah Thompson: "My name is Sarah Thompson, I live in Auckland in New Zealand. I was 24 when I filed judicial review proceedings against the New Zealand government"

Rabab Ali Khazi: "My full name is Rabab Ali Khazi. I am 10 years old and I live in Karachi, Pakistan".

Carmen Rosales: "Mi nombre es carmen rosales, tengo 22 anos, soy de Cartagena de indias"

Ridhima Pandhey: "My name is Ridhima Pandhey. I am 11 years old and I live in India...in Uttarakhand in Haridwar. I decided to sue my government because our government is not taking global warming seriously".

[Audio Transition]

Maeve: I had no idea there were so many legal cases out there. What number do you think we're at now?

Tessa: Well, if we're talking about cases against national governments there are dozens of those cases. And the remarkable thing is that, before 2015, there really weren't very many cases if any cases at all.

[Music Transition]

Maeve: So the whole reason we've got you back on is, I want to know how to become one of those people. Like how to take a government or a company to court over climate action. I've been inspired by one of the most recent cases that you are a part of in my home country, Ireland, because when we spoke to you last time, Mary and myself didn't know that two years later, you and a team of people would take the Irish government to court or that you'd win.

[Audio Archive from [RTE News](#) - 31.07.20]

The government will have to devise a new plan to reduce Greenhouse gas emissions after the Supreme Court today ruled that the existing one did not comply with the law. The court decided that the 2017 plan did not supply the necessary detail required by legislation.

Tessa: Yeah. I mean, I think when we last spoke, that was pretty shortly after the case against the Irish government had been filed.

Maeve: Yeah.

Tessa: And you know, all credit is really due to the legal team in Ireland and the very brave NGO - Friends of the Irish Environment, that was actually the plaintiff in that case.

Maeve: Mhmm.

Tessa: Specifically what happened on the 31st of July this year is that the Irish Supreme court agreed with friends of the Irish environment, that the main plank in the government's plan to reduce Ireland's greenhouse gas emissions, which are among the highest per capita emissions in Europe. The Supreme court held that that plan was unlawful and that the government has to go away and remake the plan to bring it in line with Ireland, the Irish government's legal obligations.

[Audio Archive from [RTE News](#) - 31.07.20]

Today 7 supreme court unanimously agreed - saying the plan wasn't specific enough and quashing the three year old national mitigation plan..

Maeve: And I was so thrilled and so moved that the courts agreed with them and that, you know, the government now has to make a better plan.

Maeve: What does the ruling mean now? Do you think, do you think it means anything for, for Europe, for, you know, the wider world?

Tessa: Yeah, absolutely. I mean, I think one of the really important consequences of this decision is that all of

those governments, especially in Europe where we've had a series of announcements of net zero targets in 2050, It means that that's not good enough. And that really, it is what they do in their short term that matters. And yeah, it's not, you know, it's not enough to just set a lofty target for 30 years down the road.

[Music Transition]

Maeve: But it's not just Ireland. There's been other successful cases in the past year or so, hasn't there?

Tessa: Yeah, one of the really big ones was a case against the government of Columbia basically arguing that the Colombian government's failure to arrest deforestation of the Amazon was incompatible with their human rights. So that was a huge breakthrough and then back on this side of the world, very recently this year, there was a decision in a UK court that stopped the government from proceeding with its plans to build a third runway at Heathrow airport.

Tessa: You know, the argument that was basically made there was that in approving the expansion of Heathrow airport, um, the government had failed to take into account, um, it' commitment to the Paris agreement. but it was a really significant moment.

[Music Transition]

Maeve: Okay. Well sign me up. I love this stuff. It feels so official and you know, I want to sue the government. So how can I do this? What do people do?

Tessa: Yeah. I mean, litigation is surprisingly accessible, despite being run by lawyers, you know, there's, there's a lot to be done to support these cases, to have the most political impact that they can have.

[Music Transition]

Maeve: Ok - so. You've got four steps, I believe, to litigation success... we hope... take us through them...

Tessa: So, I mean, the first thing that you need to decide is what exactly you want out of the case. Is it stopping something like the development of a third runway at an airport or a new coal fired power plant or is it going after a government for, you know, a more systemic policy like its overall ambition for reducing greenhouse gas emissions.

Maeve: And it's not just governments that are being taken to court it's companies as well?

Tessa: Yeah, exactly. The main target of that kind of litigation has been the fossil fuel industry, which makes perfect sense.

Maeve: Mhmm. You don't have to tell me about it. My fiance is an oil man. He's here with me now weeping into his cowboy hat.

Tessa: *(Laughs).*

[Music Transition]

Tessa: So another example, I guess, of a case, is one that was brought, by a farmer in Peru who is suing Germany's biggest energy company RWE on the basis that, RWE is responsible for something like half a percent of the greenhouse gas emissions that are currently in the atmosphere, sort of starting from the beginning of the industrial revolution.

Maeve: Woah.

Tessa: And he, you know, the village that he lives in is at real risk of inundation as a result of the melting of glaciers in the Peruvian Andes. And so he's suing RWE to contribute 0.5% of the costs of protecting his village from that potential impact. And so it's kind of symbolic. I mean the amount of money ends up - that he's asking for is - you know, it's less than 20,000 Euro, I think. But the principle is an incredibly important one.

Maeve: Oh, I love that.

[Music Transition]

Maeve: Okay. So you decide on your target and then you decide on your remedy, and what's next after that?

Tessa: The second point is, how are you actually going to prove to the court that climate change is something that infringes human rights.

Tessa: And so, you know, that's about looking at potentially health impacts of climate change, all of the other ways in which climate change manifests in your country through extreme weather, slower onset events like sea level rise and coastal erosion.

Tessa: But of course, you know, we're at the point in the climate crisis where, you know, even at one degree of warming, there isn't a country in the world that hasn't experienced some impact of climate change.

[Music Transition]

Tessa: The third thing you want to think about is how really, to make sure that the case has the biggest social and political impact possible. And that's really about the kind of communications and campaign strategy, you know, how can we make sure that the media knows about it, that everybody knows about it, that they're talking about the fact that governments have legal obligations to do more than they're currently doing on climate change.

Tessa: Tweeting about it or, you know, talking to our friends and family about it, you know, showing up on the days that the hearing is happening in court to sort of illustrate to the court that this is really a matter of public interest.

[Music Transition]

Tessa: And the final question is how are you going to pay for it/

Tessa: I mean I think one thing that people worry about is that they're not going to be able to afford to litigate.

Maeve: Yeah.

Tessa: Amazingly there are lawyers who are willing to do all of the work involved and take the risks involved and to do it pro bono. So, you know, in Ireland it was an extraordinary pro bono effort by all of the lawyers involved there.

Maeve: I didn't know that actually.

Tessa: Yeah. And I think it's indicative of what, I mean, that people within the legal profession get that climate change is a defining issue of our time and that, you know, if they're often looking for ways to make a difference.

Tessa: There's also been some, I think, quite successful crowdfunding for some of these cases. You know, people get excited about the idea of being able to contribute to these sorts of efforts.

[Music Transition]

Tessa: But there are also risks involved. Of course in some countries particularly in the global south lawyers face a lot of risks as all environmental defenders do. Risks to their lives, risks to their reputation - that need to be taken I think really seriously.

[Music Transition]

Maeve: So how do you become a plaintiff? The Friends of the Irish environment, they seem to have, you know, a couple of dozen people, how do you become a plaintiff? And is that a good way to get involved? Do you think?

Tessa: Certainly, you know, being a plaintiff in a case is in some ways the most direct way in which you can get involved.

You know, you can have cases that have literally tens of thousands of plaintiffs. So one example is a case that's been filed against the government of Belgium.

Tessa: That's attracted, I think 55,000 plaintiffs. And they've kind of now maxed out the limit of people

Maeve: Wow.

Tessa: Who can, who can be a part of the petition that's being filed in court.

Tessa: But there are also other ways of supporting cases that don't involve you necessarily having your name on the pleadings as such.

[Music Transition]

Tessa: So in the case against the Irish government you know, there were more than 20,000 people who sort of signed up on the website for the case.

Maeve: That is a lot of people, Ireland is tiny.

Tessa: *(Laughs)* Exactly. I know.

Maeve: Like a lot of people!

[Music Transition]

Maeve: Yes. So maybe it's not all about me. Like I personally don't have to scramble around and come up with a case. I can find other ways to support other people who are taking their governments to court.

Maeve: Are there cases going on at the moment that we can look for and support?

Tessa: Yeah. So there is one particularly interesting case, actually in Norway. And this one I think is especially important because it's about the fact that the Norwegian government, despite positioning itself as a climate champion, is still licensing oil and gas companies to drill for oil and gas in the North sea.

Tessa: Even though it's, you know, fundamentally incompatible with its climate goals.

Maeve: Wow.

Tessa: So that's, you know, that's, I think really important because it is often the case that especially countries in the global North claim to have amazing climate records. At the same time, you know, because they're only looking at the emissions that are produced within their own country.

Tessa: And they're not thinking about the emissions that are produced as a result of the oil and gas that they're extracting and then selling to other countries.

Maeve: Well I'm going to keep an eye on that Norwegian case. That is just incredible.

Tessa: Yeah - the campaign that Greenpeace have established in support of the case is "[The People versus Arctic oil](#)". So I suggest Googling that and that will lead you...

Maeve: The People that versus Arctic oil.

Tessa: Exactly.

Tessa: So that case is being heard in the Norwegian Supreme court in November and will be a huge deal. And I think it will set a really important precedent if it's successful. So it's definitely one to keep an eye out for.

[Music Transition]

Maeve: Okay, so we'll stay in touch and if people want to find out more, they can look at the [URGENDA](#) website. There's tons of information on there.

Tessa: Yeah, exactly. There's a [webpage](#) on the Urgenda website that has climate change cases around the world that are currently unfolding.

Maeve: Yeah. And we'll put that up on our Mothers of Invention [website](#) as well and all of our social media. Ever heard of it Tessa?

Tessa: Um... yeah.

Maeve: Mary's completely addicted to take talk all the dancing,

Tessa: *(Laughter)* She's the only person I follow on TikTok.

End of minisode.