7

Human Rights

*Margaretha Wewerinke-Singh and Lucy Maxwell**

Climate change is a reality that now affects every region of the world. The human implications of currently projected levels of global heating are catastrophic. Storms are rising and tides could submerge entire island nations and coastal cities. Fires rage through our forests, and the ice is melting. We are burning up our future – literally.

Michelle Bachelet, 'Global Update at the 42nd session of the Human Rights Council'

7.1 INTRODUCTION

It has been widely recognised that climate change adversely affects the enjoyment of a wide range of human rights, including the rights to life, adequate housing, food, the highest attainable standard of health, and the right to self-determination.[1] Measures taken to respond to climate change also have implications for the enjoyment of human rights.[2] As of December 2023, the United Nations (UN) Human Rights Council has adopted thirteen resolutions on human rights and climate change,[3] and several UN Special Procedure mandate holders have published reports on human rights and climate change.[4] The Paris Agreement refers explicitly

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1 Daniel Bodansky, Jutta Brunnée, and Lavanya Rajamani, *International Climate Change Law* (Oxford University Press 2017) 301; Siobhan McInerney-Lankford, Mac Darrow, and Lavanya Rajamani, *Human Rights and Climate Change: A Review of the International Legal Dimensions* (World Bank Studies 2011) 11–19.

2 McInerney-Lankford, Darrow, and Rajamani (n 1) 7; Michael Burger and Jessica A. Wentz, 'Climate Change and Human Rights' (*UNEP and Sabin Center for Climate Change Law*, December 2015) 8–10 <https://wedocs.unep.org/bitstream/handle/20.500.11822/9530/-Climate_Change_and_Human_Rightshuman-rights-climate-change.pdf.pdf> accessed 9 February 2024.

3 'Human Rights Council Resolutions on Human Rights and Climate Change' (*OHCHR*, 2022) <www.ohchr.org/en/climate-change/human-rights-council-resolutions-human-rights-and-climate-change> accessed 9 February 2024.

4 See e.g. 'Special Rapporteur on Human Rights and the Environment' (*OHCHR*, 2022) <www.ohchr.org/en/special-procedures/sr-environment> accessed 9 February 2024; see also n 20.

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to human rights in its preamble, calling upon parties to 'respect, promote and consider their respective obligations on human rights'.[5] The link between human rights and climate change was further institutionalised through the creation of a mandate for a Special Rapporteur on Human Rights and Climate Change,[6] who was first appointed in March 2022.[7]

The recognition of the link between climate change and human rights has also inspired litigation, giving rise to an increasingly rich body of jurisprudence clarifying the scope and content of States' human rights obligations in the context of climate change.[8] Recent jurisprudence further suggests that corporations also have obligations to respect human rights in the face of climate change.[9]

In this chapter, we provide a roadmap to this field of climate litigation based on human rights or constitutional rights provisions (rights-based climate litigation). We summarise key jurisprudential developments and identify emerging areas of best practice and replicable jurisprudence.

7.2 RIGHTS-BASED CLIMATE LITIGATION AT A GLANCE

Rights-based climate litigation is a dynamic and rapidly evolving field of practice globally.[10] In the past decade, and particularly since the adoption of the Paris Agreement in 2015,[11] courts and tribunals around the world have issued judgments in rights-based climate cases, demonstrating a rising trend in climate litigation.[12] As at the end of 2022, more than a hundred rights-based climate cases have been

[5] Paris Agreement (entered into force 4 November 2016) 3156 UNTS 79 (Paris Agreement). See also Alan Boyle, 'Climate Change, the Paris Agreement and Human Rights' (2018) 67 ICLQ 759; John Knox, 'The Paris Agreement as a Human Rights Treaty' in Dapo Akande and others (eds), *Human Rights and 21st Century Challenges: Poverty, Conflict, and the Environment* (Oxford University Press 2020).

[6] UNHRC, 'Mandate of the Special Rapporteur on the Promotion and Protection of Human Rights in the Context of Climate Change' UN Doc A/HRC/RES/48/14 (2021).

[7] 'Special Rapporteur on Climate Change' (*OHCHR*, 2022) <www.ohchr.org/en/specialprocedures/sr-climate-change#:~:text=Mr.,mandate%20on%201%20May%202022> accessed 26 February 2024.

[8] César Rodríguez-Garavito, 'Litigating the Climate Emergency: The Global Rise of Human Rights–Based Litigation for Climate Action' in César Rodríguez-Garavito (ed), *Litigating the Climate Emergency: How Human Rights, Courts, and Legal Mobilization Can Bolster Climate Action* (Cambridge University Press 2022); Margaretha Wewerinke-Singh, 'Preventing Climate Harm: The Role of Rights-Based Litigation' (2023) 40 Wisconsin International Law Journal 245. Note that the cases discussed substantively in this chapter are current through November 2023.

[9] Andreas Hösli, '*Milieudefensie et al v Shell*: A Tipping Point in Climate Change Litigation against Corporations?' (2021) 11 Climate Law 195.

[10] For a systematic review of rights-based climate litigation, see Annalisa Savaresi and Joana Setzer, 'Rights-based Litigation in the Climate Emergency: Mapping the Landscape and New Knowledge Frontiers' (2022) 13(1) JHRE 7–34. The authors draw upon data from the world's most established climate litigation databases (up to May 2021) – those compiled by the Sabin Center for Climate Change Law at Columbia Law School and the Grantham Research Institute on Climate Change and the Environment at the London School of Economics. We refer to their findings in what follows.

[11] See ibid 12.

[12] See ibid Annex.

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identified globally.[13] Predominantly, these rights-based climate cases have been brought against States and public authorities,[14] while a smaller but rapidly growing number of cases filed against corporations.[15] These cases broadly encompass four categories:

a) Systemic or 'framework' mitigation cases that concern a State's (or company's) *overall* efforts to mitigate climate change;
b) Project-based cases that concern the conduct of a State (or its organs) with respect to a specific project or initiative with greenhouse gas (GHG) implications. Most cases are premised on statutory grounds (such as under planning law) and focus on the State's failure to meet requirements of consultation, provision of information, and environmental impact assessment, including contribution to climate change;
c) Adaptation and loss and damage cases that concern actions related to the impacts of climate change, including adaptation and climate-induced migration; and
d) 'Just transition' cases that concern the design or implementation of a State's mitigation measures.

Most rights-based cases determined by courts fall into the systemic mitigation category.[16] The rights relied upon by plaintiffs in such cases include the right to self-determination; the right to life and dignity; the right to the highest attainable standard of health; the right to private and family life; the right to residence, movement, and inviolability of home; the right to a healthy environment; the right to property; cultural rights; and the right to equality and freedom from discrimination. Some rights-based cases invoke the State's obligations with respect to procedural rights such as the right to information, participation, and the right to a remedy.[17] The invocation of procedural rights is particularly common in project-based and 'just transition' cases.[18]

[13] 'Human Rights' (*Sabin Center for Climate Change Law*, 13 July 2023) <http://climatecasechart.com/non-us-climate-change-litigation/> accessed 24 February 2024.

[14] Savaresi and Setzer (n 10) 14.

[15] ibid. For instance, of the 112 rights-based cases that were filed through May 2021, 16 cases were directed against corporations. See e.g. in the Netherlands *Milieudefensie v Royal Dutch Shell* [2021] ECLR:NL: RBDHA: 2021:5339 (District Court of the Hague); in the Philippines *In re Greenpeace Southeast Asia and Others* [2022] Case No CHR-NI-2016-0001 (Commission on Human Rights of the Philippines); in France see Complaint filed in *Friends of the Earth et al v Total* before Nanterre High Court, 2019 <http://climatecasechart.com/non-us-case/friends-of-the-earth-et-al-v-total/> accessed 24 February 2024.

[16] Savaresi and Setzer (n 10) 19. Out of 112 rights-based cases, 83 concern mitigation, 9 concern adaptation, and 20 both mitigation and adaptation.

[17] See ibid 23–34.

[18] See e.g. Case C-524/09 *City of Lyon v French Deposits and Consignments Fund* [2009] ECR-I 14115; 'Access to Information on International GHG Emissions Trading by Ukraine' (*Environment-People-Law*, 27 January 2017) <http://epl.org.ua/en/environment/6599/> accessed 27 February 2024.

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With respect to fora, most rights-based climate cases have been filed at the national level, with domestic courts issuing the vast majority of judgments in cases to date.[19] Regional and international courts, tribunals, and human rights bodies have also developed a rich body of norms and principles regarding States' human rights obligations in the context of climate change.[20] At the time of publication, there are pending climate cases before the European Court of Human Rights (ECtHR) and the East African Court of Justice.[21] Moreover, in March 2023, the UN General

[19] Savaresi and Setzer (n 10) 10. Approximately 13 per cent of rights-based cases have been filed before international and regional human rights bodies.

[20] See e.g. UNHR Committee, 'Views Adopted by the Committee under Article 5(4) of the Optional Protocol, concerning Communication No. 2728/2016', 24 October 2019 UN Doc CCPR/C/127/D/2728/2016 (*Teitiota*); UN Committee on the Rights of the Child, 'Decision adopted by the Committee under the Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure, concerning Communication No. 104/2019', UN Doc CRC/C/88/D/104/2019 (*Sacchi*); UNHR Committee, 'Views Adopted by the Committee under Article 5(4) of the Optional Protocol, concerning Communication No 3624/2019', 21 July 2022, UN Doc CCPR/C/135/D/3624/2019 (*Billy*); Case T-330/18 *Armando Ferrão Carvalho and Others v The European Parliament and the Council* [2019] ECLI:EU:T:2019:324; *The Environment and Human Rights (State Obligations in Relation to the Environment in the Context of the Protection and Guarantee of the Rights to Life and to Personal Integrity – Interpretation and Scope of Articles 4(1) and 5(1) of the American Convention on Human Rights)*, Advisory Opinion OC-23, Inter-American Court of Human Rights Series A No 23 (15 November 2017) (IACtHR OC-23/17) [47], [54]; 'African Commission on Human and Peoples' Rights' (*ACHPR*) <www.achpr.org/documentationcenter?search=resolution%20on%20climate%20change%20and%20human%20rights> accessed 24 February 2024; UN Human Rights Committee, 'General comment No 36 (2018) on article 6 of the International Covenant on Civil and Political Rights, on the right to life' (30 October 2018) UN Doc CCPR/C/GC/36 (CCPR General Comment No 36); CEDAW, 'General Recommendation No 37 on Gender-related Dimensions Of Disaster Risk Reduction In The Context of Climate Change', UN Doc CEDAW/C/GC/37; Concluding Observations issued by UN Human Rights Treaty Bodies to States on numerous occasions, as reported in Centre for International Environmental Law and The Global Initiative for Economic, Social and Cultural Rights, see Lucy Mckernan and others, *States' Human Rights Obligations in the Context of Climate Change: 2022 Update* (CIEL and GIESCR 2022). See e.g. OHCHR, 'Joint Statement on "Human Rights and Climate Change"' (16 September 2019) <www.ohchr.org/en/statements/2019/09/five-un-human-rights-treaty-bodies-issue-joint-statement-human-rights-and> accessed 24 February 2024; Statement of the UN Committee on Economic, Social and Cultural Rights (CESCR), 'Climate change and the International Covenant on Economic, Social and Cultural Rights' (*OHCHR*, 8 October 2018) <www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=23691&LangID=E> accessed 24 February 2024; OHCHR, Joint Statement of UN Special Mandates on Climate Change (23 September 2019) <www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25003&LangID=E> accessed 24 February 2024. See e.g. OHCHR, 'Report of the Special Rapporteur on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment' (2017) UN Doc A/HRC/34/49; OHCHR, 'Report of the Special Rapporteur on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment' (2019) UN Doc A/74/161.

[21] For the list of cases pending before the European Court of Human Rights, see Council of Europe, 'Factsheet – Climate Change' (*Council of Europe*, February 2023) <www.echr.coe.int/documents/d/echr/FS_Climate_change_ENG#:~:text=There%20are%20currently%20three%20cases,the%20Court%20on%20this%20issue.&text=On%2011%20January%202023%20the,Duarte%20Agostinho%20and%20Others%20v> accessed 24 February 2024. These cases

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Assembly adopted a resolution by consensus requesting an advisory opinion from the International Court of Justice on the obligation of States with respect to climate change.[22] Similar advisory opinion requests have also been submitted to the International Tribunal for the Law of the Sea[23] as well as the Inter-American Court of Human Rights.[24]

In terms of outcomes, courts have issued a range of remedies in rights-based cases. These include declaratory relief;[25] determinations that provisions of legislation are unconstitutional;[26] injunctive relief[27] (including orders imposing particular emission-reduction targets[28] or requiring that existing targets to be met);[29] quashing orders for emission-intensive projects;[30] and particular types of adaptation support and relief. The next section will explore the expansive scope of rights-based case law in greater detail.

include Complaint filed in *Duarte Agostinho and Others v Portugal and 32 Other States* (ECtHR) <http://climatecasechart.com/climate-change-litigation/wp-content/uploads/sites/16/non-us-case-documents/2020/20200902_3937120_complaint.pdf> accessed 24 February 2024; Application filed in *Union of Swiss Senior Women for Climate Protection v Swiss Federal Council and Others* (ECtHR) <http://climatecasechart.com/climate-change-litigation/non-us-case/union-of-swiss-senior-women-for-climate-protection-v-swiss-federal-parliament/> accessed 24 February 2024; Petition filed in *Greenpeace Nordic Association v Ministry of Petroleum and Energy* (ECtHR) <http://climatecasechart.com/non-us-case/greenpeace-nordic-assn-v-ministry-of-petroleum-and-energy-ecthr/> accessed 24 February 2024; Complaint filed in *Mex M v Austria* (ECtHR) <http://climatecasechart.com/climate-change-litigation/non-us-case/mex-m-v-austria/> accessed 24 February 2024; Complaint filed in *Uricchio v Italy and 32 other States* (ECtHR) <http://climatecasechart.com/non-us-case/uricchio-v-italy-and-32-other-states/> accessed 24 February 2024; Application for injunction in *Center for Food and Adequate Living Rights et al v Tanzania and Uganda* (East African Court of Justice) <http://climatecasechart.com/climate-change-litigation/wp-content/uploads/sites/16/non-us-case-documents/2020/20201106_12737_application.pdf> accessed 24 February 2024.

[22] Obligations of States in Respect of Climate Change (Request For Advisory Opinion) <http://climatecasechart.com/wp-content/uploads/sites/16/non-us-case-documents/2023/20230420_18913_order.pdf> accessed 24 February 2024.

[23] Request for an Advisory Opinion of 12 December 2022 <www.itlos.org/fileadmin/itlos/documents/cases/31/Request_for_Advisory_Opinion_COSIS_12.12.22.pdf> accessed 24 February 2024.

[24] Petition filed in *Request for an Advisory Opinion on the Scope of the State Obligations for Responding to the Climate Emergency* (IACtHR) <http://climatecasechart.com/non-us-case/request-for-an-advisory-opinion-on-the-scope-of-the-state-obligations-for-responding-to-the-climate-emergency/> accessed 24 February 2024.

[25] *Billy* (n 20).

[26] See the judgment in *Neubauer and Others v Germany* [2021] 1 BvR 2656/18, 1 BvR 96/20, 1 BvR 78/20, 1 BvR 288/20, 1 BvR 96/20, 1 BvR 78/20 (German Federal Constitutional Court) (*Neubauer*); *Notre Affaire à Tous and Others v France* [2021] No 1904967, 1904968, 1904972 1904976/4-1.

[27] See ibid *Neubauer*; *VZW Klimaatzaak v Kingdom of Belgium and Others* [2023] 2022/AR/891 (Cour d'appel de Bruxelles) (*VZW Klimaatzaak Appeal*); *Center for Food and Adequate Living Rights et al v Tanzania and Uganda* (n 21).

[28] See e.g. *State of the Netherlands (Ministry of Economic Affairs and Climate Policy) v Stichting Urgenda* [2019] ECLI:NL:HR:2019:2007 (Supreme Court of the Netherlands) (*Urgenda Supreme Court*).

[29] *Notre Affaire à Tous* (n 26).

[30] See e.g. *Pro Public and Others v Godavari Marble Industries Pvt Ltd and Others* 068–WO–0082 (Supreme Court of Nepal); *In re Hawai'i Electric Light Co* No SCOT-22-0000418 (Supreme Court of Hawai'i) (majority and concurring opinions).

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7.3 CASE LAW DEVELOPMENT

Legal norms governing States' human rights obligations in the context of climate change have matured greatly in many jurisdictions around the world in recent years. Emerging jurisprudence further suggests that corporations have obligations to respect human rights in the face of climate change, including the alignment of their policies and conduct with the goals of the Paris Agreement. This selection provides a summary of developments across the four categories of rights-based climate cases. While the most significant developments have occurred in decisions issued in 'systemic' mitigation cases against governments, relevant principles are also starting to emerge from jurisprudence in other categories of rights-based climate cases.

7.3.1 *Systemic Mitigation Cases*

Systemic mitigation cases challenge a State's (or company's) *overall* efforts to mitigate climate change. The central allegation in such cases is that the State has failed to adopt reasonable and appropriate measures to mitigate climate change through the rapid reduction of GHG emissions, and that this failure constitutes a violation of its obligation to protect human rights, given the severe and foreseeable harm caused by climate change, of which the State knows or ought to have known.[31] Most such cases have been brought against governments in the Global North. Additionally, there is a small but growing number of cases that challenge a corporation's contribution to climate change and inadequate mitigation measures.[32]

Judgments issued in systemic mitigation cases to date include those by: the Dutch courts in *Urgenda v the Netherlands*;[33] the German Constitutional Court

[31] Most cases are premised on jurisprudence regarding the State's obligations to protect the human rights of persons within its jurisdiction against a foreseeable and serious risk of harm. See sources listed in Lucy Maxwell, Sarah Mead, and Dennis van Berkel, 'Standards for Adjudicating the next Generation of Urgenda-Style Climate Cases' (2022) 13(1) JHRE 35, 40.

[32] See e.g. in the Netherlands, *Milieudefensie v Royal Dutch Shell* [2021] ECLR:NL: RBDHA:2021:5339 (District Court of the Hague); in France, *Friends of the Earth et al v Total* (n 15) (pending); Complaint filed in *Notre Affaire a Tous and others v Total* before Nanterre District Court <http://climatecasechart.com/climate-change-litigation/wp-content/uploads/sites/16/non-us-case-documents/2020/20200128_NA_complaint.pdf> accessed 24 February 202 (pending). See Complaint filed in *Envol Vert et al v Casino* before Saint-Étienne Judicial Court <http://climatecasechart.com/climate-change-litigation/non-us-case/envol-vert-et-al-v-casino/> accessed 24 February 2024; in Italy see Summary of Complaint filed in *Rete Legalità per il Clima (Legality for Climate Network) and others v ENI* before National Contact Point of the OECD <https://climate-laws.org/geographies/italy/litigation_cases/rete-legalita-per-il-clima-legality-for-climate-network-and-others-v-eni> accessed 24 February 2024 (pending); in Germany see Petition filed in *Deutsche Umwelthilfe (DUH) v Bayerische Motoren Werke AG (BMW)* before Regional Court of Munich <https://climate-laws.org/geographies/germany/litigation_cases/deutsche-umwelthilfe-duh-v-bayerische-motoren-werke-ag-bmw> accessed 24 February 2024 (pending); the Philippines, *In re Greenpeace Southeast Asia and Others* (n 15). For further detail, see Savaresi and Setzer (n 10) 24–27.

[33] *Urgenda Supreme Court* (n 28).

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in *Neubauer et al v Germany*;[34] the District Court of the Hague in *Milieudefensie v Royal Dutch Shell*;[35] and by courts in Belgium,[36] Canada,[37] Colombia,[38] France,[39] Ireland,[40] Switzerland,[41] the United States,[42] Nepal,[43] and Brazil[44] in cases which, like *Urgenda*, concern the lawfulness of the State's overall mitigation efforts. The decisions have all been issued since 2015, which marks the beginning of the wave of systemic mitigation cases globally.[45] Until the UN Human Rights Committee issued its views on *Billy et al v Australia*, no regional or international court or tribunal had issued a decision on the merits in such a case.[46] We discuss this decision – which remains the only one of its kind – later on.

[34] See *Neubauer* (n 26).

[35] *Milieudefensie* (n 32).

[36] *VZW Klimaatzaak Appeal* (n 27).

[37] *La Rose v Her Majesty the Queen* T-1750-19 [2020] (Federal Court of Canada) (on a preliminary point); *La Rose v His Majesty the King* A-289-20, A-308-20 [2023] (Federal Court of Appeal); Judgment in *Environnement Jeunesse v Procureur General du Canada* [2018] 500-06-000955-183 (Quebec Superior Court) (*ENJEU*), which was affirmed on appeal by the Supreme Court of Canada in July 2022; Judgement in *Mathur v Ontario* [2023] ONSC 2316 (*Mathur Merits*).

[38] *Future Generations v Ministry of the Environment and Others (Demanda Generaciones Futuras v Minambiente)* [2018] 11001 22 03 000 2018 00319 00 (Colombia Supreme Court) (*Demanda Futuras Generaciones*).

[39] *Notre Affaire à Tous* (n 26) (albeit that the court upheld the case on the basis of the tort of ecological damage, rather than human rights provisions). *Commune de Grande-Synthe v France* [2020] No 427301 (Conseil d'Etat) (*Grande-Synthe*). The Supreme Administrative Court of France upheld the case on grounds other than human rights provisions.

[40] *Friends of the Irish Environment CLG v The Government of Ireland, Ireland and the Attorney General* [2020] Appeal no 205/19 (Supreme Court of Ireland) (albeit that the court upheld the case on the basis of administrative law, rather than human rights provisions).

[41] *Swiss Senior Women* (n 21).

[42] See e.g. *Juliana v United States* 947 F.3d 1159 (9th Cir 2020); Order in *Barhaugh v Montana* (Montana Supreme Court) <http://climatecasechart.com/case/2436/> accessed 27 February 2024; Order in *Held v Montana* (District Court Montana) <http://climatecasechart.com/wp-content/uploads/sites/16/case-documents/2021/20210804_docket-CDV-2020-307_order.pdf> accessed 27 February 2024; *Alec v McCarthy* (Court of Appeals for District of Columbia) <http://climatecasechart.com/case/alec-l-v-mccarthy/> accessed 27 February 2024.

[43] *Advocate Padam Bahadur Shrestha v Prime Minister and Office of Council of Ministers and Others* [2018] Order No 074-WO-0283 (2075/09/10 BS) (Supreme Court of Nepal) (*Shrestha v Office of Council of Ministers*).

[44] *PSB and others v Brazil* [2022] ADPF 708 (Federal Supreme Court of Brazil).

[45] For discussion of this 'wave' of climate litigation, see e.g. Priyadarshi R. Shukla and others (eds.), *Climate Change 2022: Mitigation of Climate Change. Contribution of Working Group III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change* (Cambridge University Press 2022) [13.4.2].

[46] Previous cases were dismissed on admissibility grounds. These include cases before: UN Committee on the Rights of the Child (UN CRC); Inter-American Court of Human Rights; Court of Justice of the European Union. The UN CRC has issued decisions in five systemic mitigation cases brought by a number of children against five Respondent States (*Sacchi* (n 20)). Each communication was deemed inadmissible, but the Committee did make important remarks in its views: it noted that States have cross-border obligations to protect children from climate harm; *Carvalho* (n 20); see also *Petition To the Inter-American Commission on Human Rights Seeking Relief from Violations Resulting from Global Warming Caused by Acts and Omissions of the United States* [2005] Inter-American Commission on Human Rights 1413-05.

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Systemic mitigation cases have led to a range of notable developments in jurisprudence.[47] For instance, many jurisdictions – including courts in the Netherlands,[48] Germany,[49] Belgium,[50] Canada,[51] Colombia,[52] and Nepal[53] – have recognised the justiciability of systemic mitigation cases, which is an important threshold issue, as described in greater detail in the Admissibility chapter.[54] Although some courts in North America have declined to hear systemic mitigation cases on admissibility grounds,[55] many courts elsewhere in the world have recognised that the State has a legal obligation under existing human rights law to undertake mitigation efforts, through GHG emissions reduction, in light of the harm caused by climate change. Finally, a smaller number of courts have proceeded to assess whether a State's overall mitigation efforts are sufficient to discharge its human rights obligations.[56] These significant judgments include *Urgenda* and *Neubauer* (as well as a recent appeal decision in the Belgian *Klimaatzaak case*), which we explore in Section 7.4.

A small but growing number of rights-based climate cases have been filed against corporations. A landmark case in this category is the Carbon Majors inquiry of the Commission on Human Rights of the Philippines (CHRP), also known as *In re Greenpeace Southeast Asia and Others*,[57] which focused on the responsibility of fossil fuel companies for human rights violations resulting from climate change. The inquiry resulted in a groundbreaking report in which the CHRP documented the contribution of fossil fuel companies' products and operations to climate change and the resulting loss and damage.[58] The report also provided evidence that these companies were aware of the climate risks from their products for several decades, but misled investors, regulators, and the public about the nature and severity of these risks.[59]

The District Court of the Hague in *Milieudefensie v Royal Dutch Shell* built on the findings of the CHRP report and reached its own landmark holding in 2021. The court issued the first decision globally that found that a corporation had a

[47] For further details, see Maxwell, Mead, and Van Berkel (n 31).
[48] *Urgenda* (n 28).
[49] *Neubauer* (n 26); *Family Farmers and Greenpeace v Germany* [2018] 00271/17/R/SP (Administrative Court of Berlin).
[50] *VZW Klimaatzaak Appeal* (n 27).
[51] *Mathur Merits* (n 37). But contrast *ENJEU* (n 37) (appeal).
[52] *Demanda Futuras Generaciones* (n 38).
[53] *Shrestha v Office of Council of Ministers* (n 43).
[54] See Chapter 5 on Admissibility.
[55] See e.g. *Juliana* (n 42); *ENJEU* (n 37).
[56] For details, see Maxwell, Mead, and Van Berkel (n 31) 46 Part 3.3.
[57] *In re Greenpeace Southeast Asia and Others* (n 15).
[58] Commission on Human Rights of the Philippines, 'National Inquiry on Climate Change Report' (CHRP December 2022).
[59] ibid. See also Annalisa Savaresi and Jacques Hartmann, 'Using Human Rights Law to Address the Impacts of Climate Change: Early Reflections on the Carbon Majors Inquiry' in Jolene Lin and Douglas A. Kysar (eds) *Climate Change Litigation in the Asia Pacific* (Cambridge University Press 2020); Savaresi and Setzer (n 10).

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legal obligation, pursuant to tort law, to adopt additional Scope 1, 2, and 3 GHG emission-reduction measures. The judgment determined that Royal Dutch Shell's obligations in tort law must be read in light of human rights law, including the UN Guiding Principles on Business and Human Rights, Articles 2 and 8 of the European Convention on Human Rights (ECHR), and Articles 6 and 17 of the International Covenant on Civil and Political Rights (ICCPR), which we expand on later.[60]

7.3.2 *Project Cases*

Project cases can trigger human rights guarantees in several ways. First, they may invoke 'procedural' human rights, such as those enshrined under the *Aarhus Convention* and *Escazú Agreement*, which include the right of access to information, the right to a fair hearing, and the right to an effective remedy. Secondly, they may rely on 'substantive' human rights, such as the rights to life and health. In the latter type of cases, the argument is similar to those made in 'systemic' mitigation cases: that the approval of the project is contrary to the duty to adopt reasonable and appropriate measures to protect human rights from the harm posed by climate change. It is important to note that there is a small body of jurisprudence regarding rights-based project cases and a larger body that does *not* relate to human rights arguments.[61] These cases concern a range of matters, including: the decision to permit exploration for new fossil fuel reserves;[62] permission for a new coal-fired power plant;[63] approval of an airport extension;[64] and the sale of state-owned coal-fired power plants.[65]

Jurisprudence in rights-based project cases has produced a mixed picture to date. For example, courts in South Africa have upheld two project-based cases with rights arguments, including the express constitutional right to a healthy environment. In *EarthLife*, the High Court found that the minister's failure to consider the proposed mine's contribution to global climate change rendered the approval unlawful,

[60] *Milieudefensie* (n 32).

[61] See e.g. *Gloucester Resources Limited v Minister for Planning* [2019] NSWLEC 7 (*Gloucester Resources*); *Minister for the Environment v Sharma* [2022] FCAFC 35 (*Sharma*); *Friends of the Earth v Haaland* (2022) <http://climatecasechart.com/case/friends-of-the-earth-v-haaland/> accessed 24 February 2024; *ClientEarth v Secretary of State* (2021) <http://climatecasechart.com/non-us-case/clientearth-v-secretary-of-state/> accessed 24 February 2024.

[62] *Greenpeace Nordic* (n 20); Complaint filed in *OAAA v Araucaria Energy SA* before Federal Court of Mercedes <http://climatecasechart.com/non-us-case/oaaa-v-araucaria-energy-sa/> accessed 24 February 2024; *Waratah Coal Pty Ltd v Youth Verdict Ltd* [2022] QLC 21.

[63] *EarthLife Africa Johannesburg v Minister of Environmental Affairs and Others* [2017] 65662/16 <http://climatecasechart.com/wp-content/uploads/sites/16/non-us-case-documents/2017/20170306_Case-no.-6566216_judgment-1.pdf> accessed 27 March 2023.

[64] See e.g. *In re Vienna-Schwechat Airport Expansion* (2018) Bundesverwaltungsgericht W109 2000179-1/291E.

[65] *PUSH Sweden, Nature and Youth Sweden and Others v Government of Sweden* (Stockholm District Court) <http://climatecasechart.com/climate-change-litigation/non-us-case/push-sweden-nature-youth-sweden-et-al-v-government-of-sweden/> accessed 24 February 2024.

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despite no express reference to climate change in the relevant legislation.[66] In *Sustaining the Wild Coast NPC and others*, the High Court granted an injunction to prevent seismic surveying for offshore fossil fuel reserves due to the defendants' failure to meaningfully consult the applicants, as well as the risk of harm from the seismic survey, which would promote extraction of fossil fuels and adversely impact climate change, the applicant communities' cultural practices, ocean conservation, and the spiritual and sustainable use of ocean for healing and fishing purposes.[67]

Similarly, in Australia, in the *Waratah Coal* case, the Queensland Land Court recommended to the relevant government minister that an application for a new coal mine should be rejected.[68] The Court took into account a range of factors in reaching this decision, including the contribution of the mine to climate change, the economic and social benefits and costs, and the impacts on human rights.[69] The Court found that the project would limit a range of human rights, including the right to property, privacy, and home for the owners of the local area, and in relation to climate change, the cultural rights of First Nations Peoples, the rights of children, the right to property and to privacy and home, the right to enjoy human rights equally, and the right to life.[70] The final approval of the project depends on the decision of the government minister, but this court decision sets an important precedent for challenges to mining projects on public interest and human rights grounds.

Likewise, in *Marangopoulos Foundation for Human Rights v Greece*, the European Committee on Social Rights underscored the need for a holistic assessment of States' environmental law obligations on the one hand and its human rights obligations on the other.[71] The Committee found that Greece violated the right to a clean environment (Article 11 of the European Social Charter ('the Charter')), the right to just conditions of work (Article 2 of the Charter), and the right to safe and healthy working conditions (Article 3 of the Charter) as a result of the nature of the State's defective oversight and partial ownership of several lignite coal mines and coal-fired power plants.[72] The violations stemmed from the State's failure to prepare adequate environmental impact assessments, lax enforcement of pollution control measures, failure to achieve reductions in the emission of conventional pollutants and GHGs, and a lack of effective labour protections. In establishing these violations, the Committee observed that Greece had not managed to strike a reasonable

[66] *EarthLife* (n 63) [81]–[83].

[67] *Sustaining the Wild Coast NPC and Others v Minister of Mineral Resources and Energy and Others* (High Court of South Africa) <http://climatecasechart.com/climate-change-litigation/non-us-case/sustaining-the-wild-coast-npc-and-others-v-minister-of-mineral-resources-and-energy-and-others/> accessed 24 February 2024.

[68] *Waratah Coal* (n 62).

[69] ibid.

[70] ibid [1795].

[71] *Marangopoulos Foundation for Human Rights (MFHR) v Greece* (Decision on the Merits) (6 December 2006), ECSR Complaint No 30/2005, Resolution CM/ResChS (2008).

[72] ibid [240].

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balance between the interests of persons living in the mining areas and the general interests,[73] and that it had failed to provide precise and plausible information on measures taken to ensure the enforcement of regulations on health and safety.[74] These findings show that even provisions of human rights treaties that grant national authorities a considerable margin of discretion must be interpreted in a manner that makes the relevant human rights safeguards practical and effective.

By contrast, courts in other jurisdictions have dismissed project-based cases featuring human rights arguments. This jurisprudence includes legal challenges to airport extensions in Austria[75] and in England and Wales;[76] oil drilling in Argentina[77] and Norway;[78] and the sale of a state-owned coal-fired power plant in Sweden.[79] The dismissal of these cases, which attempted to leverage human rights arguments to deter projects with significant deleterious impacts on the climate system, underscores the intricate challenge of applying traditional legal frameworks to the complex, global, and systemic nature of the climate crisis. Further, they highlight the pressing need for more expansive legal approaches to ensure that these legal frameworks remain fit for purpose in the face of the evolving climate crisis.

The section on emerging best practice will highlight instances where judicial innovation and adaptability have paved the way for rulings capable of offering protection of the climate system. These emerging best practices offer a beacon of hope, demonstrating the potential of the judiciary to grapple with climate change through a human rights lens. As we examine these cases, we can draw valuable insights on how courts can evolve their interpretations and applications of legal frameworks to better address the multifaceted human rights issues posed by the climate crisis.

7.3.3 *Adaptation and Loss and Damage Cases*

Several cases concerning States' human rights obligations in the context of climate change adaptation hail from the Global South.[80] For instance, the leading judgment in this category is that of the Lahore High Court in *Leghari v Pakistan* in 2015.[81] There, the High Court found that the State had failed to take appropriate action with

[73] ibid [221].
[74] ibid [231].
[75] *In re Vienna-Schwechat Airport Expansion* (n 64).
[76] *R (on the application of Plan B Earth and others) v Heathrow Airport Ltd (Heathrow Expansion)* [2020] UKSC 52. See [113] for consideration of the human rights arguments, which were dismissed.
[77] See also proceedings in *Greenpeace Argentina et al v Argentina et al* before courts in Argentina <http://climatecasechart.com/climate-change-litigation/non-us-case/greenpeace-argentina-et-al-v-argentina-et-al/> accessed 24 February 2024.
[78] *Greenpeace Nordic* (n 20).
[79] *PUSH Sweden* (n 65).
[80] See also Sudha Kavuri and Anjana Ramanathan, 'Climate Change Litigation: Chronicles from the Global South: A Comparative Study' (2022) 28 Comparative Law Review 169.
[81] *Asghar Leghari v Federation of Pakistan etc* PLD 2018 Lahore 364.

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respect to climate change adaptation and that this infringed the petitioner's right to life and the right to human dignity under Pakistan's Constitution.[82] The Court ordered the State to effectively implement its existing adaptation policies, including allocating a specified budget to climate change adaptation in order to guarantee an effective protection to constitutional rights. Another relevant case is *Advocate Padam Bahadur Shrestha v Prime Minister and Office of Council of Ministers and Others*. In this decision from the Supreme Court of Nepal, the petitioner secured an order directing the relevant authorities to actively implement national adaptation plans and policies and to formulate an effective implementation plan for adaptation and mitigation to protect people's lives and livelihoods from direct and indirect effects of climate change.[83]

In other cases, courts have ordered States to adopt new laws or policies pertaining to adaptation. Of particular note is the decision of the Colombian Supreme Court in *Future Generations v Ministry of the Environment and Others* (*Future Generations*). In addition to measures relating to the protection of the Amazon, the Supreme Court ordered the formulation and implementation of national, regional, and local implementation strategies of a preventative, mandatory, corrective, and pedagogical nature, directed towards climate change adaptation.[84] Likewise, in *Notre Affaire à Tous and others v France* (*Notre Affaire*), the plaintiffs sought an order enjoining the Government of France, amongst other things, to take the necessary measures to adapt the national territory to the effects of climate change.[85] While the Administrative Court of Paris deferred the decision on whether to issue an injunction, it did issue a decision recognising that the State's failure to take adequate climate action had resulted in ecological damage.[86] Finally, of particular note is the decision of the UN Human Rights Committee in *Billy et al v Australia*, in which the Committee found that Australia's 'failure to adopt timely adequate adaptation measures' violated the First Nation authors' rights to privacy and home (Article 17 ICCPR) and cultural rights (Article 27 ICCPR), which we outline in more detail in Section 7.4.3.

Few cases to date have addressed questions related to loss and damage from climate change.[87] In the earliest of these cases, *Pro Public and Others v Godavari Marble Industries Pvt Ltd and Others* (*Pro Public*), the petitioners sought, among

[82] ibid [8].
[83] *Shrestha v Office of Council of Ministers* (n 43).
[84] *Demanda Futuras Generaciones* (n 38) [10]–[11].
[85] See Complaint in *Notre Affaire à Tous* (n 26). See also *Grande-Synthe* (n 39) in which the commune of Grande Synthe and Mr Damien Careme ask the Council of State to put in place immediate measures to adapt to climate change.
[86] ibid *Notre Affaire à Tous*.
[87] The potential of this climate litigation strategy, however, represents an emerging area of scholarship. Patrick Toussaint, 'Loss and Damage and Climate Litigation: The Case for Greater Interlinkage' (2021) 30 RECIEL 16; Jacob Wise, 'Climate Change Loss and Damage Litigation: Infeasible or a Useful Shadow?' (2021) 38 Wisconsin International Law Journal 687.

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others, orders that would hold the respondent accountable for paying the costs of restoring the Godavari area in Nepal to its earlier condition prior to the operation of the mines in question.[88] While the Supreme Court of Nepal did not grant the requested compensation, it did quash the Department of Mines and Geology's decision to extend the lease to the respondent company with another ten years so as to avoid further damage.[89] Similarly, in *Notre Affaire*, the plaintiff NGOs demanded the symbolic sum of one euro in compensation for moral damage they claimed to have suffered as a result of the climate crisis, and another one euro in compensation for environmental damage linked to climate change. The Administrative Court of Paris found that France's failure to take ambitious climate action had indeed resulted in environmental damage from climate change and awarded the plaintiffs the requested amount of one euro in compensation for moral damage. However, it declined to issue compensatory damages for environmental harm as it found that the plaintiffs had failed to show that the government was unable to repair the harm caused by its inaction.[90]

To date, there have been no rights-based cases that address the obligations of developed countries to provide climate finance pursuant to the UN Framework Convention on Climate Change (UNFCCC)[91] and Paris Agreement.[92] However, three domestic cases concerned developed countries' obligations to provide legal protection to people fleeing the impacts of climate change. The earliest of these was a claim before Australia's Refugee Review Tribunal filed by a citizen of Kiribati, which argued that the destruction of their main livelihood in Kiribati because of climate change gave rise to protection obligations for Australia under the Refugee Convention.[93] Citizens of Tuvalu[94] and Kiribati[95] filed similar protection claims before courts and tribunals in New Zealand. All these claims were dismissed for various reasons, including that the harm alleged did not constitute 'persecution' under refugee law. In *Ioane Teitiota v The Chief Executive of the Ministry of Business, Innovation and Employment*, however, the Supreme Court of New Zealand noted that its decision did not rule out the possibility 'that environmental degradation resulting from climate change or other natural disasters could create a pathway into the Refugee Convention or protected person jurisdiction'.[96] As discussed later, the case was subsequently brought before the UN Human Rights Committee as *Ioane*

[88] *Pro Public* (n 30).
[89] ibid.
[90] *Notre Affaire à Tous* (n 26).
[91] United Nations Framework Convention on Climate Change (entered into force 21 March 1994) 1771 UNTS 107 (UNFCCC) arts 4(3), 4(4).
[92] Paris Agreement (n 5) art 9(1).
[93] 0907346 [2009] RRTA 1168.
[94] *In re: AD (Tuvalu)* [2014] Cases 501370-371.
[95] *Ioane Teitiota v Chief Executive of the Ministry of Business, Innovation and Employment* [2015] NZSC 107.
[96] ibid.

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Teitiota v New Zealand (*Teitiota*),[97] where the question before the Committee was whether New Zealand's decision to deport Mr Teitiota constituted a violation of his right to life under the ICCPR.

7.3.4 *Just Transition Cases*

Finally, a small but growing number of rights-based cases challenge the design or implementation of a State's mitigation measures. These are known as 'just transition' or 'mal-adaptation' cases,[98] the majority of which are brought by Indigenous Peoples. In general, plaintiffs allege that the State has failed to take into account their human rights in designing or adopting mitigation measures, such as the development of wind farms. As most of these cases remain pending, they are not included in the 'best practice' analysis. However, their potential to create positive obligations on States in this arena is worthy of attention in future scholarship.

7.4 EMERGING BEST PRACTICE

Having reviewed the current state of play in rights-based climate litigation, it is clear that courts and tribunals around the world are increasingly recognising the need to address the human rights implications of climate change. From the judgments and decisions rendered to date, we can distil several areas of emerging best practice in rights-based climate jurisprudence. These best practices fall into three broad categories: interpretative techniques, recognition of the impacts of climate change on human rights, and recognition of States' obligations or corporations' responsibilities to protect human rights in the face of the climate crisis. In this section, we will explore each of these areas in more detail and highlight some of the key cases and decisions that have contributed to their development.

7.4.1 *Interpretive Techniques*

National courts and UN human rights bodies have recognised that, in interpreting States' obligations to protect human rights in the context of climate change, it is instructive to refer to norms of international environmental law and best available science.[99] This is particularly important as most human rights instruments do not

[97] *Teitiota* (n 19).

[98] Joana Setzer and Catherine Higham, 'Global Trends in Climate Change Litigation: 2021 Snapshot' (*LSE Grantham Research Institute on Climate Change and the Environment*, July 2021) 15 <www.lse.ac.uk/granthaminstitute/wp-content/uploads/2021/07/Global-trends-in-climate-change-litigation_2021-snapshot.pdf> accessed 24 February 2024; Savaresi and Setzer (n 10) 29–30.

[99] See further Maxwell, Mead, and Van Berkel (n 31) 47–49 [footnotes 76 and 89]. Regarding international law, see e.g. *Urgenda Supreme Court* (n 28) as discussed below; CCPR General Comment

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expressly refer to climate change. Furthermore, as mentioned earlier, States' obligations to protect human rights are usually framed by reference to open-textured standards of 'reasonableness' and 'appropriateness'.[100] International law, as it pertains to climate change, environmental protection, transboundary harm, and human rights, has thus been a crucial source for many courts and UN human rights institutions in interpreting States' obligations in the context of climate change.[101] Many courts have referred to the near-universally ratified UNFCCC and Paris Agreement as central sources of applicable legal norms.[102] For instance, the ultimate objective of the UNFCCC, as cited by the Dutch Supreme Court in *Urgenda*, is 'to stabilise greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous human induced interference with the climate system'.[103] The principles and commitments contained in the UNFCCC are discussed in more detail in the chapter on international law.[104]

Turning now to courts' application of these sources in practice, the Dutch Supreme Court in *Urgenda* has also provided the most extensive explanation of its interpretive method. The interpretive method itself, as well as the Dutch Supreme Court's sense of transparency in the process of establishing a legal duty with far-reaching implications, is indicative of emerging best practice.[105] Pursuant to Article 31(1) of the Vienna Convention on the Law of Treaties, the Court determined that the ECHR must be interpreted so as to render its provisions 'practical and effective' in light of its object and purpose as a treaty to protect individual human beings.[106] This required a consideration of 'the relevant rules of international law',[107] the practice of European States,[108] and 'scientific insights and generally

No 36 (n 20) [62]. See also Sarah Mead and Lucy Maxwell, 'Climate Change Litigation: National Courts as Agents of International Law Development' in Edgardo Sobenes, Sarah Mead, and Benjamin Samson (eds), *The Environment through the Lens of International Courts and Tribunals* (Asser 2022); Regarding best available science, see *Urgenda Supreme Court* (n 28) (referring to the reports of the IPCC at [4.4], [4.5], [7.2.1] and reports of the UN Environment Program at [4.6]). *Neubauer* (n 26) [16] and following referring to the IPCC; Joint Statement of Five UN Human Rights Treaty Bodies (n 20).

[100] See Maxwell, Mead, and Van Berkel (n 31).

[101] Benoit Mayer, 'Climate Change Mitigation as an Obligation Under Human Rights Treaties?' (2021) 115 AJIL 409.

[102] The UNFCCC has 197 parties. Out of 197 Parties to the Convention, 191 are Parties to the Paris Agreement. See <https://treaties.un.org/>.

[103] *Urgenda Supreme Court* (n 28) [5.7.3].

[104] See Chapter 12 on International Law.

[105] *Urgenda Supreme Court* (n 28) [5.6.3]; Cf Judgement in *Plan B Earth and Ors v Prime Minister and Ors* <https://climate-laws.org/geographies/united-kingdom/litigation_cases/plan-b-earth-and-others-v-prime-minister> [5] ('The fundamental difficulty which the Claimants face is that there is no authority from the European Court of Human Rights on which they can rely, citing the Paris Agreement as being relevant to the interpretation of the ECHR, arts 2 and 8.').

[106] *Urgenda Supreme Court* (n 28) [5.4.1].

[107] ibid [5.4.2].

[108] ibid.

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accepted standards'.[109] The Court's approach consciously reflected the ECtHR's 'common ground'[110] doctrine,[111] which enables the European court to interpret the Convention 'in the light of present day conditions' and on the basis that it is a 'living instrument'.[112] The common ground approach, furthermore, ensures that human rights instruments remain relevant in light of evolving threats to human rights. Accordingly, the Supreme Court then drew upon international law in a number of stages in its judgment, as we discuss later.[113]

Numerous other national courts have engaged closely with international law in adjudicating rights-based climate cases. The Lahore High Court stated in *Leghari* that '[o]ur environmental jurisprudence … has weaved our constitutional values and fundamental human rights with the international environmental principles'.[114] This built on the understanding of the court that:

> fundamental rights, like the right to life … which includes the right to a healthy and clean environment and right to human dignity … read with constitutional principles of democracy, equality, social, economic and political justice include within their ambit and commitment, the international environmental principles of sustainable development, precautionary principle, environmental impact assessment, inter and intra-generational equity and public trust doctrine. Environment and its protection has taken a center stage in the scheme of our constitutional rights. … The existing environmental jurisprudence has to be fashioned to meet the needs of something more urgent and overpowering i.e., Climate Change. From Environmental Justice, which was largely localized and limited to our own ecosystems and biodiversity, we need to move to Climate Change Justice. Fundamental rights lay at the foundation of these two overlapping justice systems. Right to life, right to human dignity, right to property and right to information … read with the constitutional values of political, economic and social justice provide the necessary judicial toolkit to address and monitor the Government's response to climate change.[115]

In *Milieudefensie v Shell*, the Hague District Court of the Netherlands extended this reasoning to corporations, finding that Royal Dutch Shell had an obligation under Dutch tort law to reduce its emissions in accordance with the long-term temperature goal enshrined in the Paris Agreement and in accordance with the best available scientific evidence as laid down in the reports of the Intergovernmental Panel on Climate Change (IPCC). Significantly, Shell's

[109] ibid [5.4.3].
[110] *Demir and Baykara v Turkey* App no 34503/97 (ECtHR, 12 November 2008).
[111] See *Urgenda Supreme Court* (n 28) [5.4.1]–[5.4.3] and [6.3]. For application of the method to the facts, see [7.2.1]–[7.2.11], in particular [7.2.11].
[112] ibid.
[113] See further Mead and Maxwell (n 99).
[114] *Asghar Leghari* (n 81) [20].
[115] ibid [7].

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duty of care under Dutch tort law was construed in light of the rights to life and respect for private and family life, as enshrined in the ECHR and in the ICCPR. While recognising that these human rights treaties do not directly bind corporations, the Court highlighted 'the widespread international consensus that human rights offer protection against the impacts of dangerous climate change and that companies must respect human rights'.[116] The Court explicitly relied on the UN Guiding Principles on Business and Human Rights (UNGP) in its understanding of businesses' responsibilities to respect human rights, noting that since 2011, 'the European Commission has expected European businesses to meet their responsibilities to respect human rights, as formulated in the UNGP'.[117] For this reason, the UNGP 'are suitable as a guideline in the interpretation of the unwritten standard of care' contained in Dutch national law.[118] The Court's willingness to draw from these guidelines and other relevant human rights law can thus be considered an emerging best practice with respect to corporations' responsibilities to address the climate crisis.

In another rights-based case focused on both mitigation and adaptation, the Supreme Court of Colombia in *Future Generations* contributed to emerging best practice by drawing extensively upon principles of international law.[119] The Court outlined that its judgment would be guided by 'the legal environmental principles of (i) precaution; (ii) intergenerational equity; and (iii) solidarity' (the latter reflecting the 'no harm' principle of customary international law).[120] The Court then drew upon the precautionary principle in assessing the severity of the harm posed by climate change, and referred to the risk and irreversibility of the damage posed by climate change.[121] Citing the principle of intergenerational equity, the Court adopted a broad understanding of the persons and things to whom the State's duty to protect fundamental rights extends, including future generations and persons outside Colombia's borders:[122] 'In terms of intergenerational equity, the transgression is obvious', given that 'future generations, including the children who brought this action, will be directly affected, unless our present generation reduces the deforestation rate to zero'.[123] The Colombian State thereby has a 'co-responsibility' to protect the Amazon as a global resource, not only for Colombian people, but 'other people

[116] *Milieudefensie* (n 32) [4.1.3].
[117] ibid [4.4.11].
[118] ibid.
[119] *Demanda Futuras Generaciones* (n 38); Catalina Vallejo Piedrahíta and Siri Gloppen, 'The Quest for Butterfly Climate Adjudication' in César Rodríguez-Garavito (ed), *Litigating the Climate Emergency: How Human Rights, Courts, and Legal Mobilization Can Bolster Climate Action* (Cambridge University Press 2022) 128.
[120] *Demanda Futuras Generaciones* (n 38) [27].
[121] ibid [11.1].
[122] ibid [6.3], [6.4]. Danai Spentzou, 'Climate Change Litigation as a Means to Address Intergenerational Equity and Climate Change' (2021) 2 QMLJ 153, 168–169.
[123] *Demanda Futuras Generaciones* (n 38) [11.2].

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who inhabit and share the Amazon [in] foreign territory' and the world's population in general,[124] on the basis of the solidarity principle. Finally, the Court found that the State's failure to reduce deforestation was inconsistent with its commitments under the Paris Agreement, which strengthened its finding regarding the State's violation of the claimants' constitutional rights.[125]

The views of the UN Committee on the Rights of the Child (CRC) in *Sacchi* also demonstrated the relevance of international environmental law in interpreting international human rights law. Citing the *Advisory Opinion OC-23/17* of the Inter-American Court of Human Rights, the Committee stated that the obligation to prevent transboundary environmental damage or harm is an obligation recognised by international environmental law, under which States may be held responsible for any significant damage caused to persons outside their borders by activities originating in their territory or under their effective control or authority.[126] The Committee also referenced the principles of intergenerational equity and the precautionary principle, as well as the Paris Agreement and the UNFCCC, as sources informing its interpretation of the Convention on the Rights of the Child.[127] This approach can be considered an emerging best practice, as the Committee not only emphasised the criticality of these environmental instruments and norms in ensuring children's rights but also suggested the potential of these agreements to inform the broader landscape of human rights law.[128]

7.4.2 *Impacts of Climate Change on Human Rights*

Emerging best practice in climate litigation also shows judicial recognition of the impacts of climate change on human rights, both in general and on particular groups. National[129] and regional[130] courts and UN human rights institutions[131] have

[124] ibid [10], [11.3]. See also Manuela Niehaus, 'Protecting Whose Children? The Rights of Future Generations in the Courts of Germany and Colombia' (*Völkerrechtsblog*, 23 March 2022) <https://voelkerrechtsblog.org/protecting-whose-children/> accessed 24 February 2024.

[125] *Demanda Futuras Generaciones* (n 38) [11], [11.3].

[126] *Sacchi* (n 20) 11.

[127] ibid; Aoife Nolan, 'Children's Rights and Climate Change at the UN Committee on the Rights of the Child: Pragmatism and Principle in *Sacchi v Argentina*' (*EJIL: Talk!*, 20 October 2021) <www.ejiltalk.org/childrens-rights-and-climate-change-at-the-un-committee-on-the-rights-of-the-child-pragmatism-and-principle-in-sacchi-v-argentina/> accessed 24 February 2024.

[128] See also Leslie-Anne Duvic-Paoli and Mario Gervasi, 'Harm to the Global Commons on Trial: The Role of the Prevention Principle in International Climate Adjudication' (2022) RECIEL 1, 4; Yusra Suedi, 'Litigating Climate Change before the Committee on the Rights of the Child in Sacchi v Argentina et al: Breaking New Ground?' (2022) 40(4) Nordic Journal of Human Rights 549.

[129] See *Urgenda Supreme Court* (n 28); *Neubauer* (n 26); *VZW Klimaatzaak Appeal* (n 27); *Leghari* (n 81); *Demanda Futuras Generaciones* (n 38); *Shrestha v Office of Council of Ministers* (n 43). See also Maxwell, Mead, and Van Berkel (n 31) 44 [footnote 59].

[130] See e.g. IACtHR OC-23/17 (n 20).

[131] ibid.

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recognised that climate change is *already* having, and *will* have, a significant impact on the enjoyment of a wide range of human rights.

National courts, in particular, have repeatedly emphasised the far-reaching impacts of climate change on human rights. This emerging best practice is illustrated in several landmark decisions. For example, the court in *Leghari*, found that:

> Climate Change is a defining challenge of our time and has led to dramatic alternations in our planet's climate system. For Pakistan, these climatic variations have primarily resulted in heave floods and droughts, raising serious concerns regarding water and food security. On a legal and constitutional plane this is clarion call for the protection of fundamental rights of the citizens of Pakistan, in particular, the vulnerable and weak segments of the society who are unable to approach this Court.[132]

As a result, the Court emphasised that 'the delay and lethargy of the State in implementing [its climate policies] offends the fundamental rights of the citizens which need to be safeguarded'.[133] Similarly, the Dutch Supreme Court in *Urgenda* held that the harm posed by climate change triggered the State's obligations to protect the rights to life and to private and family life under the ECHR, in particular due to the precautionary principle.[134] According to the Court:

> The fact that this risk will only be able to materialise a few decades from now and that it will not impact specific persons or a specific group of persons but large parts of the population does not mean – contrary to the State's assertions – that Articles 2 and 8 ECHR offer no protection from this threat […]. *This is consistent with the precautionary principle* … The mere existence of a sufficiently genuine possibility that this risk will materialise means that suitable measures must be taken.[135]

The *Urgenda* decision has inspired plaintiffs in other jurisdictions to pursue more ambitious climate action from their governments. In many of these instances, courts in Europe have followed the Dutch courts' lead and relied on climate impacts on human rights in their decisions. For example, in *Klimaatzaak*, the Court of First Instance of Brussels in Belgium recognised that 'there can no longer be any doubt that there is a real threat of dangerous climate change with a direct negative effect on the daily lives of current and future generations of Belgium's inhabitants'.[136] In a recent decision, the Court of Appeal of Brussels affirmed this decision (and expanded on several aspects of the lower court's reasoning).[137] In *Neubauer*, the German Federal Constitutional Court highlighted that '[h]uman health is particularly vulnerable to climate change' and listed a range of ways in which health is

[132] *Asghar Leghari* (n 81) [6].
[133] ibid [8].
[134] *Urgenda Supreme Court* (n 28) [5.3.2].
[135] ibid [5.6.2] (emphasis added).
[136] *VZW Klimaatzaak v l'État Belge* [2021] 2015/4585/A, 61 (Tribunal de première instance francophone de Bruxelles, Section Civile) (*VZW Klimaatzaak First Instance*).
[137] *VZW Klimaatzaak Appeal* (n 27).

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impacted by climate change. Apart from impacting physical health, these climate impacts 'can increase social and psychological pressures and trigger disorders such as stress, anxiety attacks and depression'.[138]

Shifting focus to the regional and international level, five UN treaty bodies have recognised, in a joint statement, that 'climate change poses significant risks to the enjoyment of the human rights', including 'the right to life, the right to adequate food, the right to adequate housing, the right to health, the right to water and cultural rights'.[139] The health impacts of climate change were given specific attention by the Inter-American Court of Human Rights in its advisory opinion,[140] and by the UN CRC in *Sacchi v Argentina*. The UN CRC, in particular, gave serious thought to the disproportionate impact of climate change on children as a group. In its deliberation, the Committee highlighted that as children, the authors were particularly impacted by the adverse effects of climate change. This impact arises not just from the unique ways in which they already experience these effects but also from the increasingly serious long-term impact climate change could have on them, particularly if immediate action is not taken.[141] Building on this, and noting the explicit recognition by State parties to the Convention that children are entitled to special safeguards, including appropriate legal protection, it found that States have heightened obligations to protect children from foreseeable harm resulting from climate change.[142] This finding more broadly suggests that States are obliged to take urgent, proactive measures to ensure the rights of vulnerable groups who are disproportionately impacted by climate change.

Judicial emphasis on climate impacts and the human rights of Indigenous Peoples also emerges from the UN Human Rights Committee's views in the case *Billy et al v Australia*. The communication was filed by eight First Nations Peoples and their children, who are nationals of Australia and residents of the Torres Strait region (islands to the north of Australia). The authors alleged that the measures (or lack thereof) adopted by Australia with respect to both mitigation and adaptation were insufficient to protect their rights to life (Article 6 ICCPR) and respect for family and home (Article 17 ICCPR) and their cultural rights (Article 27 ICCPR) (among others) from the impacts caused by climate change, in particularly due to sea level rise. In its decision, the Committee focused upon the conduct of Australia with respect to adaptation, finding that there was 'delay in seawall construction with respect to the islands where the authors live',[143] that climate change had led to a 'reduction of marine resources used for food, and the loss of crops and fruit

[138] *Neubauer* (n 26) [23].
[139] See Joint Statement of Five UN Human Rights Treaty Bodies (n 20). See also CCPR General Comment No 36 (n 20) [62].
[140] IACtHR OC-23/17 (n 20).
[141] *Sacchi* (n 20) [10.13].
[142] ibid.
[143] *Billy* (n 20) [8.12].

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trees',[144] and that the authors 'experience anxiety and distress owing to erosion that is approaching some homes in their communities'[145] and gave evidence that 'their lives have been adversely affected by flooding and inundation of their villages and ancestral burial lands'.[146] On this basis, the Committee concluded that:

> the State party's failure to adopt timely adequate adaptation measures to protect the authors' collective ability to maintain their traditional way of life, to transmit to their children and future generations their culture and traditions and use of land and sea resources discloses a violation of the State party's positive obligation to protect the authors' right to enjoy their minority culture. Accordingly, the Committee considers that the facts before it amount to a violation of the authors' rights under article 27 of the Covenant.[147]

The Committee reached a similar finding with respect to the right to respect to family and home (Article 17 ICCPR). It did not uphold the alleged violation of the rights to life (Article 6 ICCPR), and did not consider it necessary to assess the other alleged violations.

By way of orders, the Committee outlined Australia's obligation to provide the authors with an 'effective remedy' (under Article 2(3)(a) ICCPR), which it indicated requires Australia to:

> provide adequate compensation, to the authors for the harm that they have suffered; engage in meaningful consultations with the authors' communities in order to conduct needs assessments; continue its implementation of measures necessary to secure the communities' continued safe existence on their respective islands; and monitor and review the effectiveness of the measures implemented and resolve any deficiencies as soon as practicable.[148]

The Committee's views also suggest that the forced relocation of Indigenous Peoples due to the impact of climate change may constitute a violation of their rights under the ICCPR.[149] This decision highlights the need for affirmative measures to ensure the rights of Indigenous Peoples and other vulnerable groups who are disproportionately affected by climate impacts.

In addition to the developments in climate litigation outlined earlier, the Philippines Human Rights Commission's report on the Carbon Majors inquiry documented a range of human rights violations caused by climate change.[150]

[144] ibid.
[145] ibid.
[146] ibid.
[147] ibid [8.14].
[148] ibid [11].
[149] ibid [4.8]. Sarah Joseph, 'Climate Change and the Torres Strait Islands: UN Condemns Australia' (*Law Future Centre*, 26 September 2022) <https://blogs.griffith.edu.au/law-futures-centre/2022/09/26/climate-change-and-the-torres-strait-islands-un-condemns-australia/> accessed 24 February 2024.
[150] *In re Greenpeace Southeast Asia* (n 15).

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In relation to the Carbon Majors' assertion that the Commission lacked jurisdiction to investigate their responsibility for climate change-related human rights violations, the Commission stated: 'Stripped of legal niceties, the contentious issue was that our Commission, or, indeed the Philippine State … may only inquire into the conduct of corporate entities operating within Philippine territory, even if the corporations' operations outside our territory were negatively impacting the rights and lives of our people. We cannot accept such a proposition.'[151] Thus, based on the Commission's constitutional mandate 'to investigate and inquire into allegations of human rights violations suffered by our people', the Commission found that it had jurisdiction, and the communication was admissible.[152] The Commission further made important findings on non-economic losses, stating how climate change impacts 'dehumanise' the human person as 'the combination of loss of lives, deprivation of basic needs, material loss, emotional trauma and hopelessness that these survivors experience strip them of their dignities'.[153]

The inquiry's findings reflect evidence from survivors of Super Typhoon Haiyan, one of the strongest storms ever recorded.[154] For example, one individual recounted how 'one moment people were reaching above the water, fighting for their lives, and the next moment, they were gone'.[155] The Commission found that these human rights impacts were directly linked to the conduct of the Carbon Majors, which are not only responsible for the lion's share of atmospheric emissions but also 'engaged in wilful obfuscation of the climate science, which has prejudiced the right of the public to make informed decisions about their products'.[156] This responsibility for climate change and related human rights impacts gave rise to a duty to 'provide for or cooperate in the remediation of those impacts';[157] an obligation which extends to 'all business enterprises in each of the Carbon Majors' respective value chains'.[158] Furthermore, the Commission recommended that States 'fulfil climate finance commitments and device new mechanisms for loss and damage from climate change-related events' including to 'compensate victims'.[159]

All in all, the inquiry as a whole can be viewed as a form of emerging best practice as it has generated the world's largest and most comprehensive body of formal eyewitness and expert testimonies, documentary evidence, and legal analysis relating to responsibility for climate loss and damage, with the report synthesising and

[151] ibid 4.
[152] ibid.
[153] ibid 32.
[154] Meagan Singer, '2013 State of the Climate: Record-Breaking Super Typhoon Haiyan' (Climate.gov, 13 July 2014) <www.climate.gov/news-features/understanding-climate/2013-state-climate-record-breaking-super-typhoon-haiyan> accessed 24 February 2024.
[155] *In re Greenpeace Southeast Asia* (n 15) 34.
[156] ibid 98.
[157] ibid 113.
[158] ibid.
[159] ibid 124; 121.

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drawing normative conclusions from these sources. While the report as such is not binding, the Commission's analysis could inspire courts around the world to address questions of responsibility for loss and damage through the lens of human rights. Moreover, it is likely to inspire further development of cases focused on the responsibility of private actors such as fossil fuel companies for contributing to climate change-related loss and damage. The report itself indicates an emerging recognition of the need for reparations and compensation for loss and damage suffered because of climate change, and suggests that the legal landscape for climate justice is gradually shifting.

In summary, emerging jurisprudence in climate litigation and the recognition of the impacts of climate change on human rights demonstrate a growing understanding that climate change is not only an environmental problem but also a human rights issue. This understanding has important legal implications. As the following sections will show, judges around the world are starting to clarify and enforce human rights obligations relating to climate change so that human rights are effectively protected in the face of climate change.

7.4.3 *Recognition of the State's Obligations in the Context of Climate Change*

On the basis of the harm posed by climate change, courts and UN treaty bodies have recognised that States must adopt a wide range of actions in order to protect human rights.[160] This position reflects emerging best practice as it demonstrates an understanding of the ambition necessary to address the expansive nature of climate change within the human rights sphere.

One can find this emerging best practice in the 2019 UN joint statement on human rights and climate change referenced in the previous subsection.[161] The statement is significant as it comes from five different treaty bodies with an interest in human rights: the Committee on the Elimination of Discrimination against Women, the Committee on Economic, Social and Cultural Rights, the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, the CRC, and the Committee on the Rights of Persons with Disabilities. The obligation is articulated as follows:

> Failure to take measures to prevent foreseeable harm to human rights caused by climate change, or to regulate activities contributing to such harm, could constitute a violation of States' human rights obligations. In order for States to comply with their human rights obligations, and to realize the objectives of the Paris

[160] Kumaravadivel Guruparan and Harriet Moynihan, 'Climate Change and Human Rights-Based Strategic Litigation' (*Chatham House*, November 2021) <www.chathamhouse.org/2021/11/climate-change-and-human-rights-based-strategic-litigation/introduction> accessed 27 February 2024.

[161] Joint Statement of Five UN Human Rights Treaty Bodies (n 20).

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> Agreement, they must adopt and implement policies aimed at reducing emissions, which reflect the highest possible ambition, foster climate resilience and ensure that public and private investments are consistent with a pathway towards low carbon emissions and climate resilient development.[162]

The statement, moreover, outlines developed countries' human rights obligations with respect to providing financial aid to developing States. This includes, '[a]s part of international assistance and cooperation towards the realization of human rights', support for 'adaptation and mitigation efforts in developing countries by facilitating transfers of green technologies and by contributing to financing climate mitigation and adaptation'.[163]

As discussed earlier, the UN Human Rights Committee's views in the case *Billy et al v Australia* represent emerging best practice with respect to the obligations of States regarding climate change adaptation.

UN treaty bodies have also analysed States' human rights obligations regarding the use of fossil fuel reserves,[164] including as part of dialogues with States during their periodic reviews. For example, in 2020, the Committee on Economic Social and Cultural Rights recommended that Norway 'reconsider its decision to increase oil and natural gas exploitation and take its human rights obligations as a primary consideration into its natural resource exploitation and export policies'.[165]

At the domestic level, several national courts have articulated States' human rights obligations regarding climate change mitigation through GHG emissions reductions.[166] For instance, in *Urgenda*, the Dutch Supreme Court found that 'no other conclusion can be drawn but that the State is required pursuant to the rights to life and to private and family life under Articles 2 and 8 ECHR to take measures to counter the genuine threat of dangerous climate change',[167] and that such measures must be 'reasonable and suitable', and consistent with 'due diligence'.[168] The Court held that the State had an *individual* responsibility to mitigate climate change based on its commitments under the UNFCCC, the '*no harm*' principle contained therein, and principles of proportionate liability under international and national law. The Court also drew on provisions of the UNFCCC and the Paris Agreement – including the principles of equity and common but

[162] ibid [10]–[11].
[163] ibid [17].
[164] See Mckernan and others (n 20).
[165] ibid 13.
[166] Note that, in addition to the *Neubauer* and *Urgenda* cases, the recent decision of the Brussels Court of Appeal in the *VZW Klimaatzaak* case in November 2023 is another significant articulation of States' mitigation obligations pursuant to human rights law (there, the ECHR). However, it falls outside the cut-off period for inclusion in this chapter.
[167] *Urgenda Supreme Court* (n 28) [5.6.2].
[168] ibid. This was also the conclusion of the Court in *VZW Klimaatzaak First Instance* (n 136). It was affirmed by the Brussels Court of Appeal in *VZW Klimaatzaak Appeal* (n 27).

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differentiated responsibilities and respective capacities (CBDR-RC) – to formulate the State's duty to contribute its '*fair share*' of global emissions reductions,[169] as follows:[170] 'The UNFCCC is based on the idea that climate change is a global problem that needs to be solved globally. Where emissions of greenhouse gases take place from the territories of all countries and all countries are affected, measures will have to be taken by all countries. Therefore, all countries will have to do the necessary.'[171] Likewise, the German Constitutional Court in *Neubauer* analysed the alleged failure of the State to reduce GHG emissions in the short-term as a potential violation of the State's obligation to protect the constitutional rights to life and health (among others), as well as its obligation to refrain from disproportionately restricting the plaintiffs' constitutional freedoms through future drastic GHG emission reductions. The Court determined that, pursuant to existing constitutional jurisprudence, '[t]he state's duty of protection [of fundamental rights] … includes the duty to protect life and health against the risks posed by climate change'.[172] The Court ultimately upheld the plaintiffs' challenge on the basis that the legislator's proposed reduction of GHG emissions violated the plaintiffs' fundamental freedoms by effectively offloading the burden to reduce emissions onto future generations.[173]

Other important mitigation cases concern the protection of carbon sinks, most notably forests, or other ecosystems essential to climate protection. Perhaps the most well-known success in this category is *Future Generations*, in which the Supreme Court of Colombia granted the youth plaintiffs an order on the Government of Colombia to formulate and implement an 'intergenerational pact for the life of the Colombian Amazon' to adopt measures aimed at reducing deforestation and GHG emissions to zero.[174] And in *Sheikh Asim Farooq v Federation of Pakistan etc.*, the Lahore High Court granted an order requesting the Government of Pakistan to adopt steps to increase the forest cover to 20–25 per cent in order to achieve a balanced economy.[175] Further, in *Pro Public*, the petitioners sought an order declaring the Godavari area as a prohibited area for mineral activities and to establish the area as an Environmental Protection Area pursuant to national laws. The Court agreed on the first count while ruling on the second count that a committee be established to determine if a designation of the area as protected is appropriate.[176]

[169] See ibid [6.3] and [6.5] on the 'fair share'.
[170] ibid [5.7.1].
[171] ibid [5.7.2].
[172] *Neubauer* (n 26). The court did not find a breach of the duty to protect, but did find that the manner in which the legislator had discharged this duty violated fundamental freedoms by offloading the burden to reduce emission onto future generations.
[173] See further Petra Minnerop, 'The First German Climate Case' (2020) 22(3) ELR 215.
[174] *Demanda Futuras Generaciones* (n 38).
[175] *Sheikh Asim Farooq v Federation of Pakistan etc* WP No 192069/2018 (Lahore High Court).
[176] *Pro Public* (n 30).

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Crucially, in all of these instances, national courts and UN treaty bodies have determined that States' human rights obligation exists *notwithstanding* that climate change is a global problem, which cannot be solved by any individual country.[177] The Dutch Supreme Court in *Urgenda*, for instance, determined that the State must do 'its part' in order to prevent dangerous climate change, and expressly rejected the State's defence that its emissions were negligible in absolute terms. The German Constitutional Court in *Neubauer* similarly found: 'The fact that the German state is incapable of halting climate change on its own and is reliant upon international involvement because of climate change's global impact and the global nature of its causes does not, in principle, rule out the possibility of a duty of protection arising from fundamental rights.'[178] Finally, on the issue of States' human rights obligations regarding climate-induced displacement, emerging best practice can be distilled from the UN Human Rights Committee's views on *Teitiota v New Zealand*. As discussed earlier, this case resulted from New Zealand's denial to grant asylum to the author despite his assertions that climate change had made his home country, Kiribati, uninhabitable. In the case before the UN Human Rights Committee, the author sought a declaration that his right to life had been violated because of this denial and his subsequent deportation to Kiribati.[179] To support this claim, the author presented evidence that sea level rise in Kiribati resulting from climate change had created scarcity of habitable space, resulting in violent land disputes, and environmental degradation including saltwater contamination of the freshwater supply.

While the Human Rights Committee did not find a violation of the author's rights, it did make an important pronouncement that represents emerging best practice. That is, States can incur international responsibility for returning individuals who face life-threatening climate impacts in their home States.[180] As Committee member Laki points out, this recognition reflects 'a significant step … toward the recognition of climate refugees, especially as regards *non refoulement* obligations under human rights law and the ICCPR' while also highlighting the importance of international assistance to States adversely affected by climate change.[181] The decision could therefore serve as a stepping-stone for the realisation of the right to a remedy for those who have suffered climate losses.[182]

[177] See cases referred to in Maxwell, Mead, and Van Berkel (n 32) 45.

[178] *Neubauer* (n 26) [149], [199]–[202]. Note that these issues intersect with other critical areas of climate litigation. See Chapters 13, 15, and 16 on Common but Differentiated Responsibilities and Respective Capabilities, State Responsibility, and Causation, respectively.

[179] *Teitiota* (n 20).

[180] ibid [9.14].

[181] Duncan Muhumuza Laki, 'The Case of Ioane Teitiota v New Zealand at the Human Rights Committee: A Common-Sense Approach' (2022) Proceedings of the ASIL Annual Meeting 162.

[182] See further 'Historic UN Human Rights Case Opens Door to Climate Change Asylum Claims' (*OHCHR*, 21 Jan 2020) <www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25482> (quoting Human Right Committee expert Yuval Shany as saying 'this ruling sets forth new standards that could facilitate the success of future climate change-related asylum claims').

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7.5 REPLICABILITY

Replicability stands as a pivotal concern in the evolution of the field of rights-based climate litigation. The core question with regard to replicability is to what extent and how the legal principles and reasoning developed in one jurisdiction can be replicated in others, and to what extent they are context- or jurisdiction-specific.

An analysis of existing judicial practice suggests that rights-based reasoning can often be replicated across jurisdictions. The *Urgenda* decision from the Dutch courts serves as a quintessential illustration. Since the first decision in 2015, courts around the world have relied upon the principles established in the *Urgenda* decisions within their own climate case adjudications. This includes judiciaries in France, Belgium, Germany, and Ireland recognising a number of the central tenets of the *Urgenda* decisions. In every instance, the courts found that the State had failed to comply with its legal obligations and that existing legal standards and scientific evidence could be used to assess compliance. These cases follow earlier decisions of the Supreme Courts in Nepal and Colombia, which applied similar principles and found the States in breach of their human rights obligations.

Further instances of replicability of rights-based reasoning across jurisdictions include the *Leghari* decision in Pakistan, which has been cited in courts in Brazil and the Philippines.[183] The decision of the UN Human Rights Committee in the case of *Teitiota v New Zealand* has also been cited in a number of subsequent cases, including by the Administrative Court of Paris in its decision in *Grande-Synthe v France*,[184] while the Supreme Court of Norway has cited the *Urgenda* decision in *People v Arctic Oil*.[185] These examples demonstrate that the principles established in one jurisdiction can be applied and relied upon in other jurisdictions, and thereby contribute to the development of a consistent and coherent body of international climate law.

At the same time, judges have found it important to highlight certain differences between jurisdictions and have insisted that legal principles and reasoning may need to be adapted to the specific legal and social context. For example, in the Philippines, the Human Rights Commission's report on the Carbon Majors inquiry found that the specific historical and social context of the country, including its high vulnerability to climate change impacts, made it necessary to develop a distinct approach to rights-based climate litigation.[186] Similarly, the *Billy et al v Australia* case before

[183] See *Institute of Amazonian Studies v Brazil* <http://climatecasechart.com/non-us-case/institute-of-amazonian-studies-v-brazil/> accessed 24 February 2024; *In re Greenpeace Southeast Asia* (n 15); Joana Setzer and Délton Winter de Carvalho, 'Climate Litigation to Protect the Brazilian Amazon: Establishing a Constitutional Right to a Stable Climate' (2021) RECIEL 197, 203.

[184] See *Luca Salis et al v State of Sachsen-Anhalt* <http://climatecasechart.com/non-us-case/luca-salis-et-al-v-state-of-sachsen-anhalt/> accessed 24 February 2024.

[185] *Greenpeace Nordic* (n 20).

[186] *In re Greenpeace Southeast Asia* (n 15).

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the UN Human Rights Committee raised specific issues relating to the impacts of climate change on Indigenous Peoples in Australia, which required a nuanced analysis of the legal principles and standards applicable to the case.[187] These examples suggest that although the core legal principles and reasoning developed in one jurisdiction are often replicable, it is nevertheless important for judges to consider the specific legal and social context of each case and adapt their reasoning accordingly.

Furthermore, the replicability of rights-based reasoning is not limited to climate litigation alone. Lessons learned from the application of rights-based reasoning in climate cases can be applied to other areas of law, such as biodiversity and environmental protection. The recognition of the interconnectedness of human rights and the environment has the potential to shape legal practice in other areas of law and contribute to the development of a more holistic and integrated approach to environmental protection.

In conclusion, the replicability of rights-based reasoning across jurisdictions is a crucial factor in the development of a consistent and coherent body of 'transnational' climate law. While appreciating the nuances inherent in differing legal and social contexts, the application of fundamental legal principles and reasoning can catalyse a more comprehensive and integrated approach towards climate change mitigation and adaptation.

7.6 CONCLUSION

Rights-based climate litigation has emerged as a crucial instrument in holding States and corporations accountable for their respective human rights obligations in the face of climate change. The recognition of the intricate link between human rights and climate change has progressively permeated institutional frameworks, leading to its invocation of human rights in climate litigation at the national, regional, and international levels. An increasingly substantial body of legal precedent now underscores the potential of litigation to drive climate action while safeguarding human rights.

This chapter has provided a comprehensive and discerning overview of prevailing trends and emerging best practices in rights-based climate litigation. We reviewed the diverse subjects, fora, and remedies involved in such cases. Although jurisdictional disparities exist, the growing corpus of jurisprudence demonstrates the adaptability and replicability of rights-based reasoning, thereby contributing to the establishment of a consistent and coherent framework for 'transnational' climate law.

The expanding body of jurisprudence in rights-based climate litigation, alongside the ongoing refinement of the interplay between climate change and human rights, underscores the vital role played by courts and tribunals in holding

[187] *Billy* (n 20).

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governments and corporations accountable for their actions – or lack thereof – in addressing the climate crisis. As judicial bodies assume this critical role, they also shape the evolution of climate law, both within individual jurisdictions and across borders. We hope that the roadmap presented in this chapter will be leveraged to further enhance the legal robustness and efficacy of rights-based climate litigation, ensuring that it continues to drive meaningful change while safeguarding human rights.

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