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Litigating the Climate Emergency

The Global Rise of Human Rights–Based Litigation for Climate Action

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In April 2021, the German Constitutional Court stunned observers and even the young plaintiffs who had challenged the country's climate law by holding that "the national climate targets and the annual emission amounts allowed [by the Federal Climate Change Act] until 2030 are incompatible with fundamental rights insofar as they lack sufficient specifications for further emission reductions from 2031 onwards."[1] The court's landmark judgment in the *Neubauer* case prompted the government to increase its 2030 greenhouse gas (GHG) emissions reduction target, specify further increases thereafter, and move up the date of net carbon neutrality to 2045. The ruling built on and expanded legal innovations introduced by litigants and courts since the mid-2010s on issues such as the impact of global warming on human rights, judicial review of governmental action on climate change, the rights of future generations, and the binding nature of governments' international pledges on climate action.

Among the key precedents quoted by the German Constitutional Court is the 2019 Dutch Supreme Court's ruling in the *Urgenda* case, which upheld the lower courts' rulings from 2015 to 2018 that the Dutch government has a duty to urgently and significantly slash the country's planet-warming emissions.[2] *Urgenda* was the first case to establish that climate inaction is a violation of internationally recognized human rights and to hold a government legally accountable for its international commitments and national targets regarding GHG emission cuts. The court ordered the government to

[1] "Constitutional Complaints against the Federal Climate Change Act Partially Successful," Bundesverfassungsgericht, April 29, 2021, <www.bundesverfassungsgericht.de/SharedDocs/Pressemitteilungen/EN/2021/bvg21-031.html>.

[2] See HR 20 December 2019, 41 NJ 2020, m.nt. J.S. (Urgenda/Netherlands) (Neth.) (hereinafter "*Urgenda*").

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increase the nation's GHG emissions reduction target from 20 to 25 percent relative to 1990 levels by the end of 2020 – in line with the country's prior target and the minimum contribution required from industrialized countries for the planet to avoid the most extreme scenarios of global warming, according to the scientific assessments of the UN Intergovernmental Panel on Climate Change (IPCC) and the goals of the 2015 Paris Agreement, both of which the Dutch Supreme Court cited extensively in its ruling, just as the German Constitutional Court would do in *Neubauer*.

Prior to 2015, only nineteen rights-based climate cases had been filed anywhere in the world, according to the database compiled for this study. Launched in early 2020 and updated regularly, this is the first specialized database to collect detailed information about human rights and climate change (HRCC) cases, based on a systematic reading of submissions and rulings as well as interviews with key actors in cases filed before national and international judicial and quasi-judicial bodies (see Table 1.1 in the Appendix for the list of cases).[3] Between 2015 and December 2021, litigants brought 148 climate cases involving rights language or arguments in thirty-eight national jurisdictions and in eleven international judicial or quasi-judicial bodies. As Figure 1.1 shows, human rights–based climate cases proliferated at a steady pace in this period, even as (and sometimes as a reaction to) progress stalled with regard to the implementation of the 2015 Paris Agreement.

Outside of the United States, the proportion of climate cases that are argued on human rights grounds has risen to approximately 91 percent since 2015, with Europe as the most active region with respect to rights-based climate litigation (see Figure 1.2).[4] *Urgenda*-like suits have been filed, with mixed results, in, for example, Belgium, Brazil, Canada, the European Union,

[3] There is an ongoing debate in the literature about which legal actions should count as climate litigation. See Jacqueline Peel and Hari M. Osofsky, *Climate Change Litigation* (Cambridge: Cambridge University Press, 2015), pp. 4–8. Following Peel and Osofsky, this chapter includes only cases in which litigants or judicial or quasi-judicial bodies explicitly referenced climate change and human rights in their submissions or decisions.

[4] The database on which this study is based is publicly available and regularly updated by the Climate Litigation Accelerator (CLX) at New York University School of Law. The information in CLX's database was generated by a systematic analysis of the texts of the HRCC submissions and rulings as well as interviews with litigants and judges and participation in expert meetings. See the NYU Climate Litigation Accelerator's Toolkit, which includes the database, at <clxtoolkit.org>. To check for consistency and thoroughness, CLX researchers also keep track of potentially relevant new cases that are included in the databases on climate litigation kept by the Sabin Center for Climate Change Law ("Climate Change Litigation Databases," Sabin Center for Climate Change Law, <www.climatecasechart.com>) and the Grantham Research Institute on Climate Change and the Environment ("Climate Change Laws of the

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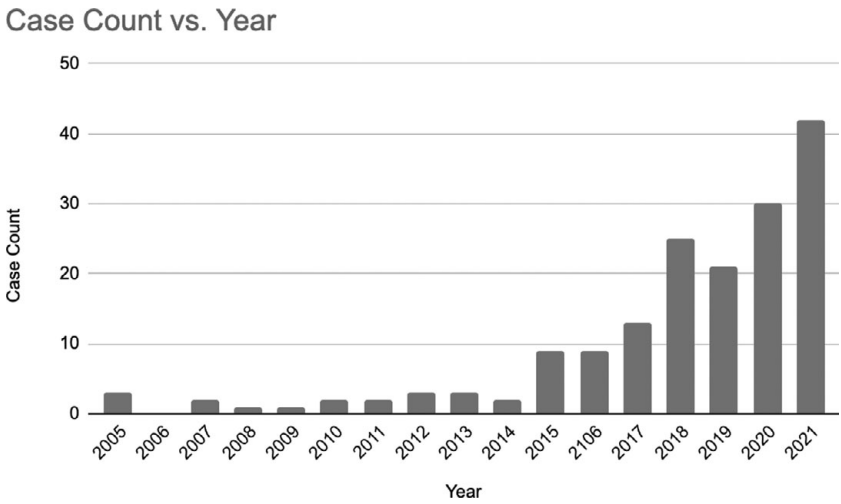


FIGURE 1.1 HRCC cases filed per year

France, Germany, India, Ireland, Nepal, South Korea, Spain, Switzerland, and the United Kingdom.[5] Beyond Europe, in 2015, Pakistan's Lahore High

World," Grantham Research Institute on Climate Change and the Environment, <https://climate-laws.org>).

5 For information' on the Belgium climate case *VZW/ASBL Klimaatzaak*, see "Overview of the Progress of Our Legal Action," L'Affaire Climat, <https://affaire-climat.be/fr/the-case>. For an unofficial translation of the complaint submitted by the petitioners in *Notre Affaire à Tous* v. *France*, see "'Affaire du Siècle' (Case of the Century): Brief on the Legal Request Submitted to the Administrative Court of Paris on 14 March 2019," Notre Affaire à Tous, <https://notreaffaireatous.org/wp-content/uploads/2019/05/Brief-juridique-ADS-EN-1.pdf>. For an overview of the case filed by the Commune de Grande-Synthe against the French government, see RFI, "French Mayor Goes to Court over Government's 'Climate Inaction,'" RFI, January 13, 2019, <www.rfi.fr/en/environment/20190123-french-mayor-goes-court-over-government-s-climate-inaction>. For the Supreme Court judgment in *Friends of the Irish Environment* v. *Ireland*, see *Friends of the Irish Environment* v. *Ireland* [2019] IEHC 747, 748 (H. Ct.) (Ir.). For an unofficial English translation of the judgment in the Swiss case, see "Verein KlimaSeniorinnen Schweiz v. DE: Judgment of 27 November 2018," KlimaSeniorinnen, 2020, <https://klimaseniorinnen.ch/wp-content/uploads/2019/02/Judgment-FAC-2018-11-28-KlimaSeniorinnen-English.pdf>. For the initial decision in the UK case *Plan B Earth* v. *Secretary of State for Business, Energy and Industrial Strategy*, see *Plan B Earth* v. *Sec'y of State for Bus., Energy & Indus. Strategy* [2018] EWHC 1892 CO/16/2018 (appeal taken from Eng.) (UK). For information on *La Rose* v. *Her Majesty the Queen*, see "La Rose v. Her Majesty the Queen," Sabin Center for Climate Change Law, <http://climatecasechart.com/non-us-case/la-rose-v-her-majesty-the-queen/>. See also "Pandey v. India," Sabin Center for Climate Change Law, <http://climatecasechart.com/non-us-case/pandey-v-india/>; see also "Duarte Agostinho and Others v. Portugal and 32 Other States," Sabin Center for Climate Change Law, <http://climatecasechart.com/non-us-case/youth-for-climate-justice-v-austria-et-al/>; see also Case T-330/T18, *Carvalho* v. *Parliament*, Gen. Ct. of the European Union

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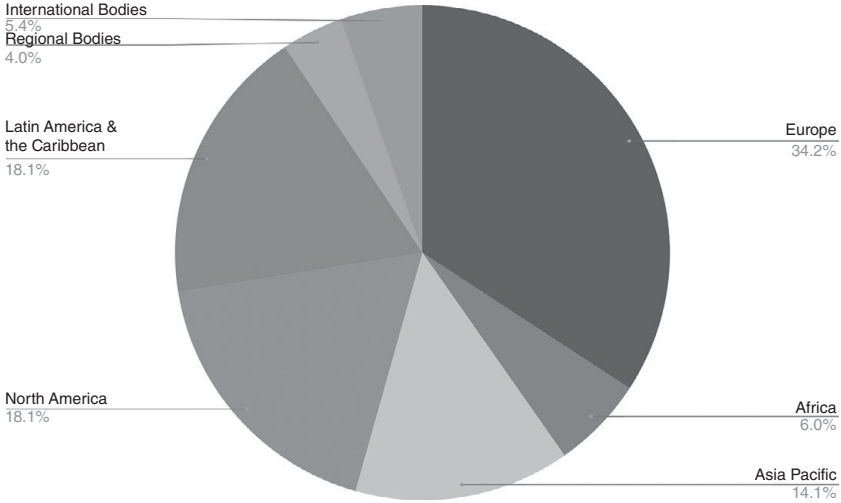


FIGURE 1.2 HRCC cases per region since 2015

Court found that the government's delay in enacting the country's climate laws violated citizens' fundamental rights.[6] In 2018, the Colombian Supreme Court ruled in favor of young plaintiffs who sued the government to hold it accountable to its own international climate-related pledge to reduce deforestation in the Amazon region.[7] Other rights-based lawsuits involving young plaintiffs have been filed in Argentina, Australia, Brazil, Canada, the European Union, Germany, India, Mexico, Pakistan, Peru, South Korea, the United Kingdom, and the United States, as well as in the European Court of Human Rights.[8] Courts and human rights bodies in the Global South – from

(Second Chamber) (May 8, 2019); see also "Shrestha v. Office of the Prime Minister et al.," Sabin Center for Climate Change Law, <http://climatecasechart.com/climate-change-litigation/non-us-case/shrestha-v-office-of-the-prime-minister-et-al/>; see also "Mathur, et al. v. Her Majesty the Queen in Right of Ontario," Sabin Center for Climate Change Law, <http://climatecasechart.com/climate-change-litigation/non-us-case/mathur-et-al-v-her-majesty-the-queen-in-right-of-ontario/>; see also "Lho'imggin et al. v. Her Majesty the Queen," Sabin Center for Climate Change Law, <http://climatecasechart.com/climate-change-litigation/non-us-case/gagnon-et-al-v-her-majesty-the-queen/>.

6 See *Leghari* v. *Pakistan* (W.P. No. 25501/2015), Lahore High Court Green Bench, Order of September 4, 2015.

7 Corte Suprema de Justicia [C.S.J.] [Supreme Court], Sala de Casación Civil, abril 5, 2018, M.P.: L.A. Tolosa Villabona, Expediente 11001-22-03-000-2018-00319-01 (Colom.), <http://climatecasechart.com/non-us-case/future-generation-v-ministry-environment-others/>.

8 See *Juliana* v. *United States*, 947 F.3d 1159 (9th Cir. 2020); see also "Youth Verdict v. Waratah Coal," Grantham Research Institute for Climate Change and the Environment, <https://climate-laws.org/cclow/geographies/australia/litigation_cases/youth-verdict-v-waratah-coal>;

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South Africa and Indonesia to the Philippines and India[9] – have formally recognized climate harms as human rights violations. In 2022, the Brazilian Supreme Court held that the Paris Agreement should be enforced as a human rights agreement, and held the government accountable for the human rights violations stemming from omissions driving deforestation in the Amazon.[10]

At the international level, in a case against New Zealand, the United Nations Human Rights Committee held that states have a duty to refrain from sending asylum seekers back to another state in which their life or physical integrity would be seriously endangered due to climate harms.[11] A petition filed by Greta Thunberg and other young climate activists against Argentina, Brazil, France, Germany, and Turkey asked the UN Committee on the Rights of the Child to declare that the respondents have violated the petitioners' rights by contributing to global warming and to recommend actions for respondents to reduce GHG emissions and adapt to the impacts of climate change.[12] And though the Committee ultimately dismissed the petition on procedural grounds, they did find that states can be accountable for harms

see also "La Rose v. Her Majesty the Queen," above note 5; see also Jeff Tollefson, "Canadian Kids Sue Government over Climate Change," Nature, October 25, 2019, <www.nature.com/articles/d41586-019-03253-5>; see also "Pandey v. India," above note 5; see also Chloe Farand, "Nine-Year-Old Girl Files Lawsuit against Indian Government over Failure to Take Ambitious Climate Action," *Independent*, April 1, 2017, <www.independent.co.uk/environment/nine-ridhima-pandey-court-case-indian-government-climate-change-uttarakhand-a7661971.html>; see also "Duarte Agostinho and Others v. Portugal and 32 Other States," above note 5; see also "Ali v. Federation of Pakistan," Sabin Center for Climate Change Law, <http://climatecasechart.com/non-us-case/ali-v-federation-of-pakistan-2/>; see also Case T-330/T18, *Carvalho* v. *Parliament*, above note 5; see also "Mathur, et al. v. Her Majesty the Queen in Right of Ontario," above note 5; see also "Jóvenes v. Gobierno de México," Our Children's Trust, September 2, 2021, <www.ourchildrenstrust.org/mexico>; see also "Six Youths v. Minister of Environment and Others," Sabin Center for Climate Change Law; see also Isabella Kaminski, "UK Students Sue Government over Human Rights Impacts of Climate Crisis," *The Guardian*, April 21, 2021.

[9] See *Earthlife Africa Johannesburg* v. *Minister of Envtl. Affairs* 2017 (2) All SA 519 (GP) (S. Afr.). For information on an Indian case involving considering climate impacts in environmental impact assessments, see "Pandey v. India," above note 5.

[10] See "PSB et al. v. Brazil (on Climate Fund)," Sabin Center for Climate Change Law, <http://climatecasechart.com/non-us-case/psb-et-al-v-federal-union/>; also Chapter 19.

[11] Human Rights Comm., Views Adopted by the Committee under Article 5(4) of the Option Protocol, concerning Communication No. 2728/2016, ¶9.11, U.N. Doc. CCPR/C/127/D/2728/2016 (October 24, 2016) (hereafter "Human Rights Comm. on Ioane Teitiota").

[12] "Sacchi et al. v. Argentina et al.," Sabin Center for Climate Change Law, <http://climatecasechart.com/climate-change-litigation/non-us-case/sacchi-et-al-v-argentina-et-al/>.

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resulting from emissions generated within their territory and felt by children living outside their territorial borders.

Commenting on a handful of early lawsuits in this trend, analysts rightly identified a "rights turn" in climate litigation.[13] Thus far, the literature on this trend has tended to focus on accounts of one case or a few particularly successful cases.[14] In the absence of systematic analyses of the "rights turn," we lack a robust understanding of its legal doctrines and implications for climate action.

This edited volume helps fill this scholarly and practical gap. This chapter provides the empirical background for the subsequent chapters and proposes a framework for understanding the key traits and emerging norms of rights-based climate litigation. In it, I summarize the results of my study of the universe of HRCC cases filed in domestic courts and in regional and international judicial and quasi-judicial bodies. Drawing on theories of global governance and legal mobilization, I elsewhere have offered an extended discussion of the results of the study.[15] In doing so, I have sought to theorize and empirically document the origins, typology, norms, and impact of the rights turn, as well as its interaction with the adoption and implementation of the 2015 Paris Agreement.

This chapter focuses on the post-Paris period, during which the large majority of cases have been filed or decided. While I report on the universe of cases, my analysis concentrates on the type of case that predominates both the practice of HRCC litigation and the chapters in this book – that is, lawsuits that primarily seek to hold states accountable for their duties regarding climate mitigation (i.e., the reduction of planet-warming emissions) as opposed to their duties regarding climate adaptation (i.e., the protection of people and ecosystems from the already inevitable impacts of global warming). This analytical choice is justified by the fact that approximately 94 percent of HRCC cases filed since 2015 are primarily geared toward expanding and speeding up climate mitigation. The focus on state targets (rather than corporations) is explained by the fact that approximately 85 percent of HRCC cases filed since 2015 target governments.

[13] See Jacqueline Peel and Hari M. Osofsky, "A Rights Turn in Climate Litigation?" (2018) 7 *Transnational Environmental Law* 37.

[14] For a survey of the literature remarking on this limitation of climate litigation studies, see Joana Setzer and Lisa C. Vanhala, "Climate Change Litigation: A Review of Research on Courts and Litigants in Climate Governance" (2019) 10 *WIREs Climate Change* 1.

[15] See César Rodríguez-Garavito, "International Human Rights and Climate Governance: Origins and Implications of the Rights-Based Climate Litigation," paper presented at the Litigating the Climate Emergency Conference, NYU School of Law (March 9–10, 2020).

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I argue that the regulatory logic and the strategy of HRCC litigation should be examined at the intersection of international and domestic governance. Specifically, I posit that litigants have predominantly followed a two-pronged strategy. They have (1) asked courts to take the goals of the climate regime (as set out in the Paris Agreement, IPCC reports, and other authoritative sources) as benchmarks to assess governments' climate action and (2) invoked the norms, frames, and enforcement mechanisms of human rights to hold governments legally accountable for such goals. In the face of governments' reluctance or hostility toward taking the urgent measures that are needed to address the climate emergency, HRCC litigation can be fruitfully viewed as a bottom-up mechanism that provides domestic traction for the international legal and scientific consensus on climate action. Put differently, HRCC litigation contributes to addressing the climate emergency by providing at least part of the missing link between international promises and domestic action. In so doing, it offers a much-needed leverage point for scaling and speeding up climate action at a moment when time is running out to prevent the most catastrophic scenarios of global warming.

However, climate change is too complex a problem for any single regulatory tool to adequately address. Rights-based litigation is only one such tool – one that, as we will see, has its own challenges and blind spots, including insufficient attention to climate adaptation and the limitations of human rights norms in dealing with the complex causality and temporality of global warming.

This chapter proceeds in three sections. In Section 1.1, I offer an overview of trends in HRCC litigation after the Paris Agreement and characterize the dominant type of case in this period. In Section 1.2, I analyze the legal rules and principles emerging from HRCC lawsuits and court decisions. Rather than examining the outcomes and impacts of these cases (which I have done elsewhere),[16] here I am primarily concerned with norm emergence – that is, identifying new norms that HRCC adjudicators and litigants, regardless of outcome, are articulating to address the unique regulatory challenges of climate change. In Section 1.3, I offer some conclusions about the potential and challenges of HRCC litigation in advancing climate action.

1.1 THE POST-PARIS REGIME AND CLIMATE RIGHTS LITIGATION

The Paris Agreement's regulatory logic stands in contrast with the pre-Paris regime. In terms of de Búrca, Keohane, and Sabel's typology of global

[16] Ibid.

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governance, international climate governance went from an unsuccessful effort to establish an integrated, top-down regime (the 1997 Kyoto Protocol to the UN Framework Convention on Climate Change) to an ongoing attempt to consolidate a bottom-up, experimental regime (the Paris Agreement) that creates incentives for states to act on climate change through an iterative process of international negotiations, domestic civil society pressure, emissions reporting based on IPCC methodologies, and periodic stocktaking and peer review of progress on climate mitigation and adaptation.[17]

The Paris Agreement does not establish a binding obligation for states to implement their nationally determined contributions (NDCs) to emission cuts, nor does it specify any procedure to ensure that states are transparent in their accounting of those contributions.[18] Since the success of the Paris system hinges on transparency, the model will only work if states have material and reputational incentives to deliver on their commitments and to increase their ambition in order to reduce the considerable gap between the mitigation targets to which they committed in Paris and the emissions cuts that, according to the IPCC, are needed to keep global warming between 1.5°C and 2°C.[19]

The large majority of HRCC suits and complaints (which focus on emissions cuts) can be understood as strategies to provide the post-Paris climate regime with procedural and substantive mechanisms for translating the aforementioned targets into legally binding commitments at the domestic level. In the lead-up to and after the 2015 climate summit, litigants have often leveraged the Paris framework to put pressure on states and, to a much lesser extent, corporations.[20] As noted, states are the target of all but 22 of the 148 cases filed between 2015 and 2021 (see Table 1.1). The exceptions[21] are lawsuits filed against oil companies Shell in the Netherlands (one case) and in South Africa (one case), Total in France (two cases), PetroOriental SA in Ecuador (one case), and Wintershall Dea in Germany (one case); a case filed against Casino

[17] See Gráinee de Búrca et al., "New Modes of Pluralist Governance" (2013) 45 *NYU Journal of International Law and Politics* 723.

[18] Paris Agreement to the United Nations Framework Convention on Climate Change, Art. 13, December 12, 2015, T.I.A.S. No. 16-1104.

[19] Article 4, paragraph 2 of the Paris Agreement states the following: "Each Party shall prepare, communicate and maintain successive nationally determined contributions that it intends to achieve. Parties shall pursue domestic mitigation measures, with *the aim of* achieving the objectives of such contributions." Ibid., Art. 4, para. 2 (emphasis added).

[20] See Joana Setzer and Rebecca Byrnes, "Global Trends in Climate Change Litigation: 2019 Snapshot," *Grantham Research Institute on Climate Change and the Environment*, 2019, <www.lse.ac.uk/GranthamInstitute/publication/global-trends-in-climate-change-litigation-2019-snapshot/>.

[21] For more on the potential impact of certain HRCC cases against corporations, see Joana Setzer's contribution to this volume (Chapter 10).

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in France; a case filed against Electricité de France; two cases filed against automobile companies in Germany; a case challenging corporations with high GHG emissions in New Zealand; a case challenging a proposed coal mine in Australia; OECD complaints filed against the Polish company Group PZA S.A. and a company involved in fracking in Slovenia; a case filed against a private pension company in the United Kingdom; five cases challenging thermoelectric power plants in Argentina; and one case challenging a coal-fired power plant in Japan, as well as the multiyear, transnational inquiry launched by the Philippines Commission on Human Rights against the forty-seven largest fossil fuel companies known as "carbon majors."[22] The commission initiated the inquiry in response to a complaint filed on international human rights grounds by Greenpeace and Filipino citizens affected by Typhoon Haiyan and other extreme weather events, whose occurrence has

[22] For information on the case filed against Shell in the Netherlands, see "Milieudefensie et al. v. Royal Dutch Shell plc," Sabin Center for Climate Change Law, <http://climatecasechart.com/climate-change-litigation/non-us-case/milieudefensie-et-al-v-royal-dutch-shell-plc/>. For information on the case in France against Total, see "Assignation de Total en Justice!," Notre Affaire à Tous, <https://notreaffaireatous.org/>. See also "Notre Affaire à Tous and Others v. Total," Sabin Center for Climate Change Law, <http://climatecasechart.com/non-us-case/notre-affaire-a-tous-and-others-v-total/>. For information on the "Carbon Majors" investigation within the Philippines Commission on Human Rights, see "In re Greenpeace Southeast Asia and Others," Sabin Center for Climate Change Law, <http://climatecasechart.com/non-us-case/in-re-greenpeace-southeast-asia-et-al/>. For more information, see "National Inquiry on Climate Change," Republic of the Philippines Commission on Human Rights, <http://chr.gov.ph/nicc-2/>. For information on the case in Ecuador against PetroOriental SA, see "Ecuador: Waorani Community Sues Fossil Fuel Company for Contributing to Climate Change," International Federation for Human Rights, December 10, 2020, <www.fidh.org/en/region/americas/ecuador/ecuador-waorani-community-sues-fossil-fuel-company-for-contributing>. For information on the case against Electricité de France, see "Mexico: Civil Lawsuit: French Energy Company EDF Must Comply with Human Rights Obligations," International Federation for Human Rights, October 13, 2020, <www.fidh.org/en/issues/human-rights-defenders/mexico-civil-lawsuit-french-energy-company-edf-must-comply-with-human>. For information on the other cases, see also "Youth Verdict v. Waratah Coal," above note 8; see also "Development YES – Open Pit Mines NO v. Group PZU S.A.," Sabin Center for Climate Change Law, <http://climatecasechart.com/non-us-case/development-yes-open-pit-mines-no-v-group-pzu-sa/>; see also "OAAA v. Araucaria Energy SA," Sabin Center for Climate Change Law, <http://climatecasechart.com/climate-change-litigation/non-us-case/oaaa-v-araucaria-energy-sa/>; see also "Carballo et al. v. MSU S.A., UGEN S.A., & General Electric," Sabin Center for Climate Change Law, <http://climatecasechart.com/climate-change-litigation/non-us-case/carballo-et-al-v-msu-sa-ugen-sa-general-electric/>; see also "FOMEO v. MSU S.A., Rio Energy S.A., & General Electric," Sabin Center for Climate Change Law, <http://climatecasechart.com/climate-change-litigation/non-us-case/fomeo-v-msu-sa-rio-energy-sa-general-electric/>; see also "Citizens' Committee on the Kobe Coal-Fired Power Plant v. Kobe Steel Ltd., et al.," Sabin Center for Climate Change Law, <http://climatecasechart.com/climate-change-litigation/non-us-case/citizens-committee-on-the-kobe-coal-fired-power-plant-v-kobe-steel-ltd-et-al/>; see also *Smith* v. *Fronterra Co-Operative Group Ltd*. [2020] NZHC 419 (N.Z.).

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been made more likely by global warming. In May 2022, the commission released its final report, which incorporated a number of legally significant findings, including, among others, that "the corporate responsibility to refrain from contributing to climate change impacts that impair the full enjoyment of human rights extends not only to the whole group of companies of each Carbon Major … but also to all business enterprises in each of the Carbon Majors respective value chains."[23] The commission also squarely addressed Carbon Majors' role in cloaking climate science in doubt and interfering with the transition away from fossil fuels. Namely, in addition to finding that "Carbon Majors, directly by themselves or indirectly through others, singly and/or through concerted action, engaged in willful obfuscation of climate science, which has prejudiced the right of the public to make informed decisions about their products, concealing that their products posed significant harms to the environment and the climate system," the commission also concluded that this willful obfuscation could serve as a basis for liability.[24] At the very least, this made the Carbon Majors, according to the commission, morally culpable.[25]

In terms of the specific objects of the legal actions, litigants and petitioners have used two general avenues to challenge the actions and inactions contributing to climate change. The first strategy involves challenging state or corporate policies, including – but not limited to – the ambition, speed, or level of implementation of states' mitigation targets. This is the route followed by approximately 74 percent of the post-2015 cases, including *Urgenda* and more recent lawsuits such as the one filed in 2021 by Brazilian youth alleging that the glaringly insufficient emissions goal set by the Brazilian government violates its obligations under the National Policy on Climate Change, the Paris Agreement, and the Brazilian constitution. In the *Neubauer* v. *Germany* case, the youth plaintiffs challenged not only the insufficient ambition but also the short-term focus and the vagueness of the implementation measures of the German government's GHG emissions reduction plan. The German Constitutional Court sided with the government with regard to the constitutionality of the overall ambition of the climate plan but declared that the plan's insufficient detail and urgency violated young peoples' and future generations' fundamental rights.[26] This also, however, includes a handful of

[23] "National Inquiry on Climate Change Report," Commission on Human Rights of the Philippines (2022) 112–13.

[24] Ibid. 108–9.

[25] Ibid. 115.

[26] See "Neubauer, et al. v. Germany," Sabin Center for Climate Change Law, <http://climatecasechart.com/climate-change-litigation/non-us-case/neubauer-et-al-v-germany/> for access to the German Constitutional Court's decision.

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cases that resist policies (or projects) intended to address climate change and aid the transition to zero-carbon economies. *In the Matter of the Greenhouse Gas Pollution Pricing Act* (Alberta), for example, involved the Alberta provincial government's attempt to invalidate Canada's carbon pricing bill, on the grounds that the federal government overstepped its constitutional authority.[27]

The second route comprises challenges to specific projects and policies that produce GHG emissions on a scale that, according to litigants, is incompatible with states' duties to act against global warming. For instance, litigants have sued governments to stop new coal or oil projects in Ecuador, Uganda, Tanzania, and Mozambique; new airport strips in Vienna and London; policies promoting deforestation in the Brazilian Amazon; and subsidies to biomass-derived energy projects in South Korea.[28] Like with cases targeting policies, this also includes a handful of cases in which plaintiffs challenged projects intended to advance climate action. In *IPC Petroleum France* v. *France*, for example, a fossil fuel company challenged the government's decision to put a time limit on its extraction permit, on the grounds that it, among other things, violated its right to property.[29] *European Center for Constitutional and Human Rights (ECCHR) and Proyecto de Derechos Económicos, Sociales y Culturales (ProDESC)* v. *Electricité de France (EDF)*, moreover, challenges the construction of a large wind farm on the basis that EDF failed to satisfy its obligation to consult with an affected Indigenous community.[30]

[27] See "In the Matter of the Greenhouse Gas Pollution Pricing Act, SC 2018, c.12," Sabin Center for Climate Change Law.

[28] See also "Center for Food and Adequate Living Rights et al. v. Tanzania and Uganda," Sabin Center for Climate Change Law, <http://climatecasechart.com/non-us-case/center-for-food-and-adequate-living-rights-et-al-v-tanzania-and-uganda/>; see also "In re Vienna-Schwechat Airport Expansion," Sabin Center for Climate Change Law, <http://climatecasechart.com/non-us-case/in-re-vienna-schwachat-airport-expansion/>; see also "Plan B Earth and Others v. Secretary of State for Transport," Sabin Center for Climate Change Law, <http://climatecasechart.com/non-us-case/plan-b-earth-v-secretary-of-state-for-transport>; see also "Institute of Amazon Studies v. Brazil," Sabin Center for Climate Change Law, <http://climatecasechart.com/climate-change-litigation/non-us-case/institute-of-amazonian-studies-v-brazil/>; see also "Ecuador: Waorani Community Sues Fossil Fuel Company for Contributing to Climate Change," above note 22; see also "Friends of the Earth v. UK Export Finance," Sabin Center for Climate Change Law, May 7, 2021, <http://climatecasechart.com/climate-change-litigation/non-us-case/friends-of-the-earth-v-uk-export-finance/>; see also "Kim Yujin et al. v. South Korea," Sabin Center for Climate Change Law, <http://climatecasechart.com/non-us-case/kim-yujin-et-al-v-south-korea/>.

[29] See "IPC Petroleum France SA v. France," Sabin Center for Climate Change Law.

[30] See also "Mexico: Civil Lawsuit: French Energy Company EDF Must Comply with Human Rights Obligations," above note 22.

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Notably, our database also includes criminal cases brought against climate protesters for their participation in activities challenging either policies or projects that contribute to the climate emergency. While these cases can be categorized according to this policy-project distinction based on the underlying target of the protests, they do operate distinctly insofar as the core of the case does not hinge on a particular policy or project but rather the protests themselves, regardless of their specific intent.

In terms of outcomes, most cases are still pending, which should not be surprising given that the rights turn is a relatively recent phenomenon. As Figure 1.3 shows, approximately 66 percent of HRCC lawsuits are either pending or on appeal.[31] Moreover, in two cases, the possibility of appeal is

[31] See "VZW Klimaatzaak v. Kingdom of Belgium & Others," Sabin Center for Climate Change Law, <http://climatecasechart.com/non-us-case/vzw-klimaatzaak-v-kingdom-of-belgium-et-al/>; see also Juliana, above note 8; see also "Ali v. Federation of Pakistan," above note 8; see also "Pandey v. India," above note 5; see also "Maria Khan v. Federation of Pakistan et al.," Sabin Center for Climate Change Law, <http://climatecasechart.com/non-us-case/maria-khan-et-al-v-federation-of-pakistan-et-al/>; see also "Notre Affaire à Tous v. France," above note 5; see also "Friends of the Earth Germany, Association of Solar Supporters, and Others v. Germany," Sabin Center for Climate Change Law, <http://climatecasechart.com/non-us-case/friends-of-the-earth-germany-association-of-solar-supporters-and-others-v-germany/>; see also "ENVironnement JEUnesse v. Canada," Sabin Center for Climate Change Law, <http://climatecasechart.com/non-us-case/environnement-jeunesse-v-canadian-government/>; see also Case T-330/T18, Carvalho v. Parliament, Gen. Ct. of the European Union (Second Chamber) (May 8, 2019), <http://curia.europa.eu/juris/liste.jsf?num=T-330/18&language=EN>; see also "Sacchi v. Argentina," above note 12; see also "Commune de Grande-Synthe v. France," above note 5; see also "The Case," EU Biomass Legal Case, <http://eubiomasscase.org/the-case/>; see also "Milieudefensie et al. v. Royal Dutch Shell plc," above note 22; see also "Notre Affaire à Tous and Others v. Total," above note 22; see also "La Rose v. Her Majesty the Queen," above note 5; see also "Álvarez v. Peru," Sabin Center for Climate Change Law, <http://climatecasechart.com/non-us-case/alvarez-et-al-v-peru/>; see also "Petition of Torres Strait Islanders to the United Nations Human Rights Committee Alleging Violations Stemming from Australia's Inaction on Climate Change," Sabin Center for Climate Change Law, <http://climatecasechart.com/non-us-case/petition-of-torres-strait-islanders-to-the-united-nations-human-rights-committee-alleging-violations-stemming-from-australias-inaction-on-climate-change>; see also "Rights of Indigenous People in Addressing Climate-Forced Displacement," Sabin Center for Climate Change Law, <http://climatecasechart.com/non-us-case/rights-of-indigenous-people-in-addressing-climate-forced-displacement/>; see generally Brent Jang, "Wet'suwet'en Nation Hereditary Launch Climate Lawsuit Against Ottawa," *Globe & Mail*, February 12, 2020, <https://www.theglobeandmail.com/canada/british-columbia/article-wetsuweten-nation-hereditary-chiefs-launch-climate-lawsuit-against/>; see also "Kim Yujin et al. v. South Korea," above note 24; see also "Neubauer v. Germany," above note 23; see also "Youth Verdict v. Waratah Coal," above note 8; see also "Sagoonick v. State of Alaska," Our Children's Trust, <https://www.ourchildrenstrust.org/alaska>; see also "Aji P. v. State of Washington," Our Children's Trust, <https://www.ourchildrenstrust.org/washington>; see also "Jóvenes v. Gobierno de México," above note 8; see also Held v. State of Montana, Our Children's Trust, <https://

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still open but not yet taken,[32] and in two other cases, there were rulings for the state and there is no evidence that the plaintiffs will appeal.[33]

The definitive rulings that have been issued by courts thus far are more or less evenly split between outcomes for the plaintiffs and outcomes for the

www.ourchildrenstrust.org/montana>; see also "PSB et al. v. Brazil (on Climate Fund)," above note 10; see also "PSB et al. v. Brazil (on Amazon Fund)," above note 10; see also "Duarte Agostinho and Others v. Portugal and 32 Other States," above note 5; see also "Greenpeace v. Spain," Sabin Center for Climate Change Law, <http://climatecasechart.com/non-us-case/greenpeace-v-spain/>; see also "Landslide Victims Take Ugandan Government to Court," *ClientEarth*, October 22, 2020; see also "Indigenous Organizations and NGOs Warn Top French Supermarket Casino: Stop Gambling with Our Forests!," *Mighty Earth*, September 20, 2020; see also "PSB et al. v. Brazil (on deforestation and human rights)," above note 10; see also "Instituto Socioambiental v. IBAMA and the Federal Union," Sabin Center for Climate Change Law; see also "Ecuador: Waorani Community Sues Fossil Fuel Company for Contributing to Climate Change," above note 22; see also Verein KlimaSeniorinnen Schweiz, above note 5; see also "Young People v. UK Government: Stop Financing Our Deaths," Plan B,; see also "Greenpeace Mexico v. Ministry of Energy (National Electric System Policies)," Sabin Center for Climate Change Law; see also "Greenpeace Mexico v. Ministry of Energy (Energy Sector Program)," Sabin Center for Climate Change Law; see also "Mexico: Civil Lawsuit: French Energy Company EDF Must Comply With Human Rights Obligations," above note 64; see also "Six Youths v. Minister of Environment and Others," above note 8; see also "Citizens' Committee on the Kobe Coal-Fired Power Plant v. Kobe Steel Ltd," above note 22; see also "Center for Food and Adequate Living Rights et al. v. Tanzania and Uganda," above note 24; see also "South Korean Biomass Plaintiffs v. South Korea," Sabin Center for Climate Change Law; see also "Friends of the Earth v. UK Export Finance," above note 24; see also "OAAA v. Araucaria Energy SA," above note 22; see also FOMEO v. MSU SA, Rio Energy SA, & General Electric, above note 22; see also Carballo v. MSU S.A., above note 22; see also "Asociación Civil por la Justicia Ambiental v. Province of Entre Ríos, et al.," Sabin Center for Climate Change Law; see also "Sierra Club v. U.S. Army Corps of Engineers," Sabin Center for Climate Change Law; see also Smith v. Fronterra Co-Operative Group Ltd., above note 22; see also "Six Youths v. Minister of Environment and Others," above note 8; see also "Sharma and others v. Minister for the Environment," Sabin Center for Climate Change Law; see also "Guyanese Citizens File Climate Case Claiming Massive Offshore Oil Project Is Unconstitutional," CIEL, 21 May 2021, < https://www.ciel.org/news/guyana-consitutional-court-case-oil-and-gas/>; see also "The Last Judgment," Giuizio Universale, < https://giudiziouniversale.eu/home-english-version/>; see also "Górska et al. v. Poland," Sabin Center for Climate Change Law; see also "Mex M. v. Austria," Sabin Center for Climate Change Law.

[32] See "Family Farmers and Greenpeace Germany v. Germany," Sabin Center for Climate Change Law, <http://climatecasechart.com/non-us-case/family-farmers-and-greenpeace-germany-v-german-government>; see also "Friends of the Earth et al. v. Total," Sabin Center for Climate Change Law, <http://climatecasechart.com/non-us-case/friends-of-the-earth-et-al-v-total/>.

[33] See "Greenpeace Luxembourg v. Schneider," Sabin Center for Climate Change Law, <http://climatecasechart.com/non-us-case/greenpeace-luxembourg-v-schneider/>; see also "PUSH Sweden, Nature and Youth Sweden and Others v. Government of Sweden," Sabin Center for Climate Change Law, <http://climatecasechart.com/non-us-case/push-sweden-nature-youth-sweden-et-al-v-government-of-sweden/>.

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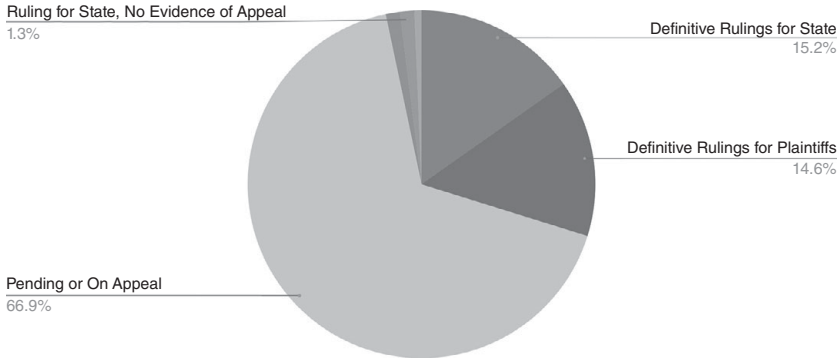


FIGURE 1.3 Status of cases filed since 2015

defendants. Indeed, approximately 15 percent have ended with a decision for petitioners, while approximately 14 percent have ended in a definitive ruling for the state. Successful cases include *Urgenda Foundation* v. *Netherlands*; *Rodríguez Peña* v. *Colombia* ("*Amazon's Future Generations*"); *Leghari* v. *Pakistan*; *in re Carbon Majors*; *Friends of the Irish Environment* v. *Ireland*; *Commune de Grande-Synthe* v. *France*; *Notre Affaire à Tous v. France*; *Castilla Salazar* v. *Colombia*; *Save Lamu* v. *National Environmental Management Authority*; *Willmeng* v. *Thorton*; *Farooq* v. *Pakistan*; *Private Corporation for the Development of Asyén* v. *Environmental Evaluation Service*; *Instituto Preservar c. Copelmi Mineracaoa Ltda*; *Moncayo et al.* v. *PetroAmazonas et al.*; *Neubauer* v. *Germany*; *Shrestha* v. *Prime Minister*; *Client Earth* v. *European Investment Bank*; and *Development YES – Open Pit Mines NO* v. *Group PZU S.A.*, as well as the ruling of the Mexican Supreme Court on ethanol legislation, a successful challenge by Earthlife against South African authorities' permit for a new coal-fired plant, and a successful challenge against an administrative decision allowing an urban development that would have threatened a local aquifer in South Africa. In *Roberts* v. *Regina*, climate protesters who were criminally charged and convicted for public nuisance had their sentences overturned.[34] Additionally, an advisory opinion by the Inter-American Court of Human Rights acknowledges an autonomous right to a healthy environment as well as states' responsibility for territorial or extra-territorial harms to the climate and the environment that violate human rights and can be attributed to their actions or omissions.[35] Twenty-three

[34] See "R v. Regina," Sabin Center for Climate Change Law.

[35] See *Urgenda*, above note 2; see also "Future Generations v. Ministry of Environment & Others," Sabin Center for Climate Change Law, <http://climatecasechart.com/non-us-case/

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lawsuits since 2015 have ended with definitive rulings for the state or defendant corporation, including: *Plan B Earth* v. *UK Secretary of State for Business, Energy, and Industrial Strategy*; *Ioane Teitiota* v. *New Zealand's Ministry of Business, Innovation and Employment*; *in re Vienna-Schwechat Airport Expansion*; *Reynolds* v. *Florida*; *Plan B Earth* v. *UK Secretary of State for Transport* (on Heathrow Airport's third runway); *Pandey* v. *India*; the *EU Biomass* case; *Greenpeace Nordic Association* v. *Ministry of Petroleum and Energy*; *Armando Ferrão Carvalho* v. *European Parliament*; *Friends of the Irish Environment* v. *Fingal County Council*; *Zoubek* v. *Austria*; *Sacchi* v. *Argentina*; *Segovia* v. *Climate Change Commission*; *Clean Air Council* v. *United States*; *In the Matter of the Greenhouse Gas Pollution Pricing Act* (Alberta); *In the Matter of the Greenhouse Gas Pollution Pricing Act* (Saskatchewan); *Greenpeace Netherlands* v. *Ministry of Finance*; *Attorney General* v. *Crosland*; *Border Deep Sea Angling Association* v. *Shell*; *Decision No. 2021-825 DC* ["In re Climate Resilience Bill"]; and *Views Adopted by the UN Human Rights Committee Concerning the Communication by Ioane Teitiota*.[36] This also includes "anti-climate action" cases wherein the state prevailed in defending its policy or action intended to address climate change: *Portland Pipeline*

future-generation-v-ministry-environment-others/>; see also *Leghari* v. *Pakistan*, above note 6; see also "National Inquiry on Climate Change," above note 22; see also "Plan B Earth and Others v. Secretary of State for Transport," above note 24; see also "Friends of the Irish Environment," above note 5; see also *Philippi Horticultural Area Food & Farming Campaign* v. *MEC for Local Gov't, Envtl. Affairs Dev. Planning* 2020 ZAWCHC 8 (High Court Western Cape Division) (S. Afr.); see also "Ruling on Modification to Ethanol Fuel Rule," Sabin Center for Climate Change Law, <http://climatecasechart.com/non-us-case/ruling-on-modification-to-ethanol-fuel-rule/>; see also *Earthlife Africa Johannesburg* v. *Minister of Envtl. Affairs*, above note 9; see also The Environment & Human Rights, Advisory Opinion OC-23/17, Inter-Am. Ct. H.R. (ser. A), No. 23, <http://www.corteidh.or.cr/docs/opiniones/seriea_23_esp.pdf>.

[36] See *Plan B Earth* v. *Secretary of State for Business, Energy and Industrial Strategy*, above note 5; see also *Teitiota* v. *Ministry of Business, Innovation & Employment* [2015] NZSC 107 (N.Z.); see also "In re Vienna-Schwechat Airport Expansion," above note 24; see also Human Rights Comm. on Ioane Teitiota, above note 11; see also "Verein KlimaSeniorinnen Schweiz," above note 5; see also Case C-565/19P, *Carvalho* v. *European Parliament*, E.C.J. (Sixth Chamber) (March 25, 2021), <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62019CJ0565>; see also "Pandey v. India," above note 5; see also "The Case," EU Biomass Legal Case, above note 26; see also "Greenpeace Nordic Ass'n v. Ministry of Petroleum and Energy," Sabin Center for Climate Change Law, <http://climatecasechart.com/non-us-case/greenpeace-nordic-assn-and-nature-youth-v-norway-ministry-of-petroleum-and-energy/>; see also "Plan B Earth and Others v. Secretary of State for Transport," above note 24; see also Friends of the Irish Environment v. Fingal County Council, Sabin Center for Climate Change Law, <http://climatecasechart.com/climate-change-litigation/non-us-case/friends-irish-environment-clg-v-fingal-county-council/>; see also "Zoubek et al. v. Austria," Sabin Center for Climate Change Law, <http://climatecasechart.com/non-us-case/greenpeace-v-austria/>.

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Corporation v. *South Portland*; *IPC Petroleum France* v. *France*; and *D.G. Khan Cement Company Ltd.* v. *Punjab*.

Again, given that HRCC litigation is still in its infancy, it is too early to extract hard and fast conclusions about its outcomes. Rather than focusing on outcomes, this and subsequent chapters are concerned with analyzing how litigants and courts have dealt with the complex legal questions posed by climate change through the use of new norms and doctrines emerging from the universe of submissions and rulings, regardless of outcomes. Indeed, this is the task of Section 1.2.

1.2 KEY QUESTIONS AND EMERGING NORMS IN CLIMATE RIGHTS LITIGATION

Despite the diversity of jurisdictions, litigants, and adjudicators involved in them, HRCC lawsuits tend to revolve around a common set of questions and norms. In sketching emerging legal doctrines and norms, I organize the discussion in terms of the core components of the standard HRCC lawsuit. Rather than an accurate description of the various cases, the model is a Weberian ideal type – a stylized account that is meant to capture the underlying logic that cuts across the large majority of cases. Some lawsuits and decisions approximate the ideal type more than others, but they all exhibit some of its features.

Since procedural rules of standing vary widely across jurisdictions and the large majority of courts that have ruled on HRCC cases have carried out a merits review, I will focus on the substantive norms arising from the typical case, as opposed to procedural rules of standing, in this section. As we will see in Part II, matters of standing – that is, proof of individualized human rights injuries suffered by the plaintiffs and a causal link between those harms and governmental climate action – pose particularly complex challenges for human rights concepts and doctrines, and no clear international norms are currently detectable with regard to these issues.[37]

The ideal-typical HRCC case proceeds in three steps and spans the two levels (international and domestic) of the post-Paris regime. Each step can be seen as addressing a key legal question:

(1) What are the standards that, by virtue of international and domestic law, apply to the judicial assessment of governments' climate action? The

[37] For more on the attribution science that is being used in litigation to establish this causal link, see Michael Burger, Jessica Wentz, and Daniel Metzger's chapter in this volume (Chapter 11).

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nascent norms and legal doctrines that address this question concern the legal status of international and domestic HRCC standards, from the rules of the Paris Agreement and the IPCC's recommendations to the rules of international human rights and constitutional rights.

(2) In light of those standards, do governments have a justiciable legal obligation to reduce GHG emissions? Courts and litigants tackle this question through emerging norms on the judicial reviewability of climate policy and the existence of a justiciable right to a climate system capable of sustaining human life.

(3) Are government policies (regarding emissions targets or specific GHG-emitting activities) compatible with such rights and duties? Emerging norms on this issue seek to set standards, in light of climate change and human rights obligations, governing countries' "fair share" of contribution to global climate mitigation, the compatibility of governmental actions and policies with this fair share, and the remedies, if any, that courts should grant to hold governments accountable.

In Section 1.2.1, I distill the nascent norms on each of these three issues in turn.

1.2.1 *The Baseline Norms: An International "Common Ground" on Climate Rights*

The first step in the typical HRCC case is the establishment of baseline rights and duties that apply to the litigation as a matter of climate change and human rights law. In determining the relevant legal standards for judicial assessments of governments' climate action (or inaction), litigants and courts have often used the European Court of Human Rights' (ECtHR) doctrine of the legal "common ground" applicable to domestic human rights cases or its equivalent in other regional or domestic regimes.[38] In addition to international human rights treaties, this common ground includes other "elements of international law," states' interpretations of such elements, and state practice reflecting common values.[39] As the ECtHR put it in *Demir and Baykara* v. *Turkey*, a judgment widely used by litigants and courts in European climate rights cases: "It is not necessary for the respondent State to have ratified the entire collection of instruments that are applicable in respect of the precise subject matter of the case concerned. It will be sufficient for the Court that the relevant

[38] See Judgment, *Case of Demir and Baykara/Turkey*, App. No. 34503/97, IHRL 3281 (2008).
[39] See ibid.

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international instruments denote a continuous evolution in the norms and principles applied in international law or in the majority of member States of the Council of Europe and show, in a precise area, that there is common ground in modern society."[40]

Regardless of the outcome of the case, virtually all of the submissions and rulings on climate mitigation adopt some version of the common ground doctrine.[41] As is evident in Table 1.1, exactly which legal instruments are deemed part of the international common ground varies from jurisdiction to jurisdiction. In general, it comprises universal and regional human rights treaties and declarations ratified by the state – including procedural and substantive environmental rights in international law, which courts and quasi-judicial bodies in the large majority of the cases under examination recognize as a matter of international positive or customary law.[42]

Importantly, the common ground in HRCC cases includes not only human rights law but also the two central elements of the global climate change regime: the Paris Agreement and the IPCC's reports. As the IPCC's findings and recommendations became more explicit and precise with regard to the impact of global warming on human beings in its 2014 and 2018 reports, litigants and adjudicators embraced them as the scientific gold standard for assessing human rights violations. Specifically, they have incorporated the Paris Agreement's goal of "holding the increase in the global average temperature to well below 2°C above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5°C" into the justiciable international common ground.[43] This has been the case regardless of the outcome of the litigation. Courts have used this Paris-IPCC standard in rulings issued against the state for failing to take into account or do enough to contribute to attaining those goals (such as those on Ireland's climate plan and Mexico's regulation on ethanol). Courts have also recognized this standard in decisions finding for the state, where they concluded that the government was taking sufficient measures to contribute to achieving those targets – as in *Greenpeace Germany* v. *Germany*, in which a group of organic farmers and Greenpeace sought to hold the government accountable to its mitigation goals – or that the plaintiffs

[40] Ibid. ¶86.

[41] A notable exception is the decision of the Ninth Circuit in the *Juliana* case, which does not invoke international human rights law instruments or standards, in line with the relative impermeability of US courts to such legal sources. See *Juliana*, 947 F.3d at 1159.

[42] See César Rodríguez-Garavito, "A Human Right to a Healthy Environment? Moral, Legal, and Empirical Considerations," in John H. Knox and Ramin Pejan (eds.), *The Human Right to a Healthy Environment* (Cambridge: Cambridge University Press, 2018), pp. 155–88.

[43] Paris Agreement, above note 18, at art. 2.1.a.

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did not have standing to sue – as in *Verein KlimaSeniorinnen Schweiz* v. *Fed. Dep't of Env't, Transport, Energy & Commc'ns*, in which an association of senior citizens demanded greater mitigation ambition by the Swiss government.

If confirmed by future litigation, the emerging recognition of an international normative common ground would consolidate the convergence of human rights, environmental protection, and climate governance. This convergence has been in the making for three decades, through legal developments such as the dissemination of the right to a healthy environment in national constitutions and laws, the proliferation of rights-based environmental litigation around the world on issues such as air pollution, and the articulation of explicit international standards by the UN Rapporteurship on human rights and the environment.[44]

1.2.2 *A Justiciable Right to Climate Action*

Against this background of common legal and scientific standards, the second step of the post-Paris ideal-typical litigation entails extracting the specific rights and duties regarding climate action that follow from those standards. The key question here is: Do governments have justiciable legal obligations, as a matter of international human rights and climate change law, to reduce GHG emissions?

Regardless of the type and ultimate outcome of the case, judicial and quasi-judicial bodies in HRCC litigation have almost invariably answered this question in the affirmative. Specifically, two emerging norms have been upheld in this body of case law. First, a justiciable right to a climate system capable of sustaining human life has been recognized as following from universally recognized human rights or as included in the constitutional right to a healthy environment. Importantly, some rulings have homed in on the rights of young people and future generations to a livable planet. Recognizing that young and future human beings will bear the brunt of climate harms, courts in cases such as *Neubauer* v. *Germany* and *Amazon's Future Generations* v. *Colombia* have interpreted constitutional human rights provisions as recognizing a justiciable right to government climate action that is in line with the magnitude and the urgency of the problem.

The second norm relates to the legal competence of courts to enforce governments' duties regarding climate action in general and emissions reduction in particular. The question of justiciability raises issues concerning the harmonization of (1) the protection of rights with deference for governmental

[44] See John H. Knox, "Constructing the Human Right to a Healthy Environment" (2020) 16 *Annual Review of Law and Social Science* 79.

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policy discretion and (2) the duty of courts to provide remedies for rights violations with the principle of the separation of powers. Although common in human rights and public interest litigation writ large, those issues are compounded by the scale, temporality, and uncertainty that characterize the problem of global warming.

Unsurprisingly, judges have given a range of different answers to this question, in line with contrasting jurisprudential traditions on the redressability of rights violations by courts in different jurisdictions. However, regardless of outcome, courts in a majority of HRCC rulings have asserted their competence to review government climate policy and redress human rights violations stemming from it. Although granting governments latitude in setting climate goals and choosing policies to attain them, most courts have held that such decisions are not exempt from judicial review and that governmental discretion is not absolute. In cases like *Greenpeace Nordic Association*, judges have used the margin of appreciation doctrine to assess governmental policies' impact on emissions reduction and conclude that the policies under challenge were within that margin.[45] In other cases, like *In re Modification to Ethanol Fuel Rule* (Mexico) and *Urgenda*, courts have used the same doctrine and ruled against the state, finding that the climate policies at issue unreasonably and disproportionately affected human rights and thus surpassed that margin.

In sum, the emerging norm regarding judicial review of climate action is that "courts have not considered the entire subject matter as a 'no go' area," as the High Court of New Zealand concluded in *Thomson* v. *Minister for Climate Change Issues*[46] – a case on mitigation targets that, although not hinging on human rights arguments, summarized and built on a number of HRCC decisions. While adjudicators have recognized that governments have a wide margin of appreciation in dealing with the complexities of climate policy, they have tended to conclude that climate change is a regulatory and scientific issue that is amenable to judicial scrutiny based on national and international standards on climate change and human rights, as opposed to a political issue in which governments have full policy discretion. Indeed, the Paris Administrative Court in *Notre Affaire à Tous* v. *France* went as far as finding the French state responsible for moral damages stemming from its failure to take sufficiently ambitious climate action, noting specifically that "in view of the State's wrongful failure to implement public policies enabling it to achieve the greenhouse gas emission reduction targets it has set itself, the

[45] For more on the rationale driving the *Greenpeace Nordic Association* case, see Michelle Jonker-Argueta's chapter in this volume (Chapter 17).

[46] *Thomson* v. *Minister for Climate Change Issues* [2018] 2 NZLR 160 at [133] (N.Z.).

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applicant associations may claim compensation from the State for those wrongful failings."[47]

1.2.3 *The Legally Enforceable "Fair Share" of Climate Mitigation*

The final step of the ideal-typical case examines the compatibility of government policies with climate rights and duties. In some cases, the driving question is: What levels of ambition and urgency with regard to national emission reductions are compatible with such rights and duties? This is the question, for instance, at the core of the average European lawsuit (including the challenge to the European Union's mitigation targets in *Ferrão Carvalho* v. *Europe*)[48] and the petition of a youth association to the South Korean Constitutional Court, which requests that the country's low mitigation target be declared unconstitutional.[49] In other suits, rather than the level of ambition itself, plaintiffs challenge the consistency of government-authorized projects or policies with the mitigation target that the government has formally adopted through national or international law. This is the case, for instance, in the legal challenges to new airport runways in Vienna and London.[50] Most Global South lawsuits[51] fit this second type, in that they do not challenge mitigation targets but rather specific government actions (or lack thereof) hindering progress towards those targets – from the omission of climate impacts in environmental impact assessments in South Africa and India[52] to bureaucratic gridlock in Peru and Pakistan.[53]

[47] *Notre Affaire à Tous* v. *France*, Sabin Center for Climate Change Law, <http://climatecasechart.com/climate-change-litigation/wp-content/uploads/sites/16/non-us-case-documents/2021/20210203_NA_decision-1.pdf> (Paris Administrative Court decision, ¶41).

[48] See Case T-330/T18, *Carvalho* v. *Parliament*, above note 26 (finding that the plaintiffs lacked standing and consequently that the case was inadmissible).

[49] See "Kim Yujin et al. v. South Korea," above note 24.

[50] See "In re Vienna-Schwechat Airport Expansion," above note 24; see also "Plan B Earth v. Sec'y of State for Transport," above note 24.

[51] For detailed analyses on climate litigation in Global South jurisdictions, see the chapters by Juan Auz (Chapter 6), Jolene Lin and Jaqueline Peel (Chapter 9), Arpitha Kodiveri (Chapter 20), Pooven Moodley (Chapter 21), and Waqqas Mir (Chapter 22), and, in this volume.

[52] See *Earthlife Africa Johannesburg* v. *Minister of Envtl. Affairs*, above note 9. For information on an Indian case involving considering climate impacts in environmental impact assessments, see "Pandey v. India," above note 5. For the order dismissing that case, see *Pandey* v. *India*, App. No. 187/2017, Nat'l Green Tribunal (Jan. 15, 2019), <https://static1.squarespace.com/static/571d109b04426270152febe0/t/5cb424defa0d60178b2900b6/1555309792534/2019.01.15.NGT+Order-Pandey+v.+India.pdf>.

[53] See *Leghari* v. *Pakistan*, above note 6; see also "Álvarez v. Peru," above note 26.

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Both modalities of litigation raise complex questions about how to set and enforce a country's level of mitigation ambition. The controversy over different criteria of equity for determining countries' appropriate share of GHG emission cuts involves core issues of climate ethics and politics that are beyond the scope of this chapter.[54] Partly due to this complexity, litigants and courts in the typical HRCC case have tended to take a cautious approach by closely tying their claims and remedies to the ambition levels prescribed by the Paris Agreement and the IPCC.

This approach has been translated into two embryonic norms. First, with regard to a country's share of emission reductions, HRCC cases have articulated a view that stresses individual states' duties. States' line of defense in mitigation lawsuits has hinged on the nature of the climate system as a public good. From this perspective, since emission reductions by one country will not make a dent in preventing global warming without other countries contributing their share, citizens have no justiciable rights-based claim to state climate action.

In contrast, litigants and courts have relied on a responsibility-based interpretation of the Paris Agreement. In this view, states have a duty to contribute their "minimum fair share" to emissions reduction, regardless of other countries' actions. As noted, the determination of a country's fair share has been guided by estimates stemming from the IPCC's recommendations and reports.

The most explicit articulation of the "minimum fair share" norm can be found in the Dutch Supreme Court's decision in *Urgenda*. According to the court, under the European Convention on Human Rights and the global climate regime, "the Netherlands is obliged to do 'its part' in order to prevent dangerous climate change, even if it is a global problem."[55] The court bases its legal opinion on an interpretation of the UNFCCC whereby "all countries will have to do the necessary" to attain global emission targets, as well as on the generally accepted principle of international law according to which countries must avoid causing harm to others. "This approach justifies partial responsibility: each country is responsible for its part and can therefore be called to account in that respect"[56] in judicial forums. Using the heuristics of a "carbon budget" – the amount of GHG that is left for humanity to burn before surpassing the 1.5 degrees Celsius to 2 degrees Celsius threshold of global warming – the court concludes that "no reduction is negligible," as all

[54] For a classic treatment of these issues, see John Broome, *Climate Matters: Ethics in a Warming World* (New York: W.W. Norton & Co., 2012).

[55] See *Urgenda*, above note 2, at ¶5.7.1.

[56] See ibid. ¶5.7.5.

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emissions contribute to using up the global budget, regardless of the size of the country or its emissions.[57]

Although in a less elaborate way, courts have reasoned along comparable lines in other HRCC cases. The High Court of Ireland used a similar rationale to conclude that, "no country, particularly that of the size of this State, can tackle the [global warming] problem on its own. That, however, does not lessen the requirement to do what is necessary to achieve scientifically advised targets."[58]

As can be readily seen, if this norm takes hold in international and comparative climate rights law, it will create further incentives for litigation at the domestic level, as litigants in different jurisdictions would seek to exert bottom-up pressure on their own governments to contribute to global mitigation efforts, regardless of (or precisely because of) limited top-down pressure from intergovernmental negotiations. There is evidence that this process of transnational dissemination of judicial precedents and legal strategies is taking place. Litigants and courts in jurisdictions as diverse as Brazil, New Zealand, Norway, and South Korea are actively invoking some version of the "minimum fair share" norm to hold governments accountable for mitigation targets.

Nevertheless, this norm remains underspecified. Given that the meaning of "minimum fair share" varies according to the criterion of fairness used, this remains an open question in HRCC litigation (see Part II). One interesting case seeking to address this question is *Duarte Agostinho* v. *Portugal*, which was filed in the European Court of Human Rights by six Portuguese youth against a number of European states for their failure to take sufficiently ambitious climate action. The petitioners argue that the burden of proving that the respondent states' climate policies are collectively consistent with the Paris temperature target should be on the states – the wrongdoers – as opposed to the petitioners – the victims of climate harms. In doing so, the petitioners seek to avoid a ruling that would fall within the low end of the necessary emissions reductions estimated by the IPCC but would collectively fail to limit warming to the Paris temperature target. By bringing this case in a regional court, moreover, the petitioners aim to secure a single ruling binding on most European states, thereby eliminating the potential for

[57] See ibid. ¶5.7.8.

[58] See *Friends of the Irish Environment* v. *Ireland* [2019] IEHC 747, 748 (H. Ct.) (Ir.). For more on the Supreme Court's decision in *Friends of the Irish Environment*, see Victoria Adelmant, Philip Alston, and Matthew Blainey's chapter in this volume (Chapter 16).

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inconsistent domestic rulings on the adequacy of states' emissions reduction ambition.[59]

Moreover, this limitation has been partially compensated by a second emerging rule, which relates to remedies. In decisions issued in favor of the plaintiffs, litigants and courts have sought to take a cautious approach to mitigation remedies in order to strike a balance between climate rights and deference to government policy. Some lawsuits have focused on holding governments accountable to the mitigation pledges they set themselves, as in *Torres Strait Islanders* v. *Australia*[60] (which seeks to hold the government to the target recommended by its Climate Change Authority), *Amazon's Future Generations* (where the Colombian Supreme Court enforced the government's own targets regarding the reduction of deforestation), and *Greenpeace Germany* v. *Germany* (which unsuccessfully sought to hold the German government to its own 2020 target). Other lawsuits demand that governments increase their mitigation commitments but either limit themselves to asking the court to declare the existing target unconstitutional and mandate the government to determine a new target (as in *Kim Yujin* v. *South Korea*) or set the proposed target at the minimum level of emissions reduction that is required from the respective government, according to IPCC recommendations. The latter was the rationale behind the *Urgenda* ruling, which required the Dutch government to reduce the nation's GHG emissions by 25 percent relative to 1990 levels by 2020, which sits at the lower end of the 25 to 40 percent range recommended by the IPCC and upholds the target that the government had adopted prior to 2011. Still other lawsuits challenge the most GHG-intensive policies or projects of a given country and request greater governmental scrutiny and transparency about their compatibility with the country's stated mitigation targets. An illustration of this type of case is *Zoubek et al.* v. *Austria*, which challenges legislation that grants tax credits for air travel but not for rail transportation.

In sum, the norms emerging from HRCC litigation contribute to addressing some of the most complex and novel legal issues raised by the climate emergency – including the applicable corpus of international law, the status of the right to climate action and a livable climate system, and individual countries' duties regarding contributions to climate mitigation. At least in the ideal-typical version that most lawsuits approximate, they fit the post-Paris governance

[59] See "Duarte Agostinho and Others v. Portugal and 32 Other States," above note 5. For an analysis of the legal rationale of the case, see Gerry Liston and Paul Clark's chapter in this volume (Chapter 18).

[60] For more on the *Torres Strait Islanders* case, see Sophie Marjanac and Sam Hunter Jones' chapter in this volume (Chapter 7).

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framework. HRCC cases help provide this framework with some of the procedural and substantive parameters that it is missing and that are necessary for climate regulation to make substantial progress against global warming.

This does not mean, however, that the HRCC framework by itself can adequately handle the complexities of climate regulation, nor that human rights concepts and doctrines adequately address key outstanding issues in climate litigation. My study reveals interesting, if as of yet preliminary, potential blind spots and limitations of HRCC litigation. To these, I turn in closing.

1.3 LOOKING AHEAD: THE POTENTIAL AND CHALLENGES OF RIGHTS-BASED CLIMATE LITIGATION

As mentioned in my Introduction to this volume and as shown by the figures on the rapid growth of HRCC lawsuits and petitions, rights-based climate litigation is an idea whose time has come. Although it is too early to systematically assess the impact of this trend on a range of relevant variables – from governmental and corporate climate action to climate social movements to the future of the Paris Agreement's implementation – it is possible to extract some initial, forward-looking lessons about the potential of this type of legal action as well as its outstanding challenges.

The future-oriented implication of the argument and the evidence presented in this chapter is that the rights-based lawsuits that are most likely to contribute to climate action are those that explicitly incorporate the standards and regulatory logic of the global climate regulatory regime, namely, the Paris Agreement and the IPCC assessments. I argue that this type of HRCC litigation can provide material incentives for governments to put climate action at the center of their agendas, overcome policy gridlock, increase compliance and ambition, and foster transparency and participation in climate policy. Evidence of the potential of these incentives can be found in the impact on the aforementioned government climate commitments resulting from rulings such as those in *Urgenda* and *Neubauer*. Further, by publicly reframing the problem of climate change as a source of grievous impacts on identifiable human beings and as a violation of universally recognized norms, HRCC litigation can create symbolic incentives for governments and other domestic actors to put climate action at the center of their agenda and align their actions with the goals of the global climate regime.[61] As courts adjudicate ongoing cases and new legal actions reach national and international

[61] For a fuller formulation of this argument on the material and symbolic impacts of HRCC litigation, see Rodríguez-Garavito, above note 15.

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tribunals, empirical case studies will be able to assess the material and symbolic potential of HRCC litigation.[62]

Nevertheless, as with other types of litigation, HRCC litigation also has limitations that are worth bearing in mind when considering it as a strategic tool. For instance, rather than being an end in and of itself, the key contribution of the typical HRCC is that it helps set a regulatory floor upon which other forces – from social movement pressure to interstate negotiations – can build. This is the approach articulated in some of the most promising recent cases, such as the Torres Strait Islanders petition before the UN Human Rights Committee. Based on the aforementioned principles of international human rights law, the petition proposes a "minimum core obligation" that states need to meet in order to discharge their responsibility for climate mitigation. In addition to alignment with IPCC recommendations, this obligation includes procedural guarantees such as consistency (with previous state commitments, with relevant state policies, and with measures taken by states with comparable resources) and due process (adequate reason-giving and public participation).[63]

Another limitation of HRCC litigation in the context of the international climate regime is its geographic reach. For very different reasons, rights-based litigation faces particularly difficult obstacles in the legal traditions of two of the key players in climate governance: the United States and China. However, the geographic spread of the ongoing wave of litigation suggests that it may be influential in some regions and countries that rank among the world's largest GHG emitters, from Europe to the United Kingdom, Canada, Brazil, India, and Indonesia.

An important oversight that is evident in the universe of HRCC litigation is the dearth of cases on climate adaptation. This blind spot is particularly striking for two reasons. First, adaptation is the most pressing issue for a large majority of countries, including most of the Global South, which continue to contribute relatively small amounts of GHG and are already experiencing the brunt of the human impact of global warming. Second, the norms and frames of human rights lend themselves more easily to litigating adaptation – that is, measures designed to protect specific individuals and communities from the effects of forced displacement, economic disruption, health impacts, and other consequences of global warming that are already inevitable. By focusing

[62] For a study in this vein, on the early impacts of the *Urgenda* case, see Anke Wonneberger and Rens Vliegenthart, "Agenda-Setting Effects of Climate Change Litigation: Interrelations Across Issue Levels, Media, and Politics in the Case of Urgenda against the Dutch Government, Environmental Communication" (2021) *Environmental Communication* 1.

[63] See Sophie Marjanac and Sam Hunter Jones' chapter in this volume (Chapter 7).

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on mitigation, HRCC litigation has overlooked half of the problem, one with urgent repercussions for most of the world's population.

In terms of types of defendants, the most visible gap is the dearth of cases against corporations. As noted, only twenty-four climate lawsuits have ever been filed against corporations on human rights grounds. This is not entirely surprising, given the long-standing difficulties that human rights norms and concepts have had in dealing with non-state actors in general and corporations in particular. However, recent regulatory and socioeconomic developments may increasingly open the door for rights-based litigation against corporate actors. In the *Casino* case, for instance, litigants leveraged a combination of corporate law tools (specifically, the 2017 Corporate Duty of Due Diligence Law) and international Indigenous rights law to demand that Casino supermarkets take all necessary measures to exclude beef tied to deforestation and the grabbing of Indigenous territories from its supply chains in Brazil, Colombia, and elsewhere.

In the future, litigants will likely explore the use of the UN Guiding Principles on Business and Human Rights and other transnational regulatory frameworks (for instance, the OECD's standards on corporate behavior) to hold corporations responsible for the human rights violations associated with their carbon emissions or to compel them to compensate governments or individuals for the costs incurred adapting to global warming.[64] In this way, litigants would effectively be translating into human rights language the claims against fossil fuel corporations that local governments in the United States have been advancing on common law grounds.[65] The human rights case, moreover, could be bolstered by growing evidence that some of these corporations have been aware of those harms for several decades and chose not only not to disclose it but also to actively lobby against climate action.[66] Indeed, a combination of these arguments underlies Greenpeace's petition against carbon majors before the Philippines' Commission on Human Rights; this strategy may well be replicated in other jurisdictions.

More broadly and conceptually, the nature of climate change exposes the shortcomings of long-held assumptions in human rights law and practice. The

[64] See generally César Rodríguez-Garavito (ed.), *Business and Human Rights* (Cambridge: Cambridge University Press, 2017).

[65] See, e.g., Karen Savage, "2019: The Year Climate Litigation Hit High Gear," The Climate Docket, December 30, 2019, <https://www.climatedocket.com/2019/12/30/2019-climate-litigation-exxon/>.

[66] See, e.g., "America Mislead: How the Fossil Fuel Industry Deliberately Misled Americans About Climate Change," George Mason University Center for Climate Change Communications, <https://www.climatechangecommunication.org/america-misled/>.

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original articulation of these difficulties is also the clearest. In the first UN study on the implications of climate change, the Office of the High Commissioner for Human Rights concluded that "qualifying the effects of climate change as human rights violations poses a series of difficulties."[67] Some difficulties have to do with causality, as it might be "virtually impossible to disentangle the complex causal relationships linking historical greenhouse gas emissions of a particular country with a specific climate change-related effect, let alone with the range of direct and indirect implications for human rights."[68] Others relate to temporality, as "adverse effects of global warming are often projections about future impacts, whereas human rights violations are normally established after the harm has occurred."[69]

These issues are particularly challenging for traditional human rights strategies and concepts. As Kathryn Sikkink has observed, drawing on Iris Young's theory of justice, the dominant paradigm in human rights advocacy is the "liability model of responsibility," a backward-looking approach that focuses on determining guilt for individualized rights violations.[70] However, the liability model cannot adequately address structural injustices like climate change and economic inequality. Indeed, climate action requires a different, forward-looking approach to human rights. Following Young, the key question in this model is not so much "who is to blame?" as "what should we do to accomplish climate goals?" Forward-looking HRCC litigation contributes to answering the latter question by using what Sabel and Simon call "destabilization rights"[71] – legal doctrines and concepts that may help disrupt dysfunctional institutional equilibria, like those common in climate policy, by prodding governments and other stakeholders to take more urgent and meaningful action against global warming.

My study of HRCC litigation highlights the initial signs of forward-looking concepts and doctrines that have the potential to deal with the difficulties associated with the causality and temporality of global warming. With regard to causality, HRCC cases have made progress in establishing the link between

[67] Human Rights Council, "Report of the Office of the United Nations High Commissioner of Human Rights on the Relationship between Human Rights and Climate Change," UN Doc. A/HRC/61 (January 15, 2009), ¶70.

[68] Ibid.

[69] Ibid.

[70] See Kathryn Sikkink, *The Hidden Face of Rights: Toward a Politics of Responsibility* (New Haven: Yale University Press, 2020); see also Iris Marion Young, *Responsibility for Justice* (Oxford: Oxford University Press, 2011).

[71] See Charles F. Sabel and William H. Simon, "Destabilization Rights: How Public Law Litigation Succeeds" (2004) 117 *Harvard Law Review* 1015.

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a country's responsibility for GHG emissions and violations of human rights. As noted, litigants and courts have articulated an emergent "minimum fair share" norm, whereby countries are responsible for contributing to mitigation efforts, regardless of actions by other states. Relatedly, they can be held accountable for the human rights impacts associated with their GHG emissions. However, courts' reticence to establishing a causal link between GHG emissions and plaintiffs' individual human rights harms has been an important procedural obstacle in HRCC litigation. Several courts have thrown out cases for lack of standing, finding that the plaintiffs had not shown specific injuries from climate change, as in the challenge brought by citizens of Europe and other regions against the European Union's mitigation targets in *Ferrão Carvalho* v. *Europe*[72] and the challenge against the Swedish government's sale of a coal-fired plant to a polluting energy company in *PUSH Sweden* v. *Sweden*.[73]

This conventional and individualistic conception of standing ignores the nature of global warming as an omnipresent phenomenon affecting all human beings and indeed all forms of life on Earth. In contrast to it, recent decisions have articulated a new view of standing that better fits the nature of the problem. This is notably the case in the ruling of the German Constitutional Court in the *Neubauer* lawsuit, where the court held that the fact that climate impacts will affect virtually all persons living in Germany did not prevent the young plaintiffs from being affected in their own right and thus meant that they had standing to sue the government to demand more ambitious and urgent climate action.[74]

The temporal dimensions of climate change also raise challenges to the linear, backward-looking temporality of human rights law. The most consequential human rights impacts associated with global warming will materialize in the future and will affect members of future generations, who are not recognized as rights-holders. Moreover, unlike other long-term human rights violations, the temporality of climate impacts is non-linear: delays are costly; the effects of inaction are compounded through time; some impacts are already irreversible; locked-in effects will continue to have adverse impacts on human rights even after climate action is accelerated (if it is ever

[72] See Case T-330/T18, *Carvalho* v. *Parliament*, above note 26 (finding that the plaintiffs lacked standing and consequently that the case was inadmissible).

[73] See "PUSH Sweden, Nature and Youth Sweden and Others v. Government of Sweden," above note 28.

[74] See "Constitutional Complaints against the Federal Climate Change Act partially successful," Bundesverfassungsgericht, above note 1.

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accelerated); and tipping points and feedback loops may drastically worsen human rights violations in unpredictable ways.[75]

Sensitivity to time may be one of the contributions of future climate-rights lawsuits and judicial decisions. Some of the existing cases offer useful pointers. In several of the rulings that deny the protection requested by the plaintiff, adjudicators explicitly tie their decision to present conditions and leave open the possibility of changing their views as global warming worsens. For instance, in the case against New Zealand brought by a climate migrant from Kiribati who had been denied asylum, the UN Human Rights Committee ruled against the migrant because sea level rise was unlikely "to render the Republic of Kiribati uninhabitable" for another "10 to 15 years," but added: "given that the risk of an entire country becoming submerged under water is such an extreme risk, the conditions of life in such a country may become incompatible with the right to life with dignity before the risk is realized."[76] Moreover, cases filed on behalf of young plaintiffs address the objection that climate harms entail future, as opposed to current, human rights violations by demonstrating that the dire impacts predicted for 2050 or even 2100 will be suffered by people who are already alive today.

With regard to the non-linear character of climate impacts over time, the *Urgenda* decision to enforce swift emission cuts invoked the cost of delays to dismiss the Dutch government's argument that mitigation targets should be evaluated in 2030 as opposed to 2020. One of the clearest formulations of the non-linearity of climate change in HRCC litigation can be found in the dissent to the US Ninth Circuit Court's decision to throw out the *Juliana* case on the basis of standing. "The majority portrays any relief we can offer as just a drop in the bucket," wrote the dissenting judge.[77] "In a previous generation, perhaps that characterization would carry the day and we would hold ourselves impotent to address plaintiffs' injuries. But we are perilously close to an overflowing bucket. These final drops matter. *A lot*."[78]

An even crisper and more consequential judicial pronouncement in this regard can be found in the German Constitutional Court's ruling in *Neubauer*, which, to my mind, should be seen as the first comprehensively time-sensitive judicial decision on climate change. Mindful of the non-linear temporality of global warming, the court held that postponing climate action

[75] See Richard Lazarus, "Super Wicked Problems and Climate Change: Restraining the Present to Liberate the Future" (2009) 94 *Cornell Law Review* 1153.
[76] See Human Rights Comm. on Ioane Teitiota, above note 11, at ¶9.12.
[77] *Juliana* v. *United States*, above note 8.
[78] Ibid. at pp. 45–46.

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to a later day is constitutionally inadmissible inasmuch as it "irreversibly offload[s] major emission reduction burdens" onto the future and imposes "radical abstinence" on future generations.[79] Therefore, "the obligation to take climate action is accorded increasing weight as climate change intensifies."[80] In a conceptual turn that addresses some of the aforementioned conceptual limitations of human rights, the court held that "fundamental rights [are] intertemporal guarantees of freedom."[81]

In conclusion, the continued contribution of HRCC litigation to climate action will hinge on the dissemination of these and other jurisprudential innovations, as well as on the fate of ongoing efforts by litigants and courts to expand and update climate and human rights law in matters ranging from legal standing to the rights of future generations to legal liability for multicausal human rights harms. As the sociolegal literature on strategic litigation in other thematic fields has amply documented, it will also depend on whether litigants can successfully coordinate their law-centered strategies with the efforts of other advocates and movements that are at the forefront of the global mobilization for climate action, from youth organizations to Indigenous peoples to collectives of concerned scientists. And it will all need to happen at a much greater scale and faster pace if we are to match those of the most urgent challenge of our time.

[79] "Constitutional Complaints against the Federal Climate Change Act partially successful," Bundesverfassungsgericht, above note 1.
[80] Ibid.
[81] Ibid.

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APPENDIX

TABLE 1.1 *Human rights–based climate cases (2005–2021)*

Filing Date	Status	Country Court	Case Name	Plaintiff	Issue & Alleged HR Violations
2005	Dismissed (in 2006)	*Inter-American Commission of Human Rights (IACHR) (defendant: U.S.)*	Petition to the IACHR Seeking Relief from Violations Resulting from Global Warming Caused By Acts and Omissions of the United States	Inuit woman (on her own behalf and on behalf of other Inuit in the Arctic)	Seeking relief from human rights violations resulting from global warming caused by acts and omissions of the US. Based on the rights to traditionally occupied land, life, physical integrity and security, culture, property, health, their own means of sustenance, residence and movement, and inviolability of the home.
2005	Granted	*Nigeria Federal High Court of Nigeria*	*Gbemre* v. *Shell Petroleum Development Company of Nigeria* [FHC/B/CS/53/05]	Adult male	Challenging the practice by the Nigerian government and Shell Oil of gas flaring in the Niger Delta. Based on the rights to life and dignity of human persons, health, healthy environment, and environment favorable to their development.
2005	Granted	*Europe European Committee of Social Rights*	*Marangopoulos Foundation for Human Rights* v. *Greece*	Marangopoulos Foundation for Human Rights	Alleging that Greece failed to comply with provisions of the human rights guaranteed by the European Social Charter, including the right to just work conditions and the right to safe and healthy working conditions, by failing to adequately consider, inter alia, the environmental impacts associated with operation of certain coal mines and coal-fired power plants, including climate impacts.

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2007	Dismissed	*United States U.S. District Court for the Northern District of California*	*A. Philip Randolph Institute (SF Chapter)* v. *U.S. Environmental Protection Agency*	Two NGOs & two individuals	Seeking an order requiring the EPA to comply with the ruling of *Massachusetts* v. *EPA* by determining whether carbon dioxide causes or contributes to harmful air pollution and challenging the Bay Area Air Quality Management District for issuing construction permits for two natural gas power plants as violations of state and federal administrative and environmental law as well as procedural due process rights.
2007	Granted	*United Kingdom High Court of Justice*	*Greenpeace* v. *Secretary of State for Trade and Industry*	Greenpeace	Alleging that the public consultation process conducted by the government while reviewing its nuclear power policy was flawed, including in relation to rights guaranteed under the Aarhus Convention and climate considerations.
2008	Dismissed	*United States*	*Sunflower Electric Power Corporation* v. *Sebelius*	Electric company	Challenging the Kansas government's decision to deny the plaintiff the air quality permit required for the construction of new coal-fired electricity units on the basis that the decision violates the dormant Commerce Clause and the equal protection clause of the US Constitution. The state government had denied the permit on the basis that the new coal-fired energy would contribute to global warming.

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TABLE 1.1 (*continued*)

Filing Date	Status	Country Court	Case Name	Plaintiff	Issue & Alleged HR Violations
2009	Dismissed	*United Kingdom High Court of Justice*	*People and Planet* v. *HM Treasury*	NGO	Challenging the adoption of a policy by the UK Treasury on the basis that it does not use its investment in the Royal Bank of Scotland to advance or require changes to RBS' commercial lending practices such that RBS does not support businesses or ventures that are insufficiently respectful of human rights or harmful to the environment by virtue of their carbon emissions.
2010	Granted	*Nepal Supreme Court of Nepal*	*Pro Public* v. *Godavari Marble Industries Pvt. Ltd.*	Nonprofit (Propublic)	Seeking to void a government permit for a marble mine in the Godavari hills outside Kathmandu, as the mine was inconsistent with the constitutional rights to live in a healthy environment and to live with dignity and Nepalese laws on environmental protection.
2010	Granted (settled)	*Philippines Supreme Court of the Philippines*	*Global Legal Action on Climate Change* v. *Climate Change Commission*	NGO	Alleging that various government agencies' failure to fully comply with two statutes on flood control puts Filipinos at risk of dangers from flooding, which is expected to worsen as climate change becomes more severe and infringes on their right to environmental protection.

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2011	Dismissed	*United States of America United States District of Columbia District Court(2012)*	*Alec L. v. McCarthy* [14-405]	Five youth and two NGOs (Kids vs Global Warming and Wildearth Guardians)	Alleging violations of the public trust by the government through its actions exacerbating climate change and, on appeal, alleging constitutional violations of equal protection guarantees and due process rights to life, liberty, and property.
	Affirmed	*U.S. Court of Appeals for the D.C. Circuit(2014)*			
2011	Opinion given	*Ecuador Constitutional Court*	Advisory Opinion in Case No. 0034-11-TI	Government	Examining whether the Agreement of Cooperation on Climate Change, Conservation of Biodiversity, and Environmental Development signed by Ecuador and Peru is consistent with the Ecuadorian Constitution, including certain constitutional rights like the right to a healthy environment.
2012	Granted	*United Kingdom High Court of Justice in Northern Ireland*	*In the Matter of an Application by Brian Quinn and Michael Quinn*	Two landowners	Challenging the decision by the Commissioner of the Planning Appeals Commission to refuse to grant authorization to the plaintiffs to develop a wind farm on their land, on the basis that, among other things, the Commissioner's decision breached their right to a fair hearing and failed to account for the environmental and social benefits of renewable energy development, including the reduction of GHG emissions.
2012	Pending	*Uganda High Court of Uganda Holden*	*Mbabazi and Others* v. *The Attorney General and*	Nonprofit (Greenwatch) on	Alleging that the government is violating its constitutional duties by not addressing climate change and enforcing

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TABLE 1.1 (*continued*)

Filing Date	Status	Country Court	Case Name	Plaintiff	Issue & Alleged HR Violations
			National Environmental Management Authority [Civil Suit No. 283 of 2012]	behalf of four Ugandan children	international climate treaties. Based on the public trust doctrine and constitutional rights and freedoms, including the right to a clean and healthy environment.
2012	Dismissed	*United States Pennsylvania Commonwealth Court*	*Funk* v. *Pennsylvania Department of Environmental Protection*	Ashley Funk (young adult)	Challenging the state environmental agency's rejection of the plaintiff's petition for rulemaking to establish rules to reduce greenhouse gas emissions, arguing that the rejection was unfounded as the state has the legal authority under the Constitution to issue these regulations, citing in particular state citizens' constitutional right to clean air and water.
2013	Granted	*India National Green Tribunal*	*Court on Its Own Motion* v. *State of Himachal Pradesh*	Court on its own motion (National Green Tribunal)	Alleging that the emission of black carbon in the ecologically sensitive region of Rhotang Pass drives the melting of glaciers and causes other effects that impermissibly infringe on Indian citizens' constitutional rights.
2013	Pending	*IACHR (defendant: Canada)*	Petition to the IACHR Seeking Relief from Violations of the Rights of Arctic Athabaskan Peoples Resulting from Rapid Arctic	Arctic Athabaskan Council (on behalf of the Arctic Athabaskan peoples of Canada and the US)	Challenging Canada's failure to implement measures to reduce black carbon emissions as violations of the Athabaskan people's human rights as a result of the arctic warming produced from black carbon emissions. Based on the rights to enjoy the benefits of culture,

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				Warming and Melting Caused by Emissions of Black Carbon by Canada		to property, to the preservation of health, and to their own means of subsistence.
	2013	Granted	*Netherlands Hague District Court (2015)*	*Urgenda Foundation* v. *Netherlands*	NGO (Urgenda Foundation)	Seeking a declaratory judgment and an injunction to compel the Dutch government to do more to reduce GHG emissions. Alleged violations of the rights to life and to private and family life.
		Affirmed	*Hague Court of Appeal (Civil Law Division)(2018)*			
		Affirmed	*Supreme Court of the Netherlands (Hoge Raad)(2019)*			
	2014	Granted	*New Zealand Immigration & Protection Tribunal*	In *re: AD (Tuvalu)* [[2014] Cases 501370-371]	Family (Tuvalu)	Seeking resident visas for a family displaced from Tuvalu, based on the rights to family unity; life; be free of cruel, inhuman or degrading treatment; water; and asylum.
	2014	Denied	*United States Massachusetts Superior Court(2015)*	*Kain* v. *Massachusetts Department of Environmental Protection*	Four teenage residents of Massachusetts & two environmental nonprofits	Challenging the state environmental agency's refusal to issue binding greenhouse gas emission reduction regulations and targets, arguing that it is inconsistent with the state's environmental law as well as the fundamental right to clean air.
		Granted	*Massachusetts Supreme Court(2016)*			

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TABLE 1.1 (*continued*)

Filing Date	Status	Country Court	Case Name	Plaintiff	Issue & Alleged HR Violations
2015	Dismissed	*New Zealand Supreme Court*	*Ioane Teitiota* v. *Chief Executive of the Ministry of Business, Innovation and Employment* [[2015] NZSC 107]	Adult male (from Kiribati)	Seeking refugee status for a Kiribati citizen, based on the risks generated by the effects of climate change to his right to life.
2015	Dismissed (2019)	*UN Human Rights Committee (defendant: New Zealand)*	Views Adopted by the Committee under Article 5(4) of the Optional Protocol, Concerning [the Teitiota Communication] [CCPR/C/127/D/2728/2016]	Family (Kiribati)	Arguing that New Zealand's denial of refugee status to a displaced family from Kiribati violated international human rights law, based on the right to life and the risk the plaintiff faced of the arbitrary deprivation of life.
2015	Granted	*Pakistan Lahore High Court (2015)*	*Leghari* v. *Pakistan* [(2015) W.P. No. 25501/201]	Adult male	Challenging the Pakistani government for their failure to carry out the core provisions of the 2012 climate law, based on rights to life, dignity, water, to a healthy environment, and the principle of intergenerational equity.

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2015	Pending	*Nepal Supreme Court of Nepal*	*Shayka* v. *Durbar et al.*	Indigenous activist	Alleging that various government ministers and the implementation agency for REDD+ (a climate adaptation program funded by the World Bank) have violated the constitutional rights to live in a clean environment; dignity; culture; social justice; participation and equality for women, Dalits, Indigenous peoples, Madhesi, and other groups; and equality. Also alleging additional violations of the rights of Indigenous peoples enshrined under international law.
2015	Granted(2021) AppealPending (2021)	*Belgium Brussels Court of First Instance*	*VZW Klimaatzaak* v. *Belgium*	NGO and class (35,000+ citizens)	Requesting that federal and regional governments reduce greenhouse gas emissions, based on the rights to life and private and family life and the principle of intergenerational justice.
2015	Allowed to Proceed (Motion to Dismiss Denied) Dismissed Appeal pending	*United States of America United States District Court of Oregon (Eugene Division) (2016)* *9th Circuit Court of Appeals(2020)* *U.S. Supreme Court (2021)*	*Juliana* v. *United States* [18-36082]	21 youth; a representative of "future generations;" NGO (OCT)	Asserting that the federal government violated the constitutional rights of youth citizens by causing dangerous carbon dioxide concentrations, based on the rights to life, liberty, and property, and equal protection.

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TABLE 1.1 (*continued*)

Filing Date	Status	Country Court	Case Name	Plaintiff	Issue & Alleged HR Violations
2015	Investigation Concluded in Favor of the Plaintiffs	*Philippines Commission on Human Rights*	Carbon Majors Inquiry	Greenpeace Philippines and Filipino NGOs and citizens	Asserting that "carbon majors" are responsible for climate-induced violations of the rights to life, food, health, water, sanitation, adequate housing, and self-determination.
2015	Dismissed(2018)	*United States U.S. District Court, District of Maine*	*Portland Pipeline Corp.* v. *South Portland*	Pipeline operator	Challenging the city of South Portland's local ordinance prohibiting loading crude oil onto tankers and the construction of new structures for that purpose as a violation of the dormant Commerce Clause and Foreign Commerce Clause of the US Constitution as well as the pipeline operator's civil and constitutional rights.
	Dismissed(2021)	*First Circuit Court of Appeals*			
2015	Granted	*Colombia Constitutional Court of Colombia*	*Castilla Salazar* v. *Colombia* [Decision C-035/16]	Colombian citizens	Challenging the constitutionality of certain laws establishing provisions of Colombia's National Development Plan, on the basis that they threatened the health of the páramos (high altitude ecosystems) and infringed on constitutional rights, including the right to a healthy environment.

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2016	Dismissed	*Norway* *Oslo District Court (2018)*	*Greenpeace Nordic Ass'n* v. *Ministry of Petroleum and Energy* [16-166674TVI-OTIR/06]	NGOs	Challenging the constitutionality of the Norwegian government's decision to license new blocks of the Barents Sea for deep-sea oil and gas extraction. Based on the rights to life, private and family life, health, an environment that is conducive to health and to a natural environment whose productivity and diversity are maintained, and the no harm principle.
	Dismissed	*Norway* *Borgarting Court of Appeal(2020)*			
	Dismissal Upheld	*Supreme Court of Norway(2020)*			
2016	Dismissed	*Switzerland* *Federal Administrative Court of Switzerland(2018)*	*Union of Swiss Senior Women for Climate Protection* v. *Swiss Federal Council and Others* [No. A-2992/2017]	Senior citizen women	Challenging the adequacy of the government's climate change mitigation targets and implementation measures and possible infringement on human rights. Based on the rights to life and private and family life.
	Dismissed (2020)	*Switzerland* *Federal Supreme Court of Switzerland*			
	Pending(2020)	*European Union* *European Court of Human Rights*			
2016	Pending	*Pakistan* *Pakistan Supreme Court*	*Ali* v. *Pakistan*	Child	Challenging various actions and inactions by the federal and provincial government, including plans to develop the Thar Coalfield. Based on the rights to life, dignity, property, equality, and the principles of sustainable development and inter-generational equality.

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TABLE 1.1 (*continued*)

Filing Date	Status	Country Court	Case Name	Plaintiff	Issue & Alleged HR Violations
2016	Dismissed	*Sweden Stockholm District Court*	*PUSH et al.* v. *Sweden*	NGOs, youth, and individuals	Challenging the sale of coal-fired plants in Germany by the Swedish state-owned energy firm, allegedly in violation of the government's duty of care and the plaintiffs' rights to life, health, private and family life, and a non-harmful climate. (Plants were sold to a Czech firm with poor climate record).
2016	Granted	*South Africa High Court of South Africa (Gauteng Division)(2017)*	*EarthLife Africa Johannesburg* v. *Minister of Environmental Affairs* [65662/16]	NGO	Challenging the government's failure to adequately consider climate change-related impacts in the development of a coal-fired power plant, based on the right to a healthy environment.
2016	Decided	*Americas Inter-American Court of Human Rights (2017)*	A Request for an Advisory Opinion from the Inter-American Court of Human Rights Concerning the Interpretation of Article 1(1), 4(1) and 5(1) of the American Convention on Human Rights	Colombia	In an advisory opinion, the Inter-American Court of Human Rights recognized the right to a healthy environment as a human right, based on the rights to life and personal integrity.

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	2016	Granted	*United States Massachusetts Superior Court*	*First Parish in Bedford, Unitarian Universalist* v. *Historic District Commission*	Religious association & certain members of it	Challenging the Bedford's Historic District Commission's decision to deny the plaintiff association's application of appropriateness to install solar panels on the roof of its Meetinghouse, on the basis that the decision was unreasonable / arbitrary and capricious and violated the plaintiffs' rights to exercise their religious beliefs under the Mass. Declaration of Rights and the First Amendment of the US Constitution.
51	2016	Granted	*Kenya National Environmental Tribunal at Nairobi (2019)*	*Save Lamu* v. *National Environmental Management Authority*	Community organization (Save Lamu) & five individuals	Challenging the National Environmental Management Authority's decision to issue an Environment Impact Assessment (EIA) license to a company (Amu Power) heading the construction of a 900–1000 MW coal fired power plant in Lamu County on the basis that the decision, among other things, violated administrative law; will generate climate, biodiversity, and health impacts; and failed to include adequate pollution mitigation measures.

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TABLE 1.1 (*continued*)

Filing Date	Status	Country Court	Case Name	Plaintiff	Issue & Alleged HR Violations
2016	Dismissed(2018)	*United States U.S. District Court for the Southern District of New York*	*Exxon Mobil Corp.* v. *Healey*	Exxon Mobil (oil company)	The plaintiff brought suit against the Attorney General of Massachusetts, seeking an injunction to bar the enforcement of a civil investigative demand and a declaration that the demand violates the plaintiff's rights under state and federal law, including its rights to free speech and due process. The underlying investigation is into whether Exxon engaged in deceptive practices / mislead consumers / investors as to the role fossil fuels play in driving climate change and the risks of climate change to Exxon's business.
	Pending	*Second Circuit Court of Appeals*			
2017	Dismissed (2018)	*United States Alaska Superior Court*	*Sinnok, et al.* v. *State of Alaska, et al.* [S17297]	Sixteen youth	Asserting that the Alaska state government violated the constitutional rights of youth citizens by enacting energy policies that allow substantial greenhouse gas emissions and lead to dangerous carbon dioxide concentrations, based on the public trust doctrine, the rights to life, liberty, and property, and equal protection.
	Appealed(2018)	*Alaska Supreme Court*			

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	2017	Dismissed	*Ireland* *High Court of Ireland*(2019)	*Friends of the Irish Environment* v. *Ireland* [2017 No. 793 JR]	NGO	Alleging Ireland's National Mitigation Plan is in violation of international and national law because it is not designed to reduce greenhouse gas emissions sufficiently in the near-term. Based on the rights to life, liberty and security, integrity of the person, respect for family and private life, property, and the rights of the child, the rights of the elderly, equality between men and women, environmental protection, and the principles of intergenerational solidarity and vigilant and effective protection of the environment.
		Granted in part (for plaintiff) & Dismissed in part (against plaintiff)	*Ireland* *Supreme Court of Ireland*(2020)			
	2017	Dismissed	*India* *National Green Tribunal*	*Pandey* v. *India*	Child	Challenging the failure of the Indian government to take greater action to mitigate climate change by implementing its environmental laws and satisfying its obligations under the Paris Agreement, given the particularly adverse impact of nonaction on children and future generations. Based on violation of children's rights to life and a healthy environment.

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TABLE 1.1 (*continued*)

Filing Date	Status	Country Court	Case Name	Plaintiff	Issue & Alleged HR Violations
2017	Granted	*Nepal Supreme Court, Division Bench*	*Shrestha* v. *Prime Minister*	Nepalese citizen	Alleging that the government's failure to take sufficient action to mitigate and adapt to climate change (including through the failure to adopt a specific climate change law) violated the Nepalese Constitution, domestic environmental law, and international law.
2017	Dismissed	*Ireland High Court*	*Friends of the Irish Environment CLG* v. *Fingal County Council*	Friends of the Irish Environment, Irish citizens	Alleging that the government's decision to authorize the expansion of the Dublin Airport was inconsistent with the government's climate obligations and violated rights guaranteed under the EU Charter of Fundamental Freedoms and the Aarhus Convention.
2017	Pending	*Argentina Federal Court*	*FOMEA* v. *MSU S.A., Rio Energy S.A., & General Electric*	NGO	Alleging that the construction and operation of a thermoelectric plant violates international climate law, international human rights law, the Argentina Constitution, and domestic environmental law.
2017	Pending	*Argentina Federal Court (Azul City)*	*Carballo* v. *MSU S.A.*	Individuals & NGOs	Alleging that the construction and operation of a thermoelectric plant violates international climate law, international human rights law, the Argentina Constitution, and domestic environmental law.

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2017	Pending	*Argentina Federal Court of Compana*	*Hahn* v. *Araucaria Energy Sociedad Anónima*	NGOs & individuals	Challenging the construction of the Matheu thermoelectric power plant on the basis that the defendant company failed to properly comply with applicable environmental law (including carrying out a proper Environmental Impact Assessment) and that the plant itself would harm the health of nearby residents and infringe upon the right to a healthy and balanced environment.
2017	Pending	*Argentina Federal Court of Compana*	*Hahn* v. *APR Energy SRL*	NGOs & individuals	Challenging the construction of the Matheu II thermoelectric power plant on the basis that the defendant company failed to properly comply with applicable environmental law (including carrying out a proper Environmental Impact Assessment) and that the plant itself would harm the health of nearby residents and infringe upon the right to a healthy and balanced environment.
2017	Dismissed	*Philippines*	*Segovia* v. *Climate Change Commission*	Various people interested in having walking and bike options for road use, including carless people, parents representing their	Asking the Court to compel the implementation of various environmental laws and regulations and require the government respondents to take various actions to make roads more accessible for bike and pedestrian use. Alleging that the government's failure to

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TABLE 1.1 (*continued*)

Filing Date	Status	Country Court	Case Name	Plaintiff	Issue & Alleged HR Violations
				children, and people with cars who would use other modes of transport if available	fully implement these laws and regulations and take these types of actions prejudices the life, health, and property of all Filipinos and violates the right to a balanced and healthful ecology.
2017	Dismissed	*United Kingdom High Court of Justice, Queen's Bench Division (Administrative Court)(Feb. 14, 2018)*	*Plan B Earth* v. *The Secretary of State for Business, Energy, and Industrial Strategy* [Claim No. CO/16/2018]	NGO & 11 citizens (including the elderly and children)	Challenging the Secretary of State's failure to revise the UK's 2050 carbon emissions reduction target in light of the UK's international obligations under the Paris Agreement and the international scientific consensus on climate change.
	Dismissed	*High Court of Justice, Queen's Bench Division (Administrative Court)(July 20, 2018)*			
	Appeal Request Dismissed	*Court of Appeal (Civil Division)(Jan. 25, 2019)*			
2017	Granted	*Austria Federal Administrative Court (Feb. 2, 2017)*	*In re Vienna-Schwechat Airport Expansion*	NGOs and several adult individuals	Challenging the government's approval of the construction of a third runway at Vienna's main airport, based on rights to environmental protection.
	Repealed (Lower Court's decision is overturned)	*Austria Austrian Constitutional Court (June 2017)*			

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2017	Dismissed	*United States U.S. District Court for the District of Eastern Pennsylvania*	*Clean Air Council* v. *United States*	NGO & two children	Alleging that the U.S. federal government's rollback of regulations meant to address and minimize the United States' contribution to climate change affirmatively increases the US contribution to climate change and its effects, endangering the lives and welfare of US citizens in violation of their constitutional rights, including the plaintiffs' right to a life-sustaining climate system.
2018	Dismissed	*United States Florida Circuit Court*	*Reynolds et al.* v. *State of Florida* [37 2018 CA 000819]	Eight youth	Asserting that the Florida state government violated the constitutional rights of youth citizens by enacting energy policies that allow substantial greenhouse gas emissions and lead to dangerous carbon dioxide concentrations, based on the public trust doctrine, the rights to life, liberty, and property, and equal protection.
2018	Dismissed (2019)	*United States U.S. District Court for the District of Oregon*	*Animal Legal Defense Fund* v. *United States*	Two NGOs & six individuals	Arguing that there is a constitutional right to wilderness and that the US government has violated this right through their actions and inactions contributing to climate change.
	Pending	*Ninth Circuit Court of Appeals*			

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TABLE 1.1 (*continued*)

Filing Date	Status	Country Court	Case Name	Plaintiff	Issue & Alleged HR Violations
2018	Granted (Settled)	*United States U.S. District Court for the District of Colorado*	*Willmeng* v. *Thorton*	Two city residents	Alleging that the city of Thorton, Colorado violated the plaintiffs' First Amendment rights to speech and to petition the government when the mayor pro tem removed the plaintiffs' comments critical of hydraulic fracking from his official Facebook page and blocked them from further commenting.
2018	Pending	*Indonesia State Administrative Court of Denpasar*	*Greenpeace Indonesia* v. *Governor of Bali Province*	NGO & three local residents	Challenging the granting of environmental permits for the expansion of a coal-fired power plant on the basis that these actions, among other things, are inconsistent with Indonesia's obligations under international climate law and that the decisions were made without adequate public participation. Moreover, the plaintiffs allege that the permits were granted without adequate consideration of socioeconomic impacts and the impacts the plant expansion would have on pollution, health, and wildlife, among other things.

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	2018	Dismissed (defense not allowed)(2019)	*Canada Supreme Court of British Columbia*	*Trans Mountain Pipeline ULC* v. *Mivasair*	Oil pipeline company for the underlying injunction against interference with the oil pipeline terminals; the state (prosecutor) for the contempt charges	The state brought charges against two climate activists for contempt of an injunction that prohibited interference with an oil pipeline and its terminals. The defendant activists sought to use the climate necessity defense – derived from criminal law and the Canadian Charter – arguing that the urgent and severe threat of climate change justified their actions to block access to oil pipeline terminals.
		Pending	*Court of Appeals of British Columbia*			
	2018	Granted	*Pakistan High Court of Lahore*	*Sheikh Asim Farooq* v. *Pakistan*	Civil society leaders and NGO members	Arguing that proper implementation of various domestic environmental statutes is necessary due to rapidly decreasing forest coverage in Pakistan. The petitioners further argue that trees in forests and other natural resources are covered by the public trust doctrine, which means that the government should conserve forests for public use instead of allowing them to be used for commercial or private purposes. The government's inaction on this matter is evidenced by their failure to protect existing trees or to plant new trees, despite the mandate under the Trees Act.

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TABLE 1.1 (*continued*)

Filing Date	Status	Country Court	Case Name	Plaintiff	Issue & Alleged HR Violations
					The petitioners also argue that the government has failed to implement its own climate change policies. Finally, the petitioners allege that the government has failed to satisfy its obligations under law and policy to preserve, maintain, and grow forest coverage in Pakistan and in Punjab specifically. The petitioners urge action to protect their fundamental rights guaranteed under the Pakistani Constitution.
2018	Pending	*Argentina Public Prosecutor of City of Neuquén*	*Mapuche Confederation of Neuquén* v. *Secretary of Territorial Development and Environment*	Indigenous association	Seeking the opening of a criminal investigation into the responsibility of the defendant government officials and companies for the contamination of the Neuquén basin with hazardous industrial waste generated from oil activities, in violation of criminal environmental law and the legal rights protected by criminal environmental law.
2018	Pending	*Switzerland Federal Supreme Court of Switzerland*	"Cases Against Credit Suisse Protestors"	State (prosecutor); climate activists (defendants)	The defendant climate activists argued that they should not be convicted and pay a fine for trespass associated with a protest (wherein they staged a fake tennis match to protest Credit Suisse's fossil fuel investments and pressure Roger Federer to end his sponsorship with them) because the severity and urgency of climate change justified their actions.

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2018	Dismissed	*United States Washington Superior Court*	*Aji P.* v. *State of Washington* [96316-9]	Twelve youth	Asserting that the Washington state government violated the constitutional rights of youth citizens by causing dangerous carbon dioxide concentrations, based on the public trust doctrine, the rights to life, liberty, and property, and equal protection.
	Appealed (2019)	*Washington Supreme Court*			
2018	Granted(2021)	*France Administrative Court of Paris (complaint submitted in 2019)*	*Notre Affaire à Tous* v. *France*	NGOs (Fondation pour la Nature et l'Homme; Greenpeace France; Notre Affaire à Tous; Oxfam France)	Challenging the government's failure to take further action on climate change based on the rights to life, health, private and family life, and the right of every person to live in a healthy and ecologically balanced environment.
2018	Pending	*Germany Federal Constitutional Court*	*Friends of the Earth Germany* v. *Germany*	NGOs & single claimants	Challenging the government's failure to meet greenhouse gas emission reduction goals, based on citizens' rights to life, health, occupational freedom, and property.
2018	Dismissed	*Canada Superior Court of Québec(2019)*	*ENVironnement JEUnesse* v. *Canada* [500-06]	Class (Québec citizens aged 35 and under)	Challenging the government's failure to set an adequate greenhouse gas emission reduction target and develop a sufficient plan to avoid dangerous climate change impacts, based on the rights of youngest generations to life, inviolability, security of the person, and equality.
	Appealed (2019)	*Québec Court of Appeals*			

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TABLE 1.1 (*continued*)

Filing Date	Status	Country Court	Case Name	Plaintiff	Issue & Alleged HR Violations
2018	Dismissed	*Germany Administrative Court (Berlin)(2019)*	*Family Farmers and Greenpeace Germany* v. *Germany* [00271/17/R /SP]	Three German families & NGO	Challenging insufficient action by the government to meet its 2020 greenhouse gas emissions reduction target, based on the rights to life and health, occupational freedom, and property.
2018	Dismissed	*United Kingdom High Court of Justice, Queen's Bench Division, (Planning Court, Divisional Court) (2019)*	*Plan B Earth* v. *Secretary of State for Transport* [[2019] EWHC 1070 (Admin)]	NGO	Challenging government approval of an expansion to the Heathrow International Airport as failing to adequately consider the UK's climate change commitments. Based on the rights to life, property, private and family life, and nondiscrimination (for those with certain protected characteristics, in particular the poor).
	Granted	*Court of Appeal (Civil Division)(2020)*			
	Reversed	*Supreme Court(2020)*			
2018	Dismissed	*European Union EU General Court (Second Chamber) (2019)*	*Armando Ferrão Carvalho* v. *European Parliament* [Case no. T-330/18]	10 families, including children (Portugal, Germany, France, Italy, Romania, Kenya, Fiji, & Swedish Sami Youth Association Sáminuorra)	Seeking an injunction to order the EU to enact more stringent greenhouse gas emissions reduction targets through existing programs. Based on the rights to life, health, occupation, property, and equal treatment (based on age and geographic place of birth), and the rights of children.
	Dismissed	*Court of Justice of the European Union (2021)*			

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2018	Granted	*Colombia Supreme Court(2018)*	*Future Generations* v. *Ministry of the Environment* [11001 22 03 000 2018 00319 00]	25 youth	Seeking to enforce the fundamental right to a healthy environment in the face of threats from climate change and deforestation. Based on the rights to life and human dignity, health, food, water, and the enjoyment of healthy environment.
2018	Pending	*Pakistan Lahore High Court*	*Maria Khan et al.* v. *Pakistan* [No. 8960 of 2019]	Adult women	Challenging government inaction on climate change based on the rights of women and future generations to a healthy environment and a climate capable of supporting human life and on equal protection for women.
2018	Pending	*Japan Kobe District Court*	*Citizens' Committee on the Kobe Coal-Fired Power Plant* v. *Kobe Steel Ltd.*	Japanese families, Citizens' Committee on the Kobe Coal-Fired Power Plant	Alleging that the construction and operation of a new coal-fired power plant would violate constitutional rights by virtue, inter alia, of the air pollutants and GHG emissions it would produce.
2018	Dismissed	*France Council of State*	*IPC Petroleum France* v. *France*	Fossil fuel company	Challenging the decision of the French government to grant an extension of an existing fossil fuel extraction permit with an expiration date, on the basis that it violated its right to property.
2018	Pending	*France Marseille Administrative Court*	*Friends of the Earth* v. *Prefect of Bouches-du-Rhône & Total*	NGOs	Challenging the permit issued to Total to operate a biorefinery and its continued operation on the basis that the relevant government decision failed to adequately consider the climate and environmental harms associated with the use of imported palm oil and comply with obligations concerning the right to a healthy environment.

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TABLE 1.1 (*continued*)

Filing Date	Status	Country Court	Case Name	Plaintiff	Issue & Alleged HR Violations
2018	Granted	*OECD Guidelines for Multinational Enterprises Polish National Contact Point*	*Development YES – Open-Pit Mines NO* v. *Group PZU S.A.*	NGO	Alleging that chapters of the OECD Guidelines (on general policies, disclosures, human rights, and consumer interests) had been violated by the company's failure to include certain information related to GHG emissions in its 2017 non-financial statement.
2018	Pending	*Argentina Federal Court*	*OAAA* v. *Araucaria Energy SA*	NGO	Alleging that the construction and operation of a thermoelectric plant violates international climate law, international human rights law, the Argentina Constitution, and domestic environmental law.
2018	Convicted	*United Kingdom Crown Court at Preston*	*Roberts* v. *Regina*	State (prosecutor); three climate activists (defendants)	The defendants were convicted in a lower court for public nuisance contrary to common law for sitting on top of trucks and blocking part of a road for several days to protest the authorization of fracking for gas at a particular site. The defendants appealed the convictions on the basis that imprisonment for nonviolent protest is an inappropriate and excessive sentence and inconsistent with their right to peaceful protest under domestic law and the European Convention on Human Rights, in addition to an error the judge made interpreting the law.
	Overturned (Appeal granted)	*Court of Appeal (Criminal Division)*			

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2018	Granted	*Chile* *Third Environmental Tribunal*	*Private Corporation for the Development of Asyén* v. *Environmental Evaluation Service*	Two NGOs & one individual	Challenging the defendant's approval of a hydroelectric project on the basis that the environmental impact assessment failed to consider a number of material impacts, including biodiversity and climate impacts.
2019	Dismissed	*Pakistan* *Supreme Court of Pakistan(2021)*	*D.G. Khan Cement Company Ltd.* v. *Punjab*	Cement company	Challenging an ordinance that disallows the establishment and enlargement of cement plants in a certain area within the Chakwal and Khushab Districts, on the basis that the government lacked jurisdiction to pass the ordinance; it infringed upon the owner of the cement company's constitutional right to trade, business, and profession; the petitioner didn't have an adequate opportunity to be heard; the government discriminated against similarly situated cement companies; and the required studies weren't undertaken.
2019	Pending	*OECD* *Slovenian and UK National Contact Point (NCP) for the OECD Guidelines*	Specific Instance under the OECD Guidelines for Multinational Enterprises, submitted to the Slovenian and UK National Contact	Coalition of NGOs	Alleging that Ascent Resources plc, in its fracking activities in Slovenia, has violated the OECD Guidelines for Multinational Enterprises by creating environmental and health hazards, operating without due diligence, engaging poorly with stakeholders, and conducting improper lobbying activities.

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TABLE 1.1 (*continued*)

Filing Date	Status	Country Court	Case Name	Plaintiff	Issue & Alleged HR Violations
			Point (NCP) for the OECD Guidelines – Complaint against Ascent Resources plc concerning environmental and health hazards of their hydraulic fracturing activities in Slovenia, improper involvement in local political activities in Slovenia and disregard for stakeholders' concerns in Slovenia		
2019	**Pending**	***Canada Federal Court of Appeal***	***Adkin-Kaya* v. *Attorney General***	**Youth petitioners**	**Challenging the government's decision to issue a certificate finding that the adverse environmental effects of the Trans Mountain Expansion project –**

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					a fossil fuel pipeline expansion – were justified on the basis that the decision failed to consider the massive greenhouse gas emissions associated with the project and its impacts on the Charter rights of the youth petitioners.
	2019	Granted(2020)	*Canada Court of Appeal of Alberta*	*In the Matter of the Greenhouse Gas Pollution Pricing Act* (Alberta)	Canadian province (Alberta)	The plaintiff province challenged the Canadian federal government's act establishing carbon pricing on the basis that it overstepped its constitutional authority, in violation of the province's rights under the Canadian Constitution.
		Reversed(2021)	*Supreme Court of Canada*			
	2019	Dismissed(2021)	*UN Committee on the Rights of the Child (defendants: Argentina, Brazil, France, Germany and Turkey)*	*Sacchi* v. *Argentina*	16 children from Argentina, Brazil, France, Germany, Turkey, India, Nigeria, Palau, South Africa, Sweden, the Marshall Islands, Tunisia, and USA	Alleging insufficient cuts to greenhouse gas emissions and a failure to use available tools to protect children from carbon pollution by the world's major emitters. Based on the rights under the CRC, including the rights to non-discrimination, prioritization of the best interests of the child, culture, life, and health, and the principle of intergenerational justice.
	2019	Dismissed (2019)	*Canada Court of Appeal of Saskatchewan*	*In the Matter of the Greenhouse Gas Pollution Pricing Act* (Saskatchewan)	Canadian province (Saskatchewan)	The plaintiff province challenged the Canadian federal government's act establishing carbon pricing on the basis that it overstepped its constitutional authority, in particular because it concerns property and civil rights or other matters of exclusive provincial concern.

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TABLE 1.1 (*continued*)

Filing Date	Status	Country Court	Case Name	Plaintiff	Issue & Alleged HR Violations
	Affirmed(2021)	*Supreme Court of Canada*			
2019	Granted(2021)	*France Council of State (Conseil d'Etat)*	*Commune de Grande-Synthe* v. *France*	Municipality of Grande-Synthe	Challenging the French government's failure to take further action to reduce greenhouse gas emissions, based on the rights to life and private life.
2019	Dismissed	*European Union EU General Court (defendant: EU) (2020)*	*EU Biomass Plaintiffs* v. *European Union*	Individuals and NGOs from Estonia, Ireland, France, Romania, Slovakia & US	Challenging the treatment of forest biomass as a renewable fuel in the European Union's 2018 revised Renewable Energy Directive. Based on the rights to property, health, private and family life.
	Appeal dismissed	*European Court of Justice(2021)*			
2019	Granted	*Mexico Supreme Court*	Ruling on Modification to Ethanol Fuel Rule [610/2019]		Challenging the government's increase in the permissible maximum ethanol fuel content, based on the rights to a healthy environment, life, health, food, and water.
2019	Granted(2021)	*Netherlands Hague District Court*	*Milieudefensie et al.* v. *Royal Dutch Shell plc.*	NGOs and class of 170,000+ citizens	Alleging a private oil company failed to take adequate action to curb contributions to climate change in violation of their duty of care and human rights obligations under national and international law. Based on the rights to life, private life, family life, home, and correspondence.

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2019	Dismissed	*France* *Nanterre High Court of Justice*(2020)	*Friends of the Earth* v. *Total*	14 French municipalities; NGOs (Friends of the Earth France, Survie; AFIEGO; CRED; NAPE/ Friends of the Earth Uganda; NAVODA)	Suit over an oil project in Uganda and Tanzania, alleging that Total failed to properly assess the risks to the environment and to human rights as required by law.
2019	Pending	*France* *Nanterre High Court of Justice*	*Notre Affaire à Tous* v. *Total*	French NGOs & French local governments	Alleging that a French oil company failed to adequately report climate risks and their human rights impacts associated with its activities and take action to mitigate those risks in line with the goals of the Paris Agreement.
2019	Dismissed	*Canada* *Federal Court of Canada*(2020)	*La Rose* v. *Her Majesty the Queen*	15 Canadian youth; NGOs (David Suzuki Foundation, CELL, OCT)	Demanding that the government prepare a plan for reducing GHG emissions; alleging that the Canadian government's policies contribute to high emissions that infringe the plaintiffs' rights to life, liberty, security, and equal protection.
	Pending	*Court of Appeals*			
2019	Pending	*Peru* *Superior Court of Lima*	*Álvarez* v. *Peru*	7 children	Seeking a judgment by the court to require net zero deforestation of the Amazon by year 2025 because of the environmental and climate consequences of the government's failure to adequately halt deforestation, based on the rights to dignity, life, health, water, conservation of biological diversity, sustainable use of natural resources, best interests of the child, solidarity and intergenerational justice.

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TABLE 1.1 (*continued*)

Filing Date	Status	Country Court	Case Name	Plaintiff	Issue & Alleged HR Violations
2019	Pending	*UN Human Rights Committee (defendant: Australia)*	Petition of Torres Strait Islanders to the United Nations Human Rights Committee Alleging Violations Stemming from Australia's Inaction on Climate Change	Eight Torres Strait Islanders	Whether Australia violated the human rights of low-lying islanders through its failure to act on climate change, based on the rights to culture and life and the right to be free from arbitrary interference with privacy, family, and home.
2019	Granted	*South Africa High Court(2020)*	*Philippi Horticultural Area Food & Farming Campaign, et al.* v. *MEC for Local Government, Environmental Affairs and Development Planning: Western Cape, et al.*	Voluntary association and adult individuals	Challenging an administrative decision allowing an urban development that would threaten a local aquifer, thereby amplifying climate harms. Based on the rights to healthy environment, water, and food.
2019	Dismissed	*Mexico District Court in Administrative MattersFirst Circuit of the Federal Judiciary(December 2019)*	*Jóvenes* v. *Gobierno de México*["Youth v. Mexico"]	Fifteen young people	Arguing that the Mexican government must comply with the terms of the General Law on Climate Change and issue regulations and policies pursuant thereto in order to adequately implement the law. Moreover, Mexico cannot comply with its international obligations

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	Appeal Granted; Remanded to District Court	*7th Collegiate Circuit Court in Administrative Matters(February 2020)*			under the UNFCCC and the Paris Agreements without issuing policies and regulations implementing the General Law on Climate Change. The plaintiffs also argue that the government's failure to implement the law jeopardizes their human rights and, therefore, the government has obligations under the Mexican Constitution to adequately implement climate change policies and regulations and mitigate Mexico's contribution to climate change.
	Pending	*District Court in Administrative Matters First Circuit of the Federal Judiciary*			
2019	Pending	*Canada Superior Court of Justice*	*Mathur et al.* v. *Her Majesty the Queen in Right of Ontario*	Seven youth	Alleging that Ontario's repeal of the Climate Change Act and its 2030 GHG reduction target of 30% below 2005 levels constitute an abdication of its responsibility to address climate change and a violation of the Charter rights to life, liberty, and security of the person, and equal protection under the law.

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TABLE 1.1 (*continued*)

Filing Date	Status	Country Court	Case Name	Plaintiff	Issue & Alleged HR Violations
2019	Dismissed	*Luxembourg Luxembourg Administrative Tribunal*	*Greenpeace Luxembourg* v. *Minister of Social Security*	Greenpeace Luxembourg	Challenging the Minister of Social Security's alleged failure to respond to Greenpeace's request for information on how, inter alia, Luxembourg's Compensation Fund, a pension fund, aligned itself with the objectives of the Paris Agreement.
2019	Pending	*United States California Superior Court*	*The Two Hundred* v. *Office of Planning and Research*	Association of civil rights leaders and two individuals	Challenging amendments to regulations implementing the California Environmental Quality Act, which use housing to address climate change, on the basis that they worsen the housing crisis and disparately harm minority communities in California – in violation of the California Constitution and the US Constitution – including civil rights protected under them – and other applicable laws.
2019	Granted	*European Union*	*ClientEarth* v. *European Investment Bank*	ClientEarth	Alleging that the European Investment Bank's decision to deny ClientEarth's request for internal review of EIB's decision to finance a biomass power generation plant in Spain violated the Aarhus Convention and applicable EU regulations.

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2020	Pending	*United Nations(10 Special Rapporteurs) (defendant: U.S.)*	Rights of Indigenous People in Addressing Climate-Forced Displacement	Five US Indian tribes; NGO (Alaska Institute for Justice)	Alleging the US government has failed to address climate-caused displacement, based on the rights to self-determination, life, health, housing, water, sanitation, a healthy environment, and food.
2020	Dismissed (2020)	*Canada Federal Court*	*Lho'imggin et al.* v. *Her Majesty the Queen*	Two native chiefs (Wet'suwet'en)	Challenging the Canadian government to adhere to its emissions reduction targets under the Paris Agreement, based on the rights to life, liberty, security of the person, and equal protection for future generations.
	Pending	*Federal Court of Appeal*			
2020	Dismissed	*Austria Constitutional Court*	*Zoubek et al.* v. *Austria*	NGO (Greenpeace) and class of 8,000 citizens	Challenging two laws that give tax credits for air travel but not rail transportation, arguing that GHGs pose a threat to the rights to life and liberty.
2020	Pending	*Argentina Supreme Court of Argentina*	*Asociación Civil por la Justicia Ambiental v. Province of Entre Ríos, et al.*	NGOs and a class of children	Alleging that the government's failure to protect the ecologically sensitive Paraná Delta violates international human rights and climate law as well as the Paraná Delta's own rights.
2020	Pending	*South Korea Constitutional Court*	*Kim Yujin et al.* v. *South Korea*	19 child members of the Korea Youth Climate Action Group	Arguing that the South Korean government's current GHG emissions targets are unconstitutional as they fail to protect guaranteed rights to life, health, pursuit of happiness, and the environment.

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TABLE 1.1 (*continued*)

Filing Date	Status	Country Court	Case Name	Plaintiff	Issue & Alleged HR Violations
2020	Pending	*Australia Queensland Land Court*	*Youth Verdict* v. *Waratah Coal*	Environmental NGO Youth Verdict	Arguing that the proposed coal mine infringes upon the plaintiff's human rights – including their rights to life, the rights of children, and the right to culture as guaranteed under the Human Rights Act – by contributing to climate change.
2020	Granted	*Germany Federal Constitutional Court (2021)*	*Neubauer* v. *Germany*	Teenagers & young adults	Arguing that Germany's Federal Climate Protection Act is legally insufficient and, as such, violates their constitutionally-guaranteed human rights, including the right to human dignity and the right to life and physical integrity.
2020	Pending	*United States Montana District Court*	*Held* v. *Montana*	Sixteen youth	Asserting that the Montana state government violated the constitutional rights of youth citizens by enacting energy policies that allow substantial greenhouse gas emissions and lead to dangerous carbon dioxide concentrations, based on the public trust doctrine; the rights to life, liberty, and property; and equal protection.

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2020	Pending	*Brazil Supreme Federal Court*	*Partido Socialista Brasileiro (PSB)* v. *Federal Union* ["Climate Fund Case"]	Four Brazilian political parties	Challenging the Brazilian federal government's failure to sufficiently administer and implement the Climate Fund, in violation of Brazilian law and the government's duty to protect the environment (derived from the precautionary principle and the Brazilian Constitution).
2020	Pending	*Brazil Supreme Federal Court*	*Partido Socialismo e Liberdade (PSOL)* v. *Federal Union* ["Amazon Fund Case"]	Four Brazilian political parties	Alleging that the Brazilian federal government has failed to implement the Amazon Fund in violation of Brazilian law and the government's duty to protect the environment (derived from the precautionary principle and the Brazilian Constitution).
2020	Pending	*Brazil 7th Federal Environmental & Agrarian Court of the Judiciary Section of Amazonas*	*Instituto Socioambiental* v. *IBAMA*	Three NGOs	Alleging that the federal environmental agency's decision to allow the export of native timber with diminished government oversight violates federal law as well as constitutional rights, given the ecological importance of the Amazon and the climate harms that stem from the Amazon's destruction.
2020	Pending	*Brazil Federal District Court of Curitiba*	*Institute of Amazon Studies* v. *Brazil*	Institute of Amazon Studies	Alleging that Brazil's failure to control deforestation in the Amazon and implement appropriate deforestation control policy violates, inter alia, constitutional and human rights.

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TABLE 1.1 (*continued*)

Filing Date	Status	Country Court	Case Name	Plaintiff	Issue & Alleged HR Violations
2020	Pending	*Brazil Supreme Federal Court*	*PSB et al.* v. *Brazil*	Seven political parties in Brazil	Alleging that the government's failure to implement its national deforestation policy (PPCDAm) violates fundamental constitutional rights as a result of deforestation's contribution to climate change. Also specifically alleging the violation of Indigenous and traditional communities' rights and the rights of future generations.
2020	Pending	*European Union European Court of Human Rights*	*Youth for Climate Justice* v. *Austria et al.*	Six youth from Portugal	Alleging that 33 Member States of the EU have violated human rights by failing to take sufficient action on climate change, based on the rights to life, privacy, and freedom from discrimination.
2020	Pending	*Spain Supreme Court*	*Greenpeace et al.* v. *Spain*	Greenpeace, Oxfam, & Ecologists for Action	Challenging the Spanish government's failure to take sufficient action to mitigate greenhouse gas emissions and address climate change in line with its commitments under the Paris Agreement.
2020	Pending	*Uganda High Court at Mbale*	*Bududa Landslide Victims* v. *Uganda*	Victims of Bududa landslides (represented by BNB Advocates)	Arguing that the Ugandan government's failure to address known landslide risks (climate change increases landslide risks) violates the plaintiffs' rights to life, property, and a healthy environment.

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2020	Pending	*United Kingdom High Court of Justice*	*Young People* v. *United Kingdom*	Plan B Earth & three young British citizens	Alleging that the government's contributions to and failure to address the climate emergency amounts to a violation of the government's legal duties to the planet, young people, communities, the right to family life, and obligations under the Paris Agreement and international law. Seeking an order requiring the government to develop and implement an Emergency Plan consistent with its legal obligations.
2020	Pending	*Ecuador Orellana Provincial Court of Justice*	*Waorani Indigenous Community* v. *PetroOriental SA*	Federation for Human Rights; Acción Ecológica; Union of People Affected by Chevron-Texaco; members of the Waorani indigenous people	Alleging that the climate pollution produced from PetroOriental's oil extraction and the subsequent use of that oil constitutes a continuing and persistent violation of human rights and the rights of nature.
2020	Granted Appealed(2020)	*Mexico Mexico City District Court in Administrative Matters* *First Circuit Collegiate Tribunal*	*Greenpeace Mexico* v. *Ministry of Energy* (on the National Electric System Policies)	Greenpeace Mexico	Alleging that two federal energy sector policies violates human rights by fossil fuels at the expense of renewables and therefore contributing to climate change.

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TABLE 1.1 (*continued*)

Filing Date	Status	Country Court	Case Name	Plaintiff	Issue & Alleged HR Violations
2020	Pending	*Mexico Mexcio City District Court in Administrative Matters*	*Greenpeace Mexico* v. *Ministry of Energy* (on the Energy Sector Program)	Greenpeace Mexico	Alleging that the Energy Sector Program for 2020–2024 violates, inter alia, the right to a healthy environment and the right to access renewable energy-based electricity by promoting the use of fossil fuels at the expense of renewable energy and GHG emissions reductions.
2020	Pending	*France*	*European Center for Constitutional and Human Rights (ECCHR) and Proyecto de Derechos Económicos, Sociales y Culturales (ProDESC)* v. *Electricité de France (EDF)*	NGOs	Arguing that French energy company Electricité de France (EDF) violated its obligations of corporate due diligence when it failed to adequately consult with the indigenous Zapotec community of Unión Hidalgo before constructing a large-scale wind farm on their land.
2020	Granted	*Ecuador Sucumbíos Provincial Court of Justice*	*Moncayo et al.* v. *PetroAmazonas, Ministry of Energy and Non-Renewable Natural Resources, and Ministry of the Environment*	9 children	Alleging that the government's practice of gas flaring contributes to climate change and violates constitutionally protected rights to health and a healthy environment and the rights of nature and environmental principles, such as sustainable development and the state's obligation to adopt policies and measures to prevent negative environmental impacts.

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2020	Pending	*South Korea* *South Korean Constitutional Court*	"South Korean Biomass Case"	Solar cooperatives, solar cooperative members, citizens	Alleging that the South Korean government's treatment of biomass as renewable energy and its subsidization of biomass-derived energy violates citizens' constitutional rights by, inter alia, increasing pollution and climate harms.
2020	Pending	*United Kingdom* *High Court of Justice*	*Friends of the Earth* v. *UK Export Finance*	Friends of the Earth England, Wales, & Northern Ireland	Alleging that the UK's decision to finance liquified natural gas developments in Mozambique was unreasonable given, inter alia, its obligations under the Paris Agreement and the associated climate, biodiversity, and human rights impacts.
2020	Pending	*United States* *U.S. District Court of Maine*	*Sierra Club* v. *US Army Corps of Engineers*	Sierra Club, Natural Resources Council of Maine, Appalachian Mountain Club	Alleging that the Army Corps of Engineers failed to comply with US domestic environmental and administrative law when it proposed an electrical transmission project that would cut across ecologically sensitive areas; the project would also use energy derived from Canadian "megadams" that present climate change, environmental justice, and human rights issues.
2020	Dismissed(2021)	*Australia* *Federal Court of Australia*	*Sharma* v. *Minister for the Environment*	Eight Australian children	Alleging that the Minister of the Environment's approval of the new Whitehaven coal mine is likely to impose serious harms on the plaintiffs through its contribution to greenhouse gas emissions, which constitutes a breach of the Minister's duty to exercise reasonable care to not cause the plaintiffs harm.

(*continued*)

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TABLE 1.1 (*continued*)

Filing Date	Status	Country Court	Case Name	Plaintiff	Issue & Alleged HR Violations
2020	Pending	*New Zealand High Court of New Zealand, Auckland Registry*	*Smith* v. *Fonterra Co-operative Group Ltd.*	Indigenous man	Alleging that the defendants – who are corporations that either release greenhouse gases into the atmosphere or sell products that release greenhouse gases when burned, including dairy farms, a power stations, and a steel mill – are responsible for public nuisance, negligence, and breach of an inchoate duty as a result of their actions.
2020	Pending	*Brazil Court of Justice of the State of São Paulo*	*Leonel Ramos* v. *São Paulo*	2 individuals (members of Parents for Future)	Filing an autonomous production of evidence suit on the basis that the projects implementing a government program that finances the manufacturing of automotive vehicles do not reduce greenhouse gas emissions as stated in a state decree and do not help make socioeconomic development compatible with the climate system. This, in turn, contributes to / doesn't help stem constitutional rights violations – including, e.g., the rights to health, dignity, respect, and freedom from negligence and discrimination – experienced by children and adolescents as a result of climate change (and future violations).

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2020	Pending	*Brazil 7th Federal Environmental and Agrarian Court*	*Ministério Público Federal* v. *IBAMA*	Federal prosecutor	Seeking an injunction requiring the federal government – through certain departments and agencies – to implement command and control actions to control the perpetrators of illegal deforestation in at least ten main hot spots of deforestation in the Amazon, based in part on growing evidence of the torts and health harms (which impact rights) associated with this deforestation.
2020	Dismissed	*The Netherlands Hague District Court*	*Greenpeace Netherlands* v. *Ministry of Finance*	Environmental NGO	Arguing that the government's Covid-19 bailout of airline KLM violated the government's duty of care to prevent dangerous climate change, which derived from international and domestic climate law as well as the European Convention on Human Rights.
2021	Pending	*Brazil 14th Federal Civil Court of São Paulo*	*Youth* v. *Minister of Environment & Others*	Six youth	Alleging that the emissions reductions target that the Brazilian government recently set violates its obligations under the National Policy on Climate Change, the Paris Agreement, and Article 225 (right to an ecologically balanced environment) of the Brazilian Constitution.

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TABLE 1.1 (*continued*)

Filing Date	Status	Country Court	Case Name	Plaintiff	Issue & Alleged HR Violations
2021	Pending	*France* *Saint-Etienne Court*	*Envol Vert* v. *Casino*	Environmental NGOs from France, Colombia and Brazil	Arguing that the Casino Group (supermarket company) must take all necessary measures to exclude beef tied to deforestation and the grabbing of Indigenous territories in its supply chains in Colombia, Brazil, and elsewhere in order to comply with the French law on the duty of vigilance.
2021	Pending	*Guyana* *Constitutional Court of Guyana*	*Guyanese Citizens* v. *Guyana*	Two Guyanese citizens	Alleging that the government's approval of licenses for oil exploration violates the government's constitutional duty to protect the plaintiffs' right to a healthy environment as well as the right to a healthy environment of future generations.
2021	Pending	*Italy* *Civil Court of Rome*	*Italian citizens* v. *Italy* ["Giudizio Universale" or "Last Judgment"]	200 individuals (adults & minors) and 24 NGOs	Alleging that the Italian government's failure to take sufficient action to reduce greenhouse gas emissions violates the fundamental rights of the plaintiffs guaranteed under international law and the Italian constitution.
2021	Pending	*Poland* *Polish Regional Courts*	*Stasiak* v. *Poland*	Five Polish citizens	Alleging that the Polish government's failure to take adequate action to reduce greenhouse gas emissions violates the plaintiffs' rights to life, health, privacy, family life, and a safe climate.

2021	Pending	*West Africa ECOWAS Court of Justice*	*HEDA Resource Centre* v. *Nigeria*	Registered Trustees of the HEDA Resource Centre	Alleging that the Nigerian government's failure to stop gas flaring by oil companies in Nigeria violates Nigerians' human rights – particularly their rights to life, human dignity, health, and a general satisfactory environment – as well as domestic environmental law.
2021	Pending	*Europe European Court of Human Rights*	*M. Mex* v. *Austria*	Austrian citizen with multiple sclerosis (MS) and Uhthoff's syndrome	Alleging that the Austrian government's failure to pass measures to adequately reduce greenhouse gas emissions violates the plaintiff's right to private and family life through the severe impacts that climate-induced increased temperatures and heatwaves has on him. Also alleging violations of the right to a fair hearing and the right to an effective remedy.

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