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# French Yearbook *of* Public Law

Issue 1, 2023

# Presentation

The objective of the "French Yearbook of Public Law" is to narrow the gap which has tended to develop between the French and the international debate on public law. The former remains too often isolated from the latter, for various reasons, ranging from the conviction of the French model's exemplary nature to an insufficient openness of French public lawyers to the international academic language, which English has undoubtedly become nowadays. This has two serious consequences. On the one hand French lawyers might often be unaware of developments in other legal systems, and on the other hand foreign lawyers face serious difficulties to follow French legal developments.

The French Yearbook of Public Law (FYPL) was created to mitigate precisely this mutual ignorance. This project has three main aims. On the one hand, it seeks to apprise English-speaking readers of important developments and scholarly debates in French public law. On the other hand, we wish to introduce French lawyers to key changes and academic discussions in foreign public laws. Lastly, it is our hope that the reciprocal information thus made available will foster international and comparative debates among legal scholars.

The FYPL is based at the Chair of French Public Law at Saarland University (Lehrstuhl für französisches öffentliches Recht - LFOER), headed by Professor Philippe Cossalter. Thus, the FYPL relies on the administrative and technical capacities of the LFOER without constituting a segment of it. Some of its researchers (Jasmin Hiry-Lesch, Enrico Buono, Sofia van der Reis, Lucca Kaltenecker) are especially involved.

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Issue 1, 2023

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# Contents

fypl french yearbook *of* public law
Issue 1, 2023

# Increasing Climate Litigation: A Global Inventory

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**Abstract:**

Climate change, often described as a "super-wicked" problem, has led to an increasing number of legal actions against governments and corporations worldwide. These cases, stemming from the failure of national and international policymakers to address climate change adequately, are expanding in scale and ambition. This article explores climate litigation as a response to the urgent climate change crisis. It provides a global overview of climate-related litigation by examining prominent domestic cases, underscoring the collective nature of climate governance and the crucial role of the judicial system in addressing this global challenge.

**Keywords:**

Climate change litigation, Environmental case law, Climate governance

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## I. Introduction

As a response to the gravity of the climate change crisis, climate litigation has been on the rise in recent decades despite being a "fairly new phenomenon".[1] Climate change has been referred to as a "super-wicked" problem[2] due to its effects and anthropogenic nature,[3] as well as the inability of States to keep up with its exponential growth and its unique challenges: time is running out, there is no central authority to tackle it, and those attempting to solve the problem are also causing it. Consequently, despite the complex international climate regime,[4] the failure of national and international policy-makers to act promptly and decisively has necessitated that the "judicial arena"[5] take the lead in combating climate change. Legal actions against governments and corporations relating to climate change are increasing in number, scope, and ambition, snowballing across all continents and paving the way for a greater judicial focus on climate issues. In this chapter, we will attempt to provide a (necessarily incomplete) global inventory of climate-related litigation[6] by examining some of the most prominent climate-related domestic cases. The global scope of this inventory is essential for highlighting the collective nature of climate governance, also in the form of climate litigation, as a result of lessons learned from other legal systems, cooperation with and among scientists, and an increasingly vital dialogue between judges, legal scholars, and practitioners involved in this type of litigation all over the world.[7]

### A. Definition(s)

For a preliminary understanding of the contours of climate litigation, it is necessary to examine its definition(s). Two main approaches dominate the definition of climate change litigation in the legal literature. On the one hand, there is a "narrow definition"

1 Preston, B.J., "Climate Change Litigation", *Carbon & Climate Law Review* 2011, vol. 5, issue 1, pp. 3-14. According to part of the literature, "Climate litigation is generally recognized to have started in the United States in the late 1980s but has since emerged as a growing global phenomenon". See Setzer, J. & Higham, C., "Global trends in climate change litigation: 2021 snapshot", *Grantham Research Institute on Climate Change and the Environment*, 2021, Policy report, 8.

2 See Lazarus, R., "Super Wicked Problems and Climate Change: Restraining the Present to Liberate the Future", *Cornell Law Review* 2009, vol. 94, pp. 1153–1234.

3 See the latest assessment report by the Intergovernmental Panel on Climate Change: IPCC, Climate Change 2021: the Physical Science Basis, Contribution of Working Group I to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change, Cambridge, Cambridge University Press, 2021.

4 Including the 1992 United Nations Framework Convention on Climate Change, the 1997 Kyoto Protocol and the 2015 Paris Agreement.

5 Cf. Rochfeld, J., Justice pour le climat ! Les nouvelles formes de mobilisation citoyenne, 2019, Paris, Odile Jacob, p. 8.

6 Cf. the perspectives considered in our latest edited volume: Alogna, I., Bakker, Ch. & Gauci, J.-P. (eds.), *Climate Change Litigation: Global Perspectives*, 2021, Leiden, Brill; see also Sindico, F. & Mbengue, M. (eds.), *Comparative Climate Change Litigation: Beyond the Usual Suspects,* 2021, Springer; Huglo, Ch., *Le contentieux climatique: un révolution judiciaire mondiale*, 2018, Bruxelles, Bruylant.

7 Maxwell, L., Mead, S. & van Berkel, D., "Standards for adjudicating the next generation of *Urgenda*-style climate cases", *Journal of Human Rights and the Environment* 2022, vol. 13, issue 1, pp. 35-63; see also Cournil Ch., "Les convergences des actions climatiques contre l'Etat. Étude compare du contentieux national", *Revue juridique de l'environnement* 2017/HS17, n° spécial, 252.

that limits climate change litigation to cases that directly and explicitly address an issue related to climate change or climate change policy. Markell and Ruhl's frequently cited definition provides an example:

"[A]ny piece of federal, state, tribal, or local administrative or judicial litigation in which the party filings or tribunal decisions directly and expressly raise an issue of fact or law regarding the substance or policy of climate change causes and impacts".[8]

On the other hand, broader definitions are increasingly being proposed, which, in addition to the explicit reference to climate change in proceedings or decisions, also consider the motivations of claimants, as well as cases in which climate change is not central but rather an "additional" or perhaps "secondary" concern, even if not explicitly mentioned. In this regard, Peel and Lin note that "there is a need for concepts of climate litigation that can capture lower-profile cases where climate change is more peripheral to arguments in, or the motivation for, the lawsuit".[9] In their view, a broader definition is particularly necessary when considering litigation in the Global South, where a significant number of cases reflect a "peripheral" focus on climate change rather than having the issue at the "centre" of the litigation. For the purposes of global analysis, it is preferable to adopt a broader perspective in order to account for more inclusive perspectives on its development on every continent.

## B. Increase in climate litigation and categories of climate-related cases.

Both the domestic climate change law scene and the climate change litigation landscape have undergone significant transformations over the past few years. According to some authors,[10] the increase in climate litigation and adjudication is the result of three main factors: the proliferation of specialist environmental courts and tribunals and a generally increased judicial capacity in this field; a more solid basis for climate litigation provided by the constitutionalisation of environmental protection (with 148 countries enshrining human rights or other constitutional provisions); and the rise of transnational judicial – and more generally legal – networks, creating a fundamental bottom-up process to educate lawyers and courts about climate justice through dialogue and exchange among judges and legal experts.

In a similar vein, the emergence of global climate protests (such as those led by Extinction Rebellion or Fridays for Future) has highlighted the inadequacy of government action and compelled lawyers to consider how they can use the law to press for change and take litigation to the courts as new "battlefields in climate fights".[11] Among the cases

8 Markell, D. & Ruhl, J.B., "An Empirical Assessment of Climate Change in the Courts: A New Jurisprudence or Business as Usual?", *Florida Law Review* 2012, vol. 64, p. 27.

9 Peel, J. & Lin, J., "Transnational Climate Litigation: The Contribution of The Global South", *American Journal of International Law* 2019, vol. 113, p. 679.

10 Ganguly, G., Setzer, J. & Heyvaert, V., "If at First You Don't Succeed: Suing Corporations for Climate Change", *Oxford Journal of Legal Studies* 2018, vol. 38, issue 4, pp. 862-864.

11 Vanhala, L., "The comparative politics of courts and climate change", *Environmental Politics* 2013, vol. 22, issue 3, p. 447.

considered to have "flooded the courts",[12] particularly domestic ones, several types of climate change litigation can be distinguished: strategic cases, with a visionary approach, aiming to influence public and private climate accountability;[13] and routine cases, less visible ones, dealing with, for example, planning applications or allocation of emissions allowances under schemes such as the EU emissions trading scheme. The literature also makes an interesting distinction between "proactive" litigation, which is initiated to promote policy change (such as by requesting the adoption or reform of legislation), and "reactive" litigation, which is initiated to oppose such change (by challenging the adoption of new or reformed legislation).[14]

Intriguingly, scholarly and media attention on climate litigation tends to concentrate on cases that attempt to advance climate action, or "pro-regulatory" cases. Despite this, not all climate litigation pursues this objective. A number of cases have been documented in which litigants have contested the implementation of regulations or policies that would reduce greenhouse gas emissions. Literature refers to them as "anti-regulatory", "defensive", or simply "anti" litigation.[15] The majority of these lawsuits are filed by parties who have a financial or ideological interest in delaying or obstructing climate action.

## C. Consistent growth in the literature and databases

Since its humble beginnings in the early 2000s, the legal and social science literature on climate litigation has grown consistently. This body of knowledge has developed predominantly with the exponential increase in climate-related cases. From a handful of cases in the 1990s, the "Climate Change Litigation Databases" developed by the Sabin Center for Climate Change Law at Columbia University now identify more than 2,000 cases,[16] covering over 55 countries (698 cases) and 10 regional or international jurisdictions. The US climate change litigation database exhaustively examines 1,578 cases (nearly three-quarters of the total) that have been identified in the United States. Australia has the second-highest number of climate cases worldwide, following the United States. The Centre for Resources, Energy and Environmental Law at the University of Melbourne created the "Australian Climate Change Litigation database"[17] in response to the filing of

12 Paraphrasing the terminology used by the economist Jeffrey Sachs, Director of the Earth Institute at Columbia University, during his lecture on "A Proposal for Climate Justice" at the London School of Economics and Political Science. Available at: www.lse.ac.uk/Events/2017/10/20171003t1830vOT/a-proposal-for-climate-justice.

13 However, as highlighted by a part of the scholarship, "not all cases challenging the design or application of climate policies and measures fit this description. Increasingly, cases have been filed that might not oppose climate action as their primary objective but will delay the finalisation or implementation of climate policy responses. For example, individuals bringing rights-based climate cases might not object to climate action but rather to how such action is carried out or its impacts on the enjoyment of human rights. These cases can be called 'just transition' cases". Setzer, J. & Higham, C., "Global trends in climate change litigation: 2022 snapshot", *Grantham Research Institute on Climate Change and the Environment*, 2022, Policy report, p. 7.

14 Setzer, J. and Byrnes, R., "Global Trends in Climate Change Litigation: 2019 Snapshot", *Grantham Research Institute on Climate Change and the Environment*, 2019, Policy report, p. 2.

15 Savaresi, A. (2021), "Inter-State Climate Change Litigation: 'Neither a Chimera nor a Panacea'", in Alogna, I. et al. (eds.), op. cit., pp. 366-367.

16 Precisely 2276 cases, as of March 2023. See: http://climatecasechart.com/about/.

17 See: https://law.app.unimelb.edu.au/climate-change/index.php#overview.

more than 200 cases, as well as those involving New Zealand and Pacific Island nations. The "Climate Change Laws of the World"[18] database from the Grantham Research Institute on Climate Change and the Environment at the London School of Economics and Political Science (LSE) is an additional crucial worldwide database. It includes national-level climate change laws and policies and climate litigation cases from around the world.

### D. Plan

In this way, climate change litigation can be viewed as "an important component of the governance framework that has emerged to regulate how states respond to climate change at the global, regional, and local levels",[19] thanks to lawsuits in which citizens and NGOs challenge the actions or inactions of local authorities and national governments, putting pressure on the executive and legislative branches of government to address climate change issues.[20] At the same time, climate change-related lawsuits have been filed against private actors,[21] primarily fossil fuel and cement companies, also referred to as "Carbon Majors" because they are significant greenhouse gas emitters.[22] This contribution will examine this dual perspective – climate change litigation involving governments (II) and corporations (III) – by synthesising some notable cases worldwide and proposing a straightforward categorisation for this brief inventory. These categories frequently overlap, as each case involves multiple causes of action.

## II. Climate litigation involving governments

In recent years, around three-quarters of climate-related cases have been against States, challenging the adequacy of governmental policies to reduce greenhouse gas (GHG) emissions or protect communities from climate change. In addition, public bodies licensing climate-changing infrastructure like coal mines, oil drilling, fracking, dams, and airports have been sued. While some countries are taking the appropriate steps, science demonstrates that we are far from the GHG emissions reductions needed to avert temperature rises of 1.5 °C or 2 °C, as per the Paris Agreement, and the disastrous climate change that will result. The newest UNEP Emissions Gap Reports examine various scenarios in order to compare projected annual GHG emissions reductions based on current policy with the reductions that are necessary.[23] The scientific data in these reports show that "[p]olicies currently in place with no additional action are projected to result in

18 See: https://climate-laws.org/litigation_cases.

19 Lin, J., "Climate Change and the Courts", *Legal Studies* 2012, vol. 32, issue 1, p. 36.

20 There has also been much debate in the literature as to institutional competence, including separation of powers and justiciability arguments. See e.g. Eckes. Ch., "Tackling the Climate Crisis with Counter-majoritarian Instruments: Judges Between Political Paralysis, Science, and International Law", *European Papers* 2021, vol. 6, nº 3, pp. 1307-1324.

21 See *ex multis* Weller, M-Ph. & Tran, M.-L., "Climate Litigation against companies", *Climate Action* 2022, vol. 1, article nº 14; cf. a critical analysis on the topic by Bouwer, K., "Lessons from a Distorted Metaphor: The Holy Grail of Climate Litigation", *Transnational Environmental Law* 2020, vol. 9, issue 2, pp. 347-378.

22 From a historical and scientifical perspective, see the contribution by Frumhoff, P.C., Heede, R. & Oreskes, N., "The climate responsibilities of industrial carbon producers", *Climatic Change* 2015, vol. 132, issue 2, pp. 157-171.

23 See the latest one: UNEP, *Emissions Gap Report 2022: The Closing Window. Climate crisis calls for rapid transformation of societies*, Oct. 2022. Available at: https://www.unep.org/resources/emissions-gap-report-2022.

global warming of 2.8 °C over the twenty-first century. Implementation of unconditional and conditional NDC scenarios reduce this to 2.6 °C and 2.4 °C, respectively."[24] States may not have made ambitious mitigation promises or taken enough action to achieve them. We will illustrate these issues through two fundamental categories of climate change litigation involving governments, based on the most frequently cited sources of climate obligations: constitutional law and human rights (A) and environmental legislation and regulation (B).

## A. Constitutional law and human rights cases

This category includes cases that use constitutional rights (such as the right to a clean and/or healthy environment) in individual countries and those that claim climate inaction breaches human rights. It accounts for 122 of 698 of the climate litigation cases reported by the Global Climate Change Litigation database of the Sabin Center for Climate Change Law, as well as for 112 constitutional claims included in its US Climate Change Litigation database. The growing media attention and high-profile nature of the cases analysed below highlight the importance of this category of climate litigation, as well as the recent international recognition of the right to a clean, healthy, and sustainable environment as a human right (UN General Assembly in July 2022, following the Human Rights Council in October 2021)[25] and the establishment in March 2022 of a new UN Special Rapporteur on the promotion and protection of human rights in the context of climate change.[26]

The OHCHR Report on the Relationship between Human Rights and Climate Change[27] already showed in 2009 that climate change threatens the enjoyment and exercise of human rights, such as the rights to life, health, a healthy environment, food, water, property and housing, private and family life, and self-determination. In its Advisory Opinion on the Environment and Human Rights,[28] the Inter-American Court of Human Rights held that States under the American Convention on Human Rights must guarantee an obligation to prevent significant environmental damage that would interfere with other rights, and applied this obligation also to climate change. More recently, the UN Human Rights Committee found that Australia's failure to adequately protect Torres Strait indigenous people from rising sea levels violated their rights to enjoy their culture and be free from

24 Ibid, XVI.

25 UN General Assembly Resolution A/76/L.75, 28 July 2022. See "UN General Assembly declares access to clean and healthy environment a universal human right", 28 July 2022. Available at: https://news.un.org/en/story/2022/07/1123482.

26 Human Rights Council, "Mandate of the Special Rapporteur on the promotion and protection of human rights in the context of climate change", A/77/226, 8 Oct. 2021. Available at: https://documents-dds-ny.un.org/doc/UNDOC/GEN/G21/285/48/PDF/G2128548.pdf?OpenElement.

27 UN High Commissioner for Human Rights, "Report of the Office of the United Nations High Commissioner for Human Rights on the Relationship between Climate Change and Human Rights", UN Doc. A/HRC/10/61 (15 January 2009). Available at: https://documents-dds-ny.un.org/doc/UNDOC/GEN/G09/103/44/PDF/G0910344.pdf?OpenElement.

28 Inter-American Court of Human Rights, Advisory Opinion OC-23/17, 15 Nov. 2017. Available at: https://www.corteidh.or.cr/docs/opiniones/seriea_23_ing.pdf.

arbitrary interferences with their private life, family, and home.[29]

At the domestic level, several cases have been decided on the basis of human rights and constitutional provisions, which has also attracted the attention of scholars from different parts of the world, through the emergence of a novel legal field: climate constitutionalism.[30] Most of this analysis has "focused on the way in which the phenomenon of climate change litigation has deployed existing constitutional structures, forcing judiciaries around the world to confront the novel fact-patterns of climate change and climate justice in their interpretation of constitutional provisions",[31] as we will see in the following cases.

### 1. *Leghari v. Pakistan Federation*[32]

The seminal case in this field is the successful case brought by a local farmer, Ashgar Leghari, against the Pakistani government for failing to implement sufficient adaptation measures through its 2012 National Climate Change Policy and 2013 Framework for Implementation of Climate Change Policy. The claimant argued that the government's failure to meet its climate adaptation target had negatively impacted Pakistan's water, food, and energy security, violating his fundamental right to life (Article 9) and right to dignity (Article 14).

The Lahore High Court ruled that the government must respond to climate change under these human rights. The court created a Climate Change Commission to supervise the climate policy and implementation framework and report on progress, including overseeing training and sensitising different government departments toward "climate-resilient development".[33] In its 2018 final report, the Commission highlighted that two-thirds of the key items in the Framework of Implementation of Climate Change Policy had been completed. The Court disbanded the Climate Change Commission at this point, yet created a Standing Committee on Climate Change, linking the Court and the Executive, and leaving the case open (under a so-called doctrine of "*continuous mandamus*", critical to overseeing the implementation of rights). The Standing Committee is empowered to petition the Court for enforcement of the Court's ruling.

As a part of the scholarship highlighted, although the *Leghari* case has been "noted for its 'symbolic value' as a leading case at a global level, the more important question from a domestic perspective is how climate change litigation will go from symbolic

29 Billy and others v. Australia (Torre Strait Islanders Petition), UN Human Rights Committee, CCPR/C/135/D/3624/2019, 23 Sept. 2022. Available at: 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/.

30 See Jaria-Manzano, J. and Borrás, S. (eds.), *Research Handbook on Global Climate Constitutionalism*, 2019, Edward Elgar Publishing. Cf. notably the contribution in the aforementioned edited volume by May, J.M. and Daly, E., "Global Climate Constitutionalism and Justice in the Courts", pp. 235-245, which concludes by stressing that "[c]onstitutionalism's greatest attribute is that, while it concerns itself with similar and shared problems, it supports localized solutions tailored to each nation's particular circumstances".

31 Cf. Singh Ghaleigh, N., Setzer, J. & Welikala, A., "The Complexities of Comparative Climate Constitutionalism", *Journal of Environmental Law* 2022, vol. 34, issue 3, pp. 517-528.

32 Leghari v. Federation of Pakistan, PLD 2018 Lahore 364. Available at: http://climatecasechart.com/non-us-case/ashgar-leghari-v-federation-of-pakistan/.

33 Ibid, paragraph 19.

to transformational".[34] Therefore, the very welcome expansion of constitutional rights, through the incorporation in the domestic legal system of principles of international environmental law, climate change law and environmental rights, necessitates a clarification of the modalities for their implementation, notably by the judiciary.

### 2. *Urgenda v. Netherlands*[35]

In the landmark *Urgenda* case, initiated by the Urgenda Foundation, an NGO representing 886 individuals and developing plans and measures to prevent climate change, the Netherlands Supreme Court upheld the lower courts' 2015 and 2019 rulings that the Dutch government must reduce GHG emissions by at least 25% by 2020 compared to 1990 levels. The Supreme Court upheld the NGO's claims under Articles 2 and 8 of the European Convention on Human Rights (ECHR), as integrated into Dutch law, imposing enforceable obligations on the State to meet that reduction target due to climate change risk, in order to guarantee the enjoyment by everyone in its jurisdiction of the rights to life and to private and family life. This case established for the first time in any jurisdiction the legal duty of the State to increase its climate ambition and do "its part" through preventative measures even though climate change is a global problem. This is the judicial confirmation of the principle of "shared responsibility", already enshrined in climate change agreements, according to which the responsibility of a State is engaged even where it is only a minor contributor to global climate change. Legal academics thoroughly analysed the *Urgenda* case,[36] which ultimately influenced other legal systems.[37]

### 3. *Neubauer v. Germany*[38]

The *Neubauer* case involves German, Bangladeshi, and Nepalese youngsters who sued the German government, with assistance from environmental associations. They claimed that the German government breached their constitutional rights by failing to

34 Cf. Ohdedar, B. (2021), "Climate Change Litigation in India and Pakistan: Analyzing Opportunities and Challenges", in Alogna, I. et al. (eds.), op. cit., pp. 103-123. See also Barritt, E. and Sediti, B., "The Symbolic Value of Leghari v Federation of Pakistan: Climate Change Adjudication in the Global South", *King's Law Journal* 2019, vol. 30, issue 2, p. 203.

35 Supreme Court of the Netherlands, Case No. 19/00135, 20 Dec. 2019, *The State of the Netherlands v Urgenda Foundation*. English translation available at: http://climatecasechart.com/wp-content/uploads/sites/16/non-us-case-documents/2020/20200113_2015-HAZA-C0900456689_judgment.pdf.

36 *Ex multis*, see Bakker, Ch. (2021), "Climate Change Litigation in the Netherlands: the Urgenda Case and Beyond", in Alogna, I. et al. (eds.), *op.cit.*, pp. 199-224; Spier, J., "The 'Strongest' Climate Ruling Yet: The Dutch Supreme Court's *Urgenda* Judgment", *Netherlands International Law Review* 2020, vol. 67, issue 2, pp. 319-391.

37 Cf. Maxwell, L., Mead, S. & van Berkel, D. (2022), "Standards for adjudicating the next generation of *Urgenda*-style climate cases", *op.cit*; see also the conclusions by Nollkaemper, A. and Burgers, L., "A New Classic in Climate Change Litigation: The Dutch Supreme Court Decision in the Urgenda Case", *EJIL: Talk!*, 6 Jan. 2020. Available at: https://www.ejiltalk.org/a-new-classic-in-climate-change-litigation-the-dutch-supreme-court-decision-in-the-urgenda-case/; and the analysis by Misonne, D., "Pays-Bas c. Urgenda (2019)", in Cournil, Ch. (dir.), *Les grandes affaires climatiques*, Confluence des droits, Aix-en-Provence: Droits International, Comparé et Européen, 2020, pp. 207-221. Available at: http://dice.univ-amu.fr/fr/dice/dice/publications/confluence-droits.

38 *Bundesverfassungsgericht* (Federal Constitutional Court), 24 March 2021, Case No. BvR 2656/18/1, BvR 78/20/1, BvR 96/20/1, BvR 288/20, Neubauer et al. v. Germany. Available at: http://www.bverfg.de/e/rs20210324_1bvr265618en.html.

keep Germany's commitment to 1.5 °C. On 24 March 2021, the Federal Constitutional Court ruled that portions of the German Federal Climate Change Act were incompatible with fundamental rights[39] due to the lack of measures updating emission reduction targets after 2030 and ordered the lawmaker to introduce such provisions. On August 31, 2021, the Federal Climate Change Act was amended in line with the judgment. The amendments included a stricter 65% decrease from 1990 levels by 2030, 88% by 2040, climate neutrality by 2045, and negative emissions after 2050.[40] German youths challenged the statutory modification in *Steinmetz et al. v. Germany*, arguing that the revised targets were still inadequate in consideration of the new factual basis presented by the IPCC's Sixth Assessment Report.[41] These cases considered intertemporal guarantees of freedom as a fundamental right, which means opportunities should be distributed proportionally across generations. The Karlsruhe Court in the *Neubauer* case explained that: "one generation must not be allowed to consume large portions of the $CO_2$ budget while bearing a relatively minor share of the reduction effort, if this would involve leaving subsequent generations with a drastic reduction burden and expose their lives to serious losses of freedom".[42]

### 4. *Greenpeace Nordic Association and Nature & Youth v. Ministry of Petroleum and Energy*[43]

A significant climate lawsuit case in Norway indicates that, in certain countries, groups and individuals interested in a particular area or topic can initiate a case even if they are not personally harmed. *Greenpeace Nordic and Nature & Youth*, as an environmental organisation, was allowed to challenge an oil exploration licence on constitutional grounds. These Norwegian environmental groups contested the validity of 10 petroleum production licences on the Southeast Barents Sea. They challenged the licences issued by the Ministry of Petroleum and Energy on the grounds that they violate Norway's Constitution (Article 112), which states that Norwegians have a "right to an environment that is conducive to health and to a natural environment whose productivity and diversity are maintained. Natural resources shall be managed on the basis of comprehensive long-term considerations which will safeguard this right for future generations as well.". The claimants argued that this required staying within a global emission budget consistent with the Paris Agreement's 1.5-2 °C temperature goal. The petition also referenced constitutional provisions requiring government action to comply with the precautionary

39 Article 2(2) of the German Constitution imposes on the State a general duty of protection of life and physical integrity, which encompasses protection against harm caused by environmental pollution and risks posed by increasingly severe climate change. This duty not only applies to existing violations but is also oriented towards the future. The State also has a duty of protection arising from the fundamental right to property in Article 14(1) of the German constitution, which includes the State's duty to protect property against the risks of climate change.

40 See the website of the German Federal Government: https://www.bundesregierung.de/breg-de/schwerpunkte/klimaschutz/climate-change-act-2021-1936846.

41 Available at: http://climatecasechart.com/non-us-case/steinmetz-et-al-v-germany/.

42 The official press release of the decision in English is available at: https://www.bundesverfassungsgericht.de/SharedDocs/Pressemitteilungen/EN/2021/bvg21-031.html.

43 Norwegian Supreme Court, 2020, Case nº 20-051052SIV-HRET, *Greenpeace Nordic Association v Ministry of Petroleum and Energy (People v Arctic Oil)*. Available at: http://climatecasechart.com/non-us-case/greenpeace-nordic-assn-and-nature-youth-v-norway-ministry-of-petroleum-and-energy/.

principle and human rights. On 4 January 2018, the Oslo District Court found in favour of the government, acknowledging that the Norwegian constitution imposed legal duties relevant to the case but that the government could fulfil those duties by following the Petroleum Act, which oversees production licences. The government fulfilled its legal obligations by assessing the licences' environmental impact. On 23 January 2020, the Court of Appeal upheld the District Court's decision, and, on 22 December 2020, the Supreme Court ruled that while the Norwegian constitution protects citizens from environmental and climate harms, the future emissions from exported oil are too uncertain to bar the granting of these petroleum exploration licences. Concerning the plaintiffs' claim that the awarded oil production licences violated the right to life and the right to respect for private and family life (Articles 2 and 8 of the ECHR), the Supreme Court considered that the link between the decisions to grant the licences and an increase of GHG emissions is too uncertain to create a "real and immediate" threat to human rights. This decision appears in "stark contrast" to the aforementioned one by the Federal Constitutional Court of Germany, considering that the Norwegian Supreme Court seemed to abdicate "its role in upholding the Constitution, marked by the motivation to align the law with the prevailing political preferences for unlimited petroleum exploration, extraction and export".[44]

### *5. Cases before the ECtHR*

This Norwegian case is part of an increasing wave of climate cases brought before the European Court of Human Rights (ECtHR),[45] yet to be decided by the Strasbourg Court. An application, filed by six young Norwegians and the organisations Greenpeace Nordic and Nature & Youth, was received on 15 June 2021 by the ECtHR, based on Articles 2 and 8 of the ECHR, as well as on Articles 13 and 14 for an alleged failure by the Norwegian courts to assess their claims adequately and to provide them with access to an effective domestic remedy, and for possible violation of their right not to experience discrimination.[46] The case also raises the issue of State responsibility for extra-territorial emissions. This is an issue that will likely come up as a subsidiary matter in the *Duarte Agostinho and Others v. Portugal and 32 Other States*,[47] brought by six Portuguese youth against 33 countries (27 Member States of the Council of Europe, in addition to Norway, Russia, Switzerland, Turkey, Ukraine and the United Kingdom) for their alleged violations of Articles 2, 8 and 14 of the ECHR, as a consequence of their insufficient action to tackle climate change. The *Agostinho* case, brought directly before the Strasbourg Court, is currently being examined by the ECtHR's Grand Chamber as it raises a serious question affecting the interpretation of the ECHR, as provided by Article 30. Similarly, two other cases were relinquished to the Grand Chamber in 2022: *Union of Swiss Senior Women for Climate*

44 Voigt, Ch., "The First Climate Judgment before the Norwegian Supreme Court: Aligning Law with Politics", *Journal of Environmental Law* 2021, vol. 33, issue 3, p. 708.

45 Currently, there are 12 cases reported by the Sabin Center for Climate Change Law database: http://climatecasechart.com/non-us-jurisdiction/european-court-of-human-rights/.

46 Communicated in Dec. 2021 and available at: http://climatecasechart.com/non-us-case/greenpeace-nordic-assn-v-ministry-of-petroleum-and-energy-ecthr/.

47 Communicated in Dec. 2020 and available at: http://climatecasechart.com/non-us-case/youth-for-climate-justice-v-austria-et-al/.

*Protection v. Swiss Federal Council and Others*[48] and *Carême v. France*.[49] While the Swiss case, brought by an association of senior women whose health and human rights (Articles 2 and 8, as well as Article 6 – the right to a fair trial – and Article 13 of the ECHR) are threatened by climate-related heat waves, concerns insufficient domestic climate measures like the *Agostinho* case, it differs procedurally from the latter because it took the Swiss government to the Strasbourg Court after the unsuccessful exhaustion of all national remedies available. The French case, brought by Damien Carême, former mayor of the city of Grande-Synthe, which was considered at high risk of exposure to the consequences of climate change, unlike the Swiss case, comes from a successful domestic administrative law challenge.[50] However, the French Supreme Administrative Court (*Conseil d'État*) found that Mr Careme did not have a personal standing in the case, notwithstanding his home was situated in an area likely to be flooded by 2040, which, according to the applicant, gave rise to a violation of Article 8 of the ECHR.

## B. Environmental Legislation and Regulation

Alleged breaches of environmental legislation and regulatory provisions are the most frequently cited causes of action for climate litigation, codifying climate change obligations for public and private actors and providing the basis for their legality, applicability, and implementation. Planning, environmental, and industry rules typically contain pertinent requirements. In fact, where planning, industry or environmental legislation requires the government to conduct an environmental impact assessment (EIA) before licensing infrastructure or energy projects, a licence may be challenged if an EIA was not done or did not assess the project's climate impact. A licence may also be challenged if the government fails to allow public participation in decision-making. Recent cases have challenged government implementation of a particular climate goal or policy using statutes and administrative law.

### 1. *R. (oao Friends of the Earth) v. Secretary of State for Business Energy and Industrial Strategy*[51]

On 18 July 2022, one of the hottest days in UK history, the High Court of England and Wales ruled on a landmark climate case.[52] The court declared that the UK Govern-

48 Communicated in March 2021 and available at: http://climatecasechart.com/non-us-case/union-of-swiss-senior-women-for-climate-protection-v-swiss-federal-council-and-others/.

49 Communicated in July 2022 and available at: http://climatecasechart.com/non-us-case/careme-v-france/.

50 Which will be analysed in the section below.

51 R. (oao Friends of the Earth) v. Secretary of State for Business Energy and Industrial Strategy [2022] EWHC 1841 (Admin), Case No: CO/126/2022, CO/163/2022, CO/199/2022. Available at: https://www.judiciary.uk/wp-content/uploads/2022/07/FoE-v-BEIS-judgment-180722.pdf.

52 Just a few days before, on 30 June 2022, another important case, widely expected to have far-reaching implications for environmental regulation, was decided on the other side of the Atlantic by the US Supreme Court. In West Virginia v. US EPA, the Supreme Court's "major questions doctrine" requires that "a clear statement is necessary for a court to conclude that Congress intended to delegate authority" for "major" laws, limiting EPA's greenhouse gas emission reduction alternatives. Therefore, this verdict limits EPA's jurisdiction to regulate power plant emissions using the major questions doctrine and could severely restrict other federal agencies' actions. The decision is available at: https://www.supremecourt.gov/opinions/21pdf/20-1530_n758.pdf.

ment's carbon emission reduction plans were inadequate and illegal. The Net Zero Strategy (NZS), established in October 2021 under Sections 13 and 14 of the Climate Change Act 2008 (CCA) – the first climate law worldwide – was challenged by Friends of the Earth, ClientEarth, and the Good Law Project. The CCA mandates carbon emission reduction targets for the UK government. The court case holds the UK Government to its climate pledges by upholding the CCA. The case strengthens a national law at a time when other countries have established domestic legislation to reduce carbon emissions. Moreover, transparency won with the ruling. This court lawsuit revealed a 5% quantified policy emission reduction gap, which the NZS did not indicate. In climate terms, 5% is essential, equating to 75 million tonnes of $CO_2$, or the UK's annual automobile emissions. The UK government decided not to pursue an appeal and published the Carbon Budget Delivery Plan (CBDP),[53] its formal response to comply with the High Court ruling by setting out the impact of the government's net zero policies on $CO_2$ emission reductions over the next 15 years.

**2. *EarthLife Africa Johannesburg v Minister of Environmental Affairs*[54]**

Another interesting example of climate litigation using environmental statutes is *EarthLife Africa Johannesburg v Minister of Environmental Affairs* (generally known as the *Thabametsi* case), where an environmental organisation successfully challenged the environmental review of plans for a new 1200 MW coal-fired Thabametsi Power Project in South Africa. The South African National Environmental Management Act (NEMA) requires public bodies to undertake an environmental impact assessment (EIA) before approving an energy project. Even though an EIA was carried out prior to the coal mine being granted a licence, it did not take into account its climatic impact. The applicant, EarthLife Africa Johannesburg, argued that the environmental damage caused by climate change and South Africa's international obligations under the Paris Agreement required the climate impact of the project to be considered. Therefore, even though neither the statute nor the implementing regulations[55] explicitly contemplate climate change, the applicant argued that EIAs had to include the climate impacts of projects. The Gauteng Division of the High Court of South Africa, sitting in Pretoria, ruled on EarthLife's appeal and suspended the original authorisation, awaiting the completion of another EIA taking climate change impact assessment reports into account. This decision also provided a significant precedent: that climate change was an essential factor to take into account when deciding whether or not to grant an environmental authorisation, and that a formal expert study on the implications of climate change would be the most effective evidentiary mechanism to take climate change effects into account in all of its myriad facets.[56]

53 Part of the Powering Up Britain package. Available at: https://www.gov.uk/government/publications/powering-up-britain.

54 Earthlife Africa Johannesburg v. Minister of Environmental Affairs and others, Case no. 65662/16 (2017). Available at: http://climatecasechart.com/non-us-case/4463/.

55 Department of Environmental Affairs, 'Environmental Impact Assessment Regulations 2014' GNR 982 *Government Gazette* 38282 of 4 December 2014.

56 See Field, T.L. (2021), "Climate Change Litigation in South Africa: Firmly Out of the Starting Block", in Alogna, I. et al. (eds.), *op.cit.*, p. 187.

### 3. *Commune de Grande-Synthe v. France*[57]

Two historic judgments were issued in France on 19 November 2020 and 1 July 2021 by the *Conseil d'État*, finding that the French government had failed to take adequate measures to mitigate climate change, and ordering it to take additional measures to remedy its failures. At the beginning, Grande-Synthe – a low-lying coastal municipality vulnerable to sea level rise and flooding – and its mayor wrote three letters to the President of the Republic, Prime Minister, Minister of State, and Minister of Ecological Transition and Solidarity, asking them to: take any useful measure to reduce the curve of GHG emissions produced on the national territory to respect France's climate obligation; take all legislative or regulatory initiatives to "make climate priority mandatory" and to prohibit any measure likely to increase GHG emissions; implement immediate measures to adapt to climate change in France. On 23 January 2019, they sued the French government and asked the *Conseil d'Etat* to declare the government's failure to take adequate action unlawful, breaching its obligation under French and international law. The *Conseil d'État* deemed the lawsuit admissible on 19 November 2020, partly because the city is a coastal community vulnerable to climate change, also using scientific evidence from IPCC and the National Observatory on the Effects of Global Warming (ONERC).[58] France agreed to a 40% reduction in GHG emissions by 2030, compared to 1990 levels, as provided by Article L100-4 of the French Energy Code in accordance with international law, and the Court instructed the government to demonstrate within three months its capacity to meet its 2030 climate goals. On 1 July 2021, the *Conseil d'État* issued its final ruling, finding that the government must take all necessary measures by March 2022 to reduce GHG emissions by 40% by 2030 to satisfy climate goals. The Court invalidated the government's implied reluctance to adopt necessary actions, finding that the emissions decline in 2019 and 2020 was inadequate to satisfy climate goals and that present climate legislation was insufficient.[59] As well highlighted by part of the French scholarship, the originality of this kind of cases relies in the consideration of a "trajectory review" by the judge, which "accepts to project himself into the future, without waiting for the end of the reference period, to verify that the State's action is sufficient to achieve the objectives it has set itself".[60]

57 *Conseil d'État*, 19 November 2020 and 1 July 2021, n° 427301, *Municipality of Grande-Synthe*. Available at: http://climatecasechart.com/non-us-case/commune-de-grande-synthe-v-france/.

58 *Observatoire national sur les effets du réchauffement climatique*. See its annual reports at: https://www.ecologie.gouv.fr/observatoire-national-sur-effets-du-rechauffement-climatique-onerc.

59 See *ex multis* the analysis by: Torre-Schaub, M., "Climate Change Risk and Climate Justice in France: The High Administrative Court as Janus or Prometheus?", *European Journal of Risk Regulation* 2023, vol. 14, issue 1, pp. 213-227; Hoynk, S., "Le contentieux climatique devant le juge administrative", *RFDA* 2021, p. 777; Huglo, Ch. (2021), "Commune de Grande-Synthe et Carême c. l'État français (2019)", in Cournil, Ch. (dir.), *Les grandes affaires climatiques, op.cit.*, pp. 183-191.

60 Bétaille, J., "Climate litigation in France, a reflection of trends in environmental litigation", *elni review* 2022, Vol. 22, p. 70.

## III. Climate litigation involving corporations

Strategic litigation and petitions/requests continue influencing corporate climate-related conduct and raising public awareness about fossil fuel companies.[61] Scholars have identified two "waves" of corporate climate lawsuits. The first one was not very successful and it took place in the early-to-mid-2000s. A second wave of corporate cases has emerged, appearing to be more resilient than the first, and bringing more chance of success than the first one. Ganguly, Setzer, and Heyvart attribute this to increased scientific odds, changing legal rhetoric, and changing institutional, constitutional, and political-economic contexts.[62] First, attribution science and Richard Heede's 2014 Carbon Majors Study[63] have allowed litigants to target corporate actors and demonstrate their contribution to global GHG emissions. However, attributing climate events to greenhouse gas emissions or emitters remains challenging. Carbon majors claims hold corporations with excessive GHG emissions directly accountable, creating "precedents" in common law countries and trying to cause widespread industry change, while raising awareness of corporations' role in climate change. Therefore, even unsuccessful cases can pressure corporations, and the "liability risk" of climate cases can foster change in business activity. However, if corporations are allowed to conduct business by law, it can be difficult to hold them liable (so-called "defence of lawful justification"), and some corporations can use aggressive tactics to intimidate and retaliate against those who try to hold them accountable (e.g. SLAPP suits).[64] Considering the vast variety of corporate climate litigation cases and their legal grounds,[65] we will simply introduce them through their climate-related goal: mitigation (A) or adaptation and/or compensation (B).

61 A part of the scholarship distinguishes "strategic private climate litigation" and "strategic public climate litigation", to differentiate climate-related cases initiated to exert bottom-up pressure on corporations or governments. See Ganguly, G., Setzer, J. & Heyvaert, V., 'If at First You Don't Succeed: Suing Corporations for Climate Change', p. 843.

62 Ibid.

63 Heede, R., "Tracing anthropogenic carbon dioxide and methane emissions to fossil fuel and cement producers, 1854–2010", *Climatic Change* 2014, vol. 122, issue 1–2, p. 229.

64 Acronym for "Strategic lawsuits against public participation". See Kaminski, I., "SLAPP attack: The clap-back against lawsuits that threaten climate activism. Plus news…", 5 Oct. 2022. Available at: https://www.the-wave.net/slapp-attack/; and the work of the Business & Human Rights Resource Centre which has recorded 413 SLAPPS around the world, notably its SLAPPs database. Available at: https://www.business-humanrights.org/en/from-us/slapps-database/.

65 Among the many possible legal grounds for corporate climate litigation, its heterogeneity includes: liability suits seeking damages triggered by climate change, claims that companies have defrauded shareholders and misrepresented the impacts of climate change on their business, greenwashing claims (e.g. misleading advertisement), claims related to the inadequate environmental assessment of projects, claims dealing with the violation of human rights obligations, claims based on fraud laws, company and financial laws, consumer protection law, etc. The British Institute of International and Comparative Law (BIICL) is currently exploring this variety of possible causes of action as part of its comparative research project "Global Perspectives on Corporate Climate Legal Tactics", to create a global toolbox on corporate climate litigation. See this research project at: https://www.biicl.org/projects/global-perspectives-on-corporate-climate-legal-tactics.

## A. Mitigation cases

### 1. *Milieudefensie et al. v. Royal Dutch Shell plc.*[66]

After the Urgenda case, another unprecedented climate ruling has taken place in the Netherlands, this time holding a fossil-fuel company accountable for its contribution to climate change. In April 2019, Friends of the Earth Netherlands (*Milieudefensie*), six other NGOs, and more than 17,000 Dutch citizens sued Royal Dutch Shell – Europe's largest oil and gas company by revenue, operating in over 70 countries – for violating its duty of care under Dutch law and its human rights obligations as a business. In May 2021, The Hague District Court ordered Shell to cut its Scope 1, 2, and 3 emissions by 45% by 2030 compared to 2019 levels.[67] Shell appealed in March 2022, yet the Court has issued provisionally enforceable orders, so Shell must meet its reduction requirements while the case is pending. This landmark judgment holds corporations accountable for failing to address climate change and requires them to meet global climate objectives. It may also lead to additional climate lawsuits against corporations, asking if a private firm can be held accountable for failing to mitigate climate change. This lawsuit follows the *Urgenda* judgment (already seen above), which concluded that the Dutch government's climate change inaction breached a duty of care to its citizens. In this complaint against Shell, claimants expanded this argument to private firms, saying that Shell had a duty of care to reduce its greenhouse gas emissions given the Paris Agreement's goals and the always more precise scientific evidence concerning climate change. They showed how Shell's long knowledge of climate change dangers, its deceptive representations, and its insufficient GHG emissions reduction supported a verdict of unlawful endangerment of Dutch citizens through hazardous negligence by its actions. The Court interpreted the unwritten standard of care contained in Book 6, Section 162 of the Dutch Civil Code as an obligation for Shell, which makes its violation illegal. Furthermore, its content is further informed by Articles 2 and 8 of the ECHR. The Court's interpretation is based on the relevant facts and circumstances, the best available scientific findings on dangerous climate change and how to manage it, and "the widespread international consensus that human rights offer protection against the impacts of dangerous climate change and that companies must respect human rights".[68] Milieudefensie's attorney, Roger Cox and his colleague Mieke Reij, recently wrote a legal manual describing the legal basis and approach used in the case against Shell,[69] a clear example of the important international dialogue that is fostered by practitioners to replicate successful climate cases around the world.[70]

66 Hague District Court C/09/571932/HA ZA 19-379, 2021, Friends of the Earth Netherlands et al v Royal Dutch Shell PLC. Available at: http://climatecasechart.com/non-us-case/milieudefensie-et-al-v-royal-dutch-shell-plc/. See also the website of Milieudefensie: https://en.milieudefensie.nl/climate-case-shell. See the analysis by Hösli, A., "Milieudefensie et al. v. Shell: A Tipping Point in Climate Change Litigation against Corporations?", *Climate Law* 2022, vol. 11, issue 2, pp. 195-209.

67 The Court gave Shell flexibility in allocating emissions cuts between Scope 1, 2, and 3 emissions, so long as in aggregate, the total emissions were reduced by 45%.

68 Hague District Court, 2021, Friends of the Earth Netherlands et al v Royal Dutch Shell PLC, op. cit., para 4. 1. 3.

69 Cox, R. & Reij, M., *Defending the Danger Line: A manual for climate litigators*, Paulussen Advocaten and Milieudefensie, 2022. Available at: https://en.milieudefensie.nl/news/defending_the_danger_line.pdf.

70 Another case against Shell which became an interesting early climate lawsuit is *Gbemre v. Shell Petroleum Development Company of Nigeria Ltd. and Others*. Available at: http://climatecasechart.com/non-us-case/gbemre-v-

**2. *Notre Affaire à Tous et al. v. Total*[71]**

In France, a less successful lawsuit against another fossil-fuel corporation has participated in this wave of corporate climate litigation cases. Oil company Total was sued by a coalition of French NGOs and local governments. The initiative seeks a court order to compel Total to develop a corporate strategy to: 1) identify the risk of greenhouse gas emissions from Total's goods and services; 2) identify the risk of more severe climate-related damage in the 2018 IPCC Special Report; and 3) take steps to ensure the company meets the Paris Agreement's climate goals. Claimants argues that Article L225-102-4-I of the Commercial Code (*Loi 27 Mars 2017 sur le devoir de vigilance des sociétés mères et des entreprises donneuses d'ordre*, hereinafter «Duty of Vigilance Law») imposes these duties. Companies must create "vigilance plans" to detect and mitigate human rights, civil liberties, and environmental and public health risks from their operations and those of their subsidiaries. After a formal meeting with Total on 18 June 2019, legal procedures were declared and a formal letter of notification ("*mise en demeure*") was delivered to Total. Total had three months to incorporate realistic greenhouse gas reduction objectives in its newest "vigilance plan" before bringing a lawsuit to force the corporation to comply with the law and the Paris Agreement. On 28 January 2020, plaintiffs filed a complaint requesting the Nanterre court to require Total to acknowledge its activities' hazards and coordinate its actions with decreasing global warming to 1.5° to limit climate change. The plaintiffs based their lawsuit on the Duty of Vigilance Law and the French Environmental Charter's ("*Charte de l'environnement*")[72] environmental monitoring requirements. Total's emissions vigilance plan was too vague, according to the claims, and the firm is still violating international climate commitments. Total requested a commercial court hearing after failing to react to the merits. The pre-trial judge rejected Total's jurisdiction objection on 11 February 2021, confirming the ordinary courts' jurisdiction. The Versailles Court of Appeal confirmed Nanterre's jurisdiction to settle the case on 18 November 2021. The decision was based on the exclusive authority of particular courts over ecological damage cessation and compensation. A fresh Paris court hearing on 21 September 2022 formalised additional interventions by Paris and New York City, yet on 6 July 2023, the Paris first instance court dismissed the lawsuit on procedural grounds, such as lack of strict identity between the demands in the formal notice and the summons, and the lack of standing for the plaintiffs (associations and local authorities), in clear contradiction with the position by the *Conseil d'État* in the *Grande-Synthe* decision.[73]

shell-petroleum-development-company-of-nigeria-ltd-et-al/#:~:text=The%20federal%20Judge%20ruled%20that,a%20clean%20and%20healthy%20environment). In the Gbemre case, a Nigerian federal court deemed Shell's gas flaring practice – and the law that permitted it – unconstitutional. The lawsuit filed by Jonah Gbemre, a Niger Delta Iwherekan, was directed both against Shell and the Nigerian government. The action claimed that Shell's flaring of methane from gas production in the Niger Delta infringed on the human rights to a clean and healthy environment. Gbemre's assertion that gas flaring released $CO_2$ and methane into the atmosphere was upheld. Gas flaring violated the Constitution of the Federal Republic of Nigeria's right to a "pollution-free and healthy environment" and the African Charter on Human and People's Rights.

71 Available at: http://climatecasechart.com/non-us-case/notre-affaire-a- tous-and-others-v-total/.

72 The English translation of the Environmental Charter is available at: https://www.conseil-constitutionnel.fr/sites/default/files/as/root/bank_mm/anglais/charter_environnement.pdf.

73 CE, 19 Nov. 2020 and 1 July 2021, n° 427301, *Commune de Grande-Synthe,* op. cit. Two American cases, also dismissed on procedural grounds, might be used as a comparison with the French case. In *American Electric Power v.*

### 3. *ClientEarth v. Enea.*[74]

Another landmark corporate climate litigation case is a shareholder lawsuit that took place in Poland. ClientEarth, a non-profit environmental law charity, sued Polish utility Enea S.A. in October 2018 for building a new coal-fired power plant. ClientEarth, purchasing some shares in the defendant company[75] and suing it in its capacity as a minority shareholder, sought to annul the shareholder resolution approving the Ostrołęka C project of a 1 GW coal-fired power plant in northeast Poland. It was a Warsaw Stock Exchange-listed joint venture between Polish State-controlled energy corporations Enea and Energa. The facility was to open in 2023, and it would have released 6 million tonnes of CO2 annually. ClientEarth argued that the proposal to build the plant would pose an "indefensible" financial risk to shareholders due to its failure to account for climate change, thus becoming a "stranded asset".[76] Article 425 §1 of the Polish Commercial Companies Code was invoked, providing that a resolution of the shareholders' meeting of a joint-stock company contrary to the law may be declared invalid. Given climate-related financial risks, the resolution granting consent to build a coal-fired power plant "risk[ed] breaching board members' fiduciary duties of due diligence and to act in the best interests of the company and its shareholders".[77] ClientEarth argued that rising carbon prices, renewable energy competition, and industry regulation would make the plant unprofitable and risky to finance, harming the company and, therefore, the shareholders. ClientEarth won in court, and the District Court in Poznań declared null and void the

*Connecticut* (2011), a consortium of states, cities, and NGOs sued four private power companies and the Tennessee Valley Authority over CO2 emissions. The plaintiffs argued that the emissions constituted a public nuisance under US federal common law because they contributed to global warming. The plaintiffs sought orders requiring the power companies to reduce their emissions. The US Supreme Court dismissed the lawsuit on the grounds that federal common law claims in this area have been displaced by the Clean Air Act, a federal law that authorises the Environmental Protection Agency (EPA) to regulate GHG emissions from power plants and other sources. The court reasoned that Congress had granted EPA the power to determine how GHG should be regulated, and it was inappropriate for the judiciary to issue its own rules. Similarly, in *Native Village of Kivalina v. ExxonMobil Corp.* (2009), a federal appellate court held that a public nuisance claim against some fossil fuel companies – including ExxonMobil, BP, and Chevron – was also displaced by the Clean Air Act. The plaintiffs – Inupiat, indigenous peoples from Kivalina, Alaska – alleged that direct emissions associated with the energy companies' operations contributed to climate change and resulted in the Arctic sea ice erosion that protected the Kivalina coast from storms. The plaintiffs sought damages for relocating residents. However, the court concluded that the Clean Air Act had displaced federal common law claims seeking damages as well as injunctions.

74 Available at: http://climatecasechart.com/non-us-case/clientearth-v-enea/.

75 Exactly €20 for ten shares. See "Lawsuits aimed at green-house gas emissions are a growing trend", *The Economist*, April 23rd 2022. Available at: https://www.economist.com/international/2022/04/23/lawsuits-aimed-at-greenhouse-gas-emissions-are-a-growing-trend.

76 This problem was highlighted in 2015 by Mark Carney, then governor of the Bank of England, in his speech at Lloyds in London, where he argued that assets tied to carbon might be in trouble as markets began to turn toward clean energy due to climate change. See Carney, M., "Breaking the Tragedy of the Horizon: Climate change and financial stability", 29 Sept. 2015, Bank of England. Available at: https://www.bankofengland.co.uk/-/media/boe/files/speech/2015/breaking-the-tragedy-of-the-horizon-climate-change-and-financial-stability.pdf.

77 "Major energy firms exposed to shareholder action over coal power plant Ostrołęka C", ClientEarth Communication, 24 Sept. 2018. Available at: https://www.clientearth.org/latest/latest-updates/news/major-energy-firms-exposed-to-shareholder-action-over-coal-power-plant-ostroleka-c/.

construction permission resolution on August 1, 2019. Enea unsuccessfully appealed the judgment before the Appellate Court in Poznań. In mid-2020, Energa and Enea declared the project's economic cancellation. The case is the first NGO-led shareholder action in the climate context and the first legal challenge to corporate decision-making based on failing to consider climate-related financial risk adequately. Its success shows the possibility of a new trend of climate lawsuits targeting private fossil fuel investment and moves also boards of directors and financial sector actors to understand better and manage climate-related financial risks and opportunities.[78]

## B. Adaptation/compensation cases

### 1. *Lliuya v. RWE AG*[79]

Filed in November 2015 by a Peruvian farmer in German courts against the German energy company RWE for its climate change contributions, it is already considered a landmark case concerning corporate liability for adaptation to climate change. The claimant, backed up by the NGO Germanwatch, claims that climate change is melting glaciers near his farm in Huaraz, flooding his hamlet. RWE's climate change and flood risk contributions violate Lliuya's property rights. Therefore, he asked the court to order RWE to pay US$21,000 to build defences against glacial lake flooding, landslides, and a possible inundation of his village and property. In November 2017, the Civil High Court in Hamm, the appeals court, found his lawsuit admissible since it was based on the Carbon Major research,[80] which linked back to RWE the precise amount of 0,47% of the total CO2 emitted over the industrial age. Thus, the $21,000 requested contribution represents 0.47% of the engineering project costs needed to mitigate flooding. The Hamm Court has provisionally accepted the claimant's causation arguments and declared that "while RWE's emissions are not wholly responsible for the flood risk to Huaraz, it is enough that its emissions are partially responsible for the actual, present risk. There is

78 Many corporate shares are held by investment funds, pension funds, and other entities that administer assets, including corporate shares, for the beneficiaries or members of the funds. Typically, these are individuals with pension plans or those who want their investments managed by others. If investment managers or pension fund managers fail to recognise the financial risks associated with climate change and the associated risks of investing in carbon-intensive industries, they may be in breach of their duties to the fund's beneficiaries or the individuals they advise. A comparable case from Australia, filed a few weeks before the Polish case, is *McVeigh v Retail Employees Superannuation Trust*, in which a member of an Australian pension fund filed a lawsuit against the Retail Employees Superannuation Trust (REST), alleging that the fund violated the Corporations Act 2001 by failing to provide information about climate change business risks, including plans to tackle those risks. The complaint asserted that the pension fund trustees owed "fiduciary" duties to the fund's members in order to protect them from the financial hazards associated with carbon-intensive investments. It was asserted that these duties were owed under national laws governing corporations (including REST) and the duties of pension fund fiduciaries. In 2020, REST agreed that its trustees must manage the financial hazards associated with climate change and the dispute was resolved outside of court with a settlement reached by REST and the plaintiff. The press release of the settlement agreement and the other case documents are available at: http://climatecasechart.com/non-us-case/mcveigh-v-retail-employees-superannuation-trust/.

79 Higher Regional Court of Essen (Germany), Case No. 2 O 285/15, On Appeal, May 2022, Luciano Lliuya v. RWE AG. Available at: http://climatecasechart.com/non-us-case/lliuya-v-rwe-ag/.

80 Heede, R. (2014), "Tracing anthropogenic carbon dioxide and methane emissions to fossil fuel and cement producers, op. cit., pp. 1854–2010.

no basis in the law to argue that partial causation does not exist in this case".[81] Therefore, one of the novelties of this case concerns the recognition of a causal link between the emissions from a specific company and an individual damaging event.[82] Moreover, progress in attribution science and its link with law and litigation,[83] in the last decade, seems a positive signal for the outcome of this case. Similarly to *Milieudefensie v. Shell* based on Article 6:162 of the Dutch Civil Code, the Lluya v. RWE case is based on a general provision of the German Civil Code, Article 1004 of the BGB on "nuisance" or "property infringement", which states: "1. If the ownership is interfered with by means other than removal or retention of possession, the owner may require the disturber to remove the interference. If further interferences are to be feared, the owner may seek a prohibitory injunction. 2. The claim is excluded if the owner is obliged to tolerate the interference".[84] Finally, another important aspect of this case, concerns the transnational responsibility for climate harm, related to a company headquartered in the Global North for damages (allegedly) produced in Global South countries. *Lluya v. RWE* seems to be the first of a coming wave of transnational cases.[85]

81 Germanwatch, 'General Ruling of the Civil High Court in Hamm' (Germanwatch.org, 14 Nov. 2017). Available at: https://germanwatch.org/sites/default/files/announcement/20810.pdf.

82 This link was denied in the well-known case of *Comer v. Murphy Oil USA*, where the plaintiffs asked for damages to the oil company, allegedly liable to have contributed to climate change-related extreme weather events, notably Hurricane Katrina. See Ned Comer v. Murphy Oil USA, 2012 WL 933670. Available at: http://climatecasechart.com/case/comer-v-murphy-oil-usa-inc/. In the comparison between Lluya v RWE and the already analysed *Urgenda v. the Netherlands*, *Neubauer v. Germany* and *Milieudefensie v. Shell*, Weller and Tran highlights that in the latter ones "it was not necessary to consider the last stage of causation because each of these decisions focused on the question of future emissions. Consequently, there was no need to trace an individual violation of legal interests back to a defendant's concrete emissions. It was enough that the courts, by referring to the IPCC reports, affirmed the causal link between greenhouse gas emissions and climate damage in general." Weller, M-Ph. & Tran, M.-L. (2022), "Climate Litigation against companies", op. cit., p. 8.

83 Burger, M., Wentz, J. & Horton, R., "The Law and Science of Climate Change Attribution", *Envtl. L. Rep* 2021, vol. 51, p. 10646; Stuart-Smith, R.F., Otto, F.E.L. & Saad, A.I. et al., "Filling the evidentiary gap in climate litigation", *Nat. Clim. Chang.* 2021, vol. 11, pp. 651-655.

84 The English translation from the original German text of the BGB is available at: https://www.gesetze-im-internet.de/englisch_bgb/englisch_bgb.html.

85 A similar claim has already been brought, in July 2022, by four residents of the Indonesian island of Pari (supported by three NGOs: HEKS/EPER, the European Center for Constitutional and European Rights, and WALHI) who sued the Swiss-based major building materials company Holcim before the Cantonal Court of Zug, in Switzerland, based on Article 28 of the Swiss Civil Code (infringement of personal rights) and Article 41 of the Code of Obligations (redress for unjust harm). The plaintiffs want proportional compensation for climate change-related damages on Pari, a 43% reduction in CO2 emissions by 2030 compared to 2019 levels (or according to climate science to limit global warming to 1.5°C), and financial support for adaptation measures. Reducing GHGs and compensating for them make the claim unique. The case *Asmania et al. v. Holcim* is available at: http://climatecasechart.com/non-us-case/four-islanders-of-pari-v-holcim/.

**2. *Friends of the Earth et al. v. Total*[86]**

This transnational trend seems to resonate and take advantage of the legal possibilities coming from the new "due diligence laws", which in some countries allow individuals to directly sue businesses for failing to prevent human rights abuse in their operations, supporting the horizontal application of human rights obligations, including in relation to their foreign subsidiaries and subcontractors. In this sense, in France, six NGOs filed a complaint in 2019, under the Duty of Vigilance Law, demanding that Total change its vigilance plan for the "Tilenga" Project, a new oil project in Uganda and Tanzania that allegedly ignored social and environmental implications. These impacts also included the 1445 km pipeline (East African Crude Oil Pipeline, EACOP) designed to export fossil fuel from Uganda and Tanzania to the port of Tanga on the Indian Ocean, the 100,000 people displaced by the project, and the hundreds of boreholes drilled in the Murchison Falls National Park, home to many endangered species. Total's failure to comply with its due diligence obligations caused an unlawful disturbance, so the claimants sought an order to establish, publish, and implement a set of measures in its due diligence plan to prevent serious violations of human rights and fundamental freedoms, human health and safety, and severe environmental damage. Notably, the claimants also said Total's vigilance plan didn't account for the project's life cycle greenhouse gas emissions. On 15 December 2021, the *Court of Cassation* overturned the Versailles Court of Appeal's ruling that the Nanterre Commercial Court had jurisdiction to hear the case because the due diligence plan was "an act of management of a commercial company" (according to Article L 723-3 2° of the French Commercial Code). The *Cour de Cassation* stated that the Nanterre civil court will decide the case because the companies' duty of vigilance is not a commercial act, and a natural person (non-commercial claimant) has a right to choose ("*droit d'option*") and can bring a claim against a legal entity before a commercial court or a civil court.[87] However, after several rulings on the objection of lack of jurisdiction raised by Total, the Paris Court – ruling in summary proceedings ("*jugement rendu en état de référé*") – on 28 February 2023 ruled for the inadmissibility of the claims, "*substantially different from the claims* made in the initial formal notice sent to the defendant", considering that the claims should be "examined in depth" by a civil judge following a regular procedure on the merits.[88]

**3. *The Philippines' Climate Change and Human Rights Inquiry*[89]**

Another interesting climate change and human rights-related case involving companies is the "Climate Change and Human Rights Inquiry" in the Philippines, the world's

86 Nanterre High Court, *Friends of the Earth et al. v. Total*, pending. Available at: http://climatecasechart.com/non-us-case/friends-of-the-earth-et-al-v-total/. See also the plaintiffs' website: https://www.amisdelaterre.org/campagne/total-rendez-vous-au-tribunal/.

87 Traditionally less sympathetic to corporate interests than the former, where judges are elected by their corporate peers.

88 Les Amis de la Terre France, "Total's Tilenga and EACOP Projects: the Paris Civil Court dodges the issue", 28 Feb. 2021. Available at: https://www.amisdelaterre.org/communique-presse/totals-tilenga-eacop-projects-paris-civil-court-dodges-issue/. See also the decision by the Paris Court (in French). Available at: https://www.amisdelaterre.org/wp-content/uploads/2023/02/decisiontj-paris-totalouganda-28fev2023.pdf.

89 Commission on Human Rights of the Philippines, *National Inquiry on Climate Change – Report*, 2022. Available at: https://www.ciel.org/wp-content/uploads/2023/02/CHRP-NICC-Report-2022.pdf.

first investigation into corporate responsibility for the climate crisis. In 2015, Typhoon survivors and civil society groups petitioned the Philippines Commission on Human Rights (CHR) to examine the relationship between human rights, climate change, and the responsibilities of Carbon Majors. They demanded an investigation into climate change-related human rights breaches by the 47 largest fossil fuel and cement firms, including loss of life, livelihood, and property in the Philippines. On 6 May 2022, the long-awaited report concluded that climate change is a human rights issue, affecting individual rights to life, food, water, sanitation, and health, and collective rights to food security, development, self-determination, preservation of culture, equality, and non-discrimination, while also affecting vulnerable populations, including children. The inquiry showed that 47 of the world's largest coal, oil, mining, and cement companies engaged in willful obfuscation of climate science and obstructed a renewable energy transition, creating prejudice to the right of the public to make informed decisions about their products and their damage to the environment and the climate system. The CHR also highlighted the Carbon Majors' corporate responsibility to undertake human rights due diligence, including through their value chains, and to provide remedies when violations occur. According to the CHR, the inquiry and its findings concern any activity by the Carbon Majors for which they can be held accountable for human rights violations resulting from climate change, even outside of the Philippines territory.[90]

## Conclusions

The majority of the total climate litigation cases filed around the world have been directed against governments, on the basis of constitutional provisions and human rights, as well as environmental, climate change and administrative law and regulation. As reported in July 2023 by the Grantham Research Institute on Climate Change and the Environment, "significant development in government framework cases have taken place over the past 12 months and these cases continue to grow in number", with new cases filed for the first time in Russia, Indonesia, Sweden and Finland.[91] Framework cases (or "systemic climate litigation" or "Urgenda-style cases") are those challenging the government implementation of climate law and policy[92] and they have been successful examples of judicial dialogue, circulation of legal arguments and tactics among practitioners and NGOs across different legal systems, as it has been the case for the landmark *Urgenda* case in the Netherlands with its diffusion worldwide.[93] The majority (70%) of these kinds

90 Savaresi, A. & Wewerinke-Singh, M., "Historic inquiry holds the Carbon Majors accountable for the impacts of climate change in the Philippines", *The Global Network for Human Rights and the Environment*, 10 May 2022. Available at: https://gnhre.org/2022/05/historic-inquiry-holds-the-carbon-majors-accountable-for-the-impacts-of-climate-change-in-the-philippines/.

91 Setzer, J. & Higham, C., *Global trends in climate change litigation: 2023 snapshot*, 2023, London: Grantham Research Institute on Climate Change and the Environment and Centre for Climate Change Economics and Policy, London School of Economics and Political Science, p. 32.

92 See Higham, C., Setzer, J. & Bradeen, E., *Challenging government responses to climate change through framework litigation*, 2022, London: Grantham Research Institute on Climate Change and the Environment and Centre for Climate Change Economics and Policy, London School of Economics and Political Science.

93 Cf. Maxwell, L., Mead, S. & van Berkel, D. (2022), "Standards for adjudicating the next generation of *Urgenda*-style climate cases", op. cit.

of cases have included human rights and constitutional arguments, referring as already seen above to international and human rights treaties, such as the ECHR. However, climate framework laws constitute a statutory basis for new cases and some interesting success in court, as shown above by the examples of the UK, France and South Africa. The complex interaction between climate legislation and litigation, as two complementary and mutually influencing aspects of climate governance, contributes to their global increase. As the human right to a healthy environment has spread in more than 80% of jurisdictions worldwide,[94] "forming the basis for an increasingly large number of [climate-related] cases"[95] in Latin America,[96] Africa,[97] the US[98] and Europe,[99] also the "extraordinary surge in legislative activity over the past two decades"[100] highlighted in the climate field around the world has driven the augmentation of climate litigation. At the same time, the quality and quantity of climate legislation and policy are directly influenced by the outcome of climate litigation. On the other side, important growth has been seen in the last few years for those cases involving private parties, both in terms of corporate duty to mitigate emissions, such as *Milieudefensie v. Shell* or *Notre Affaire à Tous v. Total*, exploiting always more creative and diverse causes of action, based on civil code-based corporate duty of care, human rights due diligence covering both human rights and the environment, also related to their supply chain and subsidiaries, or shareholder actions, as in *ClientEarth v. Enea*. At the moment, corporate liability for adaptation and compensation seems more limited in terms of the number of cases, but, as shown *Lluya v. RWE* and *Friends of the Earth v. Total,* there are compelling perspectives, in terms of the transnational dimension of this kind of litigation, the causation, related to the evidentiary phase, and the legal grounds to hold companies to account for their contribution to global climate change, including the critical role of human rights, highlighted by the Philippines Inquiry.

94 As reported by Professor David Boyd, UN Special Rapporteur on Human Rights and the Environment: UNHRC [United Nations High Commissioner for Refugees] (2020), *Right to a healthy environment: good practices*, Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, United Nations General Assembly Human Rights Council. Available at: https://undocs.org/Home/Mobile?FinalSymbol=A%2FHRC%2F43%2F53&Language=E&DeviceType=Desktop&LangRequested=False.

95 Setzer, J. & Higham, C. (2023), Global trends in climate change litigation: 2023 snapshot, op. cit., p. 33.

96 De Vilchez, P. & Savaresi, A., "The Right to a Healthy Environment and Climate Litigation: A Game Changer?", *Yearbook of International Environmental Law* 2023, vol. 32, issue 1, pp. 3-19.

97 Bouwer, K., "The Influences of Human Rights on Climate Litigation in Africa", *Journal of Human Rights and the Environment* 2022, vol. 13, issue 1, pp. 157-177.

98 Gerrard, M.B., "Environmental rights in state constitutions", *Columbia Climate Change Blog*, 31 August 2021, Available at: https://blogs.law.columbia.edu/climatechange/2021/08/31/environmental-rights-in-state-constitutions/.

99 Setzer, J., Narulla, H., Higham, C. & Bradeen, E., *Climate Litigation in Europe: A summary report for the European Union Forum of Judges for the Environment*, 2022, London and Brussels: Grantham Research Institute on Climate Change and the Environment and Centre for Climate Change Economics and Policy, London School of Economics and Political Science and the European Union Forum of Judges for the Environment.

100 Clare, A., Fankhauser, S. & Gennaioli, C., "The national and international drivers of climate change legislation", in Averchenkova A., Fankhauser, S. & M. Nachmany (eds.), *Trends in Climate Change Legislation*, 2017, Cheltenham-Northampton: Edward Elgar, p. 19.

Climate change litigation is clearly increasing, both in terms of the number of cases around the world, both before domestic and international fora, and as an attractive legal laboratory for new and more advanced causes of action, procedures and remedies. To conclude this overview of some of the most notable global cases in the field, it might be interesting to review some of the foreseeable future trends, which seem likely to gain momentum in Europe and other legal environments. Setzer and Higham predicted that criminal actions, cases on directors, officers, and trustees' duties to manage climate risk, and shareholder rights will increase actors' individual responsibility for climate harm.[101] The concept of "ecocide" and its legal developments[102] may offer new perspectives, and while no climate cases have been brought on this ground, a recent communication before the International Criminal Court under Article 15 of the Rome Statute in *The Planet v. Bolsonaro* has begun linking environmental destruction to other international crimes.[103] Another intriguing new avenue is the role of "negative emissions" technologies, which are essential to achieving "net zero" through GHG removals. Unfortunately, this brings the risk of encouraging over-reliance of states and companies on the "net" part of the concept and insufficient attention to the "zero" part and continued investment in high-emitting activities.[104] Moreover, last year, a group of Italian NGOs and environmental movements filed a "climate-washing" case against the energy company Eni, accusing it of violating the OECD Guidelines for Multi-National Enterprises by over-relying on GHG removal technologies.[105] This seems a promising new avenue with an apparent "explosion" of this kind of cases associated with "misinformation associated with climate change".[106] Furthermore, the urgent need to eliminate short-lived climatic pollutants like methane and black carbon may soon be the subject of new climate litigation suits.[107] In the coming years, cases preventing illegal deforestation or seeking compensation for loss of "ecosystem services" like carbon sequestration will likely become increasingly important at the nexus of climate and biodiversity.[108] Finally, the creation of a new Commission of Small Island States on Climate Change and International Law[109] and the requests for advisory opinions currently filed before the International Tribunal

101 Setzer, J. & Higham, C., 'Global trends in climate change litigation: 2022 snapshot', p. 18.

102 See the definition provided by an Independent Expert Panel, co-chaired by Philippe Sands and Jojo Mehta, in June 2021. Available at: https://www.stopecocide.earth/expert-drafting-panel. Or the criminalization of ecocide in at least 15 countries. Available at: https://una.org.uk/magazine/2021-1/ecocide-international-crime.

103 See: https://climate-laws.org/geographies/international/litigation_cases/the-planet-v-bolsonaro.

104 Setzer, J. & Higham, C., 'Global trends in climate change litigation: 2022 snapshot', p. 42; see also Dyke, J., Watson, R. & Knorr, W., 'Climate scientists: concept of net zero is a dangerous trap', The Conversation, 22 April 2021. Available at: https://theconversation.com/climate-scientists-concept-of-net-zero-is-a-dangerous-trap-157368.

105 *Rete Legalità per il Clima (Legality for Climate Network) and others v. ENI*. Available at: https://climate-laws.org/geographies/italy/litigation_cases/rete-legalita-per-il-clima-legality-for-climate-network-and-others-v-eni.

106 Setzer, J. & Higham, C. (2023), Global trends in climate change litigation: 2023 snapshot, op. cit., p. 39.

107 For an early case of this kind, see *In re Court on its own motion v. State of Himachal Pradesh & Others*: https://climate-laws.org/geographies/india/litigation_cases/in-re-court-on-its-own-motion-v-state-of-himachal-pradesh-others.

108 Setzer, J. & Higham, C. (2022), 'Global trends in climate change litigation: 2022 snapshot', op. cit., p. 43.

109 Agreement for the establishment of the Commission of Small Island States on Climate Change and International Law, Edinburgh, 31 Oct. 2021, I-56940. Available at: https://treaties.un.org/doc/Publication/UNTS/No%20Volume/56940/Part/I-56940-08000002805c2ace.pdf.

on the Law of the Sea (ITLOS), the Inter-American Court of Human Rights and the International Court of Justice might offer the potential for improved collaboration in this field, as well as clarification on climate obligations. These initiatives are part of a growing trend to use international adjudicatory bodies like the UN Human Rights Council, the Human Rights Committee,[110] the Committee on the Rights of the Child,[111] and the European Court of Human Rights, along with UN Special Rapporteurs, to foster the ambition of national governments' climate change responses.[112]

110 See e.g. *Billy and others v. Australia* (Torre Strait Islanders Petition), UN Human Rights Committee, CCPR/C/135/D/3624/2019. Available at: 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/

111 See e.g. *Sacchi et al. v. Argentina*, UN Committee on the Rights of the Child, CRC/C/88/D/104/2019. Available at: http://climatecasechart.com/non-us-case/sacchi-et-al-v-argentina-et-al/.

112 UNEP, Global Climate Litigation Report: 2020 Status Review (Nairobi 2020) 31.