The Fundamental Right to a Healthy Environment and Climate-Related Lawsuits

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ABSTRACT

Of all the prominent environmental issues in recent decades, global climate change is the most serious and has been widely regarded as the most pressing global environmental problem of the current age. Ongoing carbon emissions from burning fossil fuels are behind the planet's warming trend. The fossil fuel industry has had a unique role in causing, shaping, advancing, and defining the current unsustainable fossil fuel-dependent global economy. Climate science demands we decarbonise our entire economy to limit global warming to 1.5° Celsius. This paper builds its arguments starting from the universal recognition of the human right to a clean, healthy and sustainable environment by the United Nations General Assembly in 2022. A healthy and functioning environment is a precondition for human welfare. Recognition of the right to a healthy environment contributes to improved environmental outcomes, including cleaner air, enhanced access to safe drinking water and reduced greenhouse gas emissions. One notable development in recent years has been an explosion in climate litigation. The cases are being brought against governments and corporate emitters for breach of environmental and human rights obligations to pressure them to take more ambitious climate action. The two analysed cases from the Netherlands aptly illustrate that human rights arguments played a crucial role in the rulings.

Keywords: Human right to a healthy environment, Human rights-based climate change litigation, Urgenda case, Shell judgement, Sustainable Development Goals

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Temeljna pravica do zdravega okolja in podnebne tožbe

POVZETEK

Med vsemi pomembnimi okoljskimi vprašanji zadnjih desetletij so globalne podnebne spremembe najresnejši in najbolj pereč globalni okoljski problem današnje dobe. Stalni izpusti ogljika zaradi kurjenja fosilnih goriv so glavni vzrok segrevanja planeta. Industrija fosilnih goriv ima edinstveno vlogo pri povzročanju, oblikovanju, napredovanju in definiranju trenutnega netrajnostnega globalnega gospodarstva, ki temelji na fosilnih gorivih. Podnebna znanost zahteva razogljičenje celotnega gospodarstva, da bi omejili globalno segrevanje na 1,5 °C. Prispevek podaja argumente na podlagi univerzalnega priznanja človekove pravice do čistega, zdravega in trajnostnega okolja, ki jo je Generalna skupščina Združenih narodov priznala leta 2022. Zdravo in delujoče okolje je pogoj za človekovo blaginjo. Priznanje pravice do zdravega okolja prispeva k izboljšanim okoljskim rezultatom, vključno z bolj čistim zrakom, izboljšanim dostopom do varne pitne vode in zmanjšanjem izpustov toplogrednih plinov. Ena od pomembnih novosti zadnjih let je porast podnebnih tožb. Nosilci pravic vlagajo tožbe proti vladam in gospodarskim družbam zaradi kršenja okoljskih in človekovih pravic, da bi jih spodbudili k bolj ambicioznim podnebnim ukrepom. Dva analizirana primera iz Nizozemske ustrezno ponazarjata, da so imeli argumenti o človekovih pravicah ključno vlogo pri sodbah.

Ključne besede: človekova pravica do zdravega okolja, podnebne tožbe na podlagi človekovih pravic, zadeva Urgenda, sodba proti Shellu, cilji trajnostnega razvoja

1. Introduction

Climate change has a catastrophic impact on communities' lives and livelihoods all over the world. There is increasing consensus that climate change will give rise to mass displacement of people (Atapattu, 2021, p. 245). The problem of climate change is currently the largest threat to the environment and human rights. It has become over the past decade the pre-eminent environmen-

tal policy issue at the international level. Its prominence is rooted in the global nature of the problem and the impossibility for any one state or groups of states to address it in the absence of full global cooperation (Cullet, 2016, p. 498). The recent synchronous adoption of landmark United Nations (UN) agreements – the Sendai Framework for Disaster Risk Reduction, Sustainable Development Goals (SDGs), and Conference of the Parties (COP)21's Paris Conference – has created a rare but significant opportunity to build coherence across different but overlapping international policy areas (Murray, Parkinson, & Bloomer, 2021). While the Synthesis Report – the Summary for Policy Makers – for the sixth Intergovernmental Panel on Climate Change (IPCC)[1] assessment concluded that "human activities, principally through emissions of greenhouse gases (GHGs), have unequivocally caused global warming," the international community has been slow to take proportionate action (Selin & VanDeveer, 2023, p. 253).

The artificiality of state borders becomes clear when considering climate change; no matter where GHGs are emitted, they will contribute to global warming. Still, national borders prove to be real obstacles to formulate an effective answer to climate change. Secondly, the short-term bias of political systems poses an obstacle to effective climate regulation. Politicians accountable in short election cycles hardly feel the urgency of the problem and fail to implement long-term solutions (Burgers, 2023). Vulnerability to climate change cuts across geographical boundaries, and it is often the poor in all parts of the world that are affected the most. The increasing intensity of climate-induced disruption around the world has revealed how marginalised communities bear some of the worst devastation inflicted by climate disasters magnifying as they do existing forms of social inequality on racial, class, and gender lines (Bulkeley & Newell, 2023, pp. 65-66).

Since the effects of climate change transcend across territorial boundaries and the climate change is now felt on a planetary scale, it has been regarded as one of the common concerns of the humankind (Desai, 2023, p. 4). Increasing temperatures, rising sea levels, extreme weather events, melting permafrost and

[1] The Intergovernmental Panel on Climate Change (IPCC) was established in 1988 to provide internationally coordinated scientific assessments of the magnitude, timing and potential environment and socio-economic impact of climate change and realistic response strategies. It was formed by the World Meteorological Organisation and the United Nations Environment Programme.

changes in precipitation patterns all have direct impacts on human rights, threatening the enjoyment of economic, social, and cultural rights, civil and political rights, and collective rights such as the right to self-determination. It is unsurprising that the issue is both at the top of the international political agenda and one of significant public interest. These impacts, which are now acutely felt around the world, will intensify dramatically over the coming decades, impeding access to food, shelter, clean water, and other basic necessities for vast swathes of the world's population. As the effects of the climate change become more immediate, so too does the recognition that states have concrete human rights obligations to address environmental harms, and that in turn, human rights must be at the center of states' responses to climate change. The urgency of the global climate problem has prompted an increasing turn to the courts to accelerate action (Narula, 2021, pp. 135-169).

In the mid-twentieth century, the environment was simply not at the forefront of the international community's concerns. Although many of the rights enshrined in the 1948 Universal Declaration of Human Rights (UDHR)[2] cannot be meaningfully achieved without a healthy natural environment, the word environment is nowhere to be found in the Declaration. Furthermore, the 1950 European Convention on Human Rights (ECHR)[3], the 1961 European Social Charter (ESC)[4], the 1966 International Covenant on Civil and Political Rights (ICCPR)[5], and the 1966 International Covenant on Economic, Social and Cultural Rights (ICESCR)[6] do not explicitly lay down the right to a sound and healthy environment. In the specific case of the climate change issue, the United Nations Framework Convention on Climate Change (UNFCCC)[7], which aims to reduce GHG concentrations in the atmosphere, prevent dangerous anthropogenic interference with the climate system, slow down global warming and mitigate

[2] Universal Declaration of Human Rights (adopted 10 December 1948 UNGA Res 217 A(III).
[3] Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights) (adopted 4 November 1950, entered into force 3 September 1953).
[4] Council of Europe, European Social Charter (published 18 October 1961, entered into force 26 February) ETS 35.
[5] International Covenant on Civil and Political Rights (adopted16 December 1966, entered into force 23 March 1976) 999 UNTS 171.
[6] International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3.
[7] United Nations Framework Convention on Climate Change (UNFCCC) (adopted 9 May 1992, entered into force 21 March 1994) UNTC XVII.7.

its consequences, and the Paris Agreement[8], which commits parties to holding the increase of average global temperature below 2°C above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5°C, are the essential contractual sources of international climate law (Harrington, 2021).

In July 2022, the United Nations General Assembly (UNGA) adopted a resolution recognising the right to a clean, healthy and sustainable environment as a human right; the text was similar to a resolution adopted by the UN Human Rights Council (HRC) in 2021, recognising the right to a healthy environment and inviting the General Assembly to consider the matter.[9] The universal recognition of the human right to a healthy environment changed the pantheon of human rights. This new right offers to reorient human rights to better address the interdependent relationship between humans and the environment (Clark & Goldblatt, 2023, p. 65). It is now recognised that a healthy environment is essential to the realisation of a vast array of human rights. Although this is not legally binding, it contains strong political commitments and could be a catalyst for more ambitious action on environmental issues. It became clear during the negotiations what a profound impact climate and environmental crisis has and will have on ensuring human rights (Ruppel & Dobers, 2023, p. 161).

With the urgency of the climate problem growing and the prospect of limiting global temperature rise to 1.5°C slipping away, there is an increasing turn to the courts to accelerate action (Peel & Markey-Towler, 2022). The rapid rise in climate litigation globally suggests that courts can and will play a critically significant role in advancing planetary stewardship in the climate context (Kotze, 2022). Developments in climate science, and in particular a more robust scientific basis and methods, and legal discourse around accountability for climate change for holding private actors legally accountable for the harm experienced by weather events that have become more extreme due to climate change (Paiement, 2023, p. 285). Climate change litigation is defined as cases brought before courts to establish legal responsibility for the catastrophic consequences of global warming (Burgers, 2023,

[8] Paris Agreement (adopted 12 December 2015, entered into force 4 November 2016), UN Doc FCCC/CP/2015/L.9/Rev.1.

[9] UNGA (2022) *The human right to a clean, healthy and sustainable environment;* Resolution A/Res/76/300, 28 July 2022; HRC (2021), *The human right to a clean, healthy and sustainable environment;* Resolution A/HRC/RES/48/13, 8 October 2021

p. 197). As of May 2024, there were over 2,666 ongoing or concluded cases around the world: 233 of these cases were filed in 2023 (Setzer & Higham, 2024). Climate cases have been brought under a collection of laws regulating public and private actors, as well as various aspects of the causes and consequences of climate change. These include claims brought in tort, public trust, consumer law, corporate law, administrative law, constitutional law, and human rights law (Peel & Markey-Towler, 2022, p. 1486). In a number of climate cases brought before court in European private law, the claimants aim to defend the rights and interests of people from across current and future generations. Litigants in these cases aim to produce ambitious and systemic outcomes, such as advancing climate policy, raising public awareness, and transforming government or corporate behaviour. The concept of strategic climate lawsuit now spans multiple jurisdictions, before national, regional, and international fora. Thus, the relevance of this paper's observations might exceed the European private law realm (Peel & Markey-Towler, 2022, p. 1484; Burgers, 2023, p. 197).

This study discusses the right to a healthy environment, which will be followed by an analytic look at a couple of recent rulings at the highest level in European national courts, often drawing on human rights-based arguments to environmental protection and climate change. As the need to tackle dangerous climate change becomes ever more urgent, activists have turned to court to force governments and private actors to take radical action. Faced with what is perceived as a failure on the part of public authorities and private companies, the law is increasingly relied on to serve various objectives: to encourage public authorities or private actors to take stronger measures to mitigate climate change, to implement more ambitious policies, to stop a project that emits large quantities of GHG, etc. The study also examines the unequal impacts of climate change and the implications for human rights. Section 3 examines two national court rulings from the point of view of the right to a healthy environment, other human rights, and environmental rights. Its emphasis is on the examples of effective rights-based climate litigation in overseas jurisdictions. Several private law cases target private parties like oil corporations, this paper studies cases that use private (procedural) law against government authorities. The analysed

rulings are the 2019 Dutch Supreme Court's ruling in *The State of the Netherlands v. Urgenda Foundation* (*Urgenda* case) and the 2021 judgement of the District Court in The Hague in the case of *Vereniging Milieudefensie and others v. Royal Dutch Shell PLC* (RDS) (*Shell* judgment).

2. Recognition of the Human Right to a Healthy Environment

2.1. The Right to a Healthy Environment: Global Perspectives

Over the past decades, the right to a healthy environment has received ample international attention and recognition. The universal recognition of the human right to a clean, healthy and sustainable environment by the UNGA on the 28th of July 2022 transformed the pantheon of human rights (Magraw & Siemes, 2023, p. 88). The HRC and General Assembly resolutions recognising the right to a healthy environment were preceded by several decades of discussion and deliberation on the linkages between human rights and the environment. By adding an environmental right for the first time, the UNGA filled a gap in the human rights regime. This right is important in focusing on the interrelationship between the full enjoyment of all human rights with the protection of the environment (Clark & Goldblatt, 2023, p. 65).

This interrelationship recognises the value that a human rights lens can bring to any regulatory responses to the environmental challenges faced by humanity in order to better address the complex inequalities and injustices generated by climate change. In the context of climate change and its already felt and future harms to human and non-human life, the right to a healthy environment highlights the need to reorient human rights to better account for our embedded relationship with the environment (Clark & Goldblatt, 2023, p. 65). The resolution explicitly recognises that the impact of climate change, the unsustainable management and use of natural resources, the pollution of air, land and water, the unsound management of chemicals and waste, and the resulting loss in biodiversity interfere with the enjoyment of this right – and that environmental damage has negative implications, both direct and indirect, for the effective enjoyment of all human

rights.[10] Environmental consciousness did not exist in 1948 when the UDHR was finalised (Magraw & Siemes, 2023, p. 88).

On the conceptual front, the explanation of the relationship between human rights and the environment conducted by many people, including by the first UN Independent Expert and subsequent Special Rapporteur on human rights and environment, John H. Knox – led to the realisation that there is a correlative interdependence between human rights and the environment. In his work as the inaugural officeholder for the mandate, John Knox significantly advanced the notion that human rights and environmental protection are interdependent in that one' s ability to enjoy the rights to health and life, among numerous other rights, depends on living in a healthy natural environment (Narula, 2021, p. 152). It is now recognised that a healthy environment is essential to the realisation of human rights such as the rights to life, health, and culture; and protecting the environment requires the exercise of human rights such as the rights to participate and to freedoms of expression, association, and assembly (Magraw & Siemes, 2023, p. 88).

While the right to a healthy environment has not been expressed in any treaty at the international level, binding formulations of the right to a healthy environment exist through the adoption and interpretation of many different national constitutions and laws, human rights treaties, and multilateral environmental agreements at the regional and national levels (Kron, 2023, p. 1626). The interdependence of the right to a healthy environment and all other fundamental rights has been widely acknowledged for years. As of 2023, more than 160 states of the United Nations, primarily in the Global South[11] have constitutional rights and/or provisions on the environment. The right is found in many regional human rights instruments, beginning with the African Charter on Human and Peoples' Rights[12] in 1981. In addition, the right to a healthy environment appears in the Protocol to the Af-

[10] UN Human Rights Council, Resolution 48/13 (adopted on 8 October 2021) UN Doc. A/HRC/RES/48/13; UN General Assembly, Resolution adopted on July 28, 2022, UN Doc. A/RES/76/300.

[11] One explanation for the Global South's embrace of the right to a healthy environment is its disproportionate exposure to environmental and human rights abuses from extractive and polluting industries that benefit Northern states, transnational corporations, and national elites. See, eg. Carmen G. Gonzalez, "The Right to a Healthy Environment and the Global South." *AJIL Unbound* 117 (2023): 173-78. https://doi.org/10.1017/aju.2023.26

[12] African Charter on Human and People's Rights, 21 ILM 158, Article 24 (entered into force October 21, 1986).

rican Charter on Women in Africa, adopted by the African Union in 2003, the Arab Charter on Human Rights in 2004, and the 2012 Human Rights Declaration of the Association of Southeast Asian Nations,[13] and the San Salvador Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights in 1988.[14] The Aarhus Convention states in its first article that parties shall guarantee rights of information, participation, and remedy in environmental matters "in order to contribute to the protection of the right of every person of present and future generations to live in an environment adequate to his or her health and well-being" (Knox, 2021, p. 786).

Even though the right to a healthy environment has not led to a green revolution in the multiple jurisdictions in which it has been explicitly implemented, it cannot be denied that the right to a healthy environment has served as a catalyst for stronger environmental policies, stricter enforcement, stronger environmental performance and greater public participation in environmental decision-making. There appears to be a mutually reinforcing relationship between the right to a healthy environment and procedural rights. In the wake of the adoption of the 1992 Rio Declaration, which represented the first comprehensive effort at the international level to highlight the normative importance of access to information, public participation and access to justice in environmental matters in its renowned Principle 10, the intersection between the right to a healthy environment and procedural environmental rights became an increasingly groundbreaking battleground for many environmental lawyers (Schoukens & Bouquelle, 2024, p. 14)

The terms used to describe the right have varied across various times and geographic contexts, and the terminology has at times been criticized for being vague and open-ended. While there is no universally recognised definition of the right to a healthy environment, it has often been characterised as containing substantive elements (clean air, a safe and stable climate, access to safe water and adequate sanitation, healthy and sustainably produced

[13] Protocol to the African Charter on Human and Peoples; Rights on the Rights of Women in Africa, Arts. 18-19 (adopted July 1, 2003, entered into force Nov. 25, 2005; Arab Charter on Human Rights, reprinted in 12 Int'l Hum. Rts. Rep. 893 (2005), Art. 38 (entered into force Mar. 15, 2008); ASEAN Human Rights Declaration, para. 28(f) (adopted Nov. 18, 2012).

[14] Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, OAS Treaty Series No. 69, Art. 11(1) (entered into force Nov. 1999).

food, non-toxic environments in which to live, work, study and play, and healthy biodiversity and ecosystems) and procedural elements (access to information, access to meaningful participation in decision-making and access to justice). As per the Framework Principles prepared by Special Rapporteur John Knox, the right to a healthy environment (like other human rights) is accompanied by access rights such as the rights to access to information, freedom of opinion, freedom of expression, and assembly, and includes the obligation not to discriminate (Kron, 2023, p. 1627; Magraw & Siemes, 2023, p. 88). These connections were further cemented with the 2015 adoption of the Paris Agreement to the UNFCCC. The Agreement's Preamble makes clear that all parties "should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights" (Narula, 2021, p. 153).

International rights-based efforts to better protect the environment go back to the first international conference on the human environment held in Stockholm. Principle 1 of the 1972 Stockholm Declaration attempted to link human rights and environmental protection, declaring that: "Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being, and he bears a solemn responsibility to protect and improve the environment for present and future generations".[15] This duty of care concept from the second part of Principle 1 of the Stockholm Declaration recurred in the 1994 report of the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities and the associated proposed declaration and draft principles on human rights and the environment (Kron, 2023, pp. 1626-1627).[16]

Although the Stockholm Declaration has shaped every international environmental conference and multilateral environmental agreement since, the Declaration has lacked binding force, and only recently, however, has international law recognised that

[15] Declaration of the UN Conference on the Human Environment, UN Doc. A/Conf.48/14/Rev.1 (June 5-16, 1972).

[16] Commission on Human Rights, *Human Rights and the Environment: Final Report Prepared by Mrs. Fatma Zohra Ksentini, Special Rapporteur,* UN Doc. E/CN.4/Sub.2/1994/9, 6 July 1994, Annex I, Draft Principle 21: "All persons, individually and in association with others, have the duty to protect and preserve the environment." Regarding due diligence as a standard of care, see e.g. ILA Study Group on Due Diligence in International Law (ILA Study Group), Second Report, July 2016, p.2.

the human rights and environmental field are intertwined. Following the Stockholm Conference, countries made a series of efforts to keep environmental protection and the right to a healthy environment on the agenda. Since the 1970s, several countries have formally recognised the right to a healthy environment as a constitutional or statutory right. Nationally, as of 2023, over 160 countries recognise a right to a healthy environment at a regional, national or subnational level (Schoukens & Bouquelle, 2024; Bogos, 2024).[17]

2.2. Climate Protection, Sustainability and Human Rights

The 17 Sustainable Development Goals[18] of the United Nations' 2030 Agenda are all related to individual human rights to varying degrees and are people-oriented and intended to ensure sustainable development at economic, social, and environmental levels. Sustainable Development is a normative concept. From a legal standpoint, Jorge Viñuales notes that the concept of sustainable development means: (1) development which, as a necessary procedural step, 'takes into account' environmental protection; and (2) which does so in a way that is consistent with the environmental treaty obligations undertaken by a country or, at the very least, with the core content of customary international environmental law applicable to all countries (i.e. the prevention principle, integrating the duty of due diligence in the context of environmental protection, as further expressed in procedural form by the duty to co-operate and the duty to conduct an environmental impact assessment (EIA)) (Vinuales, 2021, p. 290).

Only since the establishment of the 1972 Stockholm Declaration has the concept of environmental rule of law been introduced into the focal area of legal discourses in the international arena. The interplay between legal rights and obligations is at the heart of the rule of law, which is the key principle of governance that protects the integrity of rights against arbitrary exercise of power by the State. If the rule of law is translated into the context of environmental governance, it is presented as a set of environ-

[17] The 1972 Stockholm Declaration facilitated the manifestation of the right to a healthy environment at regional and national level; see United Nations Environment Programme (2023), *Environmental Rule of Law: Tracking Progress and Charting Future Directions.* Nairobi. https://wedocs.unep.org/handle/20.500.11822/43943

[18] UNGA RES 70/1, 'Transforming our World: The 2030 Agenda for Sustainable Development (21 December 2015) UN Doc A/RES/70/1.

mental governance mechanisms, principles, and practices that hold all entities equally accountable to publicly enacted, equally enforced, and independently adjudicated laws that are consistent with sustainable development principles as well as human rights principles, which enhance environmental governance by linking environmental sustainability to fundamental human rights. Such a linkage further shapes a rights-based approach to environmental protection, whereby the right to a healthy environment as a human right has the potential to become the most extensive form of protection (Zhang, 2024, p. 36).

Although not legally binding, the SDGs represent the most comprehensive approach to socio-economic sustainable development in the international community. The SDGs promote environmental justice because these goals address a variety of social concerns, including poverty, sanitation, climate action, peace and justice (Collin & Collin, 2021, p. 129). SDG 13 aims for urgent and ambitious climate protection measures to combat climate change and its impacts and corresponds to the Paris Agreement in its content. From the perspective of climate protection, for example, SDGs can be identified whose achievement would be particularly endangered by climate change, which would at the same time be linked to the endangerment of individual human rights. For example, climate change is a crisis multiplier, and thus the non-achievement of SDG 13 threatens many people's livelihoods and food security, e.g., through crop failures due to extreme droughts, which also endangers SDG 2, "No Hunger". To stay with the example of crop failures, crop failures and the resulting lack of income also threaten SDG 1, "No Poverty". Extreme weather events, and in particular heavy rainfall, increase the risk of disease, on the one hand by affecting the cleanliness of drinking water and, on the other, by making breeding conditions more favourable for insects that transmit diseases such as malaria. This also affects SDG 3, "Health and well-being", as well as SDG 6, "Clean water and sanitation". The worse the achievement of SDG 13, the worse the achievement of the SDGs on cities and consumption (SDG 11 and 12) will be. To put it more drastically: without progress in combating climate change, some SDGs will remain largely unattainable (Ruppel & Dobers, 2023, p. 163).

At the same time, the SDGs themselves set important goals, the achievement of which automatically contributes to climate

protection, for example, the change in energy production in SDG 7, more sustainable industrialisation in SDG 9 or changed consumption and production behaviour in SDG 12. The legal debate on sustainable development law is clearly dominated by one part of it, climate protection law, which is standardised as a binding international treaty in the Paris Agreement of 2015. The protected good of the Paris Agreement is the climate, which is to be protected from human influence. Despite different factors in its approach, the Paris Agreement fits into the SDGs as an environment-related SDG13, so to speak, due to its goal of keeping the Earth livable for humankind. Needless to say, that failure to act and address the climate crisis will inevitably lead to an increase in natural disasters with devastating effects on the protection of human rights (Ruppel & Dobers, 2023, p. 164).

The UNFCCC makes clear that "the parties have a right to, and should, promote sustainable development." The Paris Agreement also emphasises the importance of economic and social factors, as well as sustainable development per se, in assessing and accomplishing the needs of global environment. In this sense, neither the SDGs nor the Paris Agreement should be treated as so-called self-contained systems; the SDGs are not intended to detract from or collide with the Paris Agreement but that there is an inseparable connection between the two (Harrington, 2021).

Many scholars argue that the right to breathe clean air is an essential element of the right to a healthy and sustainable environment (Chen & Renteln, 2023, p. 291). Climate has a place in the fundamental right to a clean, healthy and sustainable environment as approved by the United Nations. The fact remains that climate warming is an air pollution problem with a classic profile. To substances that occur naturally in our environment and are beneficial to life on the planet in their natural concentrations, human activity has added an excessive amount of the same substances, resulting in disruptive concentrations (Billiet, 2024, p. p.100).

Global warming and the associated weather extremes such as droughts, storms, hot spells or heavy rainfall will increasingly affect human rights, in particular the codified inherent rights to life (Article 6 ICCPR), health (Article 12 ICESCR) and an adequate standard of living (Article 11 ICESCR) (Ruppel & Dobers, 2023, p. 162). Lack of progress in combating climate change will make it

very difficult to realise most of the SDGs, just as the way in which SDGs concerning energy, food, sustainable cities, production, consumption, work, and growth are pursued will have a huge impact on the viability of climate goals (Bulkeley & Newell, 2023, p. 64).

2.3. The Right to a Healthy Environment: A European Perspective

Focusing on European legal instruments, the ECHR has no provision that explicitly refers to the environment. This is not surprising given that the Convention was adopted in 1950, a time when environmental protection was not a priority. At the same time, the case law of the European Court of Human Rights (ECtHR) shows that many aspects of the right to a good environment can be covered by the ECHR; to be fair, the ECtHR has used existing rights creatively to adjudicate environmental issues. The ECtHR has imposed a whole series of positive obligations on states to prevent, remedy or investigate violations of the right to life (Article 2 ECHR), the right to respect for private life, family life and the home (Article 8 ECHR) and the right to property (Article 1 First Protocol (P1) ECHR) in relation to environmental problems. However, the ECtHR will only hold these Convention provisions applicable if (a) environmental damage affects an individual directly, personally and to a sufficient extent, and (b) environmental damage reaches a certain minimum level of severity. The intensity, duration and physical and mental consequences of environmental damage are key factors in determining whether this threshold is attained. The Court's judgments are binding, and countries must comply with them (Gerards, 2023, pp. 508-521; Atapattu & Schapper, Human Rights and the Environment: Key Issues, 2019, pp. 87-91).

In Europe, environmental rights have been strengthened through enshrining procedural environmental rights in the Aarhus Convention, a treaty developed through the United Nations Economic Commission for Europe. Regionally, the Aarhus Convention is noteworthy from a fundamental rights perspective because it is recognised in the preamble that adequate protection of the environment is essential to the enjoyment of basic human rights and every person has the right to live in an environment

adequate to his or her health and well-being. The Aarhus Convention contains numerous standards for individuals on access to information, participation in decision-making and legal protection. These three aspects also come to the fore in the case law of the ECHR on the procedural positive obligations resulting from Articles 2 and 3 ECHR.[19]

In the European Union (EU)[20], the Treaty on the European Union (TEU), in turn, stipulates in Article 3 that the Union "shall work for the sustainable development of Europe" based on, inter alia, "a high level of protection and improvement of the quality of the environment". In the Treaty on the Functioning of the European Union (TFEU), this notion is present in Article 11: "Environmental Protection requirements must be integrated into all EU policies and activities, in particular with a view to promoting sustainable development" (Burgers, 2023, p. 200). Article 37 of the EU Charter of Fundamental Rights (CFREU) recognises rights related to the environment as fundamental rights, stipulating that "a high level of environmental protection and the improvement of the quality of the environment must be integrated into the policies of the Union and ensured in accordance with the principle of sustainable development". Article 191(1) of the TFEU specifies the EU's policy objectives around the environment. These are the preservation, protection and improvement of the environment, the protection of human health, the prudent and rational utilization of natural resources and the promotion of measures at the international level to deal with regional or worldwide environmental problems, in particular combating climate change (Gerards, 2023, p. 517).

In several climate cases brought before courts in European private law, the claimants aim to defend the rights and interests of future generations. Climate change litigation is defined as cases brought before courts to establish legal responsibility for the catastrophic consequences of global warming. Most of the climate

[19] Convention on Access to Information, Public Participation in Decision-Making, and Access to Justice in Environmental Matters (Aarhus, signed on 21 April 1998 and entered into force on 30 October 2001).

[20] The European Union (EU) is based on the rule of law. This means that every action taken by the EU is founded on treaties that have been approved voluntarily and democratically by all EU member countries. The EU treaties are binding agreements between EU member countries. They set out objectives, rules for EU institutions, how decisions are made and the relationship between the EU and its member countries. Two core function treaties, the Treaty on European Union (originally signed in Maastricht in 1992, The Maastricht Treaty) and the Treaty on the Functioning of the European Union (originally signed in Rome in 1957, The Treaty of Rome), lay out how EU operates.

cases have been attempts to get governments to live up to what is seen as their commitments. A report published in June 2024 by the Grantham Research Institute on Climate Change and the Environment and the Centre for Climate Change Economics and Policy shows more than 2,666 cases have been captured in the Sabin Center's climate litigation databases. 233 of these cases were filed in 2023. Around 70% of these have been filed since 2015, the year the Paris Agreement was adopted. Notably, human rights arguments are being utilised in a significant number of cases. Human rights advocates have not only filed lawsuits against states but also against companies (Setzer & Higham, 2024).

While these lawsuits rely on many different grounds, but they share a common goal: they challenge the lack of ambition of a state's climate policy and seek to force it to adopt measures to combat climate change. Faced with what is perceived as a failure on the part of public authorities or private parties like oil corporations, the law is increasingly relied on and used as weapon to serve various objectives: to encourage public authorities or private parties to take stronger measures to mitigate climate change, to implement more ambitious policies, to obtain compensation for damage suffered, to stop a project that emits large quantities of GHG (Hautereau-Boutonnet & Maljean-Dubois, 2023, pp. 151-160).

3. Human Rights-based Climate Litigation

The UNFCCC and the Paris Agreement are the essential contractual sources of international climate law. The UNFCCC contains formally binding substantive and procedural obligations on mitigation and adaptation the prescriptiveness of which, however, is strongly reduced by the lack of precision of their content. The Paris Agreement also is a formally binding international agreement (Rehbinder, 2023, p. 139).

As the effects of climate change become more immediate and clear, so too does the recognition that states have concrete human rights obligations to address environmental harms, and that in turn, human rights must be at the centre of states' responses to climate change (Narula, 2021, p. 151). States' substantive obligations to address climate change can be grouped into five distinct but overlapping categories. Namely, states must: protect human rights

from climate-related harms; mitigate climate change by regulating GHG emissions within their jurisdiction; cooperate internationally to protect against climate-related harms; address the transboundary impacts of climate change; ensure that human rights are safeguarded in all mitigation and adaptation activities. States also have procedural obligations with respect to climate change. Namely, states must ensure that the affected public: is adequately informed about the impacts of climate change; is adequately involved in decision-making around mitigation and adaptation measures; and has access to effective legal remedies when their rights are violated (Narula, 2021, pp. 153-157).

From a legal standpoint, connecting states' climate change-related obligations to their human rights obligations enables access to legal claims and mechanisms that are not available under international environmental law where citizens typically do not have standing to bring claims against states for their failure to meet their environmental obligations. Human rights cases are breaking new ground. The world over, youth activists are pushing the boundaries of international human rights law, hoping to seek relief and compel action in the face of an uncertain future. One of the most noteworthy developments is the recent success of rights-based court actions in the field of climate change, with the decisions of the Dutch courts in the *Urgenda* and, more recently, *Shell* cases as the most remarkable standouts.

3.1. The *Urgenda* Case

States have human rights obligations to mitigate climate change by regulating GHG emissions within their jurisdiction. Domestically, the most publicised effort to date to use a state's human right obligations to press for greater mitigation action was the case of *Urgenda*. The case is currently viewed as one of the most important European and global precedents for successful rights-based climate litigation. The *Urgenda* case was initially launched in 2013, two years before the adoption of the Paris Agreement on climate change. In this case, the Dutch non-governmental organisation (NGO) Urgenda Foundation, initially together with some 900 Dutch citizens, requested the District Court to order the Dutch Government to reduce its GHG emissions by 40%, or at least by 25% compared to 1990 by the end of 2020. The lawsuit

was initiated on the basis of domestic tort law, but the legal arguments supporting the claim were based on both national and international law (Wewerinke-Singh & McCoach, 2021).

In 2019, the Supreme Court upheld the claim by Urgenda against the Dutch State, confirming the earlier judgments of the District Court (2015) and the Court of Appeal of The Hague (2018), and ordering the State to reduce its GHG emissions by at least 25% below 1990 levels, by the end of 2020. The Dutch Supreme Court also upheld the Court of Appeal's conclusion that the Dutch State had failed to comply with its positive obligations under human rights law, in particular Articles 2 and 8 of the ECHR (Bakker, 2021, pp. 199-224).

Based on the 2007 Fourth Assessment Report of the IPCC, a new reduction target for developed countries of 25-45% by 2020 compared to 1990 levels was formally adopted in the 2010 Cancun Pledges.[21] In the international climate negotiations in Cancun, the Netherlands and other EU Member States acknowledged the need to reduce their emissions by 25-40% from 1990 levels by 2020. However, the Dutch Government subsequently announced that it would not meet the reduction target, and that it would aim for a 14-17% reduction (Bakker, 2021). In 2013, Urgenda initiated a lawsuit stating that the Dutch Government had committed a tort by having lowered its GHG emission reduction target for 2020. In its first-instance court judgement delivered in 2015, the District Court confirmed Urgenda's standing in this case, since it fulfilled the conditions for legal action by non-profit organisations set out in Article 3:305a of the Dutch Civil Code (Bogos, 2024, p. 325).

The District Court found for the plaintiff on the grounds that, given the severity of the impact of climate change and the significant chance that dangerous climate change would occur unless mitigating measures were taken, the State had a duty of care to take mitigating measures in its own territory to prevent dangerous climate change. Its failure to do so amounted under Dutch law to unlawful hazardous negligence. The District Court based its reasoning on tort law and applied the concept of the State acting negligently towards claimants in accordance with the juris-

[21] UNFCCC Conference of the Parties, 'Decision 1/CMP.6 The Cancun Agreements: Outcome of the Work of the Ad Hoc Working Group on Further Commitments for Annex I Parties under the Kyoto Protocol at its Fifteenth Session' (10-11 December 2010) UN Doc FCCC/KP/CMP/2010/12/Add.1, recital 6.

prudence on the doctrine of hazardous negligence developed to detail the requirement of acting with due care towards a society.[22] By contrast, the Hague Court of Appeal used the ECHR (Articles 2 and 8 of the ECHR) as the direct basis for the existence of the duty of care. The Court of Appeal considered that States Parties to the ECHR have positive or due diligence obligations to prevent threats to the right to life, and to a private and family life, of persons within their jurisdiction. The Court of Appeal referred to the jurisprudence of the ECtHR which affirmed that these obligations also apply to environmental harm. The Court of Appeal recalled the ECtHR's recognition that the due diligence obligations of States deriving from these Articles may also apply to the prevention of future infringements of the protected interests. Moreover, the Court of Appeal affirmed that the State's duty of care "applies to all activities, public and non-public, which could endanger the rights protected in these articles", adding that "if the government knows that there is a real and imminent threat, the State must take precautionary measures to prevent infringement as far as possible". The Court of Appeal determined the existence of the "real and imminent threat" caused by climate change mainly on the basis of climate science, and concluded that "it is appropriate to speak of a real threat of dangerous climate change, resulting in the serious risk that the current generation of citizens will be confronted with the loss of life and/or a disruption of family life" (Bakker, 2021, pp. 205-207; Burgers, 2023, p. 205)

More specifically, the Dutch Supreme Court judgment confirmed the Court of Appeal's finding that the Netherlands, as a State Party to the ECHR, must comply with certain positive obligations in order to guarantee the enjoyment, by everyone within its jurisdiction, of the right to life and to a private and family life. Regarding the positive obligations of States, the ECtHR determined that in order to protect the right to life, States are "obliged to take appropriate steps if there is a real and immediate risk to persons and the state in question is aware of that risk."[23] Indeed,

[22] Urgenda has relied on the "Kelderluik" criteria, which was taken from the 1965 Supreme Court on damage caused unknowingly by creating a dangerous situation (Cellar Hatch case) and is used to determine whether a conduct equates to unlawful endangerment.

[23] The ECtHR has clarified that the term 'real and immediate risk' refers to a risk that is both genuine and imminent. The Dutch Supreme Court affirmed that the term 'immediate' does not refer to imminence in a temporal sense, but rather that the risk in question is directly threatening the persons involved.

when the right to life is threatened as a result of environmental harm or natural disaster, these positive obligations are considered to have a more collective dimension, in the sense that the State must take measures to protect a larger group of persons, such as a community or the population of a region where a certain risk occurs that may directly threaten their lives. Regarding article 8, the Supreme Court cited the case law of the ECtHR establishing that "the obligation to take measures exists if there is a risk that serious environmental contamination may affect individuals' well-being and prevent them from enjoying their homes in such a way as to affect their private and family life adversely (Bakker, 2021, pp. 209-210).

The Supreme Court affirmed that "the Netherlands is obliged to do its part in order to prevent dangerous climate change, even if it is a global problem." It has confirmed the partial responsibility of individual States for wrongful acts for which all States have a joint responsibility, applying it to the harmful consequences of climate change. The Supreme Court's judgment has also confirmed and extended the collective or public interest dimension of individual human rights, especially the right to life and the right to private and family life, in the context of the risks caused by climate change. By extending the ECtHR's environmental jurisprudence in accordance with the application of positive human rights obligations to ensure the right to life and to respect for private and family life, the Supreme Court ruled that the Netherlands owes a "duty of care" to protect its citizens from climate change and as such reduce its GHG emissions by 25% in 2020 (Narula, 2021, pp. 154-155; Wewerinke-Singh & McCoach, 2021). For specifying the state duty of care, the Court relied on an extensive interpretation of the human rights set out in Articles 2 and 8 of the ECHR. In doing so, the Court went beyond existing case law of the European Court on Human Rights that had never before held that threats of remote environmental harm and in particular, future climate change were encompassed by the relevant human rights (Rehbinder, 2023, p. 145).

Like the judgement of the Court of Appeal, the Supreme Court held that climate change presents a "real threat...resulting in the serious risk that the current generation of citizens will be confronted with loss of life and/or a disruption of family life", and that under articles 2 and 8 of the Convention "the state has a duty

to protect against real threat" (Carnwath, 2024, pp. 250-251).

The state also argued that it is uncertain in science when, where and how dangerous climate change will materialise. The Supreme Court rejected this argumentation based on precautionary principle, pointing out that the fact that the mere existence of a sufficiently genuine possibility that this risk will materialise means that suitable measures must be taken." The Court adds that "the fact that this risk will only be able to materialise a few decades from now and that it will not impact specific persons or a specific group of persons, but large parts of the population does not mean...that Articles 2 and 8 ECHR offer no protection from this threat." In substantiating this conclusion, the Supreme Court referred to the findings deriving from climate science, thereby recognising that science may constitute a deciding factor in establishing accountability of States breaching their human rights obligations (Burgers, 2023, p. 205; Bakker, 2021, p. 212). That has rightly been treated as a landmark case, in its recognition that the threat posed by climate change is a human rights issue under the Convention (Carnwath, 2024, pp. 250-251).

The judgement firmly establishes that Articles 2 and 8 of the ECHR impose a positive obligation on States that are Parties to the ECHR to take appropriate measures to do their part to address climate change. In analysing the Supreme Court's judgement, it is important to note how the Supreme Court used an integrated approach to international law when interpreting and applying the ECHR, by relying on international climate change law – the principles and provisions of the UNFCCC, most notably, the precautionary principle and the principle of common but differentiated responsibilities and respective capabilities (CBDRRC) – to give substance to the positive obligations imposed on the Netherlands under Articles 2 and 8 of the ECHR.

3.2. *Shell* judgment

The *Urgenda Foundation v State of the Netherlands* litigation has sparked several lawsuits against governments. On 26 May 2021, the District Court of the Hague passed an unprecedented ruling in *Milieudefensie and others v Royal Dutch Shell PLC* (RDS)[24], holding a major transnational fossil-fuel company

[24] The respondent, RDS, is a public limited company established under the laws of England and Wales,

accountable for climate change.[25] The court that rendered the judgement is the same one that rendered the first instance judgment on 24 June 2015, in the *Urgenda* case. RDS is the parent company of the Shell group and one of the Carbon Majors, a limited group of fossil fuel producers that are collectively responsible for over 70% of GHG emissions since 1988. The landmark judgement recognised an obligation on the part of RDS to mitigate climate change. In the application of this obligation, RDS was ordered to cut its carbon dioxide (CO_2) emissions by 45% by 2030, as compared with 2019 levels, in line with the global emissions pathway for meeting the 1.5°C temperature goal contained in the Paris accord of 2015. This "reduction obligation" encompasses not only an obligation of result for the Shell group's own activities but also a "significant best-efforts obligation" to reduce emissions throughout its value chain and any entity directly linked to its business operations, products, or services, including end-users (Sanger, 2021, p. 425). *Milieudefensie*'s lawsuit against RDS, which although did not itself produce much GHG emissions, did set policy for the Shell group of companies (which collectively, the Court noted, was responsible for more GHG emissions than many countries), constitutes a major development in the trajectory of direct climate change litigation against private actors, one which seeks to reimagine the energy corporation as an actor both responsible for, and vulnerable to, the harmful consequences of a changing climate (Paiement, 2023, pp. 281-299; Wu, 2023, p. 754).

On 5 April 2019, Milieudefensie, along with six other NGOs and more than 17,000 citizens filed a class action against RDS, based on the climate impacts of the company's global operations. The claimants argued that RDS had breached its standard of care by failing to set adequate GHG emissions targets consistent with the Paris Agreement. Regarding standing, Dutch civil law enables associations to bring class actions against private entities. The Court admitted a class action by six of the NGO plaintiffs, representing the interests of current and future generations of Dutch residents. It did not give standing to the seventh NGO, which

with its head office in The Hague, and listed in New York, London, and Amsterdam. Since a restructuring of the Shell group, in 2005, RDS has been the top holding company. It is the direct or indirect shareholder in more than 1,100 companies established in jurisdictions around the world.

[25] District Court of the Hague, C/09/571932/HA ZA 19-379, 26 May 2021 (English version).

sought to represent the interests of foreign populations. The Court refused standing to the individual plaintiffs on the ground that they lacked "a sufficiently concrete individual interest" that distinguishes them from the common interest pursued by class action. This limitation of standing to public interest plaintiffs is broadly consistent with recent private climate litigation efforts in other jurisdictions. In this judgement, the Court had to determine the law applicable to Milieudefensie's climate reduction claim against RDS. The Court ruled that Dutch law was applicable as the law of the place where the damage occurred Under Article 4(1) Rome II and the law of the event giving rise to the damage under Article 7 Rome II as the place where the business decision was made, i.e., at the Dutch headquarters (Paiement, 2023, pp. 285-289).

This emissions reduction obligation concerns the group's entire energy portfolio and the aggregate volume of all CO_2 emissions (Scope 1, 2, 3)[26] associated with it. This is the first time that a court has imposed such a broad mitigation obligation on a corporation. The court based RDS's emissions reduction obligation on its duty of care towards current and future Dutch residents. It is also one of the first occasions on which tort law has successfully been invoked in litigation on climate change mitigation. The Shell case is based on Article 6:162 of the Dutch Civil Code[27] and, more specifically, the unwritten standard of care contained therein. The climate-related duty of care thus refers to an implied individual responsibility that RDS owes to Dutch residents, reflecting the internationally propagated and endorsed need for companies to genuinely take responsibility for CO_2 emissions produced by their business relations (Kanning, 2024, p. 203).

[26] Scope 1 emissions are those which occur from sources directly owned or operated by RDS; Scope 2 emissions are those emitted by third parties from whom RDS has acquired electricity, heating for operations; and Scope 3 emissions include all other emissions resulting from the company's activities and is often the main source of company-related GHG emissions. This category includes emissions that happen both upstream and downstream of the business activity, including by suppliers, in the transport of materials and products and, last but not least, by consumers.

[27] The "unwritten standard of care" (also referred to as the "open norm" in Dutch tort law) in Article 6:162 of the Dutch Civil Code prohibits anyone, including private actors, from causing major danger to others when measures can be taken to prevent that danger from occurring ('unlawful endangerment'). Under Dutch tort law (Art. 6:162 section 2 Dutch Civil Code), a tortious act can also be defined as "a violation of what according to unwritten law has to be regarded as proper social conduct." When looking for a standard of unwritten law, different legal sources, including principles of laws, juridical views and customs, can be used.

The "unwritten standard of care" from the Dutch Civil Code, which formed the basis of liability against RDS, allowed the Court to look at international law and other soft law instruments to determine the applicable standard of care (Wu, 2023, p. 755). In interpreting this stand, the court referred to, inter-alia, human rights – specifically the right to life and the right to respect for private and family life – and soft law endorsed by RDS, such as the UN Guiding Principles on Business and Human Rights (Guiding Principles),[28] the UN Global Compact (UNGPs) and OECD Guidelines for Multinational Enterprises (MNE Guidelines)" (Mayer, 2022; Macchi & van Zeben, 2021).

In the suit against RDS, plaintiffs extend the Urgenda rationale to private companies, arguing that given the Paris Agreement's goals and the scientific evidence regarding the dangers of climate change, RDS has a duty of care to take action to reduce its GHG emissions. The plaintiffs claimed that the company had violated its social duty of care. They argue that with its current policy, RDS does not live up to its commitments, even though it has known since the 1980s about the severe risks caused by climate change. The two main legal bases of the claim, which were also relied on in the Urgenda case, are first, Article 6:162 of the Dutch Civil Code – a civil law statute resembling the tort of negligence and second, the responsibility of RDS for its failure to protect human rights based on Articles 2 and 8 ECHR as well as in Articles 6 and 17 of the ICCPR. Referring to the Court of Appeal's Urgenda judgement, the claimants assert that besides States, companies also have due diligence obligations under human rights law, arguing that through the production and selling of fossil fuels, RDS's share in global GHG emissions is twice as high as that of the Dutch State as a whole. The plaintiffs recall that RDS has declared that its policies will be guided by international human rights standards for the private sector, including the UNGPS and the OCED Guidelines (Bakker, 2021, p. 217).

The Court interpreted the unwritten standard of care based on "the relevant facts and circumstances, the best available science on dangerous climate change and how to manage it" and

[28] Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy,' Annex to UNHRC, *Report of the Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises,* John Ruggie (21 March 2011), UN Doc. A/HRC/17/31 (endorsed by the UN HRC, Res. 17/4, June 16, 2011).

"the widespread international consensus that human rights offer protection against the impacts of dangerous climate change and that companies must respect human rights." The Court accepted the existence of "some uncertainty about precise manner in which dangerous climate change will manifest in the Netherlands" but held that this had no bearing on the prediction that climate change will lead to "serious and irreversible" consequences for inhabitants of the Netherlands, even when factoring in the taking of various adaptation measures. The Court recognised that these rights (Articles 2 and 8 ECHR and Articles 6 and 17 of the ICCPR) could not be directly invoked by the plaintiffs but held that they could be relied on in the interpretation of unwritten standard of care. According to the Court, there is a "widespread international consensus that human rights offer protection against impacts of dangerous climate change and that companies must respect human rights" – relying on Urgenda and on statements by the UN Human Rights Committee and the UN Special Rapporteur on Human Rights (Hosli, 2021, p. 98).

The Court drew heavily on the UN Guiding Principles as a further source by which to determine the standard of care owed by RDS to the plaintiff and described it as an "authoritative and internationally endorsed soft law instrument, which sets out the responsibilities of States and businesses relating to human rights." It is true that, while not formally legally binding on corporations, both the UN Guiding Principles and the MNE Guidelines apply to them regardless of their consent, in the sense that they express the expectations of states about responsible business conduct. The Court held that the responsibility of businesses to respect human rights, as reflected in the UN Guiding Principles, is "a global standard of expected conduct for all business enterprises wherever they operate" existing "independently of States' abilities and/or willingness to fulfil their own human rights obligations and does not diminish those obligations" and "over and above compliance with national laws and regulations protecting human rights". The Court stated that "Respecting human rights is not a passive responsibility: it requires actions on the part of businesses," which are expected to "prevent, limit and, where necessary, address" adverse human-rights impacts of their undertakings. These considerations reflect the concept of

due diligence under the Guiding Principles, which frame it as a process by which companies identify, prevent, mitigate, and account for how they address actual and potential adverse impacts on human rights (Hosli, 2021, pp. 199-200).

The Court stressed that the duty of business to respect human rights under the Guiding Principles is not limited to their own activities but extends to their operations, products or services by their business relationships, even if they have not contributed to those impacts." According to the Court, this responsibility encompasses a company's entire value chain, and, for this reason, RDS's responsibility "extends to the CO_2 emissions of these end-users (Scope 3) (Hosli, 2021, pp. 200-201). This means that "companies may be expected to identify and assess any actual or potential adverse human rights impacts with which they may be involved either through their own activities or as a result of their business relationships." The Court held that RDS did know the adverse human rights impacts of its activities – it had known for a long time of the dangerous consequences of GHG emissions and knew how much GHG emissions it is responsible for emitting. Therefore, RDS needed to take "appropriate action" to prevent and mitigate such adverse effects. Appropriate action includes taking steps to reduce GHG emissions generated from up-stream suppliers and down-stream end users (Wu, 2023, p. 756). In other words, the obligation applies globally, even if the responsibility is at least notionally "national."

The Court's reliance on soft international norms and standards, together with the consensus of scientific bodies, to interpret a domestic law obligation that essentially requires private actors to achieve the goals set out by the Paris Agreement is striking. The strict position is that the Paris Agreement and other international standards applicable to state conduct are not as a matter of positive international law binding on private actors. The Dutch Court acknowledges this point but since it is also given the power to rely on international norms and principles when applying ambiguous domestic law, the question of whether these norms are binding as a matter of international law is largely beside the point (Sanger, 2021, p. 427).

4. Discussion: Human Rights-based Arguments to Environmental Protection and Climate Change

National and regional tribunals have clarified the meaning of the right to a healthy environment and addressed many of the objections levelled at human rights-based approaches to environmental protection. The two analysed cases aptly illustrate that human rights arguments played a crucial role in the rulings. As noted above, recent jurisprudential evolutions have underlined the prominent role of rights-based discourses in the context of climate litigations. In recent years, more progressive litigation strategies have pushed governments to reassess their existing policies. At the domestic level, there is real scope for significant progress to be made to enhance and enforce the right to a healthy environment, elaborating and articulating substantive and procedural environmental rights, in the fight against dangerous climate change by litigation. In the context of climate change, this could mean that even with its shortcomings, that is, neither international human rights law nor international environment law imposes direct obligations on the private sector to ensure human rights or address climate change,[29] international human rights law and related mechanisms have provided fertile ground for civil society members to press their climate change-related claims and advance their efforts to hold states accountable. In the absence of binding international laws and mechanisms to enforce business's responsibility to respect human rights, the greening of human rights has helped to weave together two distinct branches of public international law in a manner that arguably strengthens protections and clarifies obligations on both ends. As such, the important work of articulating states' international cooperation and extraterritorial human rights obligations, including their responsibilities to regulate fossil fuel companies that are causing global climate harm, will no doubt continue. In addition, the human rights-based approach has been used as a tactical lever by civil society and affected populations to urge states to prevent to the greatest extent possible the current and future negative

[29] There are, however, some non-binding or soft law standards that states are beginning to reflect in their domestic laws. These standards are embodied in the Guiding Principles on Business and Human Rights which were unanimously adopted by the UN Human Rights Council in 2011.

human rights impacts of climate change through stringent regulatory measures, and to push energy-intensive industrial actors to limit anthropogenic carbon emissions through fulfilling their climate mitigation obligations.

An environment of a particular quality is necessary to enjoy many of the rights recognised under human rights law. In a degraded or polluted environment, it becomes difficult to enjoy protected rights. The drafters of the UDHR never dreamed of including environmental rights in the list of rights that are fundamental to a decent human life. However, by the early years of the 21st century, it had become clear that environmental problems generate profound human rights impacts and that a sustainable environment is essential to the enjoyment of all human rights (Sritharan, The Ethics of Climate Change, Climate Policy and Climate Justice, 2023, p. 171).

While no case can singlehandedly prevent the catastrophic effects of climate change predicted by scientists, there is growing interest among those bringing, funding, and analysing strategic climate litigation in which cases have the greatest prospects of achieving cut through in the policy and public debate, and accelerating climate action (Peel & Markey-Towler, 2022, p. 1484). The international community has adopted a considerable array of international legal instruments and created specialised organs and agencies at global and regional levels to respond to identified problems in human rights and environmental protection, although often addressing the two topics in isolation from one another (Zhang, 2024, p. 34).

Soft law agreements, such as the 1972 Stockholm Declaration and the 1992 Rio Declaration, have also played an important role in the development of international environmental law and commonly evolve into hard law. Thus far, the international community has regulated climate change action through multilateral environmental agreements and obligations established under the UNFCCC. Another significant treaty regarding climate change is the Paris Agreement. It uses a multitude of different, finely nuanced wording to describe the commitments of Parties. In legal literature, the classification ranges from binding rules to duties of care to soft law to strong normative expectations. By now, there have been quite a number of remarkable national court decisions that deal with the implementation of the Paris Agreement by state

Parties. The decisions have different subject-matters and use different legal approaches. One can distinguish litigation based on human rights, litigation to enforce statutory obligations to set or implement climate targets and litigation on the authorisation of individual projects (Rehbinder, 2023, pp. 139-150).

The ECHR and its protocols do not contain a fundamental right to the protection of a healthy environment. Nevertheless, the above two landmark cases from the Netherlands show that articles 2 and 8 ECHR encompass the state's duty to take positive measures to prevent the danger of climate change, the judgments do not mention the right to a healthy environment. This could be that both Dutch rulings were passed before the latest developments with respect to the legal recognition of the right to a healthy environment by the UNGA in the summer of 2022, declaring access to a clean, healthy and sustainable environment to be a universal human right.

The interdependence of the right to a healthy environment and all other fundamental rights has also been widely acknowledged for years. Even the UNGA pointed it out in its brand-new resolution recognising the fundamental right to a clean, healthy and sustainable environment:

"Reaffirming...that all human rights are...**interdependent and interrelated**; Affirming the importance of a clean, healthy and sustainable environment for the enjoyment of all human rights..." (Emphasis added.)

In the fundamental right to a clean, healthy and sustainable environment as approved by the United Nations, climate has a place. The Resolution itself also addresses the triple environmental crisis, with a separate mention of global warming. It again recognises the central place of the enjoyment of a clean, healthy and sustainable environment for the effective enjoyment of all human rights. In the words of the UNGA Resolution 2022:

"Recognizing also that...the impact of climate change, the unsustainable management and use of natural resources, the pollution of air, land and water, the unsound management of chemicals and waste, the resulting loss of biodiversity and the decline in services provided by ecosystems interfere with the enjoyment of a clean, healthy and sustainable environment and that environmental damage has negative implications, both direct and indirect, for the effective enjoyment of all human rights."

As a premise for the enjoyment of nearly all, if not all, other fundamental rights, the fundamental right to a healthy environment occupies a central place within the fundamental rights constellation (Billiet, 2024, p. 99). Accordingly, one could conclude that just as human rights cannot exist without a clean, healthy and sustainable environment, sound environmental governance cannot be realised without legal protection and promotion of environmental human rights (Zhang, 2024, p. 37).

Scientists suggest humans are causing irreversible earth system transformations. These transformations are observable in terms of earth system tipping points that are triggered by human activities. Climate change has evidently become one of the most urgent existential planetary concerns. The rise of Anthropocene narrative and its associated terminologies, such as climate related tipping points and planetary boundaries, has provoked a major shift in how we understand human impacts on planet Earth. A planetary perspective therefore offers an opportunity to understand that everything is interconnected, that cause-and-effect relationships exist, and that what we do in our own backyards has a much more widely diffused impact than we thought possible. While these planetary challenges affect the entire biosphere in which humans are inextricably situated, the impacts on humans are not equally felt. By drawing attention to inequality, human rights provide an important lens through which to examine and analyse the differential impacts of climate change on specific groups of people in society (Kotze, 2022, pp. 1423-1444).

The 2022 IPCC report noted that climate change has adversely affected the physical and mental health of people globally and has a wide range of other economic and social impacts that are most severe for people with existing vulnerabilities. The report and wider literature on vulnerability to climate change demonstrate that certain groups, such as those facing socioeconomic disadvantage, or disadvantage based on race or ethnicity, women, the elderly and very young, or people with disabilities, are being impacted most severely with inadequate support to survive and adapt effectively. This is a gap that needs far greater attention in developing mitigation, adaptation and climate disaster responses that are informed by human rights. Tackling these systemic inequalities and the linked drivers of climate change requires transformation, which the 2022 IPCC report on climate adaptation de-

fines as a change in the fundamental attributes of natural and human systems. Inequalities between different groups in societies must be addressed as they affect rights, including those related to health, housing, education, water, safe working conditions and an adequate standard of living. The IPCC sees such changes as necessary in pursuing the goal of climate justice (Clark & Goldblatt, 2023).

Climate change has been conceptualised, from a legal-scholarly perspective, as an environmental problem. Climate change affects the rights of people in vulnerable situations more severely and rapidly, like those in low-lying small island states or the least developed countries, the poor, the elderly and children. It is well established that climate change extensively affects the realisation and enjoyment of established human rights. Global warming could leave many without adequate food, water, and shelter, and threaten their economic and social rights. The adverse effects of climate change are already posing significant threats to human life, livelihoods and traditional cultures in developing countries with a limited capacity to adapt. Solving climate change requires international cooperation. States have the sovereign right to govern the affairs that occur within their territorial areas, including the authority to choose whether to control the emission of GHGs or to take any other action implicated by climate change. While states enjoy sovereign rights to exploit their own resources according to their own environment and development policies within their jurisdiction, such sovereign rights are limited by reciprocal obligations in relation to other equally sovereign states. States' acts and omissions contributing to climate change can be characterised as a breach of human rights obligations. State responsibility arises automatically upon the occurrence of a breach of such obligations (Sritharan, 2023, pp. 18-25)

The Inter-American Court of Human Rights (IACtHR)[30] has stressed, in its 2017 advisory opinion on the environment and human rights, that there is an undeniable relationship between the protection of the environment and human rights, including social and economic rights such as health, water, food and housing. The advisory opinion emphasized the vulnerability of various so-

[30] The Inter-American Court of Human Rights was established by the American Convention on Human Rights. The court is an autonomous judicial institution whose purpose is the application and interpretation of the American Convention on Human Rights.

cial groups to environmental damage and the obligation of states to protect these groups "based on the principle of equality and non-discrimination." It also recognised that the right to a healthy environment "has both individual and also collective connotations," including the rights of future generations. Furthermore, in its 2017 advisory opinion, the IACtHR concluded that a state has jurisdiction over persons outside its territory whose rights are violated by activities over which such state exercises effective control. This interpretation of jurisdiction has significant implications for climate litigation in the Inter-American system, and may influence and embolden the International Court of Justice as it prepares a response to the UNGA's request for an advisory opinion on the obligations of states with respect to climate change[31] (Gonzalez, 2023, pp. 173-178).

The recent recognition of the right to a healthy environment is underpinned by an acknowledgement of the interdependence between humanity and its habitat and established on the recognition that climate change and other human-driven environmental harms have direct and indirect negative implications for the enjoyment of all other human rights. The new right to a healthy environment now situates state obligations to provide social and economic rights as well as civil, political and cultural rights alongside obligations to protect the environment, and the absence of these rights generates greater vulnerability to environmental harms. The emergence of the newly minted right to a healthy environment adds a few extra layers of protection to the existing environmental laws, which contain precise environmental standards and enforceable integration clauses (Clark & Goldblatt, 2023, pp. 67-69).

5. Conclusion

The recent resurgence of the right to a healthy environment has sparked new hope in times of unprecedented climate change, increasing biodiversity losses and persistent air, water, and soil pollution. The UNGA's recognition of the right to a healthy environment is an exciting legal development that lays the groundwork for further contestation of the larger systemic causes of

[31] UN Doc A/77/L.58 (March 29, 2023).

cotemporary socio-ecological crises. Although the basic parameters of the human right to a clean, healthy and sustainable environment are clear, its application in specific situations will require careful analysis and appropriate measures. In the context of climate change and its already felt and future harms to human and non-human life, the right to a healthy environment highlights the need to reorient human rights to better account for our embedded relationship with the environment. This interrelationship recognises the value that a human rights lens can bring to any regulatory responses to the environmental challenges faced by humanity in order to better address the complex inequalities and injustices generated by climate change.

Furthermore, its articulation with existing human rights of the first and second generations and the alignment with novel approaches will give rise to new promising legal and jurisprudential evolutions in the years to come. In times that are characterised by heatwaves, ecological degradation and droughts, it might be a sobering thought to conclude that even the recent international recognition of the human right to a healthy environment does not represent a silver bullet for existing environmental troubles. On its own, recognising the right to a healthy environment will do all too little to halt the headlong rush to an unsustainably warming planet and the unwillingness of governments to value the environment for other than instrumental reasons. Nevertheless, with processes already well underway to obtain advisory opinions, an explosion of climate change litigation at the national level, and treaty bodies becoming increasingly aware of the indispensability of factoring environmental considerations into their extensive interpretive functions, there will be no shortage of contexts in which the process of interpretation will take place.

Just as human rights cannot exist without a healthy environment, a sound governance of the environment cannot be achieved without respect for human rights. Although this UN recognition of environmental human rights is more than moral posturing, some states have been hesitant to add new rights and tend to avoid legally binding treaties. There are several pathways ahead to strengthen the human right to a healthy environment in the international legal arena through embedding this newly recognised environmental human right into a global legal instrument. The impact of climate change on a range of human

rights is now well documented, it might now be the right time to supplement the structure of international human rights law with the adoption of a third international covenant codifying universally accepted environmental human rights in accordance with the twin international human rights covenants of 1966 (ICCPR and ICESCR). One could also foresee a parallel pathway of international environmental law, enshrining the right to a healthy environment in a founding global environmental treaty. Each multilateral environmental agreement is governed by its own set of rules and, as a result, the international environmental law system is criticized for its lack of unity. Establishing a single founding global environmental treaty that recognises and provides the human right to a healthy environment as a principle of environmental law with legal force would be considered a significant step forward.

As climate change litigation continues to expand around the globe, *Urgenda* provides important pointers for some of the interpretative and evidentiary challenges that courts have to grapple with in these cases. While the impact of the *Urgenda* case on climate cases in other countries is beginning to manifest itself, the *Shell* case stands out from other lawsuits against private corporations in that the plaintiffs' claim implies that the defendant must adapt its global operations quite drastically to bring them into alignment with the scientific consensus that emissions must be reduced substantially and swiftly in order for the world to have a fair chance of achieving the Paris Agreement's warming-limitation goals.

Climate litigation will be key in pushing state and non-state actors who demonstrably fall below accepted legal standards of conduct, whether based on human rights, corporate social responsibility, tort law duties of care, public trust, among other established principles, many of which are now being actively explored in jurisdictions around the world. Climate change has both immediate and long-term impacts, as is well-known, implicating a wide array of human rights such as the rights to life, culture, health, and property. Using the human right to a clean, healthy and sustainable environment as a framework as a framework for analyzing and responding to the threats posed by climate change has the potential to address both immediate and longer-term dangers. Moreover, using the human right to a

clean, healthy and sustainable environment as a framework as a framework for approaching the human rights aspects of climate change can counter the unfortunate and all-too-common tendency to ignore other serious environmental threats when thinking about climate change.

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