Center for Human Rights and Environment (CHRE/CEDHA)

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COMPENDIUM OF KEY CLIMATE CHANGE JURISPRUDENCE

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Summary Analysis of Key Themes

The cases in this compendium have been selected and analyzed to highlight key overall themes in global climate change jurisprudence. The themes identified are present in many cases that consider the legal and factual issues associated with climate change and are especially relevant to human rights and climate change.

As a result of the large number of climate cases, diversity of jurisdictions, and varied implications of this litigation, it is challenging to categorize, rank, or assess the comparative significance of cases by reference to uniform qualitative metrics. This compendium, therefore, adopts a focused thematic analysis with a scope limited to 29 cases from 22 jurisdictions. These cases are organized by jurisdiction, and the reasoning and significance of each case are analyzed by reference to six color-coded) themes. These key themes are:

A. Supervision and accountability of state and non-state actors in addressing climate change

B. Use and importance of climate science

C. Human rights and climate change

D. States' obligations under international treaties to address climate change

E. Judicial development and evolution of legal principles to address climate change

F. Access to justice and legal standing to bring climate cases

Each case in the compendium demonstrates careful judicial consideration in resolving the factual and legal issues in dispute, considering the judiciary's institutional role within each legal system and the urgent, unique, and catastrophic impacts and risks associated with climate change.

A summary of each theme follows, highlighting key legal principles, theories, and approaches in the cases included in the compendium.

A. Supervision and accountability of state and non-state actors in addressing climate change

Courts (broadly defined to include judicial bodies like administrative tribunals) are increasingly considering the accountability of both state and non-state actors for climate impacts. Some cases include examples of courts applying strict, and sometimes novel, accountability and enforcement mechanisms to states and corporations to implement their decisions and achieve targeted and effective action.

Examples of Latin American courts ordering government accountability for climate action include:

- In *PSB et al. v. Brazil (Brazil),* the Supreme Federal Court compelled the Brazilian government to operationalize its National Climate Fund to satisfy its constitutional and legal obligations of providing and allocating funds for its execution.
- In *Future Generations v. Ministry of Environment (Colombia),* the Supreme Court of Justice ordered the Colombian government to prepare short-, medium-, and long-term action plans to combat deforestation and ensure compliance with the government's target for zero-net deforestation in the Colombian Amazon.
- In *Herrera Carrion et al. v. Ministry of the Environment et al. (Ecuador)* the Provincial Court of Justice of Sucumbíos ruled against the Ecuadorian government, ordering a phased elimination of gas flaring in the Amazon by 2030 through a detailed set of activities. These activities included that no new authorizations for gas flaring should be issued and that existing flaring sites located near populated areas must be shut down within 18 months.

The European Court of Human Rights (ECtHR) recently established criteria to evaluate the sufficiency of its member States' national climate policies:

- *In Verein KlimaSeniorinnen Schweiz and Others v. Switzerland* (European Court of Human Rights), the Court established five non-cumulative criteria to assess whether a State's national climate policy is sufficient to meet its minimum human rights obligations, and found that Switzerland's climate policy was in violation of those obligations.

Other prominent examples outside of Latin America include:

- The two French cases in the compendium, *Notre Affaire à Tous et al. v. France* (France) and *Commune de Grande-Synthe v. France* (France). In both cases, the Courts held the French government accountable for exceeding the "carbon budget" the government had set, ordering the government take all necessary measures to reduce greenhouse gas emissions in compliance with its national reduction targets.
- In *Shrestha v. Office of the Prime Minister et al.* (Nepal), the Supreme Court of Nepal ordered the government to enact a climate change law, detailing the topics that this legislation would have to include to adequately address the government's obligations under international law (the Paris Agreement) and domestic constitutional law.

Courts are also imposing obligations on non-state actors to address climate change. For example:

- In *Milieudefensie v. Royal Dutch Shell* (The Netherlands), at trial and on appeal, both Courts recognized that Shell had a legal obligation under Dutch domestic law to reduce its CO_2 emissions. While the Hague Court of Appeal overturned the District Court's orders requiring Shell to reduce its emissions by a specified percentage, the recognition of the corporation's direct obligations to reduce emissions is a landmark judicial finding.

In some cases, courts have also supervised the implementation and enforcement of their orders, including by establishing ad hoc expert bodies to assist the government's implementation.

- In *Ashgar Leghari v Pakistan* (Pakistan), the Lahore High Court ordered the formation of a climate change Commission composed of experts and relevant stakeholders to oversee implementation of Pakistan's climate law and identify priority executive and legislative actions.

Some key features of this theme addressed in the case-by-case analyses include:

- **Judicial orders turning voluntary climate commitments into legal obligations.**
- **Application and enforcement of judicial remedies in** climate cases.
- **Role of courts in overseeing climate policies,** plans and private/public activities that contribute to climate change.
- **Judicial review or supervision of orders in climate cases.**

Key cases: *PSB et al. v. Brazil* (Brazil), *Future Generations v. Ministry of Environment* (Colombia), *Herrera Carrion et al. v. Ministry of the Environment et al.* (Ecuador), *Ashgar Leghari v Federation of Pakistan* (Pakistan), *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland* (European Court of Human Rights), *Friends of the Irish Environment v. Ireland* (Ireland), *Notre Affaire à Tous et al. v. France* (France), *Milieudefensie v. Royal Dutch Shell* (The Netherlands), *Commune de Grande-Synthe v. France* (France), *Shrestha v. Office of the Prime Minister et al.* (Nepal), *Smith v. Fonterra Co-Operative Group Ltd* (New Zealand).

B. Use and importance of climate science

Courts are increasingly relying on the best available science to assess the nature and urgency of climate harm and to develop legal obligations and principles. Climate science plays a critical role in climate litigation, informing judicial reasoning and decision-making. As litigants present strong scientific evidence on the causes and impacts of climate change, judges are evaluating this body of evidence to make legal and factual determinations.

For example, in Latin America:

- In *PSB et al. v. Brazil* (Brazil), the Supreme Federal Court acknowledged the ongoing climate emergency and its environmental impacts. Building on this evidence, the Court recognized humanity's role in environmental degradation and the relevance of government policies such as climate funds. Justice Edson Fachin's concurring vote in the decision addresses key findings from the IPCC's 6th Assessment Report, including the Arctic's albedo effect and temperature thresholds.
- In *Future Generations v. Ministry of Environment* (Colombia), the Supreme Court of Justice considered the scientific evidence linking deforestation, increased emissions, and rising temperatures to impacts and risks to human survival and ecosystems. The Court found that humanity's substantial contribution to climate change, as evidenced by scientific studies, would lead to irreversible damage to humanity and ecosystems. The Court also highlighted that these studies provided scientific certainty about the irreversibility of specific environmental harms.

Outside of Latin America:

- In *The State of the Netherlands v. Urgenda* (The Netherlands), the Supreme Court of the Netherlands recognized the importance of observing updated scientific evidence on temperature thresholds and correctly identified that the change in global consensus from a 2°C target to a 1.5°C target heightened the urgency of emissions reductions.
- In *VZW Klimaatzaak v. Kingdom of Belgium & Others* (Belgium), the Brussels Court of Appeal declared that a normally prudent and diligent State must update their climate policies in line with the best available climate science, citing IPCC reports as the key source informing the minimum threshold imposed by prudence.
- In *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland* (European Court of Human Rights), the ECtHR drew extensively upon the most recent IPCC reports to establish the facts in relation to climate change, and included as part of their criteria for national climate policies that domestic authorities update greenhouse gas emissions reductions targets based on the best available evidence.

Some key features of this theme addressed in the case-by-case analyses include:

- **Use and importance of the best available science** in evidence and judicial reasoning.
- **Temperature thresholds,** including the **scientific importance of 1.5°C** and the implications of exceeding 1.5°C, and the **differing impacts between 1.5°C and 2°C.**
- **Nature and urgency of climate harm,** including the **limited time available to act, the severity** of the climate emergency, and the risk of **irreversible and abrupt changes** in the climate system (tipping points).
- **The need for mitigation, adaptation, and sustainable development: "climate resilience".**
- **Climate change mitigation,** including the critical role of mitigating both CO_2 and non-CO_2 pollutants (i.e. nitrous oxide (N_2O) and the **short-lived climate pollutants** (SLCPs)), the importance of **decarbonization,** an explanation of the **carbon budget,** and the impacts of both **near-term** and **long-term warming.**
- **Climate change adaptation,** including the limits of adaptation measures.
- Use and importance of **attribution science.**

Key cases: *PSB et al. v. Brazil* (Brazil), *Future Generations v. Ministry of Environment* (Colombia), *ITLOS Advisory Opinion on Climate Change* (International Tribunal of the Law of the Sea), *The State of the Netherlands v. Urgenda* (The Netherlands), *VZW Klimaatzaak v. Kingdom of Belgium & Others* (Belgium), *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland* (European Court of Human Rights), *Neubauer v. Germany* (Germany), *Milieudefensie v. Royal Dutch Shell* (The Netherlands), *Sharma v. Minister for the Environment* (Australia), *Waratah Coal Pty. Ltd. v. Youth Verdict Ltd. & Ors.* (Australia), *Held v. Montana* (United States), *Application of Hawai'i Electric Light Company, Inc.* (United States).

C. Human rights and climate change

Courts around the world have recognized the connection between climate change and human rights, including constitutional and other fundamental rights. Many courts have now found that climate impacts threaten a range of human rights, such as the rights to life, private and family life, health, culture, and a healthy environment. Consequently, courts have held that governments have a duty to act on climate change as part of their human rights obligations.

Seminal cases like *The State of the Netherlands v. Urgenda* (The Netherlands), *Future Generations v. Ministry of Environment* (Colombia), *Billy et al. v. Australia* (UN Human Rights Committee), *MK Ranjitsinh et al. v. Union of India* (India), and *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland* (European Court of Human Rights) demonstrate the climate-human rights nexus. While some of these cases have focused on the generalized human rights impacts of climate change on the population at large, others have focused on its particularized impacts on vulnerable persons and/or groups—such as indigenous communities, youth, and the elderly.

In Latin America, several courts have addressed climate impacts on human rights and held that governments have positive obligations to protect both environmental and human rights.

- In *PSB et al. v. Brazil* (Brazil), the Supreme Federal Court underscored the constitutional duty to operationalize the Climate Fund, asserting that environmental treaties, including the Paris Agreement, carry a supralegal human rights status. The Court highlighted that the Brazilian constitution recognizes the supralegal character of international human rights treaties to which Brazil is a party. The Court reasoned that treaties on environmental law, like human rights treaties, have supranational status, so governments have a duty to act on climate change as part of their human rights obligations.
- In *Herrera Carrion et al. v. Ministry of the Environment et al.* (Ecuador), the Provincial Court of Justice of Sucumbíos recognized the fundamental connection between climate change, environmental degradation, and human rights. By declaring routine gas flaring unconstitutional, the Court affirmed that environmental harm directly threatens rights to health, water, food, and a clean environment, particularly for vulnerable communities. The decision underscores the State's obligation to implement immediate and long-term measures to prevent environmental damage and aligns with Ecuador's constitutional recognition of the rights of nature.

Some Latin American courts have also considered and developed the connection between human rights and the rights of nature. Key examples include:

- In the *Atrato River decision* (Colombia), in which the Constitutional Court of Colombia recognized the river as a subject of rights, addressing pollution and illegal mining impacting indigenous and Afro-descendant communities. This decision not only affirmed the human right to a healthy environment, but also incorporated indigenous rights and environmental stewardship principles, establishing that the state must protect the rights of nature alongside human communities.
- In *Future Generations v. Ministry of Environment* (Colombia), the Supreme Court of Justice declared the Amazon rainforest to be a rights-bearing entity and recognized the interconnectedness of environmental health with the rights of future generations. As a result, the Court ordered the government to formulate a short-, medium-, and long-term action plan to counteract the deforestation rates, since the Amazon was entitled to protection, conservation, maintenance, and restoration by the State and its territorial agencies.

The growing body of jurisprudence linking climate change and human rights may indicate a global shift toward recognizing environmental protection as a fundamental rights' obligation. Courts across different regions are holding governments accountable for climate inaction, emphasizing the duty to safeguard human rights in the face of environmental harm. Cases from Latin America highlight the region's leadership in integrating human rights and environmental law, reinforcing the rights of both people and nature. These cases contribute

to the evolving legal framework on climate change and human rights, clarifying governments' responsibilities to address environmental harm and its impact on communities.

Some key features of this theme addressed in the case-by-case analyses include:

- **Climate impacts on the human rights of vulnerable groups.** For example, impacts on Indigenous communities, children and youth, the elderly, rural populations, Afro-descendant communities, and islanders, among others.
- **Current violations** of human and constitutional rights, and **substantial risk of future violations** of human and constitutional rights due to climate change.
- **Human rights obligations linked to climate commitments.**
- **Non-state actors' human rights obligations.**
- **Due diligence obligations under human rights law.**

Key cases: *PSB et al. v. Brazil* (Brazil), *Herrera Carrion et al. v. Ministry of the Environment et al.* (Ecuador), *Future Generations v. Ministry of Environment* (Colombia), *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland* (European Court of Human Rights), *The State of the Netherlands v. Urgenda* (The Netherlands), *Milieudefensie v. Royal Dutch Shell* (The Netherlands), *Waratah Coal Pty. Ltd. v. Youth Verdict Ltd. & Ors. (Australia), Billy et al. v. Australia (UN Human Rights Committee), Teitiota v. New Zealand* (United Nations Human Rights Council), *Sacchi et al. v. Argentina et al.* (UNCRC), *Ashgar Leghari v Federation of Pakistan* (Pakistan), *MK Ranjitsinh et al. v. Union of India* (India).

D. States' obligations under international treaties to address climate change

Several courts have interpreted international treaties as requiring states to positively address climate change through adaptation and mitigation measures. A leading example from an international tribunal is:

- In the *ITLOS Advisory Opinion on Climate Change* (International Tribunal of the Law of the Sea), the Tribunal clarified that States have a duty under the UN Convention on the Law of the Sea (UNCLOS) to mitigate climate pollutants, based on an obligation of strict diligence derived from an objective assessment of the risks posed by these pollutants to the marine environment. The Tribunal affirmed that States' obligations to protect the marine environment under UNCLOS extend beyond the UNFCCC and Paris Agreement. Rejecting a key argument made by high-emitting States, the Tribunal determined that while the UNFCCC and Paris Agreement are relevant to interpreting and applying UNCLOS, they do not constitute lex specialis.

Several courts in Latin America have used international treaties and legal principles to clarify states' climate actions, including:

- In *Future Generations v. Ministry of Environment* (Colombia), the Supreme Court of Justice developed the concept of a global ecological public order, comprising both international and domestic commitments, such as the 1992 Rio Declaration and the UNFCCC. The Court emphasized that the protection of the Amazon is both a national and global obligation. Thus, Amazon deforestation violates this ecological global public order, as well as national commitments under the Colombian Constitution.
- In *PSB et al. v. Brazil* (Brazil), using similar reasoning to *Future Generations v. Ministry of Environment* (Colombia), the Supreme Federal Court acknowledged the existence of a transnational legal regime for tackling climate change integrated by international environmental agreements, which supersedes domestic legislation. The ruling reinforced that Brazil's obligations under treaties like the UNFCCC, the Kyoto Protocol, and the Paris Agreement are binding and must be effectively implemented by the government, underscoring the judiciary's role in ensuring compliance with international environmental commitments.

Outside of Latin America, several cases including *The State of the Netherlands v. Urgenda* (The Netherlands), *Neubauer v. Germany* (Germany), and *Notre Affaire à Tous et al. v. France* (France) have assessed the validity

of national legislative frameworks by reference to states' obligations under the Paris Agreement and have resulted in courts ordering governments to take specific actions to meet their national climate commitments.

Some key features of this theme addressed in the case-by-case analyses include:

- Use and reliance on **international treaties and legal principles** to clarify states' climate actions domestically and globally.
- **"Fair share" principles** and the consideration of **carbon budgets.**
- **Due diligence obligations** under international environmental law.
- Development of **domestic climate legal obligations** through reference to international climate instruments.

Key cases: *ITLOS Advisory Opinion on Climate Change* (International Tribunal of the Law of the Sea), *Neubauer v. Germany* (Germany), *Notre Affaire à Tous et al. v. France* (France), *Milieudefensie v. Royal Dutch Shell* (The Netherlands), *Future Generations v. Ministry of Environment* (Colombia), *PSB et al. v. Brazil* (Brazil).

E The judicial development and evolution of legal principles to address climate change

Courts around the world are developing, re-purposing, and refining legal principles and doctrines to address new and unique issues posed by the climate emergency. Some courts have adapted and applied existing principles while also establishing new legal principles to adjudicate cases concerning climate inaction and climate harm.

For instance, courts have emphasized and applied longstanding principles of precaution and prevention to address climate risks, while applying existing legal doctrines like the rights of nature to prevent further serious damage to the environment from climate impacts.

In Latin America, for example:

- In *Future Generations v. Ministry of Environment* (Colombia), the Supreme Court of Justice applied the precautionary principle and the concept of intergenerational equity, emphasizing the urgency of protecting both present and future generations from climate impacts. The Court also declared the Amazon a subject of rights, following the precedent set by the Constitutional Court in the Atrato River decision (Colombia).
- In *Herrera Carrion et al. v. Ministry of the Environment et al.* (Ecuador), the Provincial Court of Justice of Sucumbíos also analyzed the precautionary principle. Given the overwhelming evidence of the harmful effects of gas flaring, the Court ruled that the State was required to take preventive action rather than postpone regulation until further studies were conducted.
- In *Amparo en Revisión No. 610/2019* (Mexico), the Supreme Court applied the precautionary principle as a central element of its reasoning. Faced with scientific uncertainty regarding the environmental and health impacts of increasing ethanol content in gasoline, the Court held that authorities were obligated to prevent potential harm. The ruling emphasized that economic or policy decisions must not compromise environmental safeguards, especially when public health and climate commitments are at stake. The Court reiterated that the precautionary principle is not merely aspirational but legally binding, particularly in the context of Mexico's constitutional and international obligations.

Outside of Latin America

Other cases like *Milieudefensie v. Royal Dutch Shell* (The Netherlands), *VZW Klimaatzaak v. Kingdom of Belgium & Others* (Belgium), and *Smith v. Fonterra Co-Operative Group Ltd* (New Zealand) illustrate how some courts have adapted, or been prepared to evolve, traditional principles of private law to address the harms caused by climate change. These cases demonstrate a willingness to apply tort law, corporate responsibility, and duty of care principles to hold governments and private actors accountable for their contributions to climate change. These cases also highlight the role of courts in clarifying and evolving legal principles where legislative or regulatory action on climate is insufficient.

Climate litigation globally has also spotlighted legal concepts and principles like the principle of intergenerational justice and the rights and interests of future generations, which are already recognized in certain jurisdictions. For instance:

- In *Neubauer v. Germany* (Germany), the Federal Constitutional Court of Germany found that the German government's failure to take adequate measures to combat climate change had violated the German Basic Law's obligation to spread the opportunities associated with freedom proportionately across generations. Thus, the disproportionate climate burden faced by future generations constituted a violation of their fundamental freedoms.

In some cases, novel arguments or legal concepts presented by litigants have been accepted at trial, often supported by compelling scientific evidence of the nature of climate harm but have then been narrowed or rejected on appeal. For example:

- In *Sharma v. Minister for the Environment* (Australia), the trial judge's decision in the Federal Court of Australia was the first time in a common law jurisdiction where a court found a novel duty of care on a State to avoid serious harm from actions that lead to greenhouse gas emissions. This duty of care finding was overturned on appeal. Nevertheless, the appeal court upheld the trial judge's extensive and detailed factual findings using the best available science to show the current and future impacts of climate change on Australia.

In many cases and legal systems, issues of causation continue to pose challenges for courts determining legal issues of liability and damage associated with climate change. Litigants seeking to avoid liability and deny causation for harm, including some governments, have argued that climate impacts from particular actions/inactions are de minimis or that climate risks have not yet sufficiently materialized or are too uncertain to lead to a finding of legal liability. While difficult to generalize, in several significant cases these types of arguments have been rejected by courts. Examples include:

- In *Billy et al. v. Australia* (UN Human Rights Committee), the government of Australia argued before the UN Human Rights Committee that the claimants had not shown a causal connection between the alleged violations of their rights and Australia's climate measures, or alleged failure to take measures; and that future climate impacts were too uncertain to require further action. The government also denied the human rights impacts of climate change on the Torres Strait Islander people because inter alia Australia is not the main, or only, contributor to global warming. The Committee rejected Australia's arguments on admissibility and the merits, finding that Australia had breached its international human rights obligations.
- In *Held v. Montana* (United States), the government of the U.S. State of Montana argued that the cumulative nature of greenhouse gas emissions meant that multiple sources had caused the environmental harm, and that therefore the plaintiffs (1) did not have an "injury" that was "redressable" by a court and capable of establishing standing, and (2) the State constitutional right to a clean and healthful environment could not protect against harms of that kind. The Supreme Court of Montana, on appeal, upheld the District Court's findings on both legal issues and rejected the State government's arguments. The Court found that the plaintiffs had standing to challenge the relevant Montana legislation and policies. The Supreme Court also found the scope of the constitutional right to a clean and healthful environment extended to both anticipatory and preventative protection from climate harm.

Some key features of this theme addressed in the case-by-case analyses include:

- **Development of climate and nature-focused legal principles.**
- **Application and evolution of causation principles to climate harm.**
- **Intergenerational justice** and the rights and interests of future generations.
- **Burden and standard of proof in climate and environmental cases.**
- **Rights of Nature** and the recognition of ecosystems as rights-bearing entities.

Key cases: *ITLOS Advisory Opinion on Climate Change* (International Tribunal of the Law of the Sea), *Atrato River decision* (Colombia), *The State of the Netherlands v. Urgenda* (The Netherlands), *Milieudefensie v. Royal Dutch Shell* (The Netherlands), *Neubauer v. Germany* (Germany), *VZW Klimaatzaak v. Kingdom of Belgium & Others* (Belgium), *Sharma v. Minister for the Environment* (Australia), *Held v. Montana* (United States), *Smith v. Fonterra Co-Operative Group Ltd* (New Zealand), *Waratah Coal Pty. Ltd. v. Youth Verdict Ltd. & Ors.* (Australia), *Shrestha v. Office of the Prime Minister et al.* (Nepal), *Future Generations v. Ministry of Environment* (Colombia).

F. Access to justice and legal standing to bring climate cases

Legal standing is a critical issue in climate cases, with courts worldwide considering when and how to adapt existing standing and justiciability rules to allow individuals and groups to bring climate-related claims. Some courts are already addressing the expansion of legal standing in climate cases and acknowledging the disproportionate impact of climate change on vulnerable groups, enabling affected individuals, public interest organizations, and entities such as ombudsmen to pursue legal action and hold governments and corporations accountable for climate harm.

Procedural constraints have been a recurring impediment to determining the merits of climate litigation in many jurisdictions. For example:

- In *Juliana et al. v. United States* (United States), the youth plaintiffs argued that the U.S. government's actions contributing to climate change violated their constitutional rights to life, liberty, and property. The plaintiffs faced significant procedural hurdles, including challenges to standing and justiciability, which ultimately prevented the case from being heard on its merits.
- In *Sacchi et al. v. Argentina et al.* (UNCRC), procedural challenges similarly hindered the UN Committee on the Convention on the Rights of the Child from addressing the substance of the complaint. The Committee found that the petitioners had not sufficiently exhausted domestic remedies, and it highlighted the need for a more robust demonstration that alternative legal avenues would be ineffective before allowing the case to proceed.

By contrast, other legal systems adopt broad standing doctrines that recognize public interest standing, thereby enabling individuals and organizations to initiate human rights (including constitutional) claims without having to prove an individual injury or special interest.

In Latin America, several Courts have adopted an expansive approach to legal standing, including:

- In *Future Generations v. Ministry of Environment* (Colombia), the Supreme Court of Justice recognized standing for youth plaintiffs to challenge climate inaction based on intergenerational rights.
- In the *Atrato River decision* (Colombia), the Constitutional Court explicitly broadened procedural standing requirements for ethnic and vulnerable communities to enable them to protect their fundamental rights and the rights of nature.

Outside of Latin America:

- In *Ashgar Leghari v Federation of Pakistan* (Pakistan), the Lahore High Court affirmed the right of access to the Court of the petitioner (a farmer) as a citizen for the enforcement of his fundamental rights. The Court treated the public interest petition as a rolling review or a continuing mandamus and proceeded in an inquisitorial manner to determine the case.

Admissibility issues featured heavily in the recent trio of climate cases before the ECtHR *(Verein KlimaSeniorinnen Schweiz and Others v. Switzerland, Duarte Agostinho and Others v. Portugal and 32 Others, Carême v. France)*. The Court expounded new tests for standing of associations and individuals in climate cases in recognition of the unique and unprecedented challenges posed by climate change. While the ECtHR expanded standing for climate associations in KlimaSeniorinnen, it maintained stringent admissibility criteria

for individual applicants in *Carême* and declined to depart from established jurisprudence in *Duarte Agostinho* regarding the exhaustion of domestic remedies and the application of extraterritorial jurisdiction.

Some key features of this theme addressed in the case-by-case analyses include:

- **Challenges in establishing standing in domestic climate litigation,** particularly regarding who is legally entitled to bring cases or claims involving climate harm.
- **Procedural barriers in regional and international forums,** particularly regarding admissibility criteria, exhaustion of domestic remedies, and jurisdictional requirements that may impede climate claims.
- **Divergent approaches to standing doctrine,** with some jurisdictions maintaining traditional direct injury requirements while others recognizing broader public interest standing and collective rights.
- **Evolution of standing requirements to address intergenerational harm.**
- **Divergent approaches between domestic and international forums:** While some domestic courts have adopted expansive standing doctrines for climate cases, international tribunals maintain more stringent procedural requirements.

Key cases: *Sacchi et al. v. Argentina et al.* (UNCRC), *Future Generations v. Ministry of Environment* (Colombia), *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland* (European Court of Human Rights), *Duarte Agostinho and Others v. Portugal and 32 Others* (European Court of Human Rights), *Carême v. France* (European Court of Human Rights), *Held v. Montana* (United States), *Juliana et al. v. United States* (United States), *Atrato River decision* (Colombia), *Smith v. Fonterra Co-Operative Group Ltd* (New Zealand), *Ashgar Leghari v Federation of Pakistan* (Pakistan).

In conclusion, the themes that run through this compendium highlight key issues facing courts globally as they consider and determine climate-related cases using many different legal frameworks. Courts have examined scientific evidence in their reasoning, analyzed the intersection of climate impacts with constitutional and human rights obligations, interpreted domestic and international climate commitments, and developed jurisprudence on varied legal issues including standing and causation. These decisions illustrate the evolving role of courts in addressing climate-related legal questions and determining the scope of state and private actor obligations.

Note on case citations. This document contains references to cases in several jurisdictions which employ differing methods of labeling and citing cases. For the sake of consistency and readability, all case citations have been converted to the below format:

Court name [Court name in English, if applicable], case name with embedded hyperlink to case, case number, date of decision formatted: day month year (country abbr.).

Cases from Domestic Courts in Latin America and the Caribbean

Key Themes:

Supervision and accountability of state/non-state actors in addressing climate change	**States' obligations under international treaties to address climate change**
Use and importance of climate science	**Judicial development and evolution of legal principles to address climate change**
Human rights and climate change	**Access to justice and legal standing to bring climate cases**

1. *PSB et al. v. Brazil* (2022) (Brazil)

Citation	Supremo Tribunal Federal [Supreme Federal Court], *PSB v. Brazil,* DJe No. 194/2022, ADPF 708, 1 July 2022 (Braz.).
Facts	In 2009, Brazil set a greenhouse gas emission reduction target of 36.1%–38.9% by 2020 in its National Determined Contribution (NDC), which was confirmed in the passage of a domestic law and set up the Climate Fund (Fundo Clima) as part of its national climate policy plan to support climate change mitigation and adaptation projects. However, from 2019–2021, no plans were submitted for the Climate Fund, and no funds were dispersed, which the Presidential administration in office at the time attributed to plan changes in the composition of the committee overseeing the fund. By 2021, deforestation in Brazil was nearly 190% higher than in 2012. Plaintiffs—four political parties—argued that the government's failure to use the Climate Fund violated the constitutional right to a healthy environment and international commitments to which Brazil was a party.
Issues	Whether the Brazilian government had a constitutional duty to allocate funds to its National Fund on Climate Change (Climate Fund) and whether its infringement violated constitutional rights and international climate commitments.
Holding	The Court: 1) Recognized the Federal Government's omission in failing to fully allocate the resources of the Climate Fund for the year 2019; 2) Ordered the Federal Government to refrain from any further omissions in ensuring the operation of the Climate Fund and the allocation of its resources; and 3) Prohibited any contingency measures that would prevent the revenues constituting part of the Fund from being used as intended. The Court held that the constitutional right to a healthy environment imposes a duty on the State to operationalize the Climate Fund, which it noted was a key tool for combating climate change in Brazil. Additionally, the Court held that treaties on environmental law, including the UNFCCC and its Paris Agreement, are a type of human rights treaty and that human rights treaties supersede national law. Thus, acts or omissions that contradict the Paris Agreement, including Brazil's NDC which was turned into a domestic law, are in direct violation of the Brazilian constitution and human rights.
Rationale	The Court recognized there is a transnational legal regime for tackling climate change, based on the UNFCCC, Kyoto Protocol, and the Paris Agreement.[1] These environmental treaties are recognized as having supralegal status in Brazil, surpassing national laws. This establishes the binding nature of Brazil's international climate obligations.[2] Moreover, the Court delves into the Brazilian Constitution recognition of the right to an ecologically balanced environment, requiring the government to actively protect and restore the environment for current and future generations.[3] The State's failure to advance or maintain effective environmental policies, such as those related to climate funds and deforestation, contravenes the principle of preventing retrogression

[1] Supremo Tribunal Federal [Supreme Federal Court], PSB v. Brazil, DJe No. 194/2022, ADPF 708, 1 July 2022 (Braz.), ¶ 9.
[2] Id. at ¶ 17.
[3] Id. at ¶ 16.

in environmental protection. Thus, the judiciary's role is to ensure compliance with constitutional and international environmental obligations, preventing the erosion of progress in environmental protection.[4]

Significance: The Court based its decision on three pillars: the state of current environmental degradation as proved by science, the international environmental law framework, and the domestic legislation regulating the Brazilian Climate Fund.

The Court recognizes the ongoing climate emergency and its many environmental impacts, such as the albedo effect in the Artic, and even addresses the temperature thresholds. Building on this strong factual basis, the Court recognizes the role of humanity and its influence on the environmental degradation.[5] The concurring vote by Justice Edson Fachin carefully addresses key findings from the 6th Assessment Report of the IPCC and other IPCC reports,[6] and even the Court mentions the role of AI models, in predicting the rates of deforestation, as well as the main causes of the temperature increase.[7]

The judges recognize the existence of a transnational environmental law framework integrated by the UNFCCC, Kyoto Protocol, and the Paris Agreement. Regarding this framework the Court recognizes its relation to human rights issues, which makes it supersede domestic legislation.[8]

Finally, the judges recognize the domestic legislation establishing the climate fund. Based on all these arguments, the Court emphasizes the mandatory nature of the environmental obligations imposed on the State. Therefore, governments have limited leeway in deciding whether to contribute to the climate fund and which goals to prioritize within it.[9]

Additional Information & Analysis

The Role of Science: The concurring vote by Justice Edson Fachin is very strong on this issue. The judge affirms that "[t]his is not about opinion or ideology, but about scientific evidence. The need, therefore, for action to address the risks brought by climate change is urgent."[10] The rates of deforestation are increasing, and AI tools predict an increase for the near term.[11] The AR6 Report, as well as the "Climate Change 2022: Impacts, Adaptation and Vulnerability," from the IPCC, provide sufficient information on what can be done to reduce carbon emissions all over the world and slow the pace of global warming.[12]

- Justice Fachin cites a study published in the journal BioScience, where "11,258 scientists from 153 countries warn that the planet faces an unequivocal climate emergency and point to broad public policy goals to be achieved to address it."[13]
- Justice Fachin states that it is imperative to repeat that human action is now scientifically recognized as responsible for the increase in temperature of the planet and that this increase is due, in large part, to carbon emissions resulting from burning fossil fuels.[14] "Recognizing the severity and latitude of the climate emergency is a premise for all earthlings. This recognition is based on the best available scientific knowledge."[15]

[4] Id. at ¶¶ 16-18.
[5] Id. at ¶¶ 6-14.
[6] Id., Concurring opinion Justice Fachin at 2-4.
[7] PSB v. Brazil, ¶ 14.
[8] Id. at ¶¶ 9-11, 17.
[9] Id. at ¶ 31.
[10] Id., Concurring opinion Justice Fachin at 3. [Unofficial translation]
[11] PSB v. Brazil, ¶ 14.
[12] Id., Concurring opinion Justice Fachin at 2-3.
[13] Id., Concurring opinion Justice Fachin at 4. [Unofficial translation]
[14] Id., Concurring opinion Justice Fachin at 2-4.
[15] Id., Concurring opinion Justice Fachin at 4. [Unofficial translation]

- Based on the deforestation rates, the Court recognizes that "the objectively ascertained results indicate that the country is actually moving in the opposite direction to the commitments it has made to mitigate climate change, and that the situation has worsened substantially in recent years. This is the worrying and persistent situation facing the fight against climate change in Brazil, which puts the lives, health and food security of its population at risk, as well as the economy in the future."[16]

Temperature Targets: The concurring vote by Justice Edson Fachin recognizes that "the planet's temperature has increased by an average of 1.1°C since the pre-industrial era. The Paris Agreement in 2015 set the goal of limiting warming to 2°C, with efforts to keep it to 1.5°C. Although these figures seem to denote small or smooth changes, this is not how they should be understood. A change of 1 or 2 degrees Celsius in the average temperature of the planet indicates huge, devastating changes in extremes. The North Pole is warming at a faster rate than the rest of the world—double or triple, according to IPCC data. The poles, as we know, fulfill a very important mission in the thermal and ecological balance of the planet. Melting glaciers, rising sea levels, acidification of waters, risks to biodiversity, there are countless damages involved."[17] Justice Fachin also talks about the albedo effect and recognizes that we are facing a climate emergency.[18]

The Urgency of the Climate Emergency and the Timeline of Climate Cases: The concurring vote by Justice Edson Fachin summarizes climate litigation cases all over the world, most of them analyzed throughout this compendium, including jurisprudence from the IACtHR, to highlight that climate change demands urgent action.[19]

From Voluntary to Mandatory Commitments: The transnational environmental legal framework, the seriousness of the Brazilian environmental situation, and the domestic federal legislation establishing the Climate Fund, determine that the Executive has the duty to implement the Climate Fund and allocate its resources for its purposes. Therefore, "the Executive Branch has the constitutional duty to make the Climate Fund's resources work and allocate them annually for climate change mitigation purposes, and its withholding or restriction is prohibited, due to the constitutional duty to protect the environment, international rights and commitments assumed by Brazil, as well as the constitutional principle of separation of powers."[20]

- The concurring vote by Justice Edson Fachin stated that "recognizing human activity as the cause of environmental damage has important legal consequences. By recognizing the right to a balanced environment as a fundamental right of the present and future generations, the constituent legislator called on the Public Powers and the community to fulfill the duty to defend and preserve it. This duty of defense and protection logically also extends to the necessary protection in the face of human actions that degrade the planet."[21]

Climate and Environmental Treaties as Human Rights Treaties: "Along the same lines, the Constitution recognizes the supralegal character of the international treaties on human rights to which Brazil is a party, under the terms of its article 5, §2. And there is no doubt that the environmental issue fits the hypothesis. As the representative of UNEP in Brazil, during the public hearing, clearly stated: "There are no human rights on a dead or sick planet. Treaties on environmental law are a species of the genus human rights treaties and enjoy, for this reason, supranational status. Thus, there is no legally valid option of simply omitting to combat climate change."[22]

[16] PSB v. Brazil, ¶ 15. [Unofficial translation]
[17] Id., Concurring opinion Justice Fachin at 3. [Unofficial translation]
[18] Id., Concurring opinion Justice Fachin at 4.
[19] Id., Concurring opinion Justice Fachin at 6-8.
[20] PSB v. Brazil, ¶¶ 36-37. [Unofficial translation]
[21] Id., Concurring opinion Justice Fachin at 5-6. [Unofficial translation]
[22] PSB v. Brazil, ¶ 17. [Unofficial translation]

Right to an "Ecologically Balanced Environment" and Intergenerational Justice: The Court stated that Article 225 of the Brazilian Constitution "expressly establishes the right to an ecologically balanced environment, imposing on the Public Power the duty to defend, preserve and restore it for present and future generations."[23] This presents a step forward for the principle of intergenerational justice, requiring the State to act proactively to both prevent and rectify the impacts of climate change.

Prevention of Retrogression: The Brazilian government challenged the Court's authority to enjoin the State to execute the fund on separation of powers grounds. The Court stated that its decision was regarding existing legislation and interpretation of the constitution, not legislating from the bench.[24] "The role of supreme Courts and constitutional tribunals is to prevent this [environmental] retrogression."[25] The opinion described the backward progress Brazil has made on deforestation since 2009, noting that the principle of retrogression is violated when environmental protection is lowered through inaction or when policies to protect the environment are discontinued without substitution.

Climate Fund Execution: Withholding resources from the climate fund to address potential contingencies should be prohibited, as the allocation of these funds requires both the Executive's and the Legislative Branch's assessment and deliberation.[26] The Court ruled that the "Executive cannot simply ignore the allocations determined by the Legislative at its discretion, under penalty of violating the principle of the separation of powers."[27] Additionally, these resources are legally designated for specific activities, and as such, they cannot be treated as contingent in accordance with the Fiscal Responsibility Law (LRF)—Complementary Law 101/2000.[28]

2. *Future Generations v. Ministry of the Environment et al.* (2018) (Colombia)

Citation	Corte Suprema de Justicia [Supreme Court of Justice], *Future Generations v. Ministry of the Environment et al.,* STC4360-2018, No. 11001-22-03-000-2018-00319-01, 5 April 2018 (Colom.).
Facts	25 youth plaintiffs filed a tutela (Colombian constitutional claim), on 29 January of 2018, against the Colombian government, municipalities, and corporations, arguing that the climate crisis along with the government's failure to reduce deforestation and ensure compliance with a target for zero-net deforestation in the Colombian Amazon by the year 2020 (as agreed under the Paris Agreement and the National Development Plan 2014-2018), threatens their fundamental rights recognized in the Colombian Constitution, such as their right to life, to health, to food, to water, and violates their right to enjoy a healthy environment. A lower Court ruled against the youth plaintiffs. The youth plaintiffs filed an appeal on 16 February 2018. On 5 April 2018, the Supreme Court reversed the lower court decision ruling in favor of the plaintiffs.
Issues	Whether the government's failure to mitigate deforestation and comply with both its international commitments under the Paris Agreement and its national development plans, which aim to reduce deforestation in the Amazon, constitutes a violation of the plaintiffs' fundamental rights.

[23] Id. at ¶ 16. [Unofficial translation]
[24] Id., Concurring opinion Justice Fachin at 6.
[25] PSB v. Brazil, ¶ 18. [Unofficial translation]
[26] Id. at ¶¶ 27-30.
[27] Id. at ¶ 28. [Unofficial translation]
[28] Id. at ¶ 28.

Holding	The Supreme Court ruled that the government must implement deforestation plans in the Colombian Amazon in line with its national and international commitments, reasoning that it is the duty of the government to observe its Paris Agreement commitments, and continuing to allow deforestation violates this duty. The Court found that failure to comply with climate targets, such as avoiding deforestation, was a violation of the fundamental rights of the plaintiffs: "The fundamental rights of life, health, the minimum subsistence, freedom, and human dignity are substantially linked and determined by the environment and the ecosystem.... The increasing deterioration of the environment is a serious attack on current and future life and on other fundamental rights; it gradually depletes life and all its related rights."[29] "Therefore, the excessive intensification of this problem is evident, showing the ineffectiveness of the government measures adopted to deal with it and, from that perspective, the granting of protection due to the obvious breach of fundamental human rights guarantees such as water, air, a dignified life and health, among others, in connection with the environment."[30] The Court ordered the government to prepare short-, medium-, and long-term action plans to combat deforestation and face climate change impacts. All municipalities were ordered to update land management plans to reduce deforestation. It also ordered the creation of an intergenerational pact for the life of the Colombian Amazon – PIVAC in consultation with relevant groups to adopt measures aimed at reducing deforestation to net zero.[31] The Amazon was declared a subject of rights, as a continuation of Colombia's jurisprudence on the rights of nature, building on the Atrato River case, which initially declared ecosystems as rights-bearing entities.[32]
Rationale	The continued failure of the government to protect the Amazon and implement measures to reduce deforestation was a violation of the constitutional right to a healthy environment. The Court recognized that there was a link between the fundamental rights to life, health, minimum subsistence, freedom, and human dignity and the environment. Applying the precautionary principle and intergenerational equity, the Court emphasized the urgency of protecting both current and future generations from climate impacts. It declared the Amazon a subject of rights, following the precedent set in the *Atrato River case*. While referencing the Paris Agreement, the Court primarily based its decision on Colombia's constitutional obligations, setting a powerful precedent for linking climate protection with human rights.
Additional Information & Analysis	**Significance:** This is a landmark example of a youth-led case to compel government action on climate. The Court's findings recognize: 1) climate change impacts breach human rights; 2) Insufficient government action to address climate change, such as preventing deforestation, breach human rights; 3) the rights of future generations are directly breached because of ongoing greenhouse gas emissions through deforestation; and 4) the rights of nature. This decision sets a strong precedent for addressing the intersection of human rights, climate change, and environmental protection. By recognizing the Amazon as a subject of rights, the Supreme Court of Colombia reaffirms its prior decision in the Atrato river case and underscores the intrinsic value of ecosystems, not merely as resources for human exploitation but as entities deserving protection in their own right. Furthermore, the Court's reliance on the principles of intergenerational equity and the precautionary principle broadens the scope of legal responsibility, highlighting the State's duty to protect not only the present generation but also future ones from irreversible climate damage. This decision serves as an example of how judicial bodies can enforce international climate agreements and hold governments accountable for failing to meet their climate obligations, clarifying the role of courts in climate governance to ensure the human rights of present and future generations.

[29] Corte Suprema de Justicia (Supreme Court of Justice), *Future Generations v. Ministry of the Environment et al.*, STC4360-2018, No. 11001-22-03-000-2018-00319-01, 5 April 2018 (Colom.), 13. [Unofficial translation]
[30] *Id.* at 39. [Unofficial translation]
[31] *Id.* at 48-49.
[32] *Id.* at 45-47.

Climate Science: The Court considered scientific evidence demonstrating how deforestation, increased greenhouse gas emissions, and rising temperatures threaten human survival, thereby affecting human rights and ecosystems. It highlighted the various climate phenomena emerging worldwide due to the imminent threat of climate change. The Court acknowledged humanity as the primary contributor to this crisis and, based on scientific studies (IDEAM (Institute of Hydrology, Meteorology, and Environmental Studies of Colombia) and UNDP (United Nations Development Programme)), found that deforestation and increased greenhouse gas emissions would lead to further temperature increases, among other impacts. According to the Court these reports provide scientific certainty regarding the irreversibility of the damage, invoking additional components of the precautionary principle.[33]

Nature and Urgency of Climate Harm: The Court stated that all the inhabitants of the country are facing "imminent and serious damage" because deforestation causes "the emission of carbon dioxide into the atmosphere, producing the greenhouse effect, which transforms and fragments ecosystems, and alters the water resource."[34] Moreover, this case addresses the urgency of climate action, since the Court decided over a *tutela,* which is an exceptional and expedited procedure for the infringement of fundamental rights.

Legal Obligations: The Court delves into the existence of a global ecological public order established by various international instruments,[35] including the 1966 International Covenant on Economic, Social and Cultural Rights (ICESCR), the 1972 Stockholm Declaration, the 1992 Rio Declaration, The United Nations Framework Convention on Climate Change, and its 2015 Paris Agreement.[36] Such order is also integrated by the Colombian Constitution and the jurisprudence of the Court.[37] The Court concludes the protection of the Amazon is both a national and global obligation.[38] Thus, Amazon deforestation violates this ecological global public order, as well as national commitments under the Colombian Constitution. Thus, it is mandatory to adopt immediate corrective measures.[39]

Legal Principles: The Court acknowledges the role of the precautionary principle, intergenerational equity, and solidarity principle.[40] Current science provides scientific certainty on the irreversibility of the harm caused by greenhouse gas emissions, which relates to the precautionary principle.[41] The temperature increases infringe the intergenerational equity principle,since "future generations will be directly affected (...) unless the present generations reduce the deforestation rate to zero."[42] Finally, the solidarity principle mandates "the duty and co-responsibility of the Colombian state in stopping the causes that release greenhouse gasses, such as deforestation."[43]

[33] Id. at 35-37.
[34] Id. at 34-35. [Unofficial translation]
[35] Id. at 22-25.
[36] Id.
[37] Id. at 26-30.
[38] Id. at 30-32.
[39] Id. at 37.
[40] Id. at 35-37.
[41] Id.
[42] Id. at 37. [Unofficial translation]
[43] Id. at 37-38.

Rights of Future Generations: The Court found that the future generations "deserve to enjoy the same environmental conditions that we are living," and in this regard "the environmental rights of future generations are built on: (i) the ethical duty of species solidarity and (ii) the intrinsic value of nature."[44] This "formulates a mandatory legal relation of the environmental rights of future generations as in the obligation of not-doing, whose effect translates in a limitation of the freedom to act of present generations."[45] This principle of intergenerational equity was relied upon to compel the State to act without further delay so as not to disproportionately burden young persons and future generations.

Human Rights: "The fundamental rights of life, health, the minimum subsistence, freedom, and human dignity are substantially linked and determined by the environment and the ecosystem. Without a healthy environment, subjects of law and sentient beings in general will not be able to survive, much less protect those rights, for our children or for future generations. Neither can the existence of the family, society or the state itself be guaranteed."[46] The Court noted that continued deterioration of the environment shows the inefficacy of the governmental policies and constitutes a breach of the right to a healthy environment, the right to life, and the right to water, among other rights.[47]

Rights of Nature: The Amazon was declared to be a subject of rights and thus entitled to protection, conservation, maintenance, and restoration by the State and its territorial agencies. This was to protect the ecosystem deemed vital to the global future.

Intergenerational Justice: The Supreme Court granted the plaintiffs' petition and ordered the Presidency and the Ministries of Environment and Agriculture to create an "intergenerational pact for the life of the Colombian Amazon,"[48] with the participation of the plaintiffs, affected communities, and research and scientific groups, to reduce deforestation to zero and mitigate greenhouse gas emissions.

Judicial Remedies and Enforcement: This case exemplifies oversight mechanisms for State action implementation and the enforcement of climate decisions since the Court ordered the formulation of a short-, medium-, and long-term action plan to counteract the deforestation rates and its greenhouse gas emissions in the Amazon.[49]

3. *Herrera Carrion et. al. v. Ministry of the Environment et. al.* (2020) (Mecheros Case) (Ecuador)

Citation	Sala Multicompetente de la Corte Provincial de Justicia de Sucumbíos [Multi-competent Chamber of the Provincial Court of Justice of Sucumbíos], *Herrera Carrion and others. v. Ministry of the Environment and others,* STC4360-2018, No. 21201-2020-00170, 29 July 2021 (Ecu.).
Facts	On February 18, 2020, nine girls from the provinces of Sucumbíos and Orellana filed an *acción de protección* (constitutional claim) against the Ecuadorian government, challenging the widespread practice of gas flaring in oil and gas platforms. They argued that flaring is illegal, except in exceptional cases, and that the State has turned it into a routine practice, violating their constitutional rights to health, water, food, a healthy environment, and the rights of nature. The plaintiffs sought the annulment of all gas flaring authorizations, the immediate removal of all flaring towers in areas of the Amazon with oil activity, and the prohibition of new flares in the region. On May 7, 2020, the first-instance court dismissed the constitutional action, citing insufficient evidence to support the claimed violation of constitutional rights. In

[44] Id. at 19. [Unofficial translation]
[45] Id. at 21. [Unofficial translation]
[46] Id. at 13. [Unofficial translation]
[47] Id. at 39.
[48] Id. at 48. [Unofficial translation]
[49] Id. at 48.

	response, the plaintiffs appealed the decision to the Provincial Court of Justice of Sucumbíos. On July 29, 2021, the Provincial Court of Justice of Sucumbíos ruled in their favor, ordering a phased elimination of gas flaring by 2030. After the decision, the plaintiffs filed a new claim before the Constitutional Court in 2021 to clarify some terms of the decision and ensure its compliance, which was decided in February 2025, with the Court dismissing such action and prompting the plaintiffs to file an appropriate enforcement action.
Issues	Whether the Ecuadorian government's authorization of routine gas flaring, constitutes a breach of the plaintiffs' constitutional rights, including the right to a healthy environment, health, water, food, and the rights of nature, and a violation of environmental laws and international commitments.[50]
Holding	The Provincial Court of Justice of Sucumbíos ruled that the Ecuadorian government's authorization of routine gas flaring was unconstitutional, as it violated fundamental rights protected under the Constitution.[51] The Court found that the State had failed in its duty to regulate and limit gas flaring to exceptional circumstances, instead allowing it to become a widespread and routine practice.[52] This, the Court determined, contravened the constitutional rights of the plaintiffs, including their rights to health, water, food, and a healthy environment, as well as the rights of nature.[53] Recognizing the significant environmental and human health risks posed by gas flaring, the Court concluded that immediate and long-term corrective measures were necessary to bring the State's actions in line with its constitutional and international obligations.[54] Accordingly, the Court ordered the government to take decisive action to phase out gas flaring. It mandated that no new authorizations for gas flaring should be issued and that existing flaring sites located near populated areas must be shut down within 18 months. Additionally, the Court required the government to develop a comprehensive plan to progressively eliminate gas flaring entirely, with a full phase-out to be completed by 2030. The ruling placed a legal obligation on the State to take concrete steps to protect the health and well-being of affected communities and to fulfill its environmental commitments under both domestic and international law..[55]
Rationale	The Court underscored the severe environmental and public health consequences of gas flaring, emphasizing that the practice had led to significant air pollution, ecosystem degradation, and adverse health effects on local communities.[56] It noted that Ecuador's Constitution explicitly recognizes the rights of nature, imposing a duty on the State to prevent and remedy environmental harm.[57] By failing to curb gas flaring and allowing it to persist as a standard practice rather than as an exceptional measure, the government had neglected its constitutional mandate to protect the environment and the rights of those living in affected areas.[58] The Court also relied on the precautionary principle.[59] It found that, given the overwhelming evidence of the harmful effects of gas flaring, the State was required to take preventative action rather than delay regulation until further studies could be conducted.[60] Moreover, the Court stressed the interconnected nature of environmental rights with other fundamental rights, including the rights to health, water, and food security.[61] The government's inaction in regulating flaring, despite the well-documented risks, was therefore found to constitute a violation of these rights.[62]

[50] Sala Multicompetente de la Corte Provincial de Justicia de Sucumbíos [Multi-competent Chamber of the Provincial Court of Justice of Sucumbíos], Herrera Carrion and others. v. Ministry of the Environment and others, STC4360-2018, No. 21201-2020-00170, 29 July 2021 (Ecu.), 63-64.
[51] Id. at 65.
[52] Id.
[53] Id.
[54] Id. at 66-68.
[55] Id.
[56] Id. at 59-62.
[57] Id. at 51-56.
[58] Id. at 63-64.
[59] Id. at 59-62.
[60] Id. at 63.
[61] Id. at 65.
[62] Id.

Additionally, the ruling reinforced Ecuador's international obligations, particularly its commitments under the Paris Agreement and its Nationally Determined Contributions (NDCs) to reduce greenhouse gas emissions, as well as its commitments under the Zero Routine Flaring 2030 Initiative.[63] The Court noted that gas flaring is a significant source of greenhouse gases emissions and that its continued practice was inconsistent with the country's stated climate goals. By ordering a phased elimination of flaring and immediate restrictions in certain areas, the decision aligned Ecuador's domestic environmental policies with its broader commitments to climate action and human rights protection.[64]

Additional Information & Analysis

Significance: This case is a significant development in Ecuador's environmental and climate justice jurisprudence, particularly in the recognition of the rights of nature and the government's duty to protect public health and the environment from industrial pollution, including GHGs such as methane. The ruling affirms that routine gas flaring is not merely an administrative or regulatory issue but a fundamental rights violation, thereby reinforcing the judiciary's role in ensuring environmental governance and accountability. By ordering a progressive phase-out of gas flaring and immediate action in specific areas, the Court has set a precedent that could influence future litigation against harmful industrial greenhouse gas emissions in Ecuador and other jurisdictions.

The decision aligns with a growing number of cases globally, where courts are holding governments accountable for failing to take adequate climate action. The decision also underscores the role of youth-led climate litigation, as the plaintiffs—nine girls from affected communities—successfully argued that their fundamental rights were being compromised by the government's inaction. By recognizing the urgency of eliminating gas flaring and the disproportionate impact on vulnerable populations, the Court has reinforced the principle that environmental degradation constitutes a direct violation of constitutional rights, including the rights to health, water, food, and a clean environment, as well as international commitments such as the UNFCCC, its Paris Agreement, and NDCs.

Additionally, this case contributes to the broader legal recognition of the rights of nature, a concept enshrined in Ecuador's Constitution. It builds upon prior jurisprudence that views ecosystems as legal subjects entitled to protection, reinforcing that environmental harm must be prevented.

Climate Science & Environmental Harm: The Court acknowledged the overwhelming scientific evidence demonstrating the harmful effects of gas flaring on both human health and the environment. It concluded that gas flares are "the greatest threat to the inhabitants because it is highly polluting to the air and increases the risk of contracting irreversible diseases for human life."[65] The plaintiffs also presented evidence linking exposure to gas flaring emissions with an increased risk of cancer, reproductive issues, and other long-term health problems, although the Court did not elaborate on those reports.[66] The decision also recognized that gas flaring is a significant source of greenhouse gas emissions, exacerbating global warming and undermining Ecuador's commitments under the Paris Agreement.[67]

Legal Obligations & International Commitments: The ruling situates Ecuador's obligations within a broader international legal framework, emphasizing that the government's failure to regulate gas flaring contradicts both domestic constitutional protections and international climate commitments. The Court referenced Ecuador's Nationally Determined Contributions (NDCs) under the Paris Agreement, which include commitments to reduce greenhouse gas emissions and transition to cleaner energy sources. By allowing gas flaring to persist as a routine practice, the government was found to be in breach of these commitments.[68]

[63] Id. at 65.
[64] Id. at 66-67.
[65] Id. at 65. [Unofficial translation]
[66] Id. at 25-32.
[67] Id. at 65.
[68] Id.

The Court also drew upon human rights treaties, including the American Convention on Human Rights and the International Covenant on Economic, Social, and Cultural Rights, to affirm that environmental degradation directly impacts fundamental rights.[69] The ruling highlights the growing intersection between environmental law and human rights law, reinforcing that states have a legal duty to prevent environmental harm that disproportionately affects marginalized and vulnerable populations.[70]

Rights of Future Generations & Intergenerational Equity: A critical component of the Court's decision was its recognition of intergenerational equity, affirming that the government's failure to curb gas flaring would have severe consequences not only for present communities but also for future generations.[71] The ruling emphasized that environmental protection is not only about preventing immediate harm but also about ensuring that natural resources and ecosystems remain viable for the long term.[72]

The decision aligns with an emerging body of climate jurisprudence recognizing that younger generations, including the plaintiffs in this case, have standing to bring legal challenges against government inaction. This recognizes that climate-related harms disproportionately affect youth and future generations, who will bear the long-term consequences of environmental degradation.

Human Rights: The Court's ruling reinforced the fundamental connection between environmental protection and human rights, emphasizing that the government's failure to regulate gas flaring violated constitutional rights to health, water, food, and a healthy environment.[73] It explicitly recognized that environmental degradation has direct and measurable impacts on communities, particularly those living near oil extraction sites, where air and water contamination pose severe health risks.[74] The decision is especially significant for the Ecuadorian Amazon, where Indigenous and rural communities have long borne the brunt of extractive industries without adequate legal safeguards. Although not explicitly, by acknowledging the disproportionate burden placed on these communities and the necessity of state intervention, the Court strengthened the legal framework for environmental justice, affirming that access to a clean and safe environment is not merely a policy goal but a fundamental human right requiring immediate protection in the face of environmental damage.[75]

Development of legal principles: The precautionary principle was a crucial factor in the Court's reasoning, underscoring the need for proactive government action in the face of scientific uncertainty rather than waiting for further studies to confirm harm.[76] The Court stressed that when an activity poses a credible threat to health and the environment, the State must adopt preventive measures such as effective environmental assessment procedures.[77] Given the well-documented detrimental effects of gas flaring—including air pollution, climate impacts, and risks to human health—the Court concluded that the government had a legal obligation to take preventive measures, eliminating gas flaring as a routine practice and ensuring compliance with Ecuador's constitutional and international environmental commitments.[78] By applying the precautionary principle in this context, the ruling reinforced the state's duty to prioritize environmental protection and human well-being over industrial and economic interests, concluding that "both legislators and judges must lose their fear of the precautionary principle, which is an opportunity to protect the environment and the irreversible destruction of natural resources, caused by the conflict between people and the components that make it up; and of nature."[79] Considering the evidence of the detrimental effects of gas flaring, the Court concluded that the State was obligated to take preventive measures to address gas flaring as a routine practice.[80]

[69] Id. at 54.
[70] Id. at 58, 64, 65.
[71] Id. at 54, 65.
[72] Id. at 60.
[73] *Id.* at 64-65.
[74] *Id.* at 65.
[75] *Id.* at 52-55.
[76] *Id.* at 59-62.
[77] *Id.* at 61-62.
[78] *Id.* at 66-68.
[79] *Id.* at 61. [Unofficial translation]
[80] *Id.* at 59-62.

	Rights of Nature: The Court's ruling reinforces Ecuador's constitutional recognition of the rights of nature, affirming that ecosystems are not merely resources for human exploitation, but legal entities entitled to protection, conservation, and restoration.[81] By allowing gas flaring to persist as a routine practice, the government not only endangered human health but also violated nature's intrinsic right to exist and regenerate, particularly in the Amazon—a vital global ecosystem.[82] This ruling aligns with Ecuador's broader jurisprudence on the rights of nature and strengthens international legal trends recognizing ecosystems as rights-bearing entities, following precedents set in Colombia, and elsewhere. By ordering the elimination of gas flaring, the Court operationalized the rights of nature principle, demonstrating that it is not merely aspirational but an enforceable legal standard requiring concrete state action to prevent further ecological degradation.
	Judicial Oversight & Enforcement Mechanisms: Beyond its substantive findings, the ruling establishes clear oversight mechanisms to ensure compliance with its directives. The Court did not merely order a phase-out of gas flaring but also mandated the development of a concrete, enforceable plan to achieve this goal.[83] This reflects a broader shift in climate litigation, where courts are not only declaring environmental rights but also implementing judicial oversight to ensure government accountability. The Court's focus on a phased elimination by 2030, coupled with immediate action in highly affected areas, sets a clear timeline for enforcement.[84] The Court mandated the government and companies "to update the plan for the gradual and progressive elimination of traditional flares used for burning gas, with those located in areas close to populated centers being the first to be removed, for which a period of 18 months is granted; with respect to the other flares, their progressive elimination must be carried out by December 2030."[85]

4. *Atrato River Decision* (2016) (Colombia)

Citation	Corte Constitucional [Constitutional Court], *Atrato River Decision*, No. T-622/16, 10 November 2016 (Colom.).
Facts	Indigenous and afro-descendent communities living near the Atrato River in Colombia filed a *tutela* (Colombian constitutional claim), against governmental authorities arguing that, in failing to prevent river pollution, they violated plaintiffs' rights to life, health, water, food security, healthy environment, culture, and land property. The claimants asserted illegal natural resource extraction activities, such as large-scale methods of mining and illegal logging, as the main cause of Atrato River's pollution and thus of the violation of their rights. They asked the Court to issue a series of orders to solve the health, socio-environmental, ecological, and humanitarian crisis that exists in the Atrato River Basin, its tributaries and surrounding territories.
Issue(s)	Whether the State had obligations to prevent pollution of the Atrato River. Whether the State had an obligation to prevent the illegal resource extraction activities that were the primary cause of pollution. Whether due to illegal mining activities in the Atrato River Basin, its tributaries and surrounding territories, and whether by the omission of the state authorities sued (in charge of dealing with this situation, both at the local and national levels), there is a violation of the fundamental rights to life, health, water, food security, a healthy environment, and to the culture and territory of the active ethnic communities.

[81] *Id.* at 51-56.
[82] *Id.* at 53, 65.
[83] Id. at 67.
[84] Id. at 66-67.
[85] *Id.* at 67. [Unofficial translation]

Holding	The Atrato River was deemed to be a subject of rights. The Court found that the Colombian government failed to comprehensively ensure environmental protection and enjoyment of claimants' human rights by failing to prevent river pollution from mining. The Court stated that to protect these rights, the government had to consider climate change (among other issues) when developing mining and energy public policies. The Court ordered the creation of a Council to represent and protect the rights of the river. Plans had to be drawn up to end illegal mining in consultation with the indigenous communities along the river.
Rationale	Colombia's Constitutional Court recognized the Atrato River as a subject of rights and underscored its ecological importance.[86] The Court based its reasoning on the precautionary principle[87] and relied on this principle to address the devastating effects of climate change.[88] The Court also found that the Colombian government had failed to ensure environmental protection and enjoyment of claimants' human rights by failing to prevent river pollution from mining.[89]
	Significance: This is an important decision regarding the importance of biological and cultural diversity. The decision develops the rights of nature, the need to respect the rights of indigenous communities, and the application of the precautionary and prevention principles to mining activities within the Amazon. The case advances the idea that crucial aspects of our ecosystem merit the same protection as people and should have their rights protected accordingly. This novel approach, aligning with global trends toward recognizing the rights of nature, strengthens the legal framework for safeguarding critical ecosystems. This decision also recognizes the need for a broader concept of "standing" of local and indigenous communities, to vindicate their human rights in a court when affected by pollution from industrial projects.
	Progressive Realization of Rights: The Court orders were designed to progressively address and overcome the government's lack of resources and institutional capacity to tackle the problems. The Court ordered many plans to restore the environmental quality of the river and end illegal mining.[90]
	Human Rights: Relying on the evidence presented by the parties of the ongoing damage to the river, the Court found that there had been a violation of the plaintiffs' rights to life, health, water, food security, healthy environment, culture, and land property recognized in the Colombian Constitution.[91]
	Biocultural Rights: The Court explains the idea of what it means an Ecological Constitution,[92] concluding that both "the constitutional jurisprudence and the instruments of international law that have been ratified by Colombia, as well as other non-binding additional instruments on the rights of the ethnic communities, have consolidated the development of a comprehensive approach that has helped to protect both the biological diversity and the cultural diversity of the nation, recognizing the deep interrelations of indigenous peoples, afro-descendent and local communities with the territory and natural resources."[93]

[86] Corte Constitucional (Constitutional Court), Arato River Decision, No. T-622/16, 10 November 2016 (Colom.), Res. 4.
[87] *Id.* at ¶¶ 9.25-9.32.
[88] *Id.* at ¶ 7.36, ¶ 9.45.
[89] Id. at Res. 3.
[90] Id. at Res. 5-9.
[91] Id. at Res. 3.
[92] Id. at IV. ¶¶ 5.30-5.10.
[93] Id. at ¶ 5.37. See also ¶¶ 5.19-5.37. [Unofficial translation]

"The importance of the biological and cultural diversity of the nation for the next generations and the survival of the planet, imposes on the States the need to adopt comprehensive public policies on conservation, preservation and compensation that reflect the interdependence between biological and cultural diversity."[94]

Continued mining was found to pose a threat to the customs and ancestral spirit of the communities along the river. The fact that illegal mining as a single economic model ran alien to the culture of the communities was seen to increase violence, tear families apart, and pose a threat to the communal way of living of the communities. As such there was a violation of the right to culture. The Court held a judicial inspection, assisted by the Department of Anthropology of the Universidad de Los Andes assisted as well.[95]

Development of legal principles: The Court acknowledges both the principle of prevention and the precautionary principle. It further asserts that a paradigm shift has undoubtedly been taking place over time. This shift has required a reassessment and strengthening of key principles of environmental protection. These principles now demand more rigorous application under the superior guideline of *in dubio pro ambiente or in dubio pro natura.*[96]

This guideline means that when there is a conflict "between principles or rights, the authority must choose the interpretation that best guarantees and protects a healthy environment, preceding over one that suspends, limits, or restricts such protection."[97] "Specifically, the application of the precautionary principle in the present case demands the court: (i) to prohibit the use of toxic substances such as mercury in mining activities, whether legal or illegal; and (ii) to declare that the Atrato River is subject to rights that imply its protection, conservation, maintenance and, in the specific case, restoration."[98]

Social Rule of Law: The Court discusses in detail the Colombian Social Rule of Law[99] which is a model that "seeks to realize social justice, human dignity and general well-being through the subjection of public authorities––across all levels––to constitutional principles, rights and social duties."[100] "In jurisprudential matters the main objective of the Colombian Social Rule of Law is the guarantee of minimum conditions––or essential points of departure––that allow the development of a dignified life in the exercise of rights and in welfare conditions for all Colombians."[101]

Rights of Nature: "The greatest challenge of contemporary constitutionalism in environmental matters is achieving the safeguarding and effective protection of nature, its associated cultures, ways of life, and biodiversity. This protection is not only for the material, genetic, or productive benefits these elements provide to humans, but also because nature is a living entity composed of various life forms and cultural representations. As such, these are subjects of individual rights. This recognition creates a new imperative for States and societies to respect and protect these facts of nature."[102]

The Court declared that the Atrato River is a subject of rights that merit its protection, conservation, maintenance, and more specifically, in this case, restoration. The Court ordered the Colombian state to exercise guardianship and legal representation of the river's rights in conjunction with the ethnic communities that inhabit the Atrato River basin in Chocó. The parties were required to design and establish a commission of guardians of the Atrato River.[103]

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[94] Id. at ¶ 5.58. [Unofficial translation]
[95] d. at ¶ 9.36.
[96] Id. at ¶¶ 7.39-7.41.
[97] Id. at ¶ 7.39. [Unofficial translation]
[98] Id. at ¶ 9.32. [Unofficial translation]
[99] Id. at ¶¶ 4.1-4.21.
[100] Id. at ¶ 4.17. [Unofficial translation]
[101] Id. at ¶ 4.21. [Unofficial translation]
[102] Id. at ¶ 5.10. [Unofficial translation]
[103] Id. at Res. 4.

Access to Justice and Procedural Rights: The Court stated that "the procedure of protection promoted by ethnic minorities and, in general, by groups and subjects in a situation of vulnerability, should be examined with weighted criteria. Such flexibility is justified in the need to break down the obstacles and limitations that have prevented these populations from accessing the judicial mechanisms that the legislature designed for the protection of their rights under the same conditions that other sectors of the population can do."[104]

"For this purpose, the Constitutional Court has proceeded to the flexibilization of the procedural conditions of the protections promoted to safeguard the fundamental rights of ethnically differentiated communities; a fact that also responds to the need to ensure that the authorities comply with their commitments to the protection of indigenous and tribal populations under ILO Convention 169."[105]

The Court has recognized "not only the status of collective fundamental rights by which the ethnic communities are subject to, but has additionally established that both the leaders and the individual members of these communities have standing to file the acción de tutela in order to pursue the protection of the rights of the community; as well as "the organizations created for the defense of the rights of the indigenous and tribal peoples and the Ombudsman's Office."[106]

5. *Amparo en Revisión* 610/2019 (2020) (Mexico)

Citation	Suprema Corte de Justicia de la Nación (SCJN) [Supreme Court of Justice of the Nation], *Amparo en Revisión No. 610/2019,* 22 Jan. 2020 (Mex.).
Facts	In January 2020, the Supreme Court invalidated a 2017 regulatory amendment by Mexico's Energy Regulatory Commission that increased the ethanol content in gasoline from 5.8% to 10% outside of major urban areas.[107] Environmental organizations argued that the change, implemented without proper scientific assessment and public consultation, risked exacerbating greenhouse gas (GHG) emissions, air pollution, and public health issues. Petitioners claimed that the regulatory modification violated constitutional rights to a healthy environment and procedural rights by bypassing established environmental review mechanisms. The plaintiffs further asserted that the amendment contradicted Mexico's international commitments under agreements such as the Paris Agreement, which obligate the State to reduce GHG emissions and protect environmental integrity.
Issue(s)	Whether the regulatory amendment increasing ethanol content in gasoline violated the constitutional right to a healthy environment by failing to properly assess environmental risks. Whether the State breached its duty to apply the precautionary principle and conduct public consultations before implementing regulatory changes with potential environmental and public health consequences. Whether economic considerations could justify weakening environmental protections considering Mexico's domestic and international environmental obligations.
Holding	The Supreme Court invalidated the regulatory modification, ruling that environmental risks must be thoroughly assessed before adopting new fuel standards. It found that the Energy Regulatory Commission had failed to comply with environmental review requirements and did not sufficiently consider public health impacts or Mexico's climate commitments. The Court reaffirmed that the precautionary principle must be applied, and that public consultations are mandatory for policies with significant environmental impacts. Economic benefits were deemed insufficient to justify regulatory rollbacks that weaken climate and environmental protections.

[104] Id. at ¶ 3.2. [Unofficial translation]
[105] Id.
[106] Id.
[107] Id. at 45-46.

Rationale

The Court held that the regulatory amendment violated the constitutional right to a healthy environment by neglecting mandatory environmental assessments and public participation procedures outlined in national law.[108] Relying on the precautionary principle, the Court emphasized that in situations of scientific uncertainty regarding environmental harm, authorities must err on the side of environmental protection.[109] The ruling underscored that Mexico's obligations under international climate agreements, including the Paris Agreement, require alignment of domestic policies with environmental protection goals to mitigate GHG emissions and safeguard public health.[110] The Court also noted that weakening environmental safeguards for economic gain runs contrary to constitutional mandates and the principle of sustainable development.[111]

Additional Information & Analysis

Significance: This decision strengthens Mexico's legal framework for environmental governance by reinforcing the application of the precautionary principle and procedural environmental rights, such as public participation and environmental impact assessments. It serves as an important precedent limiting attempts to relax environmental standards in favor of economic interests, ensuring that regulatory changes align with both constitutional protections and international climate obligations.

Precautionary Principle: The Court affirmed that when scientific uncertainty exists about the environmental or health impacts of a policy—such as increasing ethanol content in gasoline—the authorities must prioritize environmental protection over economic or industrial interests. This reinforces the view that risk must be proactively managed, not reactively corrected. The ruling draws directly from Mexico's constitutional and international obligations, including the human right to a healthy environment enshrined in Article 4 of the Federal Constitution. The Court stated that: "[t]he establishment of a development of such nature, and the proper balance between economic growth and environmental protection, constitutes a guiding principle established by the Permanent Constituent itself, by virtue of the incorporation of the human right to a healthy environment in Article 4 of the Federal Constitution, as well as the approval and ratification of various international instruments on the matter."[112]

Climate Commitments: By requiring comprehensive environmental evaluations before altering fuel standards, the Court reinforced Mexico's duty to address climate change and protect public health. The decision recognizes climate obligations under international agreements and the need for domestic policies to uphold these commitments, including NDCs.[113] In this regard, after analyzing Mexico's international commitments, the Court concludes that "The State has the obligation to adopt and implement measures aimed at protecting against environmental harm that interferes or may interfere with the enjoyment of human rights. This implies, among other considerations, that the State 'has the obligation to protect those within its territory from the harmful effects of climate change.'"[114]

Access to Justice and Procedural Rights: The ruling highlights the importance of public consultation in environmental decision-making processes, acknowledging that affected communities and civil society organizations must have the opportunity to assess and challenge regulatory changes that may impact environmental and public health. The Court concludes that "the human right to a healthy environment imposes certain procedural obligations on the State regarding environmental protection. Among these obligations are the duties to: (I) assess environmental impact and make environmental information public; (II) facilitate public participation in environmental decision-making; and (III) provide access to effective remedies for the protection of environmental rights."[115]

[108] Id. at 45-46.
[109] Id. at 21-26, 44-45.
[110] Id. at 75-78.
[111] Id. at 80-81.
[112] Id. at 81. [Unofficial translation]
[113] Id. at 75-78.
[114] Id. at 77-78. [Unofficial translation]
[115] Id. at 30. [Unofficial translation]

Cases Decided in International Courts and Tribunals

Key Themes:

Supervision and accountability of state/non-state actors in addressing climate change	**States' obligations under international treaties to address climate change**
Use and importance of climate science	**Judicial development and evolution of legal principles to address climate change**
Human rights and climate change	**Access to justice and legal standing to bring climate cases**

6. *ITLOS Advisory Opinion on Climate Change* (2024) (International Tribunal of the Law of the Sea)

Citation	International Tribunal for the Law of the Sea, *Advisory Opinion No. 31,* 21 May 2024.
Facts	In 2022, the Commission of Small Island States on Climate Change and International Law (COSIS) transmitted to the Tribunal a request for an advisory opinion on two questions: What are the specific obligations of State Parties to UNCLOS, including under Part XII: a) To prevent, reduce and control pollution of the marine environment in relation the deleterious effects that result or are likely to result from climate change, including through ocean warming and sea level rise, and ocean acidification, which are caused by anthropogenic greenhouse gas (GHG) emissions into the atmosphere? b) To protect and preserve the marine environment in relation to climate change impacts, including ocean warming and sea level rise, and ocean acidification. The Tribunal is an independent judicial body established under the 1982 UN Convention on the Law of the Sea (UNCLOS). It can hear disputes over the interpretation or application of UNCLOS and also has power to issue non-binding 'advisory opinions.' UNCLOS imposes obligations on its 168 state parties to protect and preserve the marine environment (under UNCLOS, Part XII), but does not expressly reference climate change or GHG emissions (the treaty text was agreed upon in 1982). The request from COSIS sought to clarify the scope of States' obligations under UNCLOS to extend international law to protect oceans from climate change.
Issues	(a) Whether the Tribunal had jurisdiction to answer the request and issue the opinion? (b) Whether GHG emissions were "pollution of the marine environment" under UNCLOS? (c) If yes to (b), what are the obligations of State Parties to "prevent, reduce, and control" GHG emissions and to "protect and preserve" the marine environment in relation to climate impacts?
Holding	The Tribunal had jurisdiction to issue the advisory opinion. Acknowledging that UNCLOS is a living instrument the Tribunal recognized that anthropogenic GHG emissions constitute pollution of the marine environment under UNCLOS. Accordingly, States Parties have specific obligations under UNCLOS to prevent, reduce, and control marine pollution from anthropogenic GHG emissions, including measures to reduce such emissions. ITLOS determined that while the UNFCCC and Paris Agreement are relevant to the interpretation and application of UNCLOS, these instruments are not *lex specialis*.[116] Furthermore, the obligations of States to reduce GHG emissions under UNCLOS go beyond what is required under the UNFCCC and Paris Agreement. The Tribunal noted that "If a State fails to comply with this obligation, international responsibility would be engaged for that State."[118] (Noting that at the request of COSIS, ITLOS did not address "loss and damage" issues (i.e. States' responsibility and legal consequences of failure to comply with primary obligations)).

[116] Id. at ¶¶ 222-223.
[117] Id. at ¶ 224.
[118] International Tribunal for the Law of the Sea, Advisory Opinion No. 31, 21 May 2024, ¶ 233.

Rationale

Use and importance of the best available science to determine the issue of whether GHG emissions are marine pollution: ITLOS extensively summarized findings of the Intergovernmental Panel on Climate Change (IPCC) on the causes of climate change and the severe effects of anthropogenic GHGs on the marine environment.[119] ITLOS emphasized that scientific evidence shows that anthropogenic GHG emissions pose a high risk of foreseeability and severity of harm to the marine environment.[120] This scientific evidence informed ITLOS's interpretation of States' obligations under UNCLOS,[121] including the stringent standard of due diligence (key reasoning on this issue set out below).[122]

GHG emissions are "marine pollution" under UNCLOS: ITLOS rejected arguments from States that including GHG emissions as "pollution" would be tantamount to ITLOS exercising legislative functions,[123] and defined "greenhouse gases" by reference to the IPCC definitions[124] as well as the UNFCCC definition,[125] and interpreted UNCLOS's definition of "pollution" of the marine environment to include GHG emissions having regard to the scientific evidence.[126]

States' obligations to protect the marine environment go beyond the UNFCCC and Paris Agreement: Rejecting a key argument made by high-emitting States,[127] ITLOS determined that while the UNFCCC and Paris Agreement are relevant to the interpretation and application of UNCLOS, these instruments are not *lex specialis*.[128] Furthermore, the obligations of States to reduce GHG emissions under UNCLOS go beyond what is required under the UNFCCC and Paris Agreement.[129] The duty to protect and preserve the marine environment would not be satisfied "simply by complying with the obligations and commitments under the Paris Agreement."[130] In addition to the UNFCCC, Kyoto Protocol, and Paris Agreement, ITLOS outlined the scope and relevance of other multilateral international instruments that address climate change, including the Montreal Protocol and the Kigali Amendment, MARPOL, IMO, International Civil Aviation Organization, and the Chicago Convention.[131] ITLOS determined that rules relevant to the advisory opinion may be found in these agreements.[132] ITLOS noted the Montreal Protocol deals with phasing out the production and consumption of ozone-depleting chemicals (ex: chlorofluorocarbons and hydrochlorofluorocarbons, which are GHGs).[133] ITLOS observed that the Kigali Amendment to the Montreal Protocol provides for the phase-down of hydrofluorocarbons (HFCs) and that HFCs are not ozone-depleting substances but are potent GHGs.[134]

All States must take all necessary measures, individually and collectively, to "prevent, reduce, and control" marine pollution from GHG emissions: all State Parties have obligations under UNCLOS to take "all necessary measures" to prevent, reduce, and control marine pollution from GHG emissions and to endeavor to harmonize their policies.[135] This means States are required "to make their best efforts" to achieve the result of preventing, reducing, and controlling marine pollution.[136] Compliance with procedural obligations like: conducting effective environmental impact assessments,[137]

[119] Id. at ¶¶ 44-46.
[120] Id. at ¶¶ 57, 58, 62.
[121] Id. at ¶¶ 164, 172-173, 175, 418.
[122] Id. at ¶ 241.
[123] Id. at ¶ 160.
[124] Id. at ¶ 54.
[125] Id. at ¶ 68.
[126] Id. at ¶¶ 164-179.
[127] Id. at ¶ 220.
[128] Id. at ¶¶ 222-223.
[129] Id. at ¶ 224.
[130] Id. at ¶ 222.
[131] Id. at ¶¶ 78-82.
[132] Id. at ¶ 137.
[133] Id. at ¶ 82.
[134] Id.
[135] Id. at ¶¶ 229, 243.
[136] Id. at ¶ 233.
[137] Id. at ¶ 354.

monitoring and surveilling GHG emissions,[138] and publishing and circulating reports of monitoring activities[139] are relevant to objectively determining States' compliance with this substantive obligation (as well as the substantive obligation to prevent transboundary harm).[140]

The obligation of due diligence to prevent, reduce, and control GHG emissions does not depend on the discretion of the State to address emissions but requires an objective assessment of the best available science and the need to limit global temperature to 1.5°C: Determined objectively, all necessary measures must take into account the best available science, in particular the need to limit the temperature increase to 1.5° above pre-industrial levels and the timeline for implementing actions to stay below 1.5°.[141]

The due diligence obligation has a "stringent" due diligence standard due to high risk of serious and irreversible harm from climate change: However, the implementation of the obligation of due diligence may vary according to States' capabilities and available resources.[142]

States must adopt and enforce national legislation and establish international rules and standards addressing sources of GHG emissions under their jurisdiction or control from land-based sources, vessels or aircraft, and from certain seabed activities such as venting and flaring. Under UNCLOS, States have three main obligations to addresses these pollution sources: first, adopt national legislation, second, the obligation to take other necessary measures, and third, the obligation to endeavor to establish international rules, standards and practices and procedures. Those obligations are "mostly concerned with establishing the legal framework, both national and international, necessary to prevent, reduce and control marine pollution from land-based sources."[143]

Environmental impact assessments are a crucial aspect of this obligation and are required on an objective determination of the facts and scientific evidence. States must conduct environmental impact assessments over any planned activities (public or private) under their jurisdiction or control where there is "reasonable grounds for believing" (based on an objective determination of the facts and scientific knowledge)[144] that these activities "may cause substantial pollution of or significant and harmful changes to the marine environment."[145] Assessments can embrace not only specific impacts of individual planned activities but also the cumulative impacts of the activities given current levels of GHG emissions.[146] ITLOS emphasized this obligation also imports a broad concept of activities under States' "jurisdiction or control" and includes all land-based activities as well as maritime activities.[147]

All States must take all necessary measures to prevent transboundary harm under States' jurisdiction or control, including extraterritorial activities: States have an obligation to take all measures necessary to ensure that activities under their **jurisdiction** or control (both land-based and sea-based) do not cause damage by pollution to other States and their environment and that pollution arising from such activities does not spread beyond the limits of their jurisdiction. Activities under a States' jurisdiction may include activities carried out on board ships or aircraft registered in a State.[149]

[138] Id. at ¶¶ 347-349.
[139] Id. at ¶ 350.
[140] Id. at ¶ 345.
[141] Id. at ¶ 243.
[142] Id.
[143] Id. at ¶ 267.
[144] Id. at ¶¶ 360-361.
[145] Id. at ¶¶ 359, 367.
[146] Id. at ¶ 365.
[147] Id. at ¶ 360.
[148] Id. at ¶¶ 247, 254, 257.
[149] Id. at ¶ 247.

This obligation to prevent transboundary harm is one of due diligence and the standard is "even more stringent": than the obligation to prevent, reduce, and control GHG emissions.[150] In the context of UNCLOS, the due diligence obligation to prevent marine pollution from GHG emissions requires national regulation: a State is required to put in place a "national system, including legislation, administrative procedures and an enforcement mechanism necessary to regulate the activities in question, and to exercise adequate vigilance" to make this system function effectively to achieve the result.[151]

In many instances, the due diligence obligation can be "highly demanding."[152] The obligation of due diligence is closely linked to the precautionary approach and, in the context of the high and irreversible risks caused by climate change, required a "stringent" standard.[153] However, the implementation of that standard may vary according to States' capabilities and available resources; a State with "greater capabilities and sufficient resources" must do more than a State "not so well placed."[154] Nonetheless, all States must take mitigation measures and implementing the obligation of due diligence requires States in the latter category to "do whatever it can in accordance with its capabilities and available resources."[155]

Significance: The opinion clarifies the importance and relevance of various areas of international law to tackle the climate emergency. The advisory opinion engages in a nuanced and detailed account of the causes and impacts of climate change relying on the best available science. This strong factual foundation then reinforces the legal reasoning, which establishes a series of interlocking and mutually reinforcing obligations across international instruments (including the UNFCCC, the Montreal Protocol and MARPOL) and UNCLOS to strengthen States' obligations to effectively address climate change to protect marine ecosystems. In addition, the advisory opinion imposes a "stringent" due diligence obligation on States in the context of climate change, which varies according to States' capabilities and available resources.

Additional Information & Thematic Analysis

ITLOS's advisory opinion has significant implications for international obligations of States as parties to UNCLOS. The reasoning also has persuasive value on the two other advisory opinions proceedings concerning climate change before the Inter-American Court of Human Rights and the International Court of Justice.

While the questions and applicable law in each advisory opinion are different, they share issues in common, including:

a) The relevance and use of best available scientific evidence on the causes, impacts, and solutions for climate change to the evolutive development of legal principles and standards, especially the obligations of States to mitigate, adapt, and build climate-resilience.

b) The interpretation of international climate law obligations (including obligations under the UN Framework Convention on Climate Change (UNFCCC) and the Paris Agreement) with obligations arising from other sources of law (both under treaty and customary international law), including international environmental law and human rights law.

Best Available Science: As already noted, the reasoning contains a detailed summary of key scientific findings from various IPCC reports on climate change and the impact of GHG emissions on the marine environment. ITLOS's reasoning aligns with many of the legal arguments put forward by small island and developing States and rejects many of the arguments advanced by high-emitting States. Crucially, the opinion focuses on the best available science as the guide to interpret States' obligations to address GHG emissions. ITLOS's reasoning explained and acknowledged the scientific consensus of the severe

[150] Id. at ¶¶ 256, 258.
[151] Id. at ¶ 235.
[152] Id. at ¶ 257.
[153] Id. at ¶ 242.
[154] Id. at ¶ 241.
[155] Id.

and irreversible harm to the marine environment if global temperatures exceed 1.5°C. ITLOS stated that States must take all necessary measures to mitigate anthropogenic GHG emissions. These measures must be determined objectively and must take account of the best available science and the need to stay below 1.5°C.

Nature and Urgency of Climate Harm: The Tribunal refers to the scientific consensus on increased risk of harm with every increment of global warming and higher risks of severe and irreversible harm beyond 1.5°: Discussing and quoting the IPCC's 2023 Synthesis Report to the 6th Assessment Report (AR6) and the IPCC's 2018 Special Report on 1.5°, ITLOS noted that every increment of warming increases climate-related risks and these risks are higher beyond 1.5°, but lower than at 2°C.[156] ITLOS highlighted the IPCC's conclusion that there is a high risk of a much worse outcome if temperature increases exceed 1.5° above pre-industrial levels.[157] When defining the content of the obligation of States to protect the marine environment, ITLOS reiterated that there is "broad agreement within the scientific community that if global temperature increases exceed 1.5°, severe consequences?" will ensue.[158]

Temperature Targets: ITLOS highlights the scientific evidence on the importance of limiting warming to under 1.5°. Informed by the scientific evidence, ITLOS recognizes that this implies reaching net zero CO_2 emissions globally around 2050 and concurrent deep reductions in emissions of short-lived climate pollutants, particularly methane.[159]

Importance of SLCP Mitigation: Relying on the scientific evidence presented by the IPCC Special Report on 1.5°C and the 2023 Synthesis Report to AR6, ITLOS noted that limiting warming to 1.5°C requires deep cuts to both CO_2 emissions and non-CO_2 pollutants, particularly methane.[160] ITLOS underscored the IPCC's observations from the Special Report on 1.5°C that a 1.5°C limit implies "very ambitious internationally cooperative policy environments that transform both supply and demand (high confidence)." The transformations required to limit warming to 1.5°C, compared to 2°C, are "more pronounced and rapid over the next decades (high confidence)." [161]

Climate Impacts on Human Rights: At the end of its summary of the scientific evidence, ITLOS referred to scientific findings on climate impacts on vulnerable communities, involuntary migration and displacement, and climate-related illnesses. ITLOS observed that climate change is both a threat to human well-being and planetary health. In this respect, ITLOS acknowledged climate change is "an existential threat and raises human rights concerns."[162] ITLOS noted the "deleterious" effects of climate change and the "devastating consequences it has and will continue to have on small island States" considered to be the most vulnerable to climate impacts.[163]

Role of International Human Rights Tribunals: In her separate declaration to the opinion, Judge Infante Caffi highlighted the links between human rights and climate impacts, noting that the legal regimes on human rights require law of the sea principles to be applied, and the law of the sea requires States to consider the human implications of regulatory measures, policies, and enforcement actions.[164] Judge Pawlak, in his separate declaration, summarized the UN Human Rights Committee decision in *Billy et al. v Australia* and the judgment of the ECtHR in *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland.* His Honor described these developments as "essential" and "not isolated", referring to the advisory opinions before the Inter-American Court of Human Rights and the International Court of Justice.[165] Judge Pawlak stated that the advisory opinion could

[156] Id. at ¶¶ 62-63.
[157] Id. at ¶ 209.
[158] Id. at ¶ 241.
[159] Id. at ¶¶ 62-65, 77, 208-210, 241.
[160] Id. at ¶¶ 63, 65.
[161] Id. at ¶ 64.
[162] Id. at ¶ 66.
[163] Id. at ¶ 122.
[164] Declaration of Judge Infante Caffi to the ITLOS Advisory Opinion, ¶¶ 2-4.
[165] Declaration of Pawlak to the ITLOS Advisory Opinion, ¶ 5.

have been "more comprehensive and up to date" if it had included recent developments in courts and international bodies dealing with the issue of State responsibility to combat climate change to protect human rights.[166] Judge Kittichaisaree noted his impression was that ITLOS has "duly borne in mind and been motivated by the human rights concerns raised in the context of climate change, including in the opinion's observations (referred to above, noting the devastating impacts climate change will have on small island States).[167]

Due Diligence Obligations: The opinion's interpretation of the nature of the due diligence obligations under UNCLOS to address climate change were detailed and will be influential. ITLOS reasoned that due diligence obligations in the context of climate change are "stringent" but vary according to States' capabilities and available resources. Following and expanding upon its existing jurisprudence, ITLOS reiterated that the content of the due diligence obligations is variable and depends on numerous factors, which evolve over time.[168] These factors include: (a) Scientific and technological information; (b) Relevant international rules and standards; (c) An objective assessment of the risk of harm and urgency involved.[169]

7. *Billy et al. v. Australia* (2022) (United Nations Human Rights Committee)

Citation	United Nations Human Rights Committee, *Daniel Billy et al v Australia,* No. 3624/2019, 13 May 2019.
Facts	In 2019, eight Indigenous persons of the Torres Strait Islands of Australia (authors) on behalf of themselves and their children made a communication with the UN Human Rights Committee. The indigenous people of the Torres Strait Islands are among the most vulnerable to the impact of climate change. The communication alleged that Australia has failed to take adequate mitigation and adaptation measures to combat the effects of climate change. At the time of making the communication Australia had failed to implement an adaptation program to ensure the long-term habitability of the islands, despite numerous requests for assistance and funding. In 2017, the country's per capita GHG emissions were the second highest in the world. Australia ranked 43rd out of 45 developed countries in reducing its greenhouse gas emissions during that period. Since 1990, Australia has actively pursued policies that have increased emissions by promoting the extraction and use of fossil fuels. The effects of climate change were having a disproportionate impact on the indigenous population of the Torres Strait Islands. The authors argued Australia's insufficient mitigation and adaptation measures has violated their human rights under the International Covenant on Civil and Political Rights (ICCPR), specifically Article 6 (the right to life), Article 17 (the right to be free from arbitrary interference with privacy, family and home), and Article 27 (the right to culture). The authors also alleged violation of the rights of the named children under Article 24(1) (protection of children), read alone or in conjunction with Articles 6, 17 and 27 of the ICCPR. In February 2020, the Australian government committed $25 million in climate adaptation measures for the region, including the construction of seawalls, repairing and maintain jetties and re-establishing ferry services. However, Australia maintained the communication to the Committee was inadmissible, lacked merit and should be dismissed arguing, inter alia, that the international legal framework of climate change law was immaterial to the interpretation of the ICCPR because the framework is outside of its scope. Moreover, Australia argued the authors had not shown any meaningful causal connection between the alleged violations of their rights and Australia's climate measures, or alleged failure to take measures. Relying on the Committee's position in *Teitiota v. New Zealand,* Australia

[166] Id. at ¶ 7.
[167] Declaration of Judge Kittichaisaree to the ITLOS Advisory Opinion, ¶ 28.
[168] International Tribunal for the Law of the Sea, Advisory Opinion No. 31, ¶ 239.
[169] Id. at ¶¶ 239, 256, 397.

	asserted that the claimants were seeking to rely on a risk from climate change that has not yet materialized. Australia argued that the government was already doing enough on climate change and that future climate impacts were too uncertain to require further action. The government further denied the human rights impacts of climate change on the Torres Strait Islander people and claimed that the complaint concerned future rather than present risks, arguing that because the country is not the main, or only, contributor to global warming, the effects of climate change on its citizens are not its legal responsibility under international human rights law.
Issues	Whether the human rights claims, with respect to climate change impacts, are outside the scope of the ICCPR and whether the State can be held responsible for climate impacts under the ICCPR. Whether Australia's positive acts and omissions to address the current impacts of climate change on low lying islands affecting the complaints complied with their human rights obligations under the ICCPR.
Holding	The Committee found that Australia was violating the right to private, family and home life (Article 17) and right to culture (Article 24). **Admissibility:** The communication was admissible. The Committee rejected each of Australia's arguments on admissibility and proceeded to determine the merits. **Right to Life:** A majority of the Committee found there was no violation of the right to life under Article 6 of the ICCPR. **Right to Private, Family and Home Life:** The Committee concluded that the information made available to it indicates that by failing to discharge its positive obligation to implement adequate adaptation measures to protect the authors' home, private life and family, the State party violated the authors' rights under article 17 of the Covenant.[170] **Right to Culture:** The Committee considered on the material before it there was a violation of the authors' rights to culture under article 27 of the Covenant.[171] **Protection of Children and Rights of Future Generations:** Having found a violation of articles 17 (right to private, family and home life) and 27 (right to culture), the Committee deemed it unnecessary to examine the authors' remaining claims under article 24(1) of the Covenant. **Remedy:** Australia is obligated, *inter alia,* to provide adequate compensation to the authors for the harm that they have suffered; engage in meaningful consultations with the authors' communities in order to conduct needs assessments; continue its implementation of measures necessary to secure the communities' continued safe existence on their respective islands; and monitor and review the effectiveness of the measures implemented and resolve any deficiencies as soon as practicable. The State party is also under an obligation to take steps to prevent similar violations in the future.[172]
Rationale	**Admissibility:** To the extent that the authors were relying on climate treaties (to address mitigation and adaptation measures) they were not doing so to seek relief for violations under other treaties but seeking to refer to them to interpret the ICCPR the claims are admissible.[173] Australia's alleged actions or omissions to mitigate and adapt to climate change fall under the State party's jurisdiction under the ICCPR.[174] As indigenous peoples who are longstanding inhabitants of small, low-lying islands, the risk of impairment of their human rights is "more than a theoretical possible" and their claims were also admissible on that basis.[175]

[170] United Nations Human Rights Committee, Daniel Billy et al v Australia, No. 3624/2019, 13 May 2019, ¶ 8.12.
[171] Id. at ¶ 8.14.
[172] Id. at ¶ 8.16.
[173] Id. at ¶ 7.5.
[174] Id. at ¶ 7.8.
[175] Id. at ¶ 7.10.

Human Right to Life: The Committee considered there was no violation of the right to life as the authors had not shown that they have a real and reasonably foreseeable risk of being exposed to a situation of physical endangerment or extreme precarity that could threaten their right to life, including their right to a life with dignity.[176] The Committee reiterated that "climate change and unsustainable development constitute some of the most pressing and serious threats to the ability of present and future generations to enjoy the right to life."[177] However, while the authors "evoke feelings of insecurity" they had not "indicated that they have faced or presently face adverse impacts of their own health or a real and reasonably foreseeable risk of being exposed to a situation of physical endangerment or extreme precarity that could threaten the right to life."[178] Based on the information made available to it, the majority of the Committee was not in a position to conclude that the adaptation measures taken by the State party would be insufficient so as to represent a direct threat to the authors' right to life with dignity.[179]

Individual opinion by Committee Member Duncan Laki Muhumuza (dissenting) (Annex I): Contrary to the majority of the Committee, Committee Member Muhumuza found there was a violation of the right to life based on the information provided by Australia. As Australia had "failed to prevent foreseeable loss of life from climate change". Citing *Urgenda Foundation v the State of Netherlands,* the Committee Member reasoned that Australia had "has not taken any measures to reduce greenhouse gas emissions and cease the promotion of fossil fuel extraction and use, which continue to affect the authors and other islanders, endangering their livelihood, resulting in the violation their rights under article 6 of the Covenant."[180] Furthermore, the citizens of the Torres Strait islands have lost their livelihood as the result of sea levels and saltwater affecting their soil and cultivation. These factors point to "imminent danger or threat posed to people's lives which is already affecting their lives" and yet Australia had not taken effective protective action.[181]

Joint opinion by Committee Members Arif Bulkan, Marcia V. J. Kran and Vasilka Sancin (partially dissenting) (Annex III): The Joint Opinion also dissented on the issue of whether there was a violation of the right to life.[182] The members observed that the "real and foreseeable" risk standard used by the majority of the Committee was an overly restrictive interpretation of the right to life in Article 6 of the ICCPR in the context of climate change. The primary question in the communication should be whether the alleged violations of article 6 themselves ensue from inadequate mitigation and/or adaptation measures on climate change by the State party. Using a "more accurate standard", from a factually similar case relating to environmental damage by pesticides, the question should be whether there is "a reasonably foreseeable threat" to the authors' right to life.[183] The Joint Opinion emphasizes the need to interpret the right to life with dignity "progressively" and "based on current realities."[184]

Right to Private, Family and Home Life: The Committee considered that when climate change impacts––including environmental degradation on traditional [indigenous] lands in communities where subsistence is highly dependent on available natural resources and where alternative means of subsistence and humanitarian aid are unavailable––have direct repercussions on the right to one's home, and the adverse consequences of those impacts are serious because of their intensity or duration and the physical or mental harm that they cause, then the degradation of the environment may adversely affect the well-being of individuals and constitute foreseeable and serious violations of private and family life and the home.[185]

[176] Id. at ¶ 8.6.
[177] Id. at ¶ 8.3.
[178] Id. at ¶ 8.6.
[179] Id. at ¶ 8.8.
[180] Id. at Annex I, ¶¶ 10-11.
[181] Id. at Annex I, ¶ 13.
[182] Id. at Annex III, ¶ 1.
[183] Id. at Annex II, ¶ 2.
[184] Id. at Annex III, ¶ 4.
[185] Id. at ¶ 8.12.

Right to Culture: The Committee considered that the climate impacts mentioned by the authors represent a threat that could have reasonably been foreseen by the State party, as Torres Strait Islander community had begun raising the issue in the 1990s. The Committee considered that on the basis of the information made available to it Australia's failure to adopt timely adequate adaptation measures to protect the indigenous people's collective ability to maintain their traditional way of life, to transmit to their children and future generations their culture and traditions, and use of land and sea resources demonstrated a violation of the State party's positive obligation to protect the claimants right to enjoy their minority culture.[186]

Requirement to provide an effective remedy: The Committee found that Australia was under an obligation to provide the authors with an effective remedy (Article 2(3)(a) of the ICCPR) and made a series of recommendations on specific remedies, requiring Australia to report back to the Committee on measures taken within 180 days. In March 2023, Australia issued a formal response to the Committee's communication. Its position is that the most appropriate remedies will be achieved through close collaboration with Torres Strait Islander communities and regulatory reforms. Australia noted that consistent with the Committee's recommendations it is committed to implementing measures necessary to secure the Torres Strait Islander communities safe existence on their islands.[187]

Significance: This was the first successful claim grounded in human rights brought by climate-vulnerable inhabitants of low-lying islands against a nation-state in the UN Human Rights Committee. It was also the first time that indigenous peoples' right to culture has been found to be at risk from climate impacts. The Committee's decision also recognized that climate change was currently impacting the authors' daily lives and that Australia's poor climate record––focusing particular on the government's inadequate adaptation measures––is a violation of their right to family life and right to culture under the ICCPR. Despite being raised by the communication, the Committee's decision barely addresses the mitigation obligations of Australia, this approach is criticized in some of the individual dissenting opinions.

The individual and joint opinions of members of the Committee also include important additional and dissenting reasoning on the urgency of climate harm, the need to impose both mitigation and adaptation obligations on states to effectively protect human rights and address climate change, the appropriateness of the standard for assessing a violation of the right to life and due diligence obligation of states in relation to human rights in the context of climate change.

Additional Information & Analysis

Nature and Urgency of Climate Harm: Joint Opinion (Annex III) observes that "[g]iven the urgency and permanence of climate change, the need to adhere to the precautionary approach is imperative. In addition, the singular focus on the future obscures consideration of the harms being experienced by the authors, which negatively impact on their right to a life with dignity in the present."[188]

Limits of Adaptation: Individual opinion by Committee Member Gentian Zyberi (concurring) expressly recognized that "[i]f no effective mitigation actions are undertaken in a timely manner, adaptation will eventually become impossible. Such resources will not be available for indigenous peoples or even for humanity more generally, without diligent national efforts, as well as joint and concerted mitigation actions of the organized international community."[189]

[186] Id. at ¶ 8.14.
[187] Australian Government, Response of Australia to the Views of the Human Rights Committee in Communication No. 3624/2019 (Billy et al. v. Australia) (30 March 2023), ¶¶ 57-60.
[188] United Nations Human Rights Committee, Daniel Billy et al v Australia, No. 3624/2019, 13 May 2019, at Annex III, ¶ 4.
[189] Id. at Annex II, ¶ 6.

Climate Impacts on Vulnerable Groups: Individual opinion by Committee Member Gentian Zyberi (concurring) "In my view, the Committee should have linked the State obligation to 'protect the authors' collective ability to maintain their traditional way of life, to transmit to their children and future generations their culture and traditions and use of land and sea resources' more clearly to mitigation measures, based on national commitments and international cooperation – as it is mitigation actions which are aimed at addressing the root cause of the problem and not just remedy the effects."[190]

Due Diligence Obligations of States: Individual opinion by Committee Member Gentian Zyberi (concurring) noted that "States should act with due diligence when taking mitigation and adaptation action, based on the best science. This is an individual responsibility of the State, relative to the risk at stake and its capacity to address it. A higher standard of due diligence applies in respect of those States with significant total emissions or very high per capita emissions (whether these are past or current emissions), given the greater burden that their emissions place on the global climate system, as well as to States with higher capacities to take high ambitious mitigation action. Finding this higher standard should be applied to Australia.[191]

8. *Sacchi et al. v. Argentina et al.* (2021) (United Nations Convention on the Rights of the Child)

Citation	United Nations Committee on the Rights of the Child, *Sacchi et. al. v Argentina et al.*, No. 107/2019, 23 September 2019.
Facts	Sixteen children (petitioners) filed a petition alleging that Argentina, Brazil, France, Germany, and Turkey violated their rights under the UN Convention on the Rights of the Child (Convention) by making insufficient cuts to greenhouse gases and failing to encourage the world's biggest emitters to reduce carbon pollution. The petitioners claimed that the climate crisis is not an abstract future threat but an urgent reality. The rise in global average temperature is causing devastating heatwaves, forest fires, extreme weather patterns, floods and sea level rise, and fostering the spread of infectious diseases, infringing on the human rights of millions of people globally. Every day of delayed action, increased the risk of reaching unstoppable and irreversible ecological and human health tipping points. The petitioners claimed that all the respondent States' actions and inactions to keep global temperatures below 1.5°C above pre-industrial temperatures, has led to violations of their rights under the Convention, including the rights to life, health, and the prioritization of the child's best interest, as well as the cultural rights of petitioners from indigenous communities. The petition asserted that the State respondents have four related obligations under the Conventions: (i) to prevent foreseeable domestic and extraterritorial human rights violations resulting from climate change; (ii) to cooperate internationally in the face of the global climate emergency; (iii) to apply the precautionary principle to prevent deadly consequences even in the face of uncertainty; and (iv) to ensure intergenerational justice for children and posterity. In addition to the petitioners' claimed that States violated their right to life under Article 6, right to health under Article 24, right to cultural identity under Article 30, rights for posterity under Article 3, and failed to act in accordance with the principle of intergenerational equity.
Issues	**Jurisdiction:** Whether the States had jurisdiction over all the petitioners (even those outside their territory). **Admissibility:** Whether the petition was admissible. **Nature and urgency of harm/importance of 1.5°C:** The petition focused on the urgent need to act to avoid reaching irreversible tipping points. States were creating imminent risks as it will be impossible to recover lost mitigation opportunities.

[190] Id.
[191] Id. at Annex II, ¶ 5.

Issues	**Development of legal principles and obligations of States relying on human rights obligations:** Whether the States had violated various rights under the Convention for failing to take adequate climate action; and whether––and to what extent––human rights law required recognition of future generations. **Climate impacts on vulnerable groups (youth):** Whether and to what extent the current and projected impacts affected youth and future generations.
Holding	The Committee found that it had jurisdiction to hear the petition,[192] but rejected the petition as inadmissible on the basis that the petitioners had not exhausted all domestic remedies.[193] Accordingly, the Committee did not consider the merits of the claims.
Rationale	**Jurisdiction:** The Committee accepted the scientific evidence that the carbon emissions originating in the State party contribute to the worsening of climate change, and that climate change has an adverse effect on the enjoyment of rights by individuals both within and beyond the territory of the State party. The Committee therefore considered that, given each State's party ability to regulate activities that are the source of these emissions and to enforce such regulations, they have effective control over the emissions. **Admissibility:** The Committee rejected each of the petitioners' claims regarding the issue of their failure to exhaust domestic remedies. Noting that the petitioners had not attempted to initiate domestic proceedings in the State parties,[194] they acknowledged the arguments that these proceedings would face unique burdens, be unreasonably prolonged, and be unlikely to give effective relief. The State party's alleged failure to engage in international cooperation is raised in connection with the specific form of remedy that the authors are seeking, however, they have not sufficiently established that such a remedy is necessary to bring effective relief. In addition, the Committee rejected the petitioners' arguments about the unsuitability/unavailability of the writ of amparo. Noting, inter alia, that in the absence of any further reasons as to why the petitioner did not attempt to pursue these remedies, other than generally expressing doubts about the prospects of success of any remedy, the Committee considered that the authors have failed to exhaust all domestic remedies that were reasonably effective and available to them to challenge the alleged violation.[195]
Additional Information & Analysis	**Significance:** The Committee adopted and applied a broad test for establishing jurisdiction for transboundary harm. As a result, if the petition was admissible, the children could have argued on the merits that the impairment of their rights as a result of States' actions or inactions to mitigate GHG, including extraterritorially, was reasonably foreseeable and triggered States' obligations. **Nature and urgency of climate harm:** The Committee concluded it was "generally accepted" that GHG emissions contributed to climate change and that climate change has an "adverse effect" on the enjoyment of rights by individuals both within and beyond the territory of a State.[196] **Developments of legal principles and obligations of States' for extraterritorial impacts:** The Committee's embracing of the reasoning of the Inter-American Court of Human Rights on State responsibility for exterritorial activities is critical and has been relied on in other fora. **Climate impacts on vulnerable groups (youth):** The Committee, in determining the jurisdictional issue of victim status, found that the youth petitioners are particularly affected by climate change, both in terms of the manner in which they experience its effects and the potential of climate change to have an impact on them throughout their lifetimes, particularly if immediate action is not taken.[197]

[192] United Nations Committee on the Rights of the Child, Sacchi et al v Argentina, No. 107/2019, 23 September 2019, ¶ 10.14.
[193] Id. at ¶ 11(a).
[194] Id. at ¶ 10.18.
[195] Id.
[196] Id. at ¶ 10.19.
[197] Id. at ¶ 10.13.

9. *Teitiota v. New Zealand* (2020) (United Nations Human Rights Council)

Citation	United Nations Human Rights Council, *Ioane Teitiota v. New Zealand,* No. 2728/2016, 24 October 2019.
Facts	Ioana Teitiota (the author), a national of Kiribati (South Tarawa island) had his application for refugee status rejected by New Zealand. He claimed New Zealand violated his right to life under the ICCPR by removing him to Kiribati, pursuant to domestic immigration regime, in 2015. The New Zealand courts had denied his appeals of the deportation decision. The author alleged that climate change and sea level rise forced him to migrate to New Zealand and the situation in Kiribati was becoming increasingly unstable due to sea level rise and saltwater contamination, causing overcrowding and lack of access to fresh water and food. The Committee heard expert evidence that 60% of the author's island obtained fresh water only from rationed supplies provided by public utilities. And that the islands constituting the country of Kiribati rose no more than 3 metres above sea level. There was also information provided by the author that internal relocation was not possible, and that Kiribati would be uninhabitable in 10-15 years. The issue raised in the communication before the Committee was whether the author had substantiated the claim to New Zealand government officials at the time of his deportation that he faced a real risk of irreparable harm to his life upon deportation to Kiribati.
Issues	**Admissibility:** Whether the claim under Article 6(1) (of a violation of the right to life) was sufficiently substantiated with evidence to establish a prima facie case. **Nature and urgency of climate harm:** Whether the author's allegations about the risk and impacts of sea level rise in Kiribati should be accepted and affected New Zealand's ICCPR obligations. **Development of legal principles and obligations of States relying on human rights obligations:** whether New Zealand's deportation regime needed to accommodate risk of climate change impacts to avoid violating human rights, specifically the right to life (under Article 6 of the ICCPR). **Climate impacts on vulnerable groups (inhabitants of low-lying islands):** The Committee examined material put forward by the author about the current and projected impacts of climate change on Kiribati.
Holding	The Committee found that New Zealand had not violated the right to life. **Admissibility:** The Committee found the communication was admissible. The Committee rejected New Zealand's arguments that the complainant failed to establish a prima facie case. **Right to Life:** A majority of the Committee found there was no violation of the right to life under Article 6 of the ICCPR.
Rationale	**Admissibility:** Based on the information the author presented to the domestic authorities and in his communication, the Committee considered that the author sufficiently demonstrated, for the purpose of admissibility, that due to the impact of climate change and associated sea level rise on the habitability of Kiribati and on the security situation on the islands, he faced a real risk of impairment to his right to life under article 6 of the Covenant as a result of the State party's decision to remove him to Kiribati.[198]

[198] United Nations Human Rights Council, Ioane Teitiota v. New Zealand, No. 2728/2016, 24 October 2019, ¶ 8.6.

Right to Life: The Committee accepted the factual claim that Kiribati is likely to be uninhabitable in 10-15 years, but that the risk to the right to life was not "imminent" or "reasonably foreseeable" as that timeframe was likely to allow relocation of the population. The Committee considered that it was therefore not in a position based on the information available to it to conclude that the domestic authorities' assessment of the measures to be taken to protect the right to life at the time of deportation was "clearly arbitrary or erroneous."[199] Thus, on this basis there was no violation of the right to life within the scope of Article 6.[200]

Individual opinion of Committee member Duncan Laki Muhumuza (dissenting) (Annex 1): The Committee member found that the complainant faced "a real, personal and reasonably foreseeable risk of a threat to his right to life as a result of conditions in Kiribati."[201] Remarking that the "considerable difficulty in accessing fresh water because of the environmental conditions should be enough to reach the threshold of risk, without needing to reach the point at which there is a complete lack of fresh water. There is evidence of the significant difficulty of growing crops."[202]

Individual opinion of Committee member Vasilka Sancin (dissenting) (Annex II): The Committee member was not persuaded that the author's claim concerning the lack of access to safe drinking water had not been substantiated, on the basis that New Zealand's assessment of the complainant and his family situation was clearly arbitrary or manifestly erroneous. Consequently, he disagreed with the Committee's conclusion that the facts before it did not permit the Committee to conclude that the author's removal to Kiribati violated his rights under article 6 (1) of the Covenant.[203]

Additional Information & Analysis

Significance: This decision was the first opportunity the UN Human Rights Committee had to consider the right to life in the context of climate change impacts, specifically focusing on the circumstances of climate refugees.

The Committee set a high threshold for showing a violation of right to life (Article 6) based on climate impacts. This threshold has been followed but subsequently criticized by individual members' opinions in the Committee's decision of *Billy v Australia*.

The Committee's reasoning indicates that future claims might be successful where the evidence shows "the effects of climate change in receiving states may expose individuals to a violation of their rights."

Nature and Urgency of Climate Harm and Impacts on Vulnerable Groups: The decision addresses in some detail, based on the material provided, the dire situation in Kiribati as a low-lying island nation, as a result of climate change. Even accepting that Kiribati is likely to be uninhabitable in 10–15 years due predominantly to sea level rise and water contamination.

Developments of Legal Principles and Obligations of States re Right to Life: This was the first communication of the Committee setting a threshold or standard for showing a violation of the right to life in the context of certain climate impacts. The Committee's test requires sufficient evidence of a "reasonable foreseeable threat" constituting a violation of Article 6 (right to life).

[199] Id. at ¶ 9.12.
[200] Id. at ¶ 2.9.
[201] Id. at Annex I, ¶ 5.
[202] Id.
[203] Id. at Annex II, ¶ 6.

10. *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland* (2024) (European Court of Human Rights)

Citation	European Court of Human Rights, *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland* [GC], No. 53600/20, 9 April 2024.
Facts	Verein KlimaSeniorinnen Schweiz is a non-profit organization established to advocate for climate protections on behalf of its members, who are over 2,000 elderly Swiss women. **Rights to Life and Private Life:** The organization and four of its individual members complained that Switzerland violated Article 8 (right to respect for private life) and Article 2 (right to life) of the European Convention on Human Rights (ECHR) by failing to uphold its positive obligation to implement sufficient measures to combat climate change. As a result, the women faced adverse consequences for their lives, health, well-being, and quality of life. The applicants highlighted the effects of growing heatwaves on morbidity and mortality in older women. While temperatures and heatwaves were projected to continue increasing, the extent of their adverse effects could be mitigated by limiting warming to 1.5°C. However, Switzerland's failure to meet its own emissions reductions targets, and the insufficiency of those targets in light of its Nationally Determined Contributions and the IPCC global carbon budget, was not consistent with a 1.5°C limit. **Access to Justice:** The applicants also alleged violations of Article 6 § 1 (right to a fair trial) and Article 13 (right to an effective remedy). They had initially pursued domestic administrative and legal remedies but were repeatedly denied standing based on the determination that their individual rights were not affected with "sufficient intensity," given the future timeframe of the 2°C impacts and the perception that the harms suffered by the applicants were not sufficiently distinct from those experienced by the population at large. The case was heard by the Grand Chamber. It was heard by the same composition of judges which heard *Carême v. France* (application no. 7189/21) and *Duarte Agostinho and Others v. Portugal and 32 Others* (application no. 39371/20). The Grand Chamber made a joint announcement of its rulings in the three "climate cases" on April 9, 2024.
Issues	**Admissibility:** Whether the applicant association and the four individual applicants have standing to bring their Articles 2 (right to life) and 8 (right to respect for private life) complaints regarding the State's actions and/or omissions in the context of climate change. **Positive Obligations on Climate Change:** Whether and to what extent Member States have a positive obligation to act on climate change due to the threat it poses to individuals' lives and private lives as protected by Articles 2 and 8 of the ECHR. Whether Switzerland adequately complied with this positive obligation. **Access to Justice:** Whether Switzerland violated Articles 6 § 1 (right to a fair trial) and 13 (right to an effective remedy) of the ECHR by dismissing the applicants' complaints for lack of standing in the prior domestic proceedings.
Holding	**Admissibility:** The applicant association has standing to bring the Article 8 (right to respect for private life) complaint on behalf of its members and that complaint is admissible;[204] however, the four individual applicants do not have standing and their complaints are therefore inadmissible.[205] The Court declined to examine the applicability of the association's Article 2 (right to life) complaint.[206] **Positive Obligations of States:** States have a positive obligation under the Article 8 right to respect for private life to adopt, and to effectively apply in practice, regulations and measures capable of mitigating the existing and potentially irreversible, future effects of

[204] European Court of Human Rights, Verein KlimaSeniorinnen Schweiz and Others v. Switzerland [GC], No. 53600/20, 9 April 2024, ¶ 526.
[205] Id. at ¶ 535.
[206] Id. at ¶ 536.

climate change.[207] Switzerland, through failing to act in good time and in an appropriate and consistent manner to devise and implement a domestic regulatory framework to quantify and budget emissions reductions, did not meet its positive obligations.[208] This constituted a violation of Article 8.[209] The Court declined to examine the case under Article 2 (right to life).[210]

Access to Justice: The applicant association's right of access to a court was restricted in such a way as to constitute a violation of Article 6 § 1 (right to a fair trial).[211] The complaints of four applicant individuals were not admissible.[212] The Court declined to examine the case under Article 13 (right to an effective remedy).[213]

Rationale

Admissibility: The judgment established two new tests for determining the standing of individuals and of associations within the climate change context.

Standing of Individuals: For individual applicants to claim victim status in the context of climate-related harms, they must show that they are "personally and directly affected" by the State's failure to act via showing that:[214]

1) the applicant is subject to "a high intensity of exposure to the adverse effects of climate change", and
2) there is a "pressing need to ensure the applicant's individual protection, owing to the absence or inadequacy" of harm reduction measures.

The four individual applicants were not found to have met this test, therefore their complaints were inadmissible due to lack of victim status/standing.[215]

Standing of Associations: For associations to claim locus standi (standing) in climate change cases, they must meet a three-part test to show that the association is (1) lawfully established (2) to advocate for climate action (3) on behalf of its individual members. The full test can be found in paragraph 502 of the judgment. Notably, the members of an association do not need to meet the individual victim status requirement for the association to have standing.[216]

The applicant association was found to have met all three parts of this test, therefore its complaint was admissible and examined on the merits.[217]

Positive Obligations of States: The positive obligation for Member States to act on climate change flows from the causal relationship between climate change and the enjoyment of the human rights guaranteed by the ECHR.[218] States must act in line with the cogent scientific evidence and their international climate commitments to put in place the necessary measures to substantially and progressively reduce their GHG emissions with a view to achieving net neutrality within 30 years.[219] Immediate action and the setting of interim reduction goals are necessary to ensure feasibility and avoid disproportionately burdening future generations.[220]

[207] Id. at ¶ 545.
[208] Id. at ¶ 573.
[209] Id. at ¶ 574.
[210] Id. at ¶ 537.
[211] Id. at ¶ 640.
[212] Id. at ¶ 625.
[213] Id. at ¶¶ 644-45.
[214] Id. at ¶ 487.
[215] Id. at ¶ 535.
[216] Id. at ¶ 502.
[217] Id. at ¶ 526.
[218] Id. at ¶ 545.
[219] Id. at ¶¶ 546-48.
[220] Id. at ¶ 549.

Five-point criteria: ECtHR jurisprudence recognizes in all cases a "margin of appreciation" which preserves state autonomy by permitting a range of different actions to ensure protection of a right. With regard to the above climate obligation, the Court established five non-cumulative criteria to assess whether a state has exceeded their margin of appreciation and thus violated the Article 8 right to respect for private life. The domestic authorities must "have had due regard to the need to":[221]

a. "adopt general measures specifying a target timeline for achieving carbon neutrality and the overall remaining carbon budget for the same time frame, or another equivalent method of quantification of future GHG emissions, in line with the overarching goal for national and/or global climate-change mitigation commitments;
b. set out intermediate GHG emissions reduction targets and pathways (by sector or other relevant methodologies) that are deemed capable, in principle, of meeting the overall national GHG reduction goals within the relevant time frames undertaken in national policies;
c. provide evidence showing whether they have duly complied, or are in the process of complying, with the relevant GHG reduction targets;
d. keep the relevant GHG reduction targets updated with due diligence, and based on the best available evidence; and
e. act in good time and in an appropriate and consistent manner when devising and implementing the relevant legislation and measures."

Application to Switzerland: Switzerland exceeded its margin of appreciation due to "critical lacunae" in their climate policies.[222] Between the 2011 CO_2 Act, which regulated targets until 2024, and the Climate Act, which regulates targets from 2031 to 2050, the period between 2025 and 2030 remained unregulated.[223] Moreover, Switzerland had not met past targets for emissions reductions which were themselves insufficient in light of a 1.5°C threshold.[224] Neither had Switzerland determined a national "carbon budget" or other comparable method for quantifying its emissions limitations in a global context, as stressed by the IPCC.[225]

Access to Justice/Right to a Fair Trial

Admissibility: For Article 6 § 1 (right to a fair trial) to be applicable, there must be a genuine and serious dispute over a civil right which at least arguably exists under domestic law, and the proceedings must be "directly decisive" for the right in question.[226] The judgment noted that in climate change cases, the determination of whether proceedings are "directly decisive" for a right is connected to the determination of victim status/standing under Articles 2 and 8, above.[227]

Of association's complaint: Article 6 § 1 therefore applied to the applicant association, which demonstrated an actual and sufficiently close connection to the matter, defending the specific civil rights of its members.[228] Noting that the collective action enabled by associations is particularly relevant in the context of climate change, the Court considered that "in so far as a dispute reflects this collective dimension, the requirement of a "directly decisive" outcome must be taken in the broader sense of seeking to obtain a form of correction of the authorities' actions and omissions affecting the civil rights of its members under national law".[229]

[221] Id. at ¶ 550.
[222] Id. at ¶ 573.
[223] Id. at ¶ 566.
[224] Id. at ¶¶ 558-59.
[225] Id. at ¶¶ 569-71.
[226] Id. at ¶ 595.
[227] Id. at ¶ 612.
[228] Id. at ¶ 621.
[229] Id. at ¶ 622.

Of individual applicants' complaints: Article 6 § 1 was found not to apply to the four individual applicants for reasons similar to their lack of victim status under Article 8. The outcome of the dispute was not "directly decisive" for the applicants' individual civil rights because the requested action of the authorities would not have a sufficiently imminent and certain effect on those rights.[230]

Merits: The Court found a violation of the association's Article 6 § 1 right to access to a court.[231] The domestic courts, in not even addressing the issue of the association's standing prior to dismissing its complaint, "did not engage seriously or at all" with the action brought by the association.[232] Likewise, the administrative authorities had based their decisions on "inadequate and insufficient considerations."[233] There was no other avenue available under domestic law for the association to bring its complaint.[234]

Additional Information & Analysis

Significance of ECtHR Climate Cases: The "trio" of climate cases at the ECtHR *(KlimaSeniorinnen, Duarte Agostinho, Carême)* were heard and decided in close coordination by the same Grand Chamber composition of judges, and the rulings in all three cases were announced together on 9 April 2024. Taken together, they substantially clarify and evolve the ECtHR's approach to climate change. While some domestic courts had already interpreted the European Convention on Human Rights (ECHR) to apply to the climate change context, those decisions only held authority within their respective national contexts. In contrast, the ECtHR rulings are binding for all 46 Council of Europe Member States.

While the ECtHR trio of climate cases is significant for the future application of human rights law to the climate crisis beyond the Council of Europe Member States, in relation to several legal principles the decisions reflect a narrow approach to human rights jurisprudence internal to the European Convention system. These include, for example, the ECtHR's approach to extraterritoriality, the principle of subsidiarity, and the margin of appreciation, which constrain the Court's power by preserving a certain level of autonomy and independence for lower, national-level authorities.

General ECtHR comments on the uniqueness of climate litigation: Paragraphs 410 through 457 of the *KlimaSeniorinnen* judgment contain "Preliminary points" and "General considerations relating to climate-change cases" that are referenced in all three cases. These paragraphs are significant for their proclamations on certain issues which are generalizable to all climate change cases, and are listed prior to and separate from the Court's consideration of the applicants' unique situations.

The "General considerations" section addresses four primary causation questions, including the link between GHG emissions and climate change, between climate change and human rights, between State actions or omissions and harm to individuals, and regarding the proportion of State responsibility given the global nature of climate change.[235] It concludes with a discussion of the Court's role.[236] The Court relies on scientific evidence, in particular IPCC reports—whose findings were not challenged by the respondent or intervening states—to establish causation on the first two points.[237] On the third and fourth points, the Court considered that causation of individual harms must be assessed on a case-by-case basis,[238] and that this must be done in light of the state's responsibility to take its global fair share of measures to tackle climate change, as established by international law treaties and standards.[239]

[230] Id. at ¶¶ 624-25.
[231] Id. at ¶ 640.
[232] Id. at ¶ 636.
[233] Id. at ¶ 637.
[234] Id.
[235] Id. at ¶ 425.
[236] Id. at ¶¶ 445-57.
[237] Id. at ¶¶ 427-36, referring therein to id. at ¶¶ 107-20. See in particular ¶ 436, which states: "In sum, on the basis of the above findings, the Court will proceed with its assessment of the issues arising in the present case by taking it as a matter of fact that there are sufficiently reliable indications that anthropogenic climate change exists, that it poses a serious current and future threat to the enjoyment of human rights guaranteed under the Convention, that States are aware of it and capable of taking measures to effectively address it, that the relevant risks are projected to be lower if the rise in temperature is limited to 1.5C above pre-industrial levels and if action is taken urgently, and that current global mitigation efforts are not sufficient to meet the latter target."
[238] Id. at ¶¶ 437-40.
[239] Id. at ¶¶ 441-44.

Case-specific takeaways of *KlimaSeniorinnen:* Crucially, the Court found that States have a positive obligation to act on climate change under the right to private and family life (Article 8) in the European Convention on Human Rights (ECHR) and established a set of criteria to evaluate when States have breached this obligation. It also underlined the collective nature of climate harms and solutions and established new legal requirements that allow the Court to admit climate complaints filed by associations on behalf of their members. In the Court's reasoning, permitting selective standing of associations in the context of climate change offers a balanced solution to the difficulty on one hand of proving a distinct, individualized harm from climate change, and the prohibition on the other hand of *actio popularis* complaints under the ECHR.[240]

Recognizing the standing of associations *specifically* in the climate change context is seen as a major innovation in the Court's procedural jurisprudence. Both this and the major substantive development (finding and giving content to the States' positive obligation to act on climate change) were justified in the Court's reasoning through reference to the exceptional circumstances of climate change and the Court's living instrument doctrine, which instructs that the ECHR be interpreted and applied such that the human rights guaranteed therein are "practical and effective" and not "theoretical and illusory."[241]

Supervision of States' climate policies: For the first time, the Court established that the national climate policies of member States could be in breach of the State's human rights obligations under the ECHR. The Court set forth in its *KlimaSeniorinnen* judgment a set of criteria for assessing the adequacy of State action in formulating and implementing policies for climate change mitigation *(see above, under "Five-point criteria")*.[242] Crucially, the Court emphasized that while States maintain a wider degree of latitude to choose the means by which they achieve climate targets, they have a much narrower margin of appreciation concerning the adoption of high-level commitments to set and comply with overall GHG emissions targets.[243]

Nature and Urgency of Climate Harm: The nature and urgency of climate harm are invoked throughout the cases to justify the ECtHR's jurisprudential developments. For example, regarding the determination that States have a narrow margin of appreciation when it comes to the obligation to set and implement GHG reduction targets (though they have a wide margin of appreciation regarding their choice of means to do so), the Court states that:[244]

- "Having regard, in particular, to the scientific evidence as regards the **manner** in which climate change affects Convention rights, and taking into account the scientific evidence regarding the **urgency** of combating the adverse effects of climate change, the **severity of its consequences,** including the grave risk of their reaching the point of **irreversibility**, and the scientific, political and judicial recognition of a link between the adverse effects of climate change and the enjoyment of (various aspects of) human rights . . . the Court finds it justified to consider that climate protection should carry considerable weight in the weighing-up of any competing considerations. Other factors militating in the same direction include the **global nature** of the effects of GHG emissions, as opposed to environmental harm that occurs solely within a **State's own borders, and the States' generally inadequate track record** in taking action to address the risks of climate change that have become apparent in the past several decades, as evidenced by the IPCC's finding of "a **rapidly closing window of opportunity to secure a liveable and sustainable future for all"** . . . circumstances which highlight the gravity of the risks arising from non-compliance with the overall global objective."

[240] Id. at ¶¶ 499-501.
[241] Id. at ¶ 545.
[242] Id. at ¶ 550.
[243] Id. at ¶ 543.
[244] Id. at ¶ 542, emphasis added.

Temperature Targets: Drawing upon IPCC reports from 2018, 2021, 2022, and 2023, the *KlimaSeniorinnen* judgment takes 1.5°C as the temperature threshold which should not be exceeded, and where references to a 2°C or 2.4°C target arise, correctly identifies that these thresholds are insufficient to avoid the worst climate impacts.[245] The Court also relies upon the IPCC's articulation of a global **"carbon budget"** as a quantitative tool for assessing the extent of necessary mitigation measures to avoid exceeding the 1.5°C target.[246]

Limits of Adaptation: The Court considered that, although the State does have a duty to adopt adaptation measures to alleviate the "most severe or imminent consequences of climate change," such adaptation measures must be *supplementary* to mitigation measures and cannot relieve the State of its positive obligation to pursue mitigation through emissions reductions.[247] The judgment correctly states that "without effective mitigation" "adaptation measures cannot in themselves suffice to combat climate change."[248]

Legal Principles and Obligations of States: The Court draws upon existing human rights obligations, multilateral environmental agreements (MEAs), and science-based approaches to determine the existence and content of the State's positive obligation to address climate change through setting emissions reductions targets. The precise content of the positive obligations is described above *(see "Positive Obligations of States" and "Five-point criteria").* States are required to design and implement emissions reductions policies with a view to achieving net neutrality within 30 years. Further, due to the urgency of climate change, "immediate action needs to be taken and adequate intermediate reduction goals must be set for the period leading to net neutrality. Such measures should, in the first place, be incorporated into a binding regulatory framework at the national level, followed by adequate implementation."[249]

There is also an obligation to implement adaptation measures, though such measures are on their own insufficient.[250] Moreover, the Court established separate obligations for procedural safeguards that require information on the implementation of climate policies to be publicly available, and for public opinion (particularly of affected groups) to be taken into account.[251]

Human Rights Impacts of Climate Change: The *KlimaSeniorinnen* judgment firmly establishes that climate change adversely impacts the human right to private and family life, as recognized under Article 8 of the ECHR. In addition, the Court frequently points to the impact of climate change on human rights more broadly: "The Court cannot ignore the pressing scientific evidence and the growing international consensus regarding the critical effects of climate change on the enjoyment of human rights",[252] "There has also been a recognition that environmental degradation has created, and is capable of creating, serious and potentially irreversible adverse effects on the enjoyment of human rights. This is reflected in the scientific findings, international instruments and domestic legislation and standards, and is being recognised in domestic and international case-law",[253] etc.

Climate Impacts on Vulnerable Groups: The first preliminary point states that climate change most heavily impacts "various vulnerable groups in society, who need special care and protection from the authorities," and highlighted the intergenerational burden sharing necessary in this context.[254]

[245] Id. at ¶¶ 107-20, 432, 558.
[246] Id. at ¶¶ 109, 116.
[247] Id. at ¶¶ 552, 555.
[248] Id. at ¶ 418.
[249] Id. at ¶ 549.
[250] Id. at ¶ 552.
[251] Id. at ¶ 554.
[252] Id. at ¶ 456.
[253] Id. at ¶ 431.
[254] Id. at ¶ 410.

Though the KlimaSeniorinnen judgment most directly addressed the vulnerability of elderly women as a group, it also cited the IPCC that older adults and women in general, children, those with chronic diseases, and people taking certain medications are other groups distinctly vulnerable to temperature-related morbidity and mortality from climate change.[255] Moreover, the judgment observes that "it is clear that future generations are likely to bear an increasingly severe burden of the consequences of present failures and omissions to combat climate change . . . and that, at the same time, they have no possibility of participating in the relevant current decision-making processes." Thus, "the **intergenerational perspective** underscores the risk inherent" in those processes, "namely that short-term interests and concerns may come to prevail over, and at the expense of, pressing needs for sustainable policy-making, rendering that risk particularly serious and adding justification for the possibility of judicial review."[256]

Fair Share Principles: Both the *KlimaSeniorinnen* and the *Duarte Agostinho* rulings declared that each State can be held responsible for its own share of responsibility to act on climate change,[257] with the *KlimaSeniorinnen* judgment referencing the principle of **common but differentiated responsibilities** under the UNFCCC and the Paris Agreement.[258] "This position is consistent with the Court's approach in cases involving a concurrent responsibility of States for alleged breaches of Convention rights, where each State can be held accountable for its share of the responsibility for the breach in question."[259] Here it appealed to the UNFCCC, the Paris Agreement, the Glasgow Climate Pact, the Sharm el-Sheikh Implementation Plan, and the ILC Draft articles on Responsibility of States for Internationally Wrongful Acts.[260]

The *KlimaSeniorinnen* judgment drew upon fair share principles and the IPCC's quantification of a global carbon budget to find that States have a positive obligation to implement a national carbon budget, or equivalent quantitative commitments.[261] The judgment did not opine on the proper way to set national carbon budgets, but observed that even if the more generous "equal per capita emissions" approach were used, Switzerland's current climate strategy would exceed its budget.[262] Common but differentiated responsibility required states to act "on the basis of equity and in accordance with their own respective capabilities." The need for carbon budgets and net zero commitments "can hardly be compensated for by reliance on the State's NDCs under the Paris Agreement".[263]

Access to Justice: The Court insisted that standing requirements for both individuals and associations be interpreted in "an evolutive manner" and that the particular context of climate change warranted significant changes to their prior approach.[264]

The *KlimaSeniorinnen* judgment established standing for associations in the context of climate change, stating that "when citizens are confronted with particularly complex administrative decisions, recourse to collective bodies such as associations is one of the accessible means, sometimes the only means, available to them whereby they can defend their particular interests effectively. This is especially true in the context of climate change, which is a global and complex phenomenon."[265] In coming to this decision, the Court heavily referenced the Aarhaus Convention, which envisions a special role for non-governmental organizations in vindicating environmental

[255] Id. at ¶ 510.
[256] Id. at ¶ 420, emphasis added.
[257] European Court of Human Rights, Duarte Agostinho and Others v. Portugal and 32 Others [GC], no. 39371/20, 9 April 2024, ¶¶ 193, 202.
[258] KlimaSeniorinnen, at ¶¶ 478, 571.
[259] Id. at ¶ 443.
[260] Id. at ¶¶ 441-44.
[261] Id. at ¶ 550.
[262] Id. at ¶¶ 569-72.
[263] Id. at ¶ 571.
[264] Id. at ¶ 482.
[265] Id. at ¶ 489.

protections.[266] This is particularly true given "the special feature of climate change as a common concern of humankind and the necessity of promoting intergenerational burden-sharing in this context".[267]

The Court in *KlimaSeniorinnen* also found a violation of Article 6 § 1 **(right to a fair trial)** since the domestic courts had denied the applicants standing, in part due to the perceived non-imminence of climate harms. The Court rejected this:

- "[w]here future harms are not merely speculative but real and highly probable (or virtually certain) in the absence of adequate corrective action, the fact that the harm is not strictly imminent should not, on its own, lead to the conclusion that the outcome of the proceedings would not be decisive for its alleviation or reduction. Such an approach would unduly limit access to a court for many of the most serious risks associated with climate change. This is particularly true for legal actions instituted by associations."

Burden and Standard of Proof in Climate Cases: The Court acknowledged that climate change presents particularly complex issues of causation on multiple dimensions and addressed these in its "General considerations." It cited its prior environmental caselaw that proof beyond a reasonable doubt "may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact. It should also be noted that it has been the Court's practice to allow flexibility in this respect, taking into consideration the nature of the substantive right at stake and any evidentiary difficulties involved."[269]

In this light, the *KlimaSeniorinnen* judgment relied strongly on IPCC reports, international standards, and domestic authorities who all recognized that climate change caused human rights harms. These conclusions were not contested by the respondent States.[270] Moreover, the Court does not rely on a "but for" causation test when determining a State's positive obligations; "Rather, what is important, and sufficient to engage the responsibility of the State, is that reasonable measures which the domestic authorities failed to take could have had a real prospect of altering the outcome or mitigating the harm."[271]

11. *Duarte Agostinho and Others v. Portugal and 32 Others* (2024) (European Court of Human Rights)

Citation	European Court of Human Rights, *Duarte Agostinho and Others v. Portugal and 32 Others* [GC], no. 39371/20, 9 April 2024.
Facts	Six Portuguese youth (petitioners) filed an application complaining that their home country, Portugal, along with 32 other Council of Europe Member States, had violated their rights under Articles 2 (right to life), 3 (prohibition of torture and inhuman or degrading treatment), 8 (right to private life), and 14 (prohibition of discrimination) of the European Convention on Human Rights (ECHR) by failing to take proper action on climate change. Specifically, the applicants complained that the climate change-induced increase in heatwaves, wildfires, and smoke from wildfires negatively impacted their lives, well-being, mental health, and homes.

[266] Id. at ¶ 491.
[267] Id. at ¶ 499.
[268] Id. at ¶ 614.
[269] Id. at ¶ 427.
[270] Id. at ¶¶ 427-36, referring therein to id. at ¶¶ 107-20. See in particular ¶ 436, which states: "In sum, on the basis of the above findings, the Court will proceed with its assessment of the issues arising in the present case by taking it as a matter of fact that there are sufficiently reliable indications that anthropogenic climate change exists, that it poses a serious current and future threat to the enjoyment of human rights guaranteed under the Convention, that States are aware of it and capable of taking measures to effectively address it, that the relevant risks are projected to be lower if the rise in temperature is limited to 1.5oC above pre-industrial levels and if action is taken urgently, and that current global mitigation efforts are not sufficient to meet the latter target."
[271] Id. at ¶ 444.

	The applicants filed their complaints directly before the ECtHR: that is, they did not previously pursue domestic remedies in Portugal or elsewhere. They argued that this approach was necessary since domestic remedies were either non-existent or insufficient, and the obligation to pursue domestic remedies in all 33 States would impose an unreasonable burden, particularly given the urgency and gravity of the situation.
Holding	The Court held that the applicants' complaints were inadmissible. No jurisdiction could be established for the 32 respondent States other than Portugal.[272] Although Portugal did have clear territorial jurisdiction over the applicants, the applicants were not absolved of the requirement to exhaust domestic remedies in Portugal, and their failure to do so rendered the complaint against Portugal likewise inadmissible.[273]
Rationale	**Extraterritorial Jurisdiction:** Although territorial jurisdiction is the most common type of jurisdiction exercised by respondent States over applicants, the Court may exceptionally recognize a State's extraterritorial jurisdiction.[274] **Application of existing standards:** Recognition of extraterritorial jurisdiction may occur where a State exercises "effective control" of an area outside of its territory or where State agents have authority or control over the victim. These are typically associated with military contexts[275] and did not apply to the present case.[276] Extraterritorial jurisdiction may also be recognized where a jurisdictional link has been established through investigations or proceedings,[277] which also did not apply to the present case.[278] **Rejection of applicants' proposed interpretation:** The Court rejected the applicants' broader interpretation of its case-law, which argued that climate change constituted an "exceptional circumstance" possessing certain "special features" which warranted recognition of extraterritorial jurisdiction.[279] While the Court acknowledged that States have control over GHG emissions, that there is a causal relationship between State actions on emissions and human rights, and that climate change is an existential threat, it did not consider these to be a sufficient basis for expanding its grounds for extraterritorial jurisdiction.[280] The Court also rejected the prospect of establishing jurisdiction based on the content of a state's positive climate obligations, or through the applicants' EU citizenship.[281] It emphasized that the ECHR is not a climate treaty and expressed a preference for separately evaluating each State's accountability for its share of climate responsibility.[282] The Court explicitly rejected the applicants' proposed test of "control over the applicants' Convention interests" as one that, due to the wide-ranging effects of climate change, would lead to a "critical lack of foreseeability" and "untenable level of uncertainty" for States, as well as "an unlimited expansion of States' extraterritorial jurisdiction" to "people practically anywhere in the world."[283] The Court finally declined to draw upon jurisdictional developments in other international instruments and bodies, citing potential differences in the roles and scope of the ECtHR.[284] **Note:** the issue of extraterritoriality did not apply to Portugal, which had clear territorial jurisdiction.[285]

[272] European Court of Human Rights, Duarte Agostinho and Others v. Portugal and 32 Others [GC], no. 39371/20, 9 April 2024, at ¶ 214.
[273] Id. at ¶ 227.
[274] Id. at ¶ 168.
[275] Id. at ¶ 171.
[276] Id. at ¶¶ 181-82.
[277] Id. at ¶ 171.
[278] Id. at ¶ 183.
[279] Id. at ¶¶ 186, 213.
[280] Id. at ¶¶ 192-95.
[281] Id. at ¶¶ 196-200.
[282] Id. at ¶¶ 201-02.
[283] Id. at ¶¶ 205-08.
[284] Id. at ¶¶ 209-12.
[285] Id. at ¶ 178.

	Non-Exhaustion of Domestic Remedies: In line with the fundamental ECtHR principle of subsidiarity, applicants are generally required to exhaust domestic remedies before applying to the ECtHR. However, this requirement may be waived if the domestic remedies are inadequate or ineffective, or if special circumstances apply. An effective remedy must be "capable of remedying directly the impugned state of affairs and must offer reasonable prospects of success."[286] **Application to the case:** The Court only examined the domestic remedies available in Portugal, since the complaints against the other 32 States were already inadmissible for lack of jurisdiction.[287] It pointed to multiple avenues for redress under Portuguese law, including the right to a healthy and ecologically balanced environment under the Portuguese Constitution and the possibility of actio popularis complaints in Portugal, along with other domestic laws.[288] It also highlighted mechanisms within the Portuguese legal system to address issues relating to funding and length of proceedings.[289] It therefore concluded that an effective domestic remedy existed and that the applicants' failure to utilize this remedy rendered the complaint against Portugal inadmissible.[290]
Additional Information & Analysis	See *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland* (2024).

12. *Carême v. France* (2024) (European Court of Human Rights)

Citation	European Court of Human Rights, *Carême v. France* [GC], no. 7189/21, 9 April 2024.
Facts	The applicant is a former mayor of the French municipality of Grande-Synthe, which as a coastal municipality is particularly vulnerable to the effects of coastal erosion and flooding from rising sea levels and precipitation. On this basis, the applicant and the municipality itself initiated proceedings at the Conseil d'Etat, arguing that the national government had a positive duty to take effective measures to address climate change. The decision of the Conseil d'Etat is also included in this document (*Commune de Grande-Synthe v. France*). The Conseil d'Etat decision found the municipality's complaint admissible and the applicant's complaint inadmissible. The applicant then applied to the ECtHR, alleging that France's insufficient action on climate change violated its positive obligations under Articles 2 (right to life) and 8 (right to private life) of the ECHR.
Issues	Whether the applicant has victim status (standing) to bring the complaint.
Holding	The complaint was inadmissible due to the applicant's lack of victim status.[291]
Rationale	The applicant did not meet the test for individual victim status as set forth in *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland* (described above), because he moved to Brussels and no longer lives or owns any property in Grande-Synthe.[292]
Additional Information & Analysis	See *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland* (2024).

[286] Id. at ¶ 215.
[287] Id. at ¶ 216.
[288] Id. at ¶¶ 219-24.
[289] Id. at ¶ 225.
[290] Id. at ¶¶ 226-27.
[291] European Court of Human Rights, Carême v. France [GC], no. 7189/21, 9 April 2024, ¶ 88.
[292] Id. at ¶ 83.

Cases from Domestic Courts outside Latin America and the Caribbean

Key Themes:

Supervision and accountability of state/non-state actors in addressing climate change	**States' obligations under international treaties to address climate change**
Use and importance of climate science	**Judicial development and evolution of legal principles to address climate change**
Human rights and climate change	**Access to justice and legal standing to bring climate cases**

13. *Ashgar Leghari v. Federation of Pakistan* (2015) (Pakistan)

Citation	Lahore High Court, Ashgar Leghari v. Federation of Pakistan, Case No: W.P. No. 25501/2015 Decision of 4 September 2015; *Decision of 14 September 2015*; Decision of 25 January 2018 (Pak.).
Facts	A Pakistani farmer filed a public rights petition (a continuing mandamus) against the national government for failure to carry out the National Climate Change Policy of 2012 and the Framework for Implementation of Climate Change Policy. Leghari argued that the government should pursue climate mitigation or adaptation efforts, and that the government's failure to meet its climate change adaptation targets had resulted in immediate impacts on Pakistan's water, food, and energy security. Such impacts offended his fundamental right to life and right to human dignity under the Pakistani Constitution. He also submitted that international environmental principles like the doctrine of public trust, sustainable development, the precautionary principle, and intergenerational equity form part of the fundamental rights and are also violated.
Issues	Whether the failure to adequately implement the governments climate policies was a violation of the right to life. Whether the failure to pursue adequate mitigation and adaptation efforts was a violation of the right to food, water, and energy security.
Holding	The Court treated the public interest petition as a rolling review or a continuing mandamus and Court proceeded in an inquisitorial manner, summoning multiple public officials to give evidence on climate actions on mitigation and adaptation in Pakistan.[293] The Lahore High Court found that the government's delay in implementing its climate policy instruments violated the right to life under Article 9 and the right to human dignity under Article 14 of the Constitution of Pakistan.[294] The Court first ordered the formation of a climate change Commission to oversee implementation of the climate law and identify priority actions. The Commission consisted of a variety of experts, representative of key ministries, and NGOs to oversee and monitor progress on the implementation of the Framework. It then ordered each government ministry to create a focal person to ensure its implementation.[295] After reviewing the findings of the Commission, it dissolved the Commission and constituted a Standing Committee on Climate Change to act as a link between the Court and the Executive and to assist relevant government agencies to ensure the implementation of the climate legislation.[296] The Court did not finally dispose of the petition so that the Standing Committee can approach the Court to enforce the fundamental rights of the people in the context of climate change.

[293] Lahore High Court, Ashgar Leghari v. Federation of Pakistan, Case No: W.P. No. 25501/2015, Decision of 25 January 2018, ¶ 4-5.
[294] Id., Decision of 4 September 2015, at ¶¶ 4-5.
[295] Id., Decision of 4 September 2015 at ¶ 7.
[296] Id., Decision of 25 January 2018 at ¶¶ 24-25

Rationale	**Fundamental rights violated by government delay:** The Court stated that the "delay and lethargy" of the State in implementing the climate law offended the fundamental rights of the citizens.[297] The Court heard from representative of relevant Ministries and Departments and found that "no material exercise has been done on the ground" to implement the climate law. To effectively expedite the matter and protect fundamental rights it was necessary to constitute the Climate Change Commission.[298] Throughout the proceedings, the Court repeatedly stated that climate change was the challenge of our time and impacted rights to life, human dignity, property. Also emphasized that access to information lay at the foundation of environmental and climate justice.[299] The Court found, for Pakistan, climate impacts resulted in heavy floods and droughts, raising serious concerns of food and water security.
Additional Information & Analysis	**Significance:** The proceeding is an early example of the recognition of fundamental human rights implications of climate change. The continued judicial oversight of the implementation of the Court's decision was also a novel and innovative approach to designing an effective remedy in a country with a public sector lacking in capabilities and resources. **Right to a Healthy and Clean Environment Applies both to Local Geographical Issues and the Global Climate System:** This case was an early example of the recognition of the right to a healthy and clean environment (recognized as part of the right to life). **Development of Legal Principles (climate justice, precautionary principle and intra and intergenerational):** The judgments repeatedly discuss the shift from environmental justice to climate justice. The Court observed that "[t]he existing environmental jurisprudence has to be fashioned to meet the needs of something more urgent and overpowering i.e., Climate Change. From Environmental Justice, which was largely localized and limited to our own ecosystems and biodiversity, we need to move to Climate Change Justice. Fundamental rights lay at the foundation of these two overlapping justice systems. Right to life, right to human dignity, right to property and right to information under articles 9, 14, 23 and 19A of the Constitution read with the constitutional values of political, economic and social justice provide the necessary judicial toolkit to address and monitor the Government's response to climate change." [300] **Judicial Remedy:** The proceedings is an example of a novel and innovative judicial remedy to retain oversight and ensure compliance with human rights in the context of climate change.

14. *Juliana et al. v. United States* (2016) (United States)

Citation	U.S. District Court for the District of Oregon, *Juliana v. United States*, Case No. 6:15-cv-01517-TC, 217 F. Supp. 3d 1224, 10 November 2016 (U.S.).
Facts	Twenty-one youth plaintiffs, along with climate scientist Dr. James Hansen, acting as a guardian for future generations, filed a lawsuit against the U.S. government. They argued that the government's affirmative actions in promoting and supporting the fossil fuel industry contributed to climate change, thereby violating their substantive due process rights to life, liberty, and property under the Fifth Amendment to the United States Constitution. The complaint also alleged that the government's actions violated the public trust doctrine by failing to protect critical natural resources, including the atmosphere, water, seas, seashores,

[297] Id., Decision of 4 September 2015 at ¶¶ 7-8.
[298] Id., Decision of 14 September 2015 at ¶ 11.
[299] Id., Decision of 25 January 2018 at ¶ 11.
[300] Id., Decision of 4 September 2015 at ¶ 7.

	and wildlife. In response, the government filed a motion to dismiss, arguing that the case should be dismissed for lack of subject matter jurisdiction and failure to state a claim upon which relief could be granted.
Issues	Whether the plaintiffs have legal standing to sue the government by demonstrating that they have suffered a concrete and particularized injury due to climate change, that the injury is traceable to the government's actions, and that a favourable court ruling could redress the harm. Whether the government's promotion and support of fossil fuel use violates the plaintiffs' constitutional rights to life, liberty, and property under the Fifth Amendment by knowingly contributing to dangerous climate conditions. Whether the government has a public trust obligation to protect essential natural resources, including the atmosphere, from climate change, and whether this obligation applies to the federal government.
Holding	The District Court denied the U.S. government's motion to dismiss, ruling that the plaintiffs had standing and could proceed with their claims. The Court found that the plaintiffs had sufficiently alleged that government actions were a substantial factor in causing climate change and related harms, which could infringe on their constitutional rights.
Rationale	The Court held that the plaintiffs had demonstrated a direct link between government policies on fossil fuel use and the harms caused by climate change. This connection was enough to show that their constitutional rights to life, liberty, and property could be at risk due to government inaction.[301] The Court also found that the public trust doctrine, traditionally applied to natural resources like water and land, could extend to the atmosphere, affirming that the government may have a duty to protect it from environmental degradation. Dissent by Judge Staton: "What sets this harm [greenhouse gas emissions] apart from all others is not just its magnitude, but its irreversibility. The devastation might look and feel somewhat different if future generations could simply pick up the pieces and restore the Nation. But plaintiffs' experts speak of a certain level of global warming as "locking in" this catastrophic damage. Put more starkly by plaintiffs' expert, Dr. Harold R. Wanless, "[a]tmospheric warming will continue for some 30 years after we stop putting more greenhouse gasses into the atmosphere. But that warmed atmosphere will continue warming the ocean for centuries, and the accumulating heat in the oceans will persist for millennia." Indeed, another of plaintiffs' experts echoes, "[t]he fact that GHGs dissipate very slowly from the atmosphere (...) and that the costs of taking CO_2 out of the atmosphere through non-biological carbon capture and storage are very high means that the consequences of GHG emissions should be viewed as effectively irreversible." In other words, "[g]iven the self- reinforcing nature of climate change," the tipping point may well have arrived, and we may be rapidly approaching the point of no return";[302] "[W]aiting is not an option. Those alive today are at perhaps the singular point in history where society (1) is scientifically aware of the impending climate crisis, and (2) can avoid the point of no return. And while democracy affords citizens the right "to debate so they can learn and decide and then, through the political process, act in concert to try to shape the course of their own times," that process cannot override the laws of nature. Or, more colloquially, we can't shut the stable door after the horse has bolted."[303]

[301] U.S. District Court for the District of Oregon, Juliana v. United States, Case No. 6:15-cv-01517-TC, 217 F. Supp. 3d 1224, 10 November 2016 (U.S.).
[302] Id. at 1176.
[303] Id. at 1180-81.

Significance: This case was groundbreaking by challenging the government's role in causing climate change and advocates for judicial recognition of climate change as a constitutional issue in the U.S. The focus on youth also sets an important model for future climate litigation outside the U.S., asserting that young people, who will disproportionately suffer from climate change, have the right to demand government action to protect the environment and public trust resources.

This case was one of the first in the world to recognize climate change as a potential violation of constitutional rights, particularly for younger generations. It also expanded the interpretation of the public trust doctrine to include the atmosphere as a resource that the government is obligated to protect for future generations.

Additional Information & Analysis

In 2020, the Ninth Circuit ruled that the plaintiffs in *Juliana* lacked standing, and in 2021, the Court declined to rehear the case. The plaintiffs returned to District Court in 2023, where the Federal District Court for Oregon partially denied the federal government's motion to dismiss. The Court found the plaintiffs' constitutional claim for a stable climate system had merit, despite the Ninth Circuit ruling that the plaintiffs lacked standing. The plaintiffs scaled back their request for relief, seeking to restrain certain governmental actions related to the national energy system. The Court agreed that their narrowed request was likely to address their harm but acknowledged the scope of relief might still be too broad. The Court also recognized the plaintiffs' due process claim and public trust doctrine arguments while dismissing their equal protection and Ninth Amendment claims.

However, in May 2024, the Ninth Circuit issued a writ of mandamus directing the District Court to dismiss the case for lack of standing, as its previous mandate in 2020 left no room for amendments. A rehearing of the Ninth Circuit's order was denied in July 2024. In September 2024, the plaintiffs petitioned the Supreme Court to overturn the dismissal, but the Court denied the petition in November 2024.

This is a relevant case applying and developing traditional standing principles to challenge climate inaction in the U.S. system.

Climate Science: In Juliana, climate science plays a central role, with the plaintiffs relying on extensive scientific evidence to show that the government's actions are insufficient to prevent catastrophic climate impacts. The case underscores the importance of integrating robust climate science into judicial reasoning, particularly when assessing the adequacy of state action.[304]

Nature and Urgency of Climate Harm: The presentation of the case by the plaintiffs highlights the unique and urgent nature of climate harm, particularly through its focus on the rights of younger generations. The case stresses the limited time available to mitigate the worst impacts of climate change, citing the need to act before critical tipping points are reached.[305] The Court's consideration of timelines, such as the exhaustion of the carbon budget, parallels the urgency required in the Inter-American Court's opinion.[306]

Turning Voluntary Commitments into Obligations: The case demonstrates how voluntary commitments, particularly those related to reducing greenhouse gas emissions, can be interpreted as binding obligations. The plaintiffs argue that the U.S. government's failure to adequately address climate change violates their constitutional rights, emphasizing the need for governments to be held accountable for their climate commitments.[307]

Human Rights Impacts: The plaintiffs emphasize the profound human rights implications of climate change, arguing that the government's inaction infringes on the plaintiffs' rights to life, liberty, and property.[308] This perspective aligns with the Inter-American Court's focus on protecting human rights in the context of environmental harm.

[304] Id. at 1244-45.
[305] Id. at 1265.
[306] Id. at 1242-44.
[307] Id. at 1250-52.
[308] Id. at 1261-62.

Access to Justice and Future Generations: The plaintiffs are primarily young people, underscoring the need to protect the rights of younger generations in the face of climate change. This focus on youth rights could be a focus in other rights' cases challenging climate inaction enabling courts to consider how to practical prioritize and protect the rights of children. This case is an example of how Courts can recognize the standing of future generations in climate litigation, asserting that young people have a right to seek judicial protection from the harmful impacts of climate change.

15. *Shrestha v. Office of the Prime Minister et al.* (2018) (Nepal)

Citation	Supreme Court of Nepal, *Shrestha v. Office of the Prime Minister et al.*, Decision No. 10210, 61(3) NKP, 25 December 2018 (Nep.).
Facts	Padam Bahadur Shrestha, an environmental lawyer, petitioned the Supreme Court of Nepal for a writ of mandamus or other appropriate order to compel the government to enact a climate change law after it failed to respond to his previous request. He argued that Nepal's Environmental Protection Act (1997) and Climate Change Policy (2011) were not effectively implemented, leading to adverse environmental and climate impacts. Shrestha claimed this failure violated his constitutional rights to a dignified life (Article 16) and a clean environment (Article 30) and breached Nepal's commitments under the UNFCCC, Kyoto Protocol, and Paris Agreement.
Issues	Whether the government's inaction on climate change violated the constitutional rights to a dignified life and a clean and healthy environment. Whether the State failed to enforce existing environmental laws and policies (e.g., Environmental Protection Act 1997; Climate Change Policy 2011). Whether the government breached Nepal's commitments under international treaties, including the UNFCCC, Kyoto Protocol, and Paris Agreement. Whether there is a need to ensure the rights of future generations to a sustainable environment through proactive climate action. Whether the Court has power to compel the government to enact and implement climate legislation via a writ of mandamus.
Holding	The Court issued a writ of mandamus ordering the government to create a separate law on climate change and to implement the programs identified in its climate policy. It found that the government had failed to prioritize climate policy implementation, thereby violating the right to live with dignity (Article 16) and the right to a clean environment (Article 30) under Nepal's Constitution. The Court further held that this inaction hindered Nepal's ability to fulfill its obligations under the UNFCCC (1992), Kyoto Protocol (1997), and Paris Agreement (2015). Noting that the Environmental Protection Act (1997) lacks provisions on climate change adaptation and mitigation, the Court emphasized the urgency of legislative action. It also acknowledged scientific research indicating that climate change has increased global temperatures by an average of 0.01°C to 0.3°C, exacerbating environmental threats such as glacial lake outburst floods and the heightened vulnerability of Himalayan communities. Despite these risks, the government had failed to take substantive action, necessitating judicial intervention.

Rationale

The Supreme Court of Nepal ruled that the government's failure to implement climate policies infringed on citizens' fundamental rights under the Constitution of Nepal. These rights include the right to live with dignity and the right to a clean and healthy environment.[309]

The Court's decision is grounded in a combination of domestic constitutional rights, international treaty obligations, and the broader principles of environmental and intergenerational justice. The ruling stresses the government's duty to enact and enforce climate-related laws that protect both present and future generations from the adverse effects of climate change.[310]

Additional Information & Analysis

Significance: The Court held that action was needed to comply with international climate change treaty obligations, protect petitioners' constitutional rights, and ensure intra- and intergenerational justice. Following this decision, Nepal enacted the Environment Protection Act and the Forests Act.

This is a key case in relation to climate litigation as a tool to turn voluntary commitments to binding legal obligations to achieve effective action on climate change. The Court detailed some of the key elements that a climate change law should incorporate, which could also serve as a template for establishing guidelines that States should consider when working on mitigation and adaptation measures.

This is also a useful example of a case considering the relationship between climate action (and inaction) and environmental and climate justice. The Court also emphasized the need to consider climate justice concerns while developing measures to respond to the climate emergency.

From Voluntary Commitments to Obligations: The Court acknowledges that a "balanced coexistence, environmental justice and reduction in destruction of environment and exploitation of natural resources due to anthropogenic causes, can be achieved. It is necessary to do a moral, balanced, and responsible usage of the ecological resources that sustain humans and lives of other species. In order to maintain the cleanliness of water, air, land and food, the human activities that have the potential of having adverse impact on these resources. Human life and ecology should be safeguarded from the hazards of nuclear tests, poisonous and harmful substances. Laws and systems should be developed that regulate harmful production at the source itself. Legal provisions that guarantee right to damages for the any commercial entity, laws related to waste management in vulnerable areas, usage of chemical fertilizers, regulation of import and export of harmful materials, conservation and management of watershed areas, conservation of migratory habitats of migratory birds, effective implementation of conservation of cultural and natural resources, reduction in concentration of greenhouse gasses and in the atmosphere, and measurement and management of erratic change in weather patterns, should be in place."[311]

The remedy issued in this case—a writ of mandamus—included a directive for a new climate law that included, *inter alia,* specific actions to reduce the impacts of climate change: "Since the cause of climate change is the emission of greenhouse gases, make special legal provision for promotion and development of low carbon emitting technology, technology that utilizes clean and renewable energy, reduce the consumption of fossil fuel consumption for the purpose of climate change mitigation, and includes provisions for forest conservation and expansion and addresses the usage of forest area the type of energy in vulnerable areas."[312]

[309] Supreme Court, Shrestha v. Office of the Prime Minister et al., Decision No. 10210, 61(3) NKP, 25 December 2018 (Nep.), 11-12.
[310] Id. at 12-14.
[311] Id. at 11-12. [Unofficial translation]
[312] Id. at 13. [Unofficial translation]

The Court details what a climate change law should incorporate. Some of the key ideas are the minimization of adverse effects caused by climate change in vulnerable areas, and their restoration; the development of adaptation and mitigation measures to promote a sustainable development, including legal provisions for the promotion and development of low carbon emitting technology and the reduction of fossil fuel, forest conservation, and expansion; the development of ecological justice and environmental justice to the future generation through the conservation of natural resources, heritages and environmental protection while mitigating the effects of climate change; and arrangements for scientific and legal instruments to evaluate and compensate individuals, society and others caused by pollution or environmental degradation.[313]

International Obligations: The decision highlighted Nepal's commitment to international climate treaties. The Court found that the government's inaction contravened these obligations, emphasizing that Nepal must take domestic action to meet its international commitments. The Court concluded that "[a] law that takes into consideration the provisions of Convention on Biological Diversity 1992, United Nations Weather Change Convention 1992, The Convention on International Trade in Endangered Species of Wild Fauna and Flora 1993, Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal 1989, Convention on Wetlands of International Importance especially as Waterfowl Habitat 1971, Paris Agreement on Climate Change 2015, and imposes punitive as well as pecuniary sanctions on the violation of its provisions, and apart from regulatory powers, includes provisions of awareness, promotion of certain practices, seems imperative."[314]

Intergenerational Justice: The ruling underscored the principle of intergenerational justice, stating that climate action is necessary not only for the current population but also to ensure the well-being of future generations. The Court mandated the government to address climate change urgently to ensure sustainable development and protect the rights of future generations.[315]

Climate Justice: "Climate change has not only affected human lives but all plants and animal species, their habitats and created an imbalance in ecology and biodiversity, therefore making it a matter of public concern. Therefore, while carrying out any activity relating to climate change, it should embrace the principle of climate justice. The need to mitigate the effects of climate change and to gradually reduce the vulnerability from disasters occurring because of climate change is similarly without contestation. If only we embrace the principles of sustainable development and allied principles of inter-generational and inter-generational equity, and formulate a law to conserve biodiversity and ecosystem, we can establish an edifice of climate justice for present and future generations."[316]

Human Rights and Climate Change: The Court recognizes that "climate change, exploitation of natural resources and environmental pollution have posed a threat to the existence of ecology and biodiversity. Such threats do not just affect the organisms living today but also cause irreversible damage to nature and pose an imminent threat to several generations ahead. The matter of climate change and threat posed by pollution is directly connected to the well-being of citizens who are guaranteed with the right to clean environment and conservation under the Constitution. Such kind of threat to present and future generations posed by climate change affects every citizen, hence, the matters raised in the petition are of public concern."[317]

[313] Id. at 13-14.
[314] Id. at 12. [Unofficial translation]
[315] Id. at 11, 13.
[316] Id. at 11. [Unofficial translation]
[317] Id.

16. *The State of the Netherlands v. Urgenda* (2019) (The Netherlands)

Citation	Hoge Raad [Supreme Court of the Netherlands], *De Staat Der Nederlanden v. Stichting Urgenda,* No. 19/00135, 20 December 2019 (Neth.).[318]
Facts	The Urgenda Foundation and 886 Dutch citizen co-plaintiffs filed suit against the Dutch government, arguing that the State was legally obliged to take action to reduce Dutch greenhouse gas emissions. The suit claimed that Dutch tort law had to be developed consistently with Articles 2 (right to life) and 8 (right to respect private and family life) of the European Convention on Human Rights (ECHR), such that the government's duty of care requires the Netherlands to reduce GHG emissions by 25–40% from 1990 levels. Both parties agreed that GHG levels must be reduced to achieve the 1.5°C or 2°C Paris targets. The dispute was whether the State's commitment to cut emissions by 20% by 2020 was sufficient. The District Court and the Hague Court of Appeal found in favor of the plaintiffs. The government filed an appeal at the Dutch Supreme Court.
Issues	Whether the government's failure to take adequate action on climate change violates its obligation to take due care under Dutch domestic law and/or Articles 2 (the right to life) and 8 (the right to respect for private and family life) of the ECHR. Whether the court's order that the government reduce emissions is permissible under separation of power principles.[320]
Holding	The Supreme Court upheld the conclusions of the District Court and Appeals Court that the State does have a duty of care to take adequate action to mitigate climate change.[321] Whereas the District Court had located this duty of care in Dutch domestic law,[322] the Supreme Court focused primarily on the State's positive obligations under Articles 2 and 8 of the ECHR,[323] on the basis of which *Urgenda* was permitted to bring a claim under Dutch domestic law.[324] By failing to 'do its part' to implement actions consistent with a 25-40% GHG reductions target by 2020, the State had violated its positive obligations.[325] The Court also rejected the argument that determining the amount of climate mitigation was an issue solely for the legislative branch.[326] The Supreme Court of the Netherlands subsequently ruled that the Dutch government must reduce its GHG emissions by 25% below 1990 levels by 2020, and issued an injunction to this effect.[327]
Rationale	The Court held that Articles 2 (right to life) and 8 (right to respect for private and family life) of the ECHR entail a positive obligation for the government to reduce its GHG emissions because climate change presents a 'real and immediate risk' to the lives and well-beings of people in the Netherlands. Citing the precautionary principle, the Court states that the "mere existence of a sufficiently genuine possibility that this risk will materialise means that suitable measures must be taken."[328]

[318] All citations are made with respect to the unofficial English translation, as published on Rechspraakt.nl and the Urgenda website and hyperlinked in the citation. The official and original Dutch text may be found here: De Staat Der Nederlanden v. Stichting Urgenda [Official Dutch text].
[319] Hoge Raad (Supreme Court of the Netherlands), De Staat Der Nederlanden v. Stichting Urgenda, No. 19/00135, 20 December 2019 (Neth.), ¶ 2.2.2. Unofficial English translation as published on Rechspraakt.nl and the Urgenda website.
[321] Id. at ¶ 2.2.3.
[321] Id. at ¶¶ 2.3.1-2.
[322] Id. at ¶ 2.3.1.
[323] Id. at ¶ 5.8.
[324] Id. at ¶ 5.9.1-3.
[325] Id. at ¶ 8.3.4.
[326] Id. at ¶ 8.4.
[327] Id. at ¶ 8.3.5.
[328] Id. at ¶ 5.6.2.

That the positive obligation specifically required the State to comply with a 25-40% GHG reductions target by 2020 was supported by consensus within climate science and the international community, as well as consistency with other domestic targets.[329] The Court rejected the State's argument that negative emission strategies allowed the State to postpone more aggressive mitigation until 2030, noting that the negative emission strategies were speculative and that premature reliance on nonexistent technologies constituted an irresponsible risk.[330]

The Court also rejected the State's argument that ordering emissions reductions constituted an impermissible order to create legislation. It noted that, under constitutional democracy, courts must be permitted to issue orders to the government[331] and that such orders are only impermissible when they prescribe specific legislative measures.[332] In this case, the Court only ordered the government to reduce emissions, without specifying the particular measures necessary to achieve that reduction, which remained the domain of the legislature.[333]

Additional Information & Analysis

Significance: This decision is a landmark ruling in climate litigation, as it was the first time an apex court found a national government's climate commitments to be inadequate. By establishing that the Dutch government's failure to meet climate targets violated fundamental human rights under the ECHR, the decision expanded the scope of state obligations to protect the right to life (Article 2) and the right to respect for private and family life (Article 8) in the context of climate change.

The Court's reliance on the scientific consensus, particularly regarding the need for at least a 25% reduction in greenhouse gas emissions, underscored the role of climate science in shaping legal obligations. This decision further advanced the concept of a State's duty of care in addressing climate risks and affirmed that governments cannot defer meaningful action based on speculative future technologies or legislative priorities.

The case set a global precedent for using human rights frameworks to compel urgent climate action, reinforcing the judiciary's ability to enforce stricter climate policies and elevating the principle of state responsibility in tackling global environmental crises. The decision has been relied on by litigants and courts all over the world.

Use of Best Available Climate Science to Order Stricter Climate Targets: The Court acknowledges that, as the scientific knowledge on climate change has evolved, it has shown that far-reaching measures to address climate change are more, and not less, urgent than previously believed.[334] Although the Court's eventual order to reduce emissions by 25% by 2020 was based on numbers from a 2007 IPCC scenario which took a 2°C temperature target,[335] the Court repeatedly acknowledges that the more ambitious temperature target of 1.5°C is now supported by a high degree of consensus within the climate science and international communities.[336]

Nature and Urgency of Climate Harm: Throughout the judgment, the Court resoundingly rejects the State's postponement of GHG emissions reductions measures and embraces the urgency of implementing adequate climate change mitigation measures. It cites a 2017 report from the United Nations Environment Programme that "if the emissions gap is not bridged by 2030, achieving the target of a maximum warming of 2°C is extremely unlikely," noting also that the 2015 Paris Agreement declared that any global temperature increase over 1.5°C is unsafe. Given this, the required urgency of acting continues to grow.[337]

[329] Id. at ¶¶ 7.2.1-11
[330] Id. at ¶ 7.2.5.
[331] Id. at ¶ 8.2.1.
[332] Id. at ¶ 8.2.6.
[333] Id. at ¶ 8.2.7.
[334] Id. at ¶ 7.2.9.
[335] Id. at ¶ 7.2.1.
[336] Id. at ¶ 7.2.8.
[337] Id. at ¶¶ 4.5, 4.6. [Unofficial translation].

Limits of Adaptation: Current and proposed climate adaptation measures did not suffice to meet the State's duty of care on mitigation, since "it has not been demonstrated or made plausible that the potentially disastrous consequences of excessive global warming can be adequately prevented by such measures."[338]

Right to Life: The Court found that a continued failure to meet adequate climate targets would breach the State's duty of care to respect the right to life, as derived from Article 2 of the ECHR. This was due to the threat posed by dangerous climate change in line with the science presented by the IPCC and other relevant reports.[339]

Right to Respect for Private and Family Life: The Court found that climate change threatened the right to respect for private and family life as enumerated in Article 8 of the ECHR.[340]

States' Duty of Care to act on Climate Change: A combination of domestic Dutch law, ECtHR Law, and international law derived from the UNFCC justified the imposition of a duty of care on the State to take adequate climate action. This duty of care was being breached by the State by it failing to implement targets to reduce emissions by at least 25% by the end of 2020, in accordance with climate science.[341]

Precautionary Principle: The Court noted that the precautionary principle means that the State must take more far-reaching measures to reduce greenhouse gas emissions instead of less ambitious measures.[342] States have a positive obligation to prevent climate harms even if the materialization of danger is uncertain,[343] since there is a sufficiently genuine possibility.[344] The precautionary principle also barred the State from relying on speculative future emissions reductions technologies when designing policies to achieve climate goals.[345]

Causation: The Court found that the Netherlands could not escape an obligation to introduce stricter climate targets by citing the global nature of the problem. Each State was determined to have an individual responsibility to take urgent action.[346]

Transforming Voluntary Commitments into Obligations: The Court reasoned that consistent reference to the 25-40% by 2020 reduction target for Annex I countries in IPCC reports, international climate change conference resolutions, and EU commitments, evidenced a high degree of international consensus on that particular target, such that it could be regarded as "common ground" under ECHR case-law.[347] The Court thus used "agreements and rules that are not binding in and of themselves" as a basis for determining the specific content of the State's positive obligation to mitigate climate change under the ECHR.[348]

Court Powers: Affirming the courts' powers to order the State to take action to satisfy its duty of care, the Court rejected the government's argument that a court order to reduce emissions was an impermissible use of judicial power to order legislation and engage in political decision-making.[349] On the contrary, the Court noted the judicial obligation to determine questions of human rights.[350]

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[338] Id. at ¶ 7.5.2.
[339] Id. at ¶ 5.8.
[340] Id.
[341] Id. at ¶ 8.3.4.
[342] Id. at ¶ 7.2.10.
[343] Id. at ¶ 5.3.2.
[344] Id. at ¶ 5.6.2.
[345] Id. at ¶ 7.2.5.
[346] Id. at ¶¶ 5.7.1-9.
[347] Id. at ¶¶ 7.2.1-11. [Unofficial translation].
[348] Id. at ¶ 6.3. [Unofficial translation].
[349] Id. at ¶¶ 8.2.7, 8.3.5.
[350] Id. at ¶ 8.3.3.

17. *Friends of the Irish Environment v. Ireland* (2020) (Ireland)

Citation	Supreme Court of Ireland, *Friends of the Irish Environment v. Ireland*, Appeal No. 205/19, 31 July 2020 (Ir.).
Facts	Friends of the Irish Environment (FIE), a non-government organization, filed suit in the High Court challenging the Irish government's approval of the National Mitigation Plan as a violation of the Climate Action and Low Carbon Development Act 2015, the Constitution of Ireland, and Ireland's commitments under the European Convention on Human Rights (ECHR). The High Court ruled against FIE, reasoning that the government exercised appropriate discretion and that the Plan was an initial step in achieving targets. FIE, on appeal, was granted permission by the Supreme Court to bypass the traditional appeal process.
Issues	Whether the National Mitigation Plan was a violation of the Climate Action and Low Carbon Development Act 2015 due to its lack of specificity. Whether the National Mitigation Plan was a violation of right to life and bodily integrity under the Irish Constitution and Articles 2 and 8 of the European Convention on Human Rights. Whether the Plan was also a violation of a right to a healthy environment claimed by FIE to exist within the Irish Constitution.
Holding	The National Mitigation Plan was a violation of the Climate Action and Low Carbon Development Act. The Plan was quashed and had to be redrawn such that it showed a realistic path to the statutory net zero target.[351] FIE lacked standing to bring the Constitutional and ECHR claims.[352] Nor did the judgment recognize the existence of a right to a healthy environment under the Irish Constitution.[353]
Rationale	The National Mitigation Plan lacked the specificity necessary for a "reasonable and interested" person to be capable of identifying how the Plan would meet the statutory target of net zero GHG emissions by 2050.[354] Instead, the Chief Justice characterized the provisions as "excessively vague or aspirational," noting that they leaned heavily on the promise of future research and technologies and did not formulate a specific action plan.[355] Such shortcomings were particularly critical given evidence that Ireland's GHG emissions had been continuing to increase, rather than decrease, indicating that it would fail to meet its interim climate commitments.[356] As a non-profit, FIE lacked the individual standing needed under Irish law to make rights-based claims, such as those under the Constitution and the ECHR.[357] The Chief Justice's opinion described the right to a healthy environment as either superfluous, if the claims under it could be contained within the rights to life and to bodily integrity, or impermissibly vague.[358]
Additional Information & Analysis	**Significance:** This decision of the apex Court in Ireland builds upon the momentum of *Urgenda* as an apex court again required a national government to present detailed and actionable climate plans. By ruling that the Irish National Mitigation Plan lacked sufficient specificity to realistically achieve the net-zero by 2050 target under the Climate Action and Low Carbon Development Act, the Supreme Court of Ireland set a critical precedent for judicial review of government climate policies.

[351] Supreme Court of Ireland, Friends of the Irish Environment v. Ireland, Appeal No. 205/19, 31 July 2020 (Ir.), ¶ 9.3.
[352] Id. at ¶ 9.4.
[353] Id. at ¶ 9.5.
[354] Id. at ¶ 6.46.
[355] Id. at ¶ 6.43-45.
[356] Id. at ¶ 6.42.
[357] Id. at ¶ 7.22-24.
[358] Id. at ¶ 8.14.

This decision reinforces the principle that climate action plans must be transparent and concrete, allowing the public to assess their adequacy in meeting legal obligations. While the Court rejected FIE's rights-based claims due to standing issues, the case nonetheless highlighted the judiciary's role in ensuring accountability in governmental climate action. The Court also emphasized that vague or inadequate plans are subject to invalidation, thereby holding governments to a higher standard of climate policy formulation and execution.

Tipping Points: The Court noted the submissions of counsel in relation to tipping points. Clarke CJ stated: "It would certainly seem to me on the evidence that the practical irreversibility and significant consequences of reaching some of the tipping points in question adds a further imperative to the early tackling of global warming mitigation; tipping points; remedy that invalidated government's inadequate climate plan."[359] However, it was emphasized that the Court was focused on the lawfulness of the plan rather than matters of policy.

Public Participation: The Court noted that the plan must be specific enough to allow a member of the public to know how the government intends to meet the objectives of the climate statute and then have the capacity to act in a manner the member of the public deems appropriate to the plans.[360]

Remedy to Invalidate Inadequate Climate Action Plans: The Court found that the climate action plan was not specific enough to meet the statutory requirements set out by the Climate Change Act. A reasonable and interested person had to be able to make a judgment as to whether the plan was realistic in light of the statutory targets of net zero by 2050.[361]

18. *Neubauer v. Germany* (2021) (Germany)

Citation	Bundesverfassungsgericht [BverfG] [Federal Constitutional Court of Germany], *Neubauer v. Germany*, 1 BvR 2656/18, 24 March 2021 (Ger.).[362]
Facts	Youth plaintiffs argued that Germany's Federal Climate Protection Act (KSG) was insufficient to protect their fundamental rights under the German Basic Law, which imposes constitutional obligations on the State. The KSG stipulated a 55% reduction in greenhouse gas emissions below 1990 levels by 2030 and directed the legislature to update annual emission reduction amounts in 2025 for the period of 2031 and beyond. **Rights invoked by the plaintiffs:** The plaintiffs base their complaints on Articles 2(2) (right to life and physical integrity) and 14(1) (right to property) of the German Basic Law, which they argue create a duty of protection which compels the government to act on climate change. They also invoke Article 20(a) of the German Basic Law, which orders the State to protect the natural foundations of life and animals based on a responsibility to future generations. They argue that Article 20(a) taken in conjunction with other Articles and rights recognized under the German Basic Law create two other fundamental rights: a fundamental right to a future consistent with human dignity, and a fundamental right to an ecological minimum standard of living. Regarding the obligation to reduce emissions for periods after 2030, "the complainants rely on fundamental freedoms more generally."[363]

[359] Id. at ¶ 3.7.
[360] Id. at ¶ 6.38.
[361] Id. at ¶ 6.46.
[362] All citations are made with respect to the unofficial English translation, as published on the Federal Constitutional Court website and hyperlinked in the citation. The official and original German text may be found here: Neubauer v. Germany [Official German text].
[363] Bundesverfassungsgericht [BverfG] (Federal Constitutional Court of Germany), Neubauer v. Germany, 1 BvR 2656/18, 24 March 2021 (Ger.), ¶ 1. Unofficial English translation published on the BverfG website.

Issues	Whether a duty of protection to act on climate change exists and whether the target laid out by the German legislature was sufficient to meet that duty: a) Under Articles 2(2) (right to life and physical integrity) and 14(1) of the German Basic Law; b) Under Article 20(a) of the German Basic Law and the corresponding fundamental rights to a future consistent with human dignity and to an ecological minimum standard of living; c) With respect to plaintiffs living in Bangladesh and Nepal; and d) With respect to future generations, based on an intertemporal guarantee of freedom.
Holding	The Court found that: a) There is a duty of protection to act on climate change under Articles 2(2) (right to life and physical integrity) and 14(1) of the German Basic Law, at least with respect to the German plaintiffs. However, there is no violation of this duty of protection because the climate law is neither manifestly unsuitable nor completely inadequate to achieve this goal.[364] b) None of Article 20(a), nor a fundamental right to a future consistent with human dignity, nor a fundamental right to an ecological minimum standard of living can be invoked to lodge a constitutional complaint.[365] However, Article 20(a) does shape the Court's approach to the future generations issue (d).[366] c) There is no violation of any duty of protection with respect to the plaintiffs living in Bangladesh and Nepal.[367] d) There is a violation of the duty to guarantee freedom over time and across generations because the legislature's GHG emissions reductions targets were not presently ambitious enough to avoid a disproportionate burden on the fundamental rights of future generations.[368] The Court ordered the legislature to set clear provisions for reduction targets from 2031 onward by the end of 2022.[369] Any specifications made for the future had to align with a reduction pathway that led to climate neutrality while staying within the remaining emissions budget set out by the legislature.[370]
Rationale	**Rights to life, physical integrity, and property:** The Court found that, due to the considerable potential risks to life, health, and property posed by climate change—for example, through heat waves, floods, or hurricanes—the State has a duty of protection under Articles 2(2) (right to life and physical integrity) and 14(1) (right to property) of the German Basic Law. This duty requires Germany to take measures to help limit anthropogenic warming with a goal of climate neutrality and, where necessary, to implement adaptation measures.[371] The fact that no State can resolve climate change on its own could not absolve Germany of its own obligation to pursue climate action. Rather, it created an obligation for Germany to participate in internationally oriented solutions.[372] However, the Court also found that no violation of the State's duty of protection could be ascertained with respect to Articles 2(2) and 14(1). A violation would occur if the measures pursued to address climate change were manifestly unsuitable or completely inadequate. The Court considered that the current emissions reductions targets were adequate enough that the government could, through the future adoption of aggressive adaptation measures, take the steps necessary to fulfill its duty of protection.[373]

[364] Id. at ¶ 143.
[365] Id. at ¶¶ 112-13.
[366] Id. at ¶¶ 189-93.
[367] Id. at ¶ 173.
[368] Id. at ¶ 182.
[369] Id. at ¶¶ i.4, 266.
[370] Id. at ¶ 255.
[371] Id. at ¶¶ 143-50.
[372] Id. at ¶ 149.

Article 20(a), rights to ecological minimum standard of living and to a future with human dignity: Article 20(a) of the German Basic Law, which compels the State to protect the natural foundations of life and animals out of mindfulness to its responsibility towards future generations, though a justiciable provision, cannot serve as the basis for a constitutional complaint because it does not entail any subjective rights.[374]

The Court does not determine to what extent a fundamental right to an ecological minimum standard of living or a fundamental right to a future consistent with human dignity are covered by the German Basic Law. It determines that even if these existed, no violation could be ascertained because it seems possible that Germany may still be able to avert climate catastrophe.[375]

Plaintiffs in Bangladesh and Nepal: The Court declined to establish whether a duty of protection on climate change existed with respect to the plaintiffs in Bangladesh and Nepal. It observed that any duty of protection for persons outside of Germany would necessarily be different to the duty of protection for persons within German territory, since the government is more limited in the measures it can take. Since the Court had already found that there was no violation of the duty of protection with respect to the German plaintiffs, it considered there could likewise be no violation here.[376]

Fundamental rights of future generations: The legislature's failure to take adequate precautionary measures to safeguard the fundamental rights of future generations violates the German Basic Law's obligation to spread the opportunities associated with freedom proportionately across generations.[377]

Legal basis of the "fundamental rights": Regarding the burdens on future generations, the decision primarily refers generally to "fundamental rights" or "fundamental freedoms" without further specification. Paragraph 117 of the decision explains:[378]

- "Practically all forms of freedom are potentially affected because virtually all aspects of human life involve the emission of greenhouse gases . . . and are thus potentially threatened by drastic restrictions after 2030. Freedom is comprehensively protected by the [German] Basic Law through special fundamental rights, and in any case through the general freedom of action enshrined in Art. 2(1) [of the German Basic Law] as the elementary fundamental right to freedom."

Obligations of protection: The obligation to safeguard fundamental freedoms across time is violated where carbon budget provisions allow so much of the remaining budget to be consumed in the short term that "future losses of freedom would inevitably assume unreasonable proportions from today's perspective."[379]

Although Article 20(a) (duty to protect the natural foundations of life) was not a basis for a constitutional complaint, it still compels the State to reduce emissions to achieve climate neutrality. As the deadline to do so draws closer, the State may be compelled through proportionality assessments to justify ever-greater restrictions on fundamental freedoms.[380]

Furthermore, in its objective dimension, the protection mandate laid down in Art. 20a of the Basic Law encompasses the necessity to treat the natural foundations of life with such care and to leave them in such condition that future generations who wish to carry on preserving these foundations are not forced to engage in radical abstinence.[381]

[373] Id. at ¶¶ 153-72.
[374] Id. at ¶ 112.
[375] Id. at ¶¶ 113-15.
[376] Id. at ¶¶ 173-81.
[377] Id. at ¶¶ 182-83.
[378] Id. at ¶ 117. [Unofficial translation].
[379] Id. at ¶ 194. [Unofficial translation].
[380] Id. at ¶¶ 189-92.
[381] Id. at ¶ 193.

Finding of violation: The Court, relying on scientific analyses of carbon budgets from the IPCC and the German Advisory Council on the Environment, found that the approach established by the Climate Act would require drastic measures to be taken after 2030 if Germany were to remain within its national carbon budget. Thus, in order to comply both with the Paris Agreement's temperature target of keeping global warming to well below 2°C and preferably to 1.5°C, and with the obligation under the German Basic Law to not disproportionately burden future obligations, the legislature had to update national emissions reductions pathways to include targets from 2031 to climate neutrality.[382]

Additional Information & Analysis

Significance: This decision is a key climate case, particularly in its emphasis on intertemporal and intergenerational justice and the constitutional obligations of states to protect future generations from the impacts of climate change. By ruling that the German Federal Climate Protection Act's targets were insufficient to safeguard fundamental rights under the German Basic Law, the Federal Constitutional Court underscored the necessity of aligning national climate policies with scientific evidence, including carbon budgets and the Paris Agreement's temperature limits.

The Court's recognition that inadequate climate action violates the right to life highlights the direct connection between human rights and environmental protection. Additionally, the Court's insistence that future generations must not bear a disproportionate burden of climate risks introduced a new legal standard for climate justice. This decision catalyzed the German government to revise its climate targets, marking an important step toward stronger judicial oversight in the enforcement of climate policies and the protection of human rights in the face of global warming.

Nature and Urgency of Climate Harm: The judgment, relying primarily on IPCC reports, describes the runaway effects of global warming on melting ice masses, sea level rise, ocean currents, and jet streams, and thus on global weather patterns including storms, droughts, floods, heat waves, and other extreme weather events. It emphasizes the drastic and potentially irreversible effects of tipping points.[383] The Court also explains the link between tipping points and the IPCC's 1.5°C temperature target.[384]

Right to Life: Although the Court did not ultimately find a violation on this ground, it still declared that the right to life and physical integrity under Article 2(2) of the German Basic Law created a duty of protection which required the State to adopt policies with a goal of achieving climate neutrality. The fact that climate change required global solutions could not absolve Germany of its obligation to act, but rather created an obligation to engage in international activities aimed at creating global solutions.[385]

Right to Property: Similarly to the right to life, although the Court did not find a violation of the right to property, it still found that the right to property under Article 14(1) of the German Basic Law created a duty of protection which required the State to adopt policies with a goal of achieving climate neutrality.[386]

[382] Id. at ¶¶ 245-66.
[383] Id. at ¶¶ 20-21.
[384] Id. at ¶ 161.
[385] Id. at ¶ 149.
[386] Id. at ¶ 171.

Freedom of Future Generations: The Court invoked the responsibility of the State towards future generations and to ensure intergenerational justice as part of the justification for the ordering of stricter climate targets. The Court describes fundamental rights as "intertemporal guarantees of freedom" which guard against greenhouse gas reduction burdens being "unilaterally offloaded onto the future."[387]

- "It follows from the principle of proportionality 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 – something the complainants describe as an "emergency stop". It is true that even severe losses of freedom may, at some point in the future, be deemed proportionate and justified in order to prevent climate change [. . .] the impacts on future freedom must be proportionate from the standpoint of today – while it is still possible to change course."[388]

The Court thus considers that the government has an obligation to avoid "an overly short-sighted and thus one-sided distribution of freedom and reduction burdens to the detriment of the future" by allocating its carbon budget in a "sufficiently prudent manner."[389]

Fair Share Principles: The *Neubauer* case's use of the principle of Common but Differentiated Responsibilities to enforce a carbon budget based on equity and a State's respective capacity[390] was cited by the ECtHR in its aforementioned judgment in *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland* [supra, § 571].

While the Court did not find that Article 20(a) of the German Basic Law specified which exact mechanism could determine Germany's "fair share", it considered that it could not be determined arbitrarily. Although the carbon budget set by the German Advisory Council on the Environment contained inherent uncertainties, its use of a per capita approach to calculate the "fair share" was based on verifiable assumptions and sound calculation methods.[391] Moreover, Article 20(a) meant that legislators could not use scientific uncertainties as a reason to postpone action, as long as the scientific indicators are at least sufficiently reliable.[392]

The Court noted that Germany's current approach was unlikely to stay within the budget calculated by the Advisory Council based on a target of 1.75°C, which itself was not very stringent given the push to limit warming to 1.5°C. However, the Court itself did not mandate a specific temperature target beyond the Paris Agreement range of "well below 2°C and preferably 1.5°C."[393]

Effective Remedy: As a result of the ruling, the German legislature revised its climate target to require at a minimum, a reduction of 65% in greenhouse gas emissions from 1990 levels by 2030, and a reduction of 88% by 2040. The timeline for achieving full net neutrality was moved up 5 years, from 2050 to 2045.[394]

[387] Id. at ¶ 183. [Unofficial translation].
[388] Id. at ¶ 192. [Unofficial translation].
[389] Id. at ¶ 194. [Unofficial translation].
[390] Id. at ¶¶ 215-19.
[391] Id. at ¶¶ 224-25.
[392] Id. at ¶ 229.
[393] Id. at ¶¶ 231, 235, 237.
[394] Bundesregierung News (25 June 2021) Intergenerational contract for the climate.

19. *Notre Affaire à Tous et al. v. France* (2021) (France)

Citation	Tribunal Administratif de Paris [Administrative Court of Paris], *Notre Affaire à Tous et al. v. France,* N°s 1904967, 1904968, 1904972, 1904976/4-1, *First judgment* on 3 February 2021,[395] *Second judgment* on 14 October 2021[396] (Fr.).
Facts	Four nonprofit plaintiffs (Association Notre Affaire à Tous, Oxfam France, Fondation pour la Nature et l'Homme, and Greenpeace France) alleged that the French government, by not fully implementing legislative and regulatory instruments to combat climate change, failed to meet its obligations under the European Convention of Human Rights, as well as the French Charter for the Environment and the general principle of law providing for the right of each person to live in a preserved climate system, or the preserving of an environment favorable to sustainable development of human society. Plaintiffs argued that this general principle of law stems from various sources, including the French Charter on the Environment and sources of international law including the Stockholm Declaration, the Rio Declaration, the UN Framework Convention on Climate Change, the Kyoto Protocol, and the Paris Agreement.
Holding	The French government is liable for ecological damage due to its failure to meet its own emissions targets to keep warming under 1.5°C, which constitutes a breach of its general obligation to combat climate change.[397] The Court awarded the plaintiffs one euro in moral damages.[398] Prior to deciding on injunctive measures, the Court requested that the French state provide additional information on the steps it was taking to meet its climate targets.[399] After receiving this information a few months later, the Court in its second judgment ordered the government to take all useful measures to repair the ecological damage and meet its emissions-reduction commitments, and to remedy the damage that occurred from France's emissions exceeding the statutory ceiling for carbon budgets. This was to be done by 31 December 2022.[400]
Rationale	Under French domestic law, ecological damage "consists of a non-negligible harm to the elements or functions of ecosystems or to the collective benefits derived by man from the environment."[401] The Court recognized that climate change had already caused and would increasingly continue to cause significant ecological damage.[402] It found, through reference to the UNFCCC, EU laws and regulations, and French domestic law, that the French government had a general obligation to combat climate change.[403] Yet despite the French government's recognition that it was capable of taking direct action on GHG emissions,[404] annual reports indicated that France had substantially exceeded the carbon budget it set for itself for the years 2015-2018.[405] On this basis, the Court found the French government liable for ecological damage.[406]

[395] An unofficial English translation of the first judgment, provided by the plaintiffs, is the source of in-text quotations and may be found here: First NAaT judgment [Unofficial English translation].
[396] An unofficial English translation of the second judgment, provided by the plaintiffs, is the source of in-text quotations and may be found here: Second NAaT judgment [Unofficial English translation].
[397] Tribunal Administratif de Paris (Administrative Court of Paris), Notre Affaire à Tous and Others v. France, N°s 1904967, 1904968, 1904972, 1904976/4-1, First judgment on 3 February 2021, ¶ 34.
[398] Id. at ¶¶ 42-45.
[399] Id. at ¶ 39.
[400] Id., Second NAaT judgment at ¶¶ 13-14.
[401] First NAaT judgment [Unofficial English translation] at ¶ 10.
[402] First NAaT judgment at ¶ 16.
[403] Id. at ¶¶ 18-21.
[404] Id. at ¶ 29.
[405] Id. at ¶ 30.
[406] Id. at ¶ 31.

At the conclusion of the first judgment, the Court prescribed two different judicial remedies. First, it held that the plaintiffs were entitled to claim one Euro of symbolic compensation from the State for moral harm.[407] Second, it held that an injunction would be issued against the State, following a mandatory two-month investigation intended to determine the precise content of the injunction.[408]

The Court issued its second judgment following the results of that investigation. That judgment affirmed that an injunction was necessary to prevent worsening of the ecological damage in the present and future, as GHG emissions are of a "continuous and cumulative nature" and, once emitted, will continue to have an effect for around 100 years.[409] The Court ordered the competent Ministers to take all sector-based measures necessary to repair the overshoot of the first carbon budget (i.e. 15 million tons of CO_2 equivalent).[410]

Additional Information & Analysis

Significance: This decision establishes that the government's failure to meet emissions reductions targets can constitute a legal breach of a general obligation to mitigate climate harm. By recognizing climate change as a source of continuous and cumulative damage, the Court set a legal precedent that demands concrete governmental actions to remedy past failures and avoid future harm. The case underscores the judicial power to turn political climate promises into enforceable legal obligations, reinforcing the role of courts in advancing climate justice and addressing ecological damage.

The decision is also notable for its enforcement of France's own carbon budget commitments. Unlike in *Urgenda,* the Court was not evaluating the sufficiency on paper of the State's commitments, but was instead assessing the adequacy of the State's actions to meet its commitments. This decision also identified a more specific and quantifiable injury than the *Grande-Synthe* case, in the form of a precise overrun of the carbon budget which the Court then ordered the State to repair through the immediate adoption of concrete measures.[411]

Temperature Targets: The first decision described the ecological harms which have already occurred with a 1°C increase in temperatures and described the difference between a 1.5°C scenario and a 2°C scenario, citing an IPCC report that each additional half degree of global warming significantly increases the associated risks, particularly for the most vulnerable ecosystems and populations.[412]

Judicial Orders Turning Commitments into Obligations: The first decision drew upon international commitments made by the French government in the 1992 UNFCCC, the 2015 Paris Agreement, and the 2020 EU Climate and Energy Package––in addition to domestic sources such as the French Environment Charter, energy code, and environment code––to find that France has a general obligation to combat climate change through achievement of certain specific objectives and timelines.[413]

Application and Enforcement of Judicial Remedies: The Court issued two judicial remedies for France's liability for ecological damage vis-à-vis its failure to sufficiently reduce climate change-causing GHG emissions. The first decision awarded the plaintiffs a symbolic sum of one euro for moral damage, since "the State's wrongful failure to meet its commitments in the fight against climate change has undermined the collective interests" which the plaintiff organizations defend.[414] It further ordered an investigation to remedy what it considered to be insufficient information on which to craft an injunction, and set a two-month deadline for the investigation.[415]

[407] Id. at ¶¶ 40-45.
[408] Id. at ¶ 39.
[409] Second NAaT judgment [Unofficial English translation] at ¶ 11.
[410] Second NAaT judgment at ¶¶ 13, 7.
[411] Id. at ¶ 10.
[412] First NAaT judgment at ¶ 16.
[413] Id. at ¶¶ 18-21.
[414] First NAaT judgment [Unofficial English translation] at ¶¶ 40-45.
[415] First NAaT judgment at ¶ 39.

In the second decision, issued about eight months after the first, the Court concluded on the basis of the investigation that France had still failed to remedy part of the overshoot of its first carbon budget, in an amount totaling approximately 15 million tons of CO_2 equivalent.[416] The Court thus issued an injunction ordering the French government to repair this damage through adoption of all useful remedies by a clear deadline slightly over one year from the date of the decision.[417]

20. *Sharma v. Minister for the Environment* (2022) (Australia)

Citation	Federal Court of Australia, *Sharma by her litigation representative Sister Marie Brigid Arthur v. Minister for the Env't,* FCA 560, Judgment of 27 May 2021 (Trial Judge) (Austl.); FCA 774, Judgment of 8 July 2021 (Trial Judge Orders) (Austl.); FCAFC 35, Judgment of 15 March 2022 (Appeal) (Austl.)
Facts	In 2021, 8 children brought a representative action in the Federal Court of Australia arguing that the federal Minister of Environment had a duty of care to take reasonable care to avoid harm to youth ordinarily residing in Australia. The applicants argued the Minister would breach this novel duty of care if she approved the extension of a coal mine exercising statutory powers under Australia's environmental protection legislation and argued the risk of climate change's impacts on young people must be considered in the Minister's decision. The extension of the mine was expected to extract an additional 33 million tonnes of coal. This would in turn cause 100 million tonnes of carbon dioxide to be emitted into the Earth's atmosphere when that coal is burned.
Issues	**Existence of Novel Statutory Duty of Care:** Whether the federal Minister owed a duty of care to take reasonable steps to mitigate GHG emissions when exercising statutory powers under environmental legislation and the scope of that duty. **Access to Justice:** Whether the plaintiffs had standing to bring the claims **Remedy:** Whether the Court had the power to order declaratory and injunctive relief to restrain the Minister from approving the proposed mining project.
Holding	The Federal Court found for the applicants at trial. a) **Existence of Novel Statutory Duty of Care:** The trial judge in the Federal Court held that the Minister had a duty of care to take reasonable care to avoid causing personal injury or death to all people in Australia under 18 years of age at the time of the commencement of the proceeding from the emissions of carbon dioxide into the atmosphere from the combustion of coal to minded in the extension of the mine.[418] b) **Remedy**: The trial judge made a declaration that the Minister owed a duty of care to take reasonable care in the exercise of their statutory functions under the Environmental Protection and Biodiversity Conservation Act to avoid causing personal injury or death to persons who were under 18 years of age and resident in Australia at the time of the commencement of the proceeding arising from emissions of carbon dioxide into the Earth's atmosphere. The trial judge refused to issue an injunction restraining the Minister from granting the mine's extension on the ground that the applicant had not discharged onus in showing relief was justified in the circumstances. On appeal, the Full Court of the Federal Court overturned the holding that the minister owed a duty of care and discharged the other orders.

[416] Second NAaT judgment at ¶ 9.
[417] Id. at ¶¶ 13-14.
[418] Federal Court of Australia, Sharma by her litigation representative Sister Marie Brigid Arthur v. Minister for the Env't, FCA 560, Judgment of 27 May 2021 (Trial Judge) (Austl.), ¶ 1.

The Full Court, despite upholding the appeal on the question of law and rejecting the existence of a statutory duty of care, upheld all the factual findings (unchallenged by the Australian government at first instance and largely undisputed on appeal[419]) on the causes and impacts of climate change and coal production. The Full Court held that all the trial judge's findings on the climate science were open and supported by the expert evidence. These findings include evaluation of the expert scientific evidence about climate change, and the dangers to the world and humanity in the future.[420]

Additional Information & Analysis

Significance: The first instance decision of the Federal Court was the first time in a common law jurisdiction where a court found a novel duty of care on a State to avoid serious harm from actions that lead to GHG emissions. Although the tort-based finding was overturned on appeal, the extensive and detailed factual findings using the best available science to show the current and future impacts of climate change provides a template for future litigation, especially cases raising issues of intergenerational justice.

In July 2023, draft legislation was introduced by an independent senator in the Australian Parliament modelled off the novel duty of care litigated in the proceedings. This Bill is designed to legislate the duty of care into existing federal environmental protection legislation. Currently, it is unlikely the Bill will be enacted in its current form, but the *Sharma* proceedings has significantly shifted the national political dialogue around the duty of care of public authorities to address climate change domestically.

Use and Importance of the Best Available Science: At trial, the Minister accepted the projected effects of climate change depended on the amount of GHG emitted globally. The Minister also accepted the findings of the IPCC and expert evidence of Professor William Steffen.[421] The trial judge made extensive and detailed factual findings on the evidence on climate impacts based upon the best available science.

Nature and Urgency of Climate Harm (including explanation of feedbacks, tipping points): The trial judge accepted the evidence of Professor Steffen, finding that there is a near linear relationship between human emissions of CO_2 from all sources and increases in global average surface temperature (subject to non-linear impacts).[422] The Judge also made findings about feedback processes which accelerate warming and increase global temperatures.[423]

Temperature Targets: The trial judge examined and accepted evidenced from scientific expert on the effects of global warming at different temperature increases (at 2°C and 3°C).[424]

Climate Impacts on Vulnerable Groups (youth and future generations): The trial judge characterized the potential harms from climate change as "catastrophic", particularly if global average surface temperatures rise to and exceed 3°C beyond the pre-industrial level. He also made findings on the evidence, including that one million Australian children alive in 2021 are expected to suffer at least one heat-stress episode serious enough to require acute care in a hospital.[425] Many thousands of Australian children will suffer premature death from heat-stress or bushfire smoke;[426] and there is increased risk of cyclones and flooding and substantial economic loss and property damage in the future.[427]

[419] Id., Judgment of 15 March 2022 at ¶ 1.
[420] Id. at ¶ 2.
[421] Id., Judgment of 27 May 2021 at ¶ 31.
[422] Id. at ¶ 41.
[423] Id. at ¶¶ 44-50, 65.
[424] Id. at ¶¶ 55-69, 74.
[425] Id. at ¶¶ 205-221.
[426] Id. at ¶ 226.
[427] Id. at ¶ 236.

	Development of Legal Principles and Obligations of States (intergenerational justice): Addressing future impacts of projected climate harm on children and the unborn, the trial judge noted the extreme intergenerational inequalities: "[i]t is difficult to characterise in a single phrase the devastation that the plausible evidence presented in this proceeding forecasts for the [c]hildren. As Australian adults know their country, Australia will be lost and the World as we know it gone as well. The physical environment will be harsher, far more extreme and devastatingly brutal when angry. As for the human experience–– quality of life, opportunities to partake in nature's treasures, the capacity to grow and prosper––all will be greatly diminished. Lives will be cut short. Trauma will be far more common and good health harder to hold and maintain. None of this will be the fault of nature itself. It will largely be inflicted by the inaction of this generation of adults, in what might fairly be described as the greatest inter-generational injustice ever inflicted by one generation of humans upon the next."[428]

21. *Waratah Coal Pty. Ltd. v. Youth Verdict Ltd. & Ors.* (No 6) (2022) (Australia)

Citation	Queensland Land Court, *Waratah Coal Pty. Ltd. v. Youth Verdict Ltd. & Ors. (No 6)*, QLC 21, 25 November 2022 (Austl.).
Facts	The case challenged the application of a major thermal coal mine project in Queensland, owned by prominent Australian businessman Clive Palmer. The youth plaintiffs argued that the coal mine, if approved, would infringe on children's human rights protected under Queensland's State statutory charter of rights. The Land Court of Queensland's function under the legislation was to make recommendations to the Minister for Resources on whether two related applications for the mining lease for the project should be rejected or granted. Historically, State Ministers and Departments follow the Land Court's recommendations in determining applications.
Issues	**Use and Importance of the Best Available Science and Causation of Future Harm from Combustion of Coal from Mine:** Whether there is environmental uncertainty of the extent of the harm from mining the coal; and whether the Court can consider the impact of combustion of the mined coal when determining objections to coal mine. **Human Rights Impacts of Climate Change:** Whether and how the Court should consider human rights (right to life, rights of First Nations people, rights of children, right to property, right of privacy, right to equal enjoyment of human rights) in making recommendations on whether coal mine in public interest under *Environmental Protection Act 1994* (Qld).
Holding	The Land Court recommended against the approval of a mining lease and environmental authority to open a new coal mine. The coal company appealed, but withdrew its appeal in Feb 2023. The State Department of Environment and Science refused the application for environmental authority for the coal mine in April 2023.
Rationale	**Use and Importance of the Best Available Science:** There was sufficient certainty in the science to understand the relationship between emissions and temperature and there was an "almost linear relationship" between increases in the atmospheric concentration of GHG and increases in temperature. The Court reasoned the carbon budget was a helpful tool in assessing the significance of the project in keeping temperature to 1.5C in 2100. To calculate the remaining carbon budget, the Court chose a climate scenario that would avoid feedback loops and tipping points. The Court accepted that it could take into account the emissions from the combustion of the coal in considering the extent of the environmental impact of the mine as it could not be logically separated from the justification for the mine.

[428] Id. at ¶ 293.

Human Rights Impacts of Climate Change: The Court must properly consider the human rights that might be limited by the coal mine project and it rejected the argument that the relationship between approving the mine and impacts on rights from climate change was too remote or indirect. The Court found several human rights would be limited by the project (right to life, cultural rights of First Nations people, rights of children, right to property, privacy and home and the right to enjoy human rights equally) and, applying a balancing test, found that the importance of preserving each right weighs more heavily than the economic and social benefits of the mine contributing to energy security in Southeast Asia.

Additional Information & Analysis

Significance: This decision marks the first time a coal mining project in Australia has been rejected on the basis of human rights concerns linked to climate change. The Queensland Land Court found that the proposed coal mine would disproportionately harm the rights of children and First Nations people by contributing to climate change, and would substantially impact their human rights under Queensland's Human Rights Act.

This case is also significant because, by relying on expert evidence, it directly connects fossil fuel projects to human rights infringements and highlights the important role of climate science, such as carbon budgets and tipping points, in assessing environmental and societal risks. The decision underscores that economic benefits from such projects do not outweigh the profound and long-term harm to human rights and the environment, setting a powerful precedent for using human rights frameworks to challenge high-emission projects. It also emphasizes the growing importance of judicial remedies in addressing climate change, particularly in the context of protecting vulnerable groups.

Human Rights and Climate Change

Relationship between the coal mine, climate change, and human rights: Central to the Court's assessment was whether the proposed mine would be in the public interest. This turned on the potential impact of the mine on climate change and human rights. The Court emphasized the importance of addressing climate change and drew a direct link between the proposed mine and its impact on climate change. The Court held that the mine would make a "material contribution" to the climate crisis and would diminish Australia's ability to meet its Paris Agreement targets. The 1.58 gigatons of carbon emissions that would be produced from the mine posed an "unacceptable risk" that "had not been fully accounted for."[429]

In fact, the Court went one step further, finding that granting the applications would constitute an unjustified limitation on human rights. As such, the importance of preserving the human rights in question outweighed the purpose and benefits of the project. In relation to climate change, the Court held: "I have found that the following rights of certain groups of people in Queensland would be limited: the right to life, the cultural rights of First Nations peoples, the rights of children, the right to property and to privacy and home, and the right to enjoy human rights equally. Doing the best I can to assess the nature and extent of the limit due to the [mine], I have decided the limit is not demonstrably justified."[430]

Her Honor held that the social and economic benefits claimed by Waratah did not outweigh the human rights implications of the proposed development. The contribution of the mine to the "life-threatening conditions of climate change (and associated economic and social costs)" was "not proportionate to the economic benefit and the supply of thermal coal to Southeast Asia."[431]

[429] Queensland Land Court, Waratah Coal Pty. Ltd. v. Youth Verdict Ltd. & Ors. (No 6), QLC 21, 25 November 2022 (Austl.), ¶ 38.
[430] Id. at ¶ 44.
[431] Id. at ¶ 1486.

	Climate impacts on vulnerable groups (Indigenous peoples): In weighing the impacts of the proposed mine on human rights, Her Honor emphasized the particular impacts of climate change on First Nations peoples. She accepted evidence that climate change would impact Indigenous peoples' cultural rights and would disproportionately burden their rights.
	Relationship with coal mining and threat to biodiversity: Her Honor also accepted evidence and considered the impact of the mine on the biodiversity of the Bimblebox Nature Refuge. The Bimblebox area was declared a nature refuge in recognition of its significant natural and cultural value. The Bimblebox Nature Refuge is a biodiversity hotspot, home to nearly 700 known species of native plants and animals, including several threatened bird species. The proposed mine would cut across two thirds of the Bimblebox Nature Refuge and would likely cause serious environmental damage. President Kingham accepted that the impacts on the Nature Refuge were "unacceptable" and that the "ecological values of Bimblebox [could be] seriously and possibly irreversibly damaged."[432]

22. *Milieudefensie v. Royal Dutch Shell* (2024) (The Netherlands)

Citation	Rechtbank Den Haag [The Hague District Court], *Milieudefensie v. Royal Dutch Shell plc.*, C/09/571932 / HA ZA 19-379, 26 May 2021 (Neth.).[433] Gerechtshof Den Haag [The Hague Court of Appeal], *Milieudefensie v. Royal Dutch Shell plc.*, 200.302.332/01, 12 November 2024 (Neth.).[434]
Facts	In 2019, an environmental group (Milieudefensie) and co-plaintiffs filed a summons in the Hague District Court alleging that Shell's contribution to climate change violates its duty of care under Dutch law, the human rights to life and to private and family life under the European Convention on Human Rights (ECHR), and the soft law principles endorsed by Shell.[435] They claimed that Shell must reduce CO_2 emissions volume, directly and indirectly via the companies and legal entities in the group. This reduction obligation must be achieved in accordance with the Paris Agreement and "best available" climate science. The plaintiffs also claim that Shell must reduce its CO_2 emissions by preferably 45%, but alternatively 35% or 25%, relative to 2019 levels by 2030.[436] The District Court decided in favor of the plaintiffs in May 2021. Shell appealed the judgment, and the Hague Court of Appeal issued its decision on 12 November 2024, partially overturning the District Court judgment.
Issues	**Admissibility:** Whether the interests of the plaintiffs are sufficiently similar to bring a class action suit. **Merits:** Whether Shell has a legal obligation to pursue a corporate policy which reduces the Shell group's CO_2 emissions across all scopes (including emissions from the consumption of its products) by the end of 2030, relative to 2019 levels.[437]
Holding	**Admissibility:** The class action is admissible insofar as it serves the interests of current and future residents of the Netherlands and the Wadden Sea region, which are sufficiently similar.[438]

[432] Id. at ¶ 19.
[433] All citations are made with respect to the unofficial English translation, as published on Rechspraakt.nl and hyperlinked in the citation. The official and original Dutch text may be found here: Milieudefensie v. Royal Dutch Shell plc. [Rechtbank Den Haag] [Official Dutch text].
[434] All citations are made with respect to the unofficial English translation, as published on Rechspraakt.nl and hyperlinked in the citation. The official and original Dutch text may be found here: Milieudefensie v. Royal Dutch Shell plc. [Gerechtshof Den Haag] [Official Dutch text].
[435] Rechtbank Den Haag (The Hague District Court), Milieudefensie v. Royal Dutch Shell plc., C/09/571932/HA ZA 19-379, 26 May 2021 (Neth.), ¶ 3.2. Unofficial English translation. (Hereinafter "District Court decision")
[436] Id. at ¶ 3.1.
[437] Id. at ¶ 4.1.1.
[438] Id. at ¶¶ 4.2.4-6; Gerechtshof Den Haag (The Hague Court of Appeal), Milieudefensie v. Royal Dutch Shell plc., 200.302.332/01, 12 November 2024 (Neth.), ¶ 6.2. Unofficial English translation. (Hereinafter "Court of Appeal decision")

Holding	**Merits:** Both the District Court and the Court of Appeal held that Shell has a general legal obligation under domestic law to reduce CO_2 emissions.[439] However, the Court of Appeal overturned the District Court's order that Shell reduce the aggregate volume of all CO_2 emissions by 45% relative to 2019 by the end of 2030.[440] The Court of Appeal instead held that no specific reductions obligation could be applied to Shell.[441]
Rationale	**Admissibility:** The District Court ruled that the interests of current and future generations of the world population were not suitable for bundling within a class action due to significant variations in how and when different regions of the world will be affected by climate change.[442] However, the interests of residents of the Netherlands and the Wadden Sea region were similar enough to bundle.[443] Thus, the class action is admissible for the plaintiffs that sufficiently represent the interests of Dutch and Wadden Sea residents.[444] The Court of Appeal upheld these findings.[445] **Merits:** On appeal, the Court of Appeal upheld the District Court's finding that companies like Shell have a legal obligation under the domestic duty of care standard to limit their CO_2 emissions in pursuit of the Paris Agreement targets.[446] This duty of care standard is informed by international soft law instruments on business and human rights, and thus gives indirect horizontal effect to what the Court sees as an established human right to protection from dangerous climate change.[447] Existing EU legislation targeting large, high-emitting companies such as Shell did not preclude the courts from mandating additional emissions reductions obligations under the social standard of care.[448] However, the Court of Appeal overturned the District Court's order that Shell reduce its Scope 1, 2, and 3 emissions[449] by 45% below 2019 levels by 2030.[450] The Court of Appeal found that Shell was on track to reduce its Scope 1 and 2 emissions by 48% by 2030 relative to 2019, which was greater than the 45% demanded by the plaintiffs; thus, there was no violation with regard to these emissions.[451] The Court dismissed the claims regarding Shell's Scope 3 emissions (comprising the vast majority of emissions), holding that the global average reduction target of 45% could not be taken as a legally binding obligation for Shell since it was not sufficiently case- or sector-specific, pointing to a hypothetical scenario in which gas produced by Shell replaces higher-polluting coal, leading to a net reduction in global CO_2 emissions while increasing Shell's Scope 3 emissions.[452] The Court of Appeal further declined to enforce a sector-specific target on the basis that the reductions figures provided by both parties were too divergent and uncertain to form the basis for a legal standard.[453] Moreover, it was not convinced that ordering Shell to restrict its sales would lead to global emissions reductions.[454]

[439] District Court decision at ¶ 4.4.55; Court of Appeal decision at ¶¶ 7.27, 7.57. [Note that the unofficial English translation of the Court of Appeal decision provided on the Court's website uses the word "limit" in paragraph 7.27 but refers to an obligation to "reduce" in paragraph 7.57 and elsewhere throughout the decision].
[440] District Court decision at ¶ 4.1.4; Court of Appeal decision at ¶ 8.1.
[441] Court of Appeal decision at ¶ 7.111.
[442] District Court decision at ¶ 4.2.3.
[443] Id. at ¶ 4.2.4.
[444] Id. at ¶¶ 4.2.5-6.
[445] Court of Appeal decision at ¶¶ 6.2-4.
[446] Id. at ¶¶ 7.24-27.
[447] Id. at ¶¶ 7.17-19.
[448] Id. at ¶ 7.53.
[449] Scope 1 emissions are direct GHG emissions from sources owned or controlled by the reporting entity. Scope 2 emissions are indirect GHG emissions from the production of electricity, heat, or steam purchased by the reporting entity. Scope 3 emissions are all other indirect GHG emissions. See id. at ¶ 2.5.4; see also World Business Council for Sustainable Development & World Resources Institute (2004) THE GREENHOUSE GAS PROTOCOL: A CORPORATE ACCOUNTING AND REPORTING STANDARD, 25.
[450] District Court decision at ¶ 4.4.55; Court of Appeal decision at ¶ 7.111.
[451] Court of Appeal decision at ¶¶ 7.63-66.
[452] Id. at ¶ 7.75.
[453] Id. at ¶¶ 7.91, 7.96.
[454] Id. at ¶¶ 7.106-110.

Significance: This case is significant because both the District Court and Court of Appeal rulings establish that large corporations, not just states, have a duty of care to mitigate climate impacts and adhere to human rights obligations on climate change. This demonstrates an innovative integration of international soft-law standards on business and human rights into domestic law standards, thus transforming voluntary commitments into legal obligations.

The District Court ruling was the first time a major corporation had been legally obligated to align its emissions reductions with the Paris Agreement targets and set a powerful example of holding multinational corporations accountable for their contributions to climate change. The District Court's reliance on climate science further underscored the importance of scientifically informed legal decisions in addressing global warming.

Additional Information & Analysis

The Court of Appeal's decision overturned the District Court's order to Shell to reduce its emission by specified percentages. However, the reasoning of the Court of Appeal upheld much of the legal framework that underpinned the District Court's reasoning that applies horizontal human rights obligations to corporations.

Importance of Climate Science: The District Court decision, in section 2.3, refers to climate science from the IPCC and the Royal Netherlands Meteorological Institute to establish the causes, current pathways, and anticipated consequences of climate change on the world, Europe, and the Netherlands in particular.[455] It draws upon the IPCC SR15 report to emphasize the importance of the 1.5°C temperature target, while noting that all model pathways to 1.5°C rely on carbon dioxide removal technologies which are subject to "multiple feasibility and sustainability constraints."[456] The decision also references the UNEP emissions gap and production gap reports, the latter of which assesses the climate consequences of future planned fossil fuel production.[457] It also cites the World Energy Outlook of the International Energy Agency anticipating that demand for and consumption of fossil fuels will continue to rise through 2040 unless rapid and widespread changes are made.[458] The Court also determined the specific content of Shell's obligation––to reduce its CO_2 emissions by 45% below 2019 levels by 2030––through reference to IPCC pathways.[459]

While the Court of Appeals decision referred to similar science when establishing the "facts" of climate change, the Court concluded that there was insufficient support for it to set a specific emissions reduction order for Shell,[460] despite earlier acknowledging that Shell has a general obligation to reduce emissions.[461]

Certainty of Climate Impacts: The District Court decision stated that while "there is some uncertainty about the precise manner in which dangerous climate change will manifest in the Netherlands and Wadden region. This uncertainty is inherent in prognoses and future scenarios but has no bearing on the prediction that climate change due to CO_2 emissions will lead to serious and irreversible consequences for Dutch residents and the inhabitants of the Wadden region."[462] The Court also declared that adaptation strategies "do not alter" the serious and irreversible consequences of climate change.[463]

Corporations' Duty to Respect Human Rights: Although the courts acknowledged that they could not directly apply human rights law obligations, which apply only to states, to Shell, they found that they could and should refer to those obligations when interpreting the statutory standard of care, which did apply to Shell.[464] The District Court thus referred to Articles 2 and 8 of the ECHR and Articles 6 and 17 of the International Covenant on

[455] District Court decision at ¶¶ 2.3.1-9.
[456] Id. at ¶ 2.3.5.3. [Unofficial translation]
[457] Id. at ¶¶ 2.4.5-6.
[458] Id. at ¶¶ 2.4.9-11.
[459] Id. at ¶ 4.4.29.
[460] Id. at ¶ 7.96.
[461] Id. at ¶ 7.27.
[462] District Court decision at ¶ 4.4.7. [Unofficial translation]
[463] Id. at ¶ 4.4.8. [Unofficial translation]
[464] Id. at ¶ 4.4.9; Court of Appeal decision at ¶ 7.18.

Civil and Political Rights (ICCPR), which each affirm the rights to life and respect for private and family life, and which the Dutch courts in *Urgenda* and the UN Human Rights Committee respectively interpreted to protect against dangerous climate change.[465]

The Court of Appeal, drawing upon *Urgenda, KlimaSeniorinnen,* the UN Human Rights Committee, and UNGA resolution 76/300 on the human right to a clean, healthy, and sustainable environment, declared that "there can be no doubt that protection from dangerous climate change is a human right."[466]

Mitigation Responsibility of Non-State Actors: The District Court (and later, the Court of Appeal) heavily referenced the United Nations Guiding Principles on Business and Human Rights (UNGP), which it considered an "authoritative and internationally endorsed 'soft law' instrument" that was an appropriate guideline for interpreting the unwritten standard of care under domestic law. It was consistent with other soft law instruments such as the UN Global Compact (UNGC) 'principles' and the OECD Guidelines for Multinational Enterprises.[467] The UNGP envisions different responsibilities for states and businesses:[468]

- "between which no inevitable tension needs to exist . . . The responsibility of business enterprises to respect human rights, as formulated in the UNGP, is a global standard of expected conduct for all business enterprises wherever they operate. **It exists independently of States' abilities and/or willingness to fulfil their own human rights obligations,** and does not diminish those obligations. And it exists over and above compliance with national laws and regulations protecting human rights. Therefore, it is not enough for companies to monitor developments and follow the measures states take; they have an individual responsibility."

Companies therefore have a duty to respect human rights, including those in the ICCPR and ECHR, and to:[469]

- avoid causing or contributing to adverse human rights impacts through their own activities (actions or omissions), and to address such impacts when they occur; and
- seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts.

This duty would apply to Shell regardless of whether it committed itself to the UNGP.[470]

Duty of Care: The District Court located Shell's legal obligation to reduce emissions in the "unwritten standard of care" from Book 6 Section 162 of the Dutch Civil Code, which states that "acting in conflict with what is generally accepted according to unwritten law is unlawful." To interpret this standard of care, the Court looked to "all of the circumstances of the case."[471] It held that the unwritten standard of care is informed by and should conform with international and multilateral soft law instruments, including the UNGP and the 2015 Paris Agreement,[472] human rights law, including the ECHR and the ICCPR rights to life and respect for private and family life,[473] and the best available science from the IPCC.[474] The duty requires companies to avoid causing or contributing to adverse human rights impacts through its direct or indirect activities.

[465] District Court decision at ¶¶ 4.4.9-10.
[466] Court of Appeal decision at ¶¶ 7.6-17. [Unofficial translation]
[467] District Court decision at ¶ 4.4.11. [Unofficial translation]
[468] Id. at ¶ 4.4.13. [Unofficial translation]
[469] Id. at ¶¶ 4.4.14, 4.4.17.
[470] Id. at ¶ 4.4.11.
[471] Id. at ¶ 4.4.1. [Unofficial translation]
[472] Id. at ¶¶ 4.4.11-21, 4.4.26-27.
[473] Id. at ¶¶ 4.4.9-10.
[474] Id. at ¶¶ 4.4.26-30.

Causation: The District Court and Court of Appeal treated the causal relationship between burning fossil fuels, GHG emissions, and rising global temperatures as a scientifically established fact. While the District Court acknowledged that Shell was not the sole actor contributing to climate change, and that the impact on the Netherlands was only one component of a diffuse global phenomenon, it considered that Shell was still responsible for its individual contribution to the portion of that harm suffered by the Netherlands; moreover, that the adoption of Shell's corporate policy at its headquarters in the Netherlands was an independent cause of the damage to Dutch residents.[475]

One of the main differences between the District Court decision and the Court of Appeal decision was their assessment of the causal relationship between the requested remedy and the desired effect (of global emissions reductions). The District Court referred to the Production Gap Report to establish a causal relationship between limitation of fuel production and reductions in emissions.[476] In contrast, the Court of Appeal was unconvinced that a decrease of Shell's emissions necessarily entailed a net decrease in global emissions[477] or that the requested remedy would result in a decrease of emissions currently attributed to Shell.[478]

Capacity of Courts to Order Private Companies to Mitigate: The District Court rejected Shell's argument that the claims went beyond the proper function of the court. Courts must decide the claims based on interpreting the unwritten standard of care from Dutch tort law, the basis of the relevant facts and circumstances "the best available science on dangerous climate change and how to manage it, and the widespread international consensus that human rights offers protection against the impacts" of climate change.[479]

The Court of Appeal did not order Shell to comply with any specific reductions target. However, this was not based on its own lack of authority to do so, but instead was based on the Court's assessment that there was no clear legal standard to inform case-specific or sector-specific mitigation orders made by the District Court.[480]

23. *Commune de Grande-Synthe v. France* (2023) (France)

Citation	Conseil d'État [Council of State], *Commune de Grande-Synthe v. France,* N° 427301, First decision of 19 November 2020, Second decision of 1 July 2021 (Fr.). ***Follow-up decision:*** Conseil d'État [Council of State], *Commune de Grande-Synthe v. France,* N° 467982, 10 May 2023 (Fr.).
Facts	The French municipality of Grande-Synthe is a coastal municipality at high risk of flooding and coastal erosion due to climate change. The municipality and its mayor sued the French government and asked the Council of State to annul, for excess of power, the implicit decisions resulting from the failure of public authorities to answer their requests for climate action, and to order the government to (i) take all necessary measures to reduce territorial GHG emissions in respect of France's commitments at the international and national levels; (ii) implement immediate measures to adapt to climate change in France, and (iii) take all necessary legislative and regulatory initiatives to make climate change a priority and prohibit any measure likely to increase GHG emissions.[481] The Council of State deemed the case to be partially admissible in 2020 and ordered further investigations before rendering its decision on the merits in July 2021.

[475] Id. at ¶¶ 4.3.5-6, 4.4.37.
[476] Id. at ¶ 4.4.50.
[477] Court of Appeal decision at ¶ 7.75.
[478] Id. at ¶¶ 7.106-110.
[479] District Court decision at ¶ 4.1.3. [Unofficial translation]
[480] Court of Appeal decision at ¶¶ 7.91-96.
[481] Conseil d'État (Council of State), Commune de Grande-Synthe v. France, N° 427301, First decision of 19 November 2020 (Fr.), ¶ 1. (Hereinafter "First GS decision")

	Approximately one year after the judgment, the municipality lodged another legal action against France for non-execution of the judgment. The Council of State issued its decision in this action in May 2023, ordering France to take additional measures to implement the 2021 decision.
Issues	Which of the municipality's requests were admissible. Whether the French government is required, under domestic or international law, to take all necessary measures to reduce GHG emissions. Whether the French government was in compliance with those obligations.
Holding	**First decision:** The first decision rejected the requested orders (ii) and (iii) and held that further investigation was necessary to decide upon requested order (i).[482] It also rejected the claims with respect to Mr. Carême as a plaintiff.[483] The French government was required by French domestic law, which intended to implement relevant international commitments, to reduce its GHG emissions by 40% by 2030 in comparison to 1990 levels.[484] Further investigation was necessary to determine whether France was in compliance with this obligation.[485] **Second decision:** The French State was not on track to meet its above emissions target. This constituted an implicit refusal of its obligations under domestic law.[486] The Court thus enjoined the Prime Minister to take all necessary measures to reduce GHG emissions in compliance with national reduction targets by March 31, 2022, and ordered the State to pay 5,000 euros to the municipality.[487] **Follow-up decision:** The Council found France's compliance with the prior decisions insufficient and issued another order requiring the State to take all additional necessary measures by the end of mid-2024.[488]
Rationale	**First decision:** Order (iii) is rejected because orders concerning the executive's failure to submit bills before the legislature fall outside of the jurisdiction of the administrative courts.[489] Order (ii) is rejected because it relies upon an article of the Paris agreement which has no direct effect.[490] Mr. Carême's claims are rejected because he does not have a sufficient interest.[491] French domestic law, in Article L. 100-4 of the Energy Code, which expressly mentions the UNFCCC and the Paris Agreement, and is intended to ensure France's effective implementation of the principles set out in those instruments, mandates a 40% reduction of GHG emissions by 2030 compared to 1990 levels.[492] **Second decision:** Upon assessing the information provided in the mandated investigation, which revealed that France's emissions in 2019 and 2020 were not in line with the required climate goals,[493] and that additional measures would need to be taken in the short term to achieve an accelerated emissions reduction,[494] the Council concluded that France's current climate regulations were insufficient to reduce GHG emissions.[495]

[482] Id. at ¶¶ 2, 16, 17, 18.
[483] Id. at ¶ 19.
[484] Id. at ¶ 13.
[485] Id. at ¶ 16.
[486] Id., Second decision of 1 July 2021, ¶¶ 5-6. (Hereinafter "Second GS decision")
[487] Id. at ¶¶ 7-8.
[488] Conseil d'État (Council of State), Commune de Grande-Synthe v. France, N° 467982, 10 May 2023 (Fr.), ¶¶ 25-26 (Hereinafter "Follow-up GS decision")
[489] First GS decision at ¶ 2.
[490] Id. at ¶ 18.
[491] Id. at ¶ 4.
[492] Id. at ¶ 13.
[493] Second GS decision at ¶ 4.
[494] Id. at ¶ 5.
[495] Id. at ¶ 6.
[496] Follow-up GS decision at ¶¶ 13-18.

Follow-up decision: In the 2023 decision, the Council referred to sectoral analyses of the measures taken and claimed by the government to constitute compliance with the Council's prior decisions.[496] It found that, although France had adopted a substantial set of measures to decrease GHG emissions in line with its policy, there were still too many uncertainties regarding its ability to achieve the desired targets by 2030 to consider the order fully implemented.[497]

Significance: This decision holds the French government accountable for its insufficient action to meet national and international climate commitments, particularly under the Paris Agreement. The French Council of State's order emphasizes the binding nature of state obligations to reduce greenhouse gas emissions and highlights the judiciary's role in enforcing climate targets. Moreover, it provides an example of a court following up on that enforcement and conducting sectoral-level analysis of compliance.

By mandating the government to take additional measures to reduce emissions by March 2022, this case reinforces the concept of judicial oversight over climate action and sets a precedent for holding governments liable when their climate policies fail to achieve promised goals.

The significance of the decision lies in its affirmation that States must not only set ambitious climate targets but must also implement effective, concrete measures to meet them, reinforcing the enforceability of climate law domestically and under international agreements. Additionally, the decision demonstrates how vulnerable communities, such as coastal municipalities like Grande-Synthe, can use legal mechanisms to protect themselves from the impacts of climate change by compelling government action.

Additional Information & Analysis

Nature and Urgency of Climate Harm: Even though the full effects of climate change were not likely to manifest in Grande-Synthe until 2030 or 2040, the inevitability of those effects absent the prompt implementation of effective mitigation measures justifies the need to act without delay.[498]

International Commitments in Domestic Law: Although the Court observed that the relevant portions of the UNFCCC and the Paris Agreement could not be enforced with direct effect, they must be taken into account when enforcing the national laws specifically designed to implement them.[499] In this case, article L. 100-4 of the French Energy Code set an enforceable cap on emissions based on these agreements.[500]

Obligations of States/Carbon Budgets: The Council examined current and previous carbon budgets and determined their effect at reducing greenhouse gas emissions, noting that the reductions in 2019 and 2020 were not sufficient to meet the overall target.[501] In 2023, the Council again examined reports on the policies and GHG emissions of various sectors during the years 2020, 2021, and 2022, and concluded that the models provided were not sufficient to indicate that France would meet its target.[502]

Application and Enforcement of Judicial Remedy: The Council ordered the government to take any measures necessary to reduce GHG emissions.[503] The procedure concerning the evaluation of the implementation of the measures necessary to comply with the decision of the Council of State is currently ongoing.

The Council's 2023 decision followed up on enforcement of the 2021 decision and found that the French government was not on track to comply with the Council's order. It considered that some of the reported positive results were clearly influenced by exogenous circumstances, including the COVID-19 pandemic and the Russian invasion of Ukraine, and thus could not be taken as determinative of the French State's commitment to implementing sufficient structural changes.[504]

[497] Id. at ¶ 25.
[498] First GS decision at ¶ 3.
[499] First GS decision at ¶ 12.
[500] Id. at ¶ 13.
[501] Second GS decisionat ¶ 4.
[502] Follow-up GS decision at ¶¶ 21-25.
[503] Second GS decision at ¶¶ 7-8.
[504] Follow-up GS decision at ¶ 21.

24. *VZW Klimaatzaak v. Kingdom of Belgium & Others* (2023) (Belgium)

Citation	Cour d'appel Bruxelles [Brussels Court of Appeal], *VZW Klimaatzaak v. Kingdom of Belgium,* 2021/AR/1589, 2022/AR/737, 2022/AR/891, 30 November 2023 (Belg.).[505]
Facts	NGOs petitioned for a reduction in Belgian greenhouse gas emissions by at least 42–48% in 2025 and 55–65% in 2030 compared to 1990 levels. The plaintiffs argued that Belgium had breached its duty of care to prevent harmful climate change and sought an injunction directing the government to reduce emissions by 42 to 48% in 2025 and at least 55 to 65% in 2030. On June 17, 2021, the Brussels Court of First Instance held that the Belgian government breached its duty of care by failing to take necessary measures to prevent the harmful effects of climate change, but declined to set specific reduction targets on separation of powers grounds. The Court found that the plaintiffs were sufficiently directly affected by the governments' inaction for the proceedings to be admissible and found the government had breached its duty of care, but held that the remedy of an injunction could not be issued in the form requested because the setting of targets exceeded the role of the court. The claim was otherwise dismissed. The plaintiffs appealed the decision of the Court of First Instance, asking the Court of Appeal to grant the injunction sought and to partially reverse the unfavorable parts of the judgment.
Facts	Whether the claim is admissible, and the Court has jurisdiction to hear the claim. Whether the State defendants violated Articles 2 and 8 of the ECHR by failing to sufficiently reduce GHG emissions. Whether the State defendants have similarly breached their duty of care under articles 1382 and 1383 of the former French Civil Code (domestic law). Whether the plaintiffs can obtain an injunction to require Belgium to reduce the overall volume of GHG emissions.
Issues	The Court of Appeals: a) upheld the first instance finding that the action was admissible and fell within the jurisdiction of the courts and tribunals.[506] b) upheld the first instance finding that the State defendants had infringed Articles 2 and 8 of the ECHR by failing to take all necessary measures to prevent the effects of climate change on the plaintiffs' lives and privacy.[507] c) upheld the first instance finding that the State defendants had breached their duty of care by failing to act as normally prudent and diligent authorities when pursuing their climate policy.[508] d) overturned the first instance court's refusal of an injunction, and ordered the Belgian State, the Flemish Region and the Brussels-Capital Region to take the appropriate measures to do their part in reducing the overall volume of annual GHG emissions from Belgian territory by at least 55% in 2030 compared with 1990.[509] The claims against the Walloon region were dismissed on cross-appeal.[510]

[505] All citations are made with respect to the unofficial English translation, as published by the plaintiffs and hyperlinked in the citation. The official French and Dutch texts may be found here: VZW Klimaatzaak v. Kingdom of Belgium [French], VZW Klimaatzaak v. Kingdom of Belgium [Dutch].
[506] Cour d'appel Bruxelles [Brussels Court of Appeal], VZW Klimaatzaak v. Kingdom of Belgium, 2021/AR/1589, 2022/AR/737, 2022/AR/891, 30 November 2023 (Belg.), ¶¶ 115, 129, 135.
[507] Id. at ¶¶ 211, 214.
[508] Id. at ¶¶ 243, 246.
[509] Id. at ¶ 285.
[510] Id. at ¶¶ 243, 249

Rationale

The natural persons plaintiffs' claims were admissible as climate change poses a serious risk to current and future generations living in Belgium and will profoundly disrupt their daily lives.[511] The Klimaatzaak associations' claims were also admissible, in line with the stipulation of the Aarhaus Convention (to which Belgium is a party) that legal systems give due recognition and support to environmental associations acting on behalf of private individuals.[512]

There was no dispute that climate change presented a real and urgent risk to the lives and private lives of the natural persons plaintiffs.[513] The State defendants had timely knowledge of the risk and of the need to take specific emissions reductions measures and failed to do so. This violated their positive obligations under Articles 2 and 8 of the ECHR, as articulated in the prior environmental case-law of the ECtHR.[514]

The above violation of Articles 2 and 8 of the ECHR was sufficient to constitute a fault and a breach of the civil duty of care of public authorities under Articles 1382 and 1383 of the former Civil Code.[515]

An injunction is the most appropriate measure to address the damage already done and to prevent the sufficiently certain future damage from occurring. This does not infringe upon separation of powers because the injunction is limited to a GHG emissions target which has already been validated at the European level.[516] The 55% by 2030 requirement flows from the EU Climate Law, has been incorporated into Belgian domestic law, and was backed up by scientific reports from the European Commission and the EU Advisory Council.[517]

The Walloon region demonstrated a higher level of commitment to both setting and executing more ambitious climate targets than did the other defendant regions.[518]

Additional Information & Analysis

Significance: This decision reinforces the judiciary's role in holding governments accountable for failing to meet climate obligations. The Brussels Court of Appeal upheld the State's violation of Articles 2 and 8 of the European Convention on Human Rights, citing Belgium's failure to take adequate measures to reduce greenhouse gas emissions and protect its citizens from climate risks. Importantly, the court issued an injunction ordering Belgium to reduce its emissions by 55% by 2030, based on scientific evidence and EU climate law.

This ruling establishes a precedent for the use of human rights law in climate cases and demonstrates courts' capacity to intervene when government actions fall short of international climate commitments. The decision also underscores the importance of judicial remedies in compelling state action to address the urgent threat of climate change.

Use and importance of the Best Available Science: The judgment adopts a 1.5°C temperature target and refers to the IPCC carbon budget for reaching this goal. The residual budget accepted by all parties in the proceedings is 400 $GtCO_2$ for a 2/3 chance of staying below 1.5°C.[519] The judgment also references the risk of various potential tipping points and notes the regional variations in temperature change, wherein Europe has already warmed 1.9°C on average.[520]

[511] Id. at ¶¶ 132-34.
[512] Id. at ¶ 123.
[513] Id. at ¶¶ 164, 213.
[514] Id. at ¶ 139.
[515] Id. at ¶ 246.
[516] Id. at ¶¶ 282-86.
[517] Id. at ¶¶ 198-202.
[518] Id. at ¶ 210.
[519] Id. at ¶ 2.
[520] Id. at ¶ 3.

Significantly, the Court looked to the best available science, including IPCC reports, to inform the "minimum threshold required by prudence" that determined the State defendants' legal obligations with respect to climate action.[521] The Court rejected the arguments that such an approach treats scientific reports as a source of law, stating instead that it merely allows the Court "to ascertain the extent to which the best available climate science makes it possible to confer on the standard of care a sufficiently precise content to assess, in law, the conduct of the authorities to which a fault is attributed."[522]

Duty of care: In its reasoning, the Court found that a minimum standard of prudence informed by scientific consensus and international agreements required the Belgian state to meet a stricter GHG reductions target than that mandated by the European Union.[523] Any climate governance had to take into account that:[524]

- "since at least 2018 . . . given the -25% threshold set on the basis of a 2° C target and the shift from 2 to 1.5°C, a -30% reduction in GHG emissions at national level by 2020 could, at the very least, be considered a minimum in the light of the general obligation of prudence"

Moreover, prudence required the Belgian state to update the target in light of new scientific consensus that greater reductions were necessary to avoid dangerous climate change:[525]

- "It could therefore be expected of a normally prudent and diligent State (or federated entity) that, between 2013 and 2020, it would initially set itself a GHG emissions reduction target of 25% below 1990 levels by 2020, and that in 2018, following the Paris Agreement, this target would be revised upwards, taking into account the fact that, to avoid global warming of more than 1.5°C, it should have been raised to at least -30% by 2020."

Right to Life: The Court used the right to life derived from Article 2 of the European Convention on Human Rights and found that the State was breaching this right by failing to take all necessary measures to prevent the effects of climate change. This was due to the positive obligation on the State to prevent dangerous activities or disasters in line with broader ECHR environmental jurisprudence.[526]

Right to Privacy and Respect for Family Life: The Court also used the Article 8 European Convention on Human Rights right to privacy and respect for family life and determined that not taking all necessary measures to prevent the effect of climate change was a breach of this right. The real threat of dangerous climate change was determined to have a direct negative effect on the daily lives of current and future generations of Belgium's inhabitants. Given the current and future climate impacts on Belgium, the State was found to have breached Article 8.[527]

Application of Judicial Remedies: The Court of Appeal decision clarified that the judiciary could issue an injunction to implement emissions reductions without infringing upon separation of powers of the executive and legislative branches.[528]

[521] Id. at ¶ 240. [Unofficial translation]
[522] Id.
[523] Id. at ¶ 238.
[524] Id. at ¶ 238. [Unofficial translation]
[525] Id. at ¶ 241. [Unofficial translation]
[526] Id. at ¶¶ 211-14.
[527] Id. at ¶ 213-14.
[528] Id. at ¶ 286.

25. *In re: Application of Hawai'i Electric Light Company, Inc.* (2023) (Hawai'i, United States)

Citation	Hawai'i Supreme Court, *In the Matter of the Application of Hawai'i Electric Light Company, Inc. For Approval of a Power Purchase Agreement for Renewable Dispatchable Firm Energy & Capacity,* No. SCOT-22-0000418, 2023 WL 2471890, 13 March 2023 (U.S.). Hawai'i Supreme Court, *In the Matter of the Application of Hawai'i Electric Light Company, Inc. For Approval of a Power Purchase Agreement for Renewable Dispatchable Firm Energy & Capacity,* No. SCOT-22-0000418, 2023 WL 2472050, 13 March 2023 (U.S.) (Wilson, J., concurring).
Facts	The Court had previously vacated and remanded an earlier order by the Public Utilities Company (PUC) on a biomass project with an order that the new hearing on remand include "express consideration of GHG emissions" that would result from the project.[529] On remand, the PUC found that (a) the proposed project would emit substantially more carbon than it sequestered for at least the first 25 years of operation and raise ratepayer prices for the full term and (b) the company's promise of carbon neutrality was speculative ate best. Based on those findings, the PUC concluded that the proposed project was not in the public interest and rejected it. The company appealed the PUC's decision. On appeal the Court rejected each of the arguments made by the company and found the PUC's order was lawful.
Issues	Whether the public utility company's consideration of GHG emissions of the project beyond the scope of its authority Whether the utilities company improperly apply the public interest criteria by limiting its comparisons of the project only to fossil fuel alternatives; and Whether the electricity company's due process rights infringed by finding facts not on the record, applying the wrong evidentiary standard and subjecting the company to a carbon neutrality requirement.
Rationale	The Court unanimously found that Hawai'i's state constitutional right to a clean and healthy environment encompasses the "right to a life-sustaining climate system" this right is "constantly evolving."[533] Given the climate emergency with each year the "impacts amplify and the chances to mitigate dwindle."[531] These realities allow the PUC to exercise statutory powers differently than they may have a decade earlier, as the statutory functions of the PUC had to be interpreted given the evolving nature of the climate emergency. The Court found the PUC's had a duty to act in the public interest and that protecting rate-payers by considering pricing impacts of potential GHG emissions fell within the performance of this obligation and was reasonable.[532] Public interest-minded balancing within the statutory terms required the PUC to consider "potentially harmful climate change due to the release of harmful" GHG.[533]
Additional Information & Analysis	**Significance:** The Court found an unenumerated right to a sustainable climate system from the right to a clean and healthy environment in the Hawaiian Constitution. This decision was a step forward in the U.S. litigation on the interpretation of the right to healthy environment to include the duty of the State to require and use best available technologies to address climate change.

[529] Hawai'i Supreme Court, In the Matter of the Application of Hawai'i Electric Light Company, Inc. For Approval of a Power Purchase Agreement for Renewable Dispatchable Firm Energy & Capacity, No. SCOT-22-0000418, 2023 WL 2471890, 13 March 2023 (U.S.), 3.
[530] Id. at 18-19.
[531] Id. at 19.
[532] Id. at 12.
[533] Id. at 14.

Concurrence: The concurrence by Justice Wilson advances several other strands of reasoning summarized below, including detailed consideration of the best available science on climate change.

Use and Importance of the Best Available Science: The concurrence is the first-ever judicial opinion to detail why the average surface temperature targets of 1.5°C–2.0°C above pre-industrial levels specified in the Paris Agreement (Paris temperature targets) are unacceptable because the current level of warming is already causing harm and to call on the State to urgently reduce greenhouse gas emissions in line with what is scientifically and constitutionally required. His Honor explains why the emissions mitigation strategies must be based on the best available science: "Current scientific consensus, as opposed to political consensus in the Paris Agreement regarding an acceptable increase in global average temperature, suggests that mitigation strategies must be consistent with achieving global atmospheric CO_2 concentrations below 350 parts per million ('ppm') by 2100.[534] His Honor continues, "Because the global average temperature has increased by approximately 1.1°C, there is a growing concern that using the 1.5°C threshold as a judicial standard for protecting constitutional rights will permit governments to perpetuate policies that, in fact, violate fundamental rights.... That is, 'once a constitutional standard is embedded in law, history shows that policies that flow from that constitutional standard will inevitably allow full maximization of pollution levels that lead to the brink of that standard.' . . . And because the consequences of global warming at 1.1°C are already disastrous and life-threatening, governments cannot use the 1.5°C threshold to continue emitting greenhouse gas emissions up until global warming reaches 1.5°C."[535]

Constitutional Right to a Life-Sustaining Climate System: The concurrence found that the right to a life-sustaining climate system is also embedded in both the Hawaiian Constitution's due process right to "life, liberty, and property" and in the public trust doctrine. Justice Wilson concluded that, "Given the climate emergency, and the need to limit atmospheric CO_2 concentrations to below 350 ppm in order to leave Hawai'i's future generations a habitable earth ... the State of Hawai'i is constitutionally mandated to urgently reduce its [¶GHG] emissions in order to reduce atmospheric CO_2 concentrations to below 350 ppm."[536]

Development of Legal principles and Obligations of States (intergenerational equity): Judge Wilson's concurring opinion emphasizes throughout that, "climate change is a human rights issue at its core; not only does it inordinately impact young people and future generations, but it is also a profound environmental injustice disproportionately impacting native peoples."[537]

26. *MK Ranjitsinh et al. v. Union of India* (2024) (India)

Citation	Supreme Court of India, *M.K. Ranjitsinh & Ors. v. Union of India & Ors.*, Writ Petition (Civ.) No. 838 of 2019, 21 March 2024 (India).
Facts	The petition was brought before the Supreme Court of India to protect two endangered bird species, the Great Indian Bustard (GIB) and the Lesser Florican. In a prior ruling in 2021, the Court ordered that overhead transmission lines in the GIB's habitat be converted to underground lines to prevent bird collisions. However, the Union of India sought modification of this ruling, arguing that burying high-voltage power lines would negatively impact the country's renewable energy targets and commitments under the Paris Agreement, as the area is rich in solar and wind potential. The case thus focused on balancing species protection with India's energy transition.

[534] Hawai'i Supreme Court, In the Matter of the Application of Hawai'i Electric Light Company, Inc. For Approval of a Power Purchase Agreement for Renewable Dispatchable Firm Energy & Capacity, No. SCOT-22-0000418, 2023 WL 2472050, 13 March 2023 (U.S.) (Wilson, J., concurring), 10.
[535] Id. at 9-10, n. 4.
[536] Id. at 38.
[537] Id. at 15.

Issues	Whether the Supreme Court should modify its 2021 order to allow overhead power lines in the GIB's habitat. How can India balance biodiversity conservation (protection of GIB) with its commitments to renewable energy development and climate change mitigation?
Holding	The Supreme Court upheld the need for renewable energy development but recognized the importance of species conservation. The Court revised its earlier order, allowing overhead power lines in certain areas while emphasizing additional protective measures, such as habitat restoration, predator-proof enclosures, and collaboration with scientific organizations for GIB conservation. Particularly the Supreme Court sought to balance India's commitment to renewable energy development with the urgent need for species conservation, specifically the protection of the Great Indian Bustard (GIB). Instead of maintaining a blanket ban on overhead power lines, the Court modified its April 19, 2021, order, recalling the general prohibition on overhead transmission lines in a 99,000 square kilometer area. Recognizing the complexity of the issue, it appointed an Expert Committee tasked with assessing the feasibility of overhead and underground power lines in specific areas, advising on conservation measures, and ensuring long-term GIB survival through habitat restoration, anti-poaching initiatives, and climate impact assessments. The Court also emphasized additional protective measures, including predator-proof enclosures, collaboration with scientific organizations, and community engagement programs. While recalling its previous injunction, the Court directed the Union of India and relevant ministries to implement their conservation commitments and ensure that power infrastructure decisions align with India's international climate and biodiversity obligations.
Rationale	The Court underscored the balance between environmental protection and economic development.[538] It acknowledged India's international commitments to combat climate change, including transitioning to renewable energy.[539] However, the Court reinforced the State's duty under Articles 48A and 51A of the Constitution to protect biodiversity.[540] The Court ruled that renewable energy projects could proceed while ensuring specific safeguards for GIB conservation, thus harmonizing the dual imperatives of conservation and energy transition.[541]
Additional Information & Analysis	**Significance:** This case is significant because it marks a judicial approach to balance biodiversity conservation with renewable energy development, both critical to India's environmental and economic future. It establishes the framework for future cases dealing with the competing demands of species protection and sustainable development.[542] The decision is a step forward in recognizing climate change as a human rights issue while simultaneously safeguarding endangered species and ecosystems. Indeed, one of the greatest contributions of this decision is the establishment of a new constitutional right to be free from the adverse effects of climate change.[543] The Court highlighted India's obligations under various international treaties, including the UNFCCC and the Paris Agreement, as critical to its energy policy.[544] It emphasized that the right to a clean environment, as derived from Article 21 of the Indian Constitution (right to life), encompasses protection from climate change impacts.[545] This ruling reflects the growing recognition of the intersection between environmental conservation and human

[538] Supreme Court of India, M.K. Ranjitsinh & Ors. v. Union of India & Ors., Writ Petition (Civ.) No. 838 of 2019, 21 March 2024 (India), ¶¶ 16-18, 35.
[539] Id. at ¶¶ 11-15.
[540] Id. at ¶ 20.
[541] Id. at ¶ 62.
[542] Id. at ¶¶ 60-62.
[543] Id. at ¶ 24.
[544] Id. at ¶¶ 11-18.
[545] Id. at ¶¶ 20-24.

rights. However, it also raised practical questions about how courts balance the right to a healthy environment with other conflicting interests. The Court analyzes that beyond mere adherence to international agreements, India's pursuit of sustainable development reflects the complex interplay between environmental conservation, social equity, economic prosperity, and climate change.[546]

The decision's consideration of these complex issues is significant as the Court adopts a holistic approach to balancing: the conservation of a particular species with the conservation of the environment as a whole through urgent decarbonization. The Court states that if they "were to direct that the power transmission lines be undergrounded in the entire area delineated above, many other parts of the environment would be adversely impacted. Other endangered species may suffer due to the emission of harmful gases from fossil fuels. Rising temperatures and the attendant evils of climate change may not be halted in a timely fashion, leading to disastrous consequences for humankind and civilization as a whole. The existential threat may not be averted."[547]

The Court also defers to experts and explicitly states that "[w]hile adjudicating writ petitions which seek reliefs which are of the nature sought in the present case, this Court must conduct judicial review while relying on domain experts. Those who are equipped and trained to assess the various facets of a problem which is litigated before the Court must be consulted before a decision is taken. If this is not done, the Court may be in danger of passing directions without a full understanding of the issue in question."[548]

Importance of Biodiversity Conservation: The Court highlighted the importance of protecting endangered species according to international treaties, as well as recognizing the impact of climate change, pollution, and invasive species on the survival of vulnerable species.[549]

Mission to Combat Climate Change: The judges recount the significance of international commitments pursuing global environmental goals., such as the UNFCCC, and the Kyoto Protocol. The judges highlight the primary object of the UNFCCC of stabilizing greenhouse gas concentrations in the atmosphere to prevent dangerous human-induced interference with the climate system, and the history of recent climate negotiations.[550]

The Court then moves to analyze India's National Determined Contribution (NDC) and its commitments. The Court concentrates on India's commitments to transitioning to non-fossil fuel sources and reducing emissions, particularly on the goal of renewable energy capacity installation.[551]

Human Rights and Climate Change: The Court presents a thorough analysis on the intersection between climate change and human rights, underscoring the imperative for states to address climate impacts through the lens of rights.[552] The judges analyze the impacts of climate change to human rights, concluding that "States owe a duty of care to citizens to prevent harm and to ensure overall well-being. The right to a healthy and clean environment is undoubtedly a part of this duty of care. States are compelled to take effective measures to mitigate climate change and ensure that all individuals have the necessary capacity to adapt to the climate crisis."[553]

The Supreme Court analyzes the IACtHR advisory opinion from 2017 affirming the right to a healthy environment as a fundamental right. In this analysis it emphasizes the state obligations regarding environmental harm and cross-border impacts, among other issues.[554] Furthermore, the Court cites doctrine studying climate obligations under international law, and the imperative for States to adapt and mitigate climate change

[546] Id. at ¶¶ 60-62.
[547] Id. at ¶ 60.
[548] Id. at ¶ 61.
[549] Id. at ¶¶ 2-4, 52-53.
[550] Id. at ¶¶ 11-14.
[551] Id. at ¶¶ 14-18.
[552] Id. at ¶¶ 19-35.
[553] Id. at ¶ 29.
[554] Id. at ¶ 32.

impacts observing human rights principles.[555] It also recounts climate litigation as a tool to advance rights-based energy transitions and promote energy justice from a human rights approach.[556]

Right to a Healthy Environment and the Right to be Free from the Adverse Effects of Climate Change: The Court argues that "despite governmental policy and rules and regulations recognizing the adverse effects of climate change and seeking to combat it, there is no single or umbrella legislation in India which relates to climate change and the attendant concerns. However, this does not mean that the people of India do not have a right against the adverse effects of climate change."[557]

The Court argues that the right against the adverse effects of climate change derives from the interpretation of a series of constitutional provisions. Essentially, the Court states that Article 48A of the Constitution provides that the State shall endeavor to protect and improve the environment and to safeguard the forests and wildlife of the country. Clause (g) of Article 51A stipulates that it shall be the duty of every citizen of India to protect and improve the natural environment including forests, lakes, rivers and wildlife, and to have compassion for living creatures.[558]

"Although these are not justiciable provisions of the Constitution, they are indications that the Constitution recognizes the importance of the natural world. The importance of the environment, as indicated by these provisions, becomes a right in other parts of the Constitution. Article 21 recognizes the right to life and personal liberty while Article 14 indicates that all persons shall have equality before law and the equal protection of laws. These articles are important sources of the right to a clean environment and the right against the adverse effects of climate change."[559]

27. *Smith v. Fonterra Co-Operative Group Ltd* (2024) (New Zealand)

Citation	Supreme Court of New Zealand, *Smith v Fonterra Co-Operative Group Limited,* SC 149/2021[2024] NZSC 5, 7 February 2024 (N.Z.).
Facts	In 2019, Mr Smith, an elder of the Ngāpuhi and Ngāti Kahu people, along with a climate change spokesperson for the Iwi Chairs Forum (a national forum for tribal leaders), filed a claim in the High Court of New Zealand, against seven New Zealand companies (including the world's largest processer of dairy products and a coal mine) (respondents) emitted GHGs (methane) or supplied products that released GHGs when burned (coal). The respondents' collective was responsible for more than one-third of New Zealand's reported GHG emissions. Mr Smith claimed a traditional connection to the coastal land and said that the land has been threatened by the respondents who have contributed materially to the climate crisis and have damaged, and will continue to damage, places of customary, cultural, historical, nutritional and spiritual significance to him. The claim raised three causes of action in tort, including public nuisance, negligence, and a proposed new climate tort imposing a legal duty to cease materially contributing to: damage to the climate system; dangerous anthropogenic interference with the climate system; and the adverse effects of climate change. Mr Smith sought a declaration that the respondents have unlawfully breached a duty of care owed to him in addition to an injunction requiring the Respondents to: (a) reduce or cause peaking of their emissions by 2025, a particularized reduction in their emissions by the end

[555] Id. at ¶ 30.
[556] Id. at ¶¶ 44-50.
[557] Id. at ¶ 19.
[558] Id. at ¶ 20.
[559] Id.

	of 2030 and 2040, and zero net emissions by 2050; or alternatively (b) immediately cease emitting net GHG emissions. He also claimed that tikanga Māori (indigenous customary law) should inform the scope of his tort claims. The respondents applied to strike out the proceeding on the basis that the claim raised no cause of action and was related to complex policy matters that were better addressed by Parliament. The respondents main arguments were that: (a) parliament had already addressed the issue through legislation, and the common law duty of care would create a parallel and inconsistent regime; (b) it was not possible to link the emissions caused by the respondents' activities to the harm suffered by Mr Smith; (c) Mr Smith's claim would "open the floodgates" of litigation for GHG emitters that would disrupt economies. In 2020, the High Court at first instance struck out Mr Smith's public nuisance and negligence claims but refused to strike out the proposed new climate change tort. In October 2021, on appeal, the Court of Appeal struck all the claims; observing that *"the magnitude of the crisis which is climate change simply cannot be appropriately or adequately addressed by common law tort claims pursued through the courts...."*[560] Mr Smith appealed to the Supreme Court of New Zealand.
Issues	Whether the claim should be struck out or could proceed to trial? Whether Mr Smith had standing to bring the claim, including because of his indigenous connection to the land recognized under indigenous customary law? Whether Mr Smith's harm could be attributed to the respondents' GHG emissions?
Holding	NB: All references are to the Supreme Court's decision. The Supreme Court unanimously allowed the appeal and reinstated Mr Smith's claim (meaning that the proceeding will proceed to trial). The Court found the legislative climate regime did not displace the operation of the common law tort claims.[561] The primary claim (tort of public nuisance) was founded on seriously arguable non-trivial harm and should not be struck out,[562] and as all three tort claims raised common issues, it was not necessary or appropriate to strike out the remaining claims.[563]
Rationale	There was sufficient scientific certainty on the causes and impacts from climate change, globally and in New Zealand.[564] The Parliament has taken various measures to address climate change including, passing a motion declaring a climate emergency in New Zealand and legislated measures under a climate framework law to align with meeting New Zealand's NDC required under the Paris Agreement.[565] However, the common law could and should be developed to accommodate common law causes of action in tort. **Standing and Harm:** The Court held that the special damage rule in nuisance claims (that a person must show harm as appreciably different to the harm suffered by the general public to have standing to bring the claim) needed to be reconsidered, in the context of full evidence and legal argument to account for the 21st century context, including the implications of Māori customary law.[566] Mr Smith had a tenable claim to meeting the standing requirement, as "[w]hile the effects of human caused climate change are ubiquitous and grave for humanity, their precise impact is distributed and different. The pleaded effects, including inundation of coastal land and impacts on fishing and cultural interests, go beyond a wholly common interference with public rights."[567]

[560] Supreme Court of New Zealand, *Smith v Fonterra Co-Operative Group Limited,* SC 149/2021[2024] NZSC 5, 7 February 2024 (N.Z.), ¶ 6.
[561] Id. at ¶ 101.
[562] Id. at ¶ 143.
[563] Id. at ¶¶ 175-176.
[564] Id. at ¶¶ 13-26.
[565] Id. at ¶¶ 30-31.
[566] Id. at ¶¶ 149, 151, 182.
[567] Id. at ¶ 152.

Causation: Rejecting the Court of Appeal's reasoning that tort law involving issues of aggregate harm only had a finite number of known contributors to the harm,[568] the Court found there were numerous cases where defendants have been found to have caused a public nuisance (of discharging into rivers) despite the waterways being polluted by numerous other non-party polluters.[569] The Court assumed for the purposes of the issue in the strike out appeal that the emissions attributable to the respondents' activities harmed the land and Mr Smith's other pleaded interests.[570] The Court observed that how the 21st century law of torts should respond to "cumulative causation" involving "newer technologies and newer harms" (like GHGs) should not be answered pre-emptively without evidence and policy analysis.[571] Tort law needed to take account of Māori customary law both to assess the type of loss (or harm) allegedly suffered by Mr Smith caused by the respondents and to develop the legal principles concerning the tort causes of action.[572]

Additional Information & Analysis

Significance: The apex Court of New Zealand's reasoning is significant in the way it approaches the relationship of the courts and political branches in the context of climate harm. Prior to this decision, the common law had generally maintained the orthodoxy that tort claims could not be used to challenge or address climate change, and that the regulation of GHG emitters was properly left to the other branches of government through statutory regulation. The reasoning in this decision is contrary to this orthodoxy. The Court emphasizes the need to develop the legal principles to take account of the unique harm of GHG emissions in the 21st century. The reasoning is detailed and nuanced, discussing the realities of the climate emergency.

The Supreme Court's reasoning and decision creates a role for the domestic courts in a common law system to hold non-State actors accountable for climate harm through tort law principles. This role accommodates and supplements the role of political branches. The Court noted: "[c]limate change was described to us as an existential crisis, and the respondents would have it that its range and diffuse and disparate causes exceed the capacity of the common law for response. The Court of Appeal appeared to share that view. Another assessment, that might arise after the benefit of evidence and a full trial, may be that climate change is different in scale, but a consequence of a continuum of human activities ***that may or may not remain lawful depending on whether the harm they cause to others is capable of assessment and attribution.*** It is here beyond question that the respondents are either very substantial emitters of GHGs or are (or have been) very substantial suppliers of fossil fuels that release GHGs when burned by others."[573]

The Court's reasoning on ways legal principles must evolve to consider both climate impacts on indigenous peoples and indigenous values and customs are also likely to be relevant and possibly influential in other legal systems.

Importance of Attribution Science to Climate Impacts and Harm: The Court acknowledged that evidence at trial will need to include evidence as to the scientific attribution of climate change to the respondents' activities.[574] Only after a full review of this evidence at trial could the legal issues of harm and the companies' liability be determined.

Human Rights of Indigenous Peoples: The Court expressly acknowledged the vulnerability of indigenous peoples in New Zealand to climate harm, and that the law of torts needed to account of indigenous customary law to develop in response to the new kinds of harm posed by GHG emissions.

[568] Id. at ¶ 158.
[569] Id. at ¶ 158.
[569] Id. at ¶ 159.
[570] Id. at ¶ 167.
[571] Id. at ¶ 166.
[572] Id. at ¶ 182.
[573] Id. at ¶ 155 (emphasis added).
[574] Id. at ¶ 167.

	Access to Justice (standing and justiciability of climate harm): By stating that the relevant principles of tort law needed reconsideration, the Court took an important step forward to remove obstacles to access climate justice. **Judicial Remedy:** The Court acknowledged the challenges facing Mr Smith to obtain a remedy requiring cessation (by way of injunction) on the application of current legal principles. But left the door open for a full examination of available remedies, noting the flexibility of equitable remedies of injunction and declaration.[575]

28. *Navahine F. v. Hawai'i Department of Transportation* (2024) (Hawai'i, United States)

Citation	First Circuit Court of Hawai'i, *Navahine F. et al. v. Hawai'i Dep't of Transp.,* 1CCV-22-0000631, 20 June 2024 (U.S.).
Facts	In June 2022, thirteen youth plaintiffs, represented by Earthjustice and Our Children's Trust, filed a lawsuit against the Hawai'i Department of Transportation (HDOT), alleging that its policies promoting a fossil fuel-based transportation system contributed to climate change. The plaintiffs argued that HDOT's failure to reduce transportation-related emissions violated their constitutional right to a clean and healthful environment under Article XI, Section 9 of the Hawai'i Constitution and the public trust doctrine under Article XI, Section 1. They contended that HDOT's actions contradicted the state's Zero Emissions Target and its duty to protect Hawai'i's natural resources for present and future generations. The case was resolved through a settlement agreement, in which the State of Hawai'i, Governor Josh Green, HDOT, and Edwin Sniffen did not admit liability but committed to developing a GHG Reduction Plan, revising transportation policies, creating a Climate Change Mitigation & Culture Manager position, and expanding multimodal transportation options and public EV infrastructure.
Issues	Whether the State can be held accountable under a constitutionally protected public trust doctrine for failing to take timely action to reduce greenhouse gas emissions, particularly in the transportation sector. Whether the operation and maintenance of a fossil fuel-based transportation system violates the youth plaintiffs' constitutional right to a clean and healthful environment under Haw. Const. art. XI, § 9. Whether HDOT's role in establishing, maintaining, and operating the transportation system require it to preserve and protect Hawai'i's public trust resources and ensure compliance with Hawai'i's Zero Emissions Target.
Holding	The Court denied the State's motion to dismiss, allowing the case to proceed. In April 2023, the Court ruled that the plaintiffs had standing, and their claims under the public trust doctrine and constitutional environmental rights were valid. The Court set a trial date for June 2024, but the case was eventually settled in June 2024. The settlement agreement stipulates that the HDOT must take concrete steps to reduce greenhouse gas (GHG) emissions from the state's transportation system. This includes developing and implementing a comprehensive GHG Reduction Plan with interim targets for 2030, 2035, and 2040, in line with the state's goal of achieving zero emissions by 2045. HDOT is also required to revise its transportation programming and budgeting process to prioritize projects aligned with GHG mitigation and VMT reduction goals, create a Climate Change Mitigation & Culture Manager position to lead decarbonization efforts, and undertake immediate actions such as investing in public EV charging stations and expanding multimodal transportation choices. The court retains jurisdiction to enforce the agreement until December 31, 2045, or until the Zero Emissions Target is achieved.

[575] Id. at ¶ 246.

Rationale	The settlement recognized Hawai'i jurisprudence such as that: "[t]here is scientific consensus: anthropogenic global warming threatens the world's climate system. It raises the seas; it sickens the planet. It harms present and future generations;"[576] "[t]he people of Hawai'i have declared 'a climate emergency'... Hawai'i faces immediate threats to our cultural and economic survival: sea level rise, eroding the coast and flooding the land; ocean warming and acidification, bleaching coral reefs and devastating marine life; more frequent and more extreme droughts and storms. For the human race as a whole, the threat is no less existential ... HRS § 225P-5 mandates that we reduce emissions now, before the damage done to the environment is irreversible—before action becomes impossible for future generations ... With each year, the impacts of climate change amplify and the chances to mitigate dwindle ... A stepwise approach is no longer an option... as a state agency, HDOT 'must perform its statutory function in a manner that fulfills the State's affirmative constitutional obligations.'... an array of laws enacted by the Hawai'i Legislature require the State to increase energy efficiency, develop an integrated multi-modal transportation system, and reduce greenhouse gas ("GHG") emissions, including transportation sector emissions specifically."[577]
Additional Information & Analysis	**Significance:** This case is a significant legal precedent for youth-led climate litigation, as the decision is an example of a Court be willing to consider constitutional claims related to environmental rights. The case follows *Held v. Montana,* where the state's constitution played a key role in climate protections, signalling a broader trend of state-level climate litigation in the U.S. The settlement reached in June 2024 was recognized as a major climate victory, marking the first youth-led case in the U.S where such an agreement was reached. The State agreed to develop a comprehensive plan to decarbonize its transportation system by May 2025, acknowledging the transportation sector's significant contribution to greenhouse gas emissions (48% of Hawai'i's total). Furthermore, the agreement includes a "Recognition of Rights" that establishes: the youth plaintiffs' right to a clean and healthful environment including the "right to a life-sustaining climate system;"[578] and that the State has affirmative public trust obligations to conserve and protect Hawai'i's natural resources "for the benefit of present and future generations."[579]

29. *Held v. State of Montana* (2023) (Montana, United States)

Citation	Montana First Judicial District Court of Lewis and Clark County, *Held v. State of Montana*, CDV-2020-307, 13 August 2023 (U.S.). Supreme Court of Montana, *Held v. State of Montana*, DA-23-0575, 18 December 2024 (U.S.).
Facts	The plaintiffs (sixteen Montana youth aged between two and 18 years old at the time of filing) filed a complaint for declaratory and injunctive relief against the State of Montana, the Governor and several Montana departments and agencies. The complaint challenged the constitutionality of the State's fossil fuel-based state energy system (specifically the provisions of that policy that forbid the State and its agents from considering the impacts of GHG emissions or climate change in their environmental reviews and the acts the State has taken under those provisions to implement and perpetuate a fossil fuel-based energy system) alleging that this system causes and contributes to climate change in violation of the plaintiffs' State constitutional rights and the public trust doctrine.

[576] First Circuit Court of Hawai'i, Navahine F. et al. v. Hawai'i Dep't of Transp., 1CCV-22-0000631, 20 June 2024 (U.S.), Exhibit A, 1.
[577] Id. at 2.
[578] Id. at 2-3.
[579] Id. at 4.

	The plaintiffs sought a declaration concerning their constitutional rights and a declaration of law that the impugned provisions, including fossil fuel-based provisions of Montana's State Energy Policy Act and Montana's Environmental Policy Act (the "MEPA Limitation"), are unconstitutional and a declaration that that defendants past and ongoing actions to implement a fossil fuel-based energy system are unconstitutional. The plaintiffs also sought injunctive relief to restrain the defendants to subjecting the plaintiffs to the State energy policy and orders requiring the defendants prepare statewide GHG accounting and a remedial plan to reduce GHG emissions; for the Court to retain jurisdiction until the defendants have fully complied with the Court's orders and, if necessary, appoint a special master to review the State's remedial plan.
Issues	**Standing:** Plaintiffs' standing to challenge the energy policy. **Use of Climate Science:** Plaintiffs relied on expert testimony on: the causes of climate change and how human-caused fossil fuel development is harming Montana's ecosystems and hydrology; climate change's current and projected impacts in Montana on ecosystems, water supplies, communities, and the plaintiffs; and, to show physical and psychological injury to youth plaintiff. **Climate Impacts on Rights:** Right to a healthy environment: Whether the States' energy system violates the plaintiffs' State constitutional right to a "clean and healthful environment in Montana for present and future generations." **Remedy:** Whether the Court had the power to order the relief requested.
Holding	The District Court found in favor of the plaintiffs:[580] a) The plaintiffs have standing to challenge the defendants' actions. b) The MEPA limitation violates the plaintiffs' rights to a clean and healthful environment. c) The MEPA limitation was declared unconstitutional, and the defendants were enjoined from acting in accordance with the statutory provisions declared unconstitutional. The decision was upheld on appeal by a majority of the Supreme Court of Montana in December 2024.
Rationale	The plaintiffs had experienced past and ongoing injuries due to the State's failure to consider GHGs and climate change inaction on climate change.[581] The defendants' inaction to mitigate climate change were not *de minimis* and sufficiently contributed to climate change to reduce plaintiffs' injuries. The claims seeking declaratory relief were redressable because removing the statutory prohibition would allow decision-making to conform with the best science and constitutional duties, and give them the necessary information to deny fossil fuel activities when inconsistent with protecting the plaintiffs' rights.[582] The MEPA limitation implicates the plaintiffs' fundamental right to a clean and healthful environment and based on the based on the text, intent and precedent the climate is included in the clean and healthful environment and "environmental life support system."[583] The MEPA limitation is facially unconstitutional as it is contributing to the degradation of Montana's environment and natural resources and contributing to the plaintiffs' injuries and depriving them of their constitutional right and the State failed to show it serves a compelling governmental interest.[584] The plaintiffs could obtain the declaratory and injunctive relief sought,[585] but the Court did not order the other relief sought on the grounds that it exceeded the political question doctrine.[586]

[580] Montana First Judicial District Court of Lewis and Clark County, Held v. State of Montana, CDV-2020-307, 13 August 2023 (U.S.), 102.
[581] Id. at ¶ 1, Conclusions of Law.
[582] Id. at ¶ 18, Conclusions of Law.
[583] Id. at ¶ 49, Conclusions of Law.
[584] Id. at ¶¶ 58-59, 62, Conclusions of Law.
[585] Id. at ¶¶ 1-11, Order.
[586] Id. at p. 3.

Additional Information & Analysis

Significance: This case establishes a new precedent using the right to healthful environment (currently an express constitutional right in a handful of U.S. States) to invalidate a state law. The decision opens up further climate litigation (especially in other U.S. States which have similar constitutional rights under their state constitutions) that focuses on the impacts of climate change on youth, youth constitutional rights, and the energy transition.

The District Court engaged in a detailed, nuanced, and thorough review of the expert evidence on the causes of climate change (focusing on fossil fuel production), the economic and technical feasibility of the clean energy transition, and the current and projected impacts of climate change on Montana's ecosystems and communities, emphasizing in the factual findings' areas of scientific consensus and certainty. This strong factual evidential basis, using the best available science, informed the Court's legal reasoning on the constitutionality of the State's energy policy by drawing a link directly between climate harm from continued emissions of fossil fuels and the right to a healthy environment. These factual findings were undisputed on appeal.

The factual findings in the District Court decision also focuses on the catastrophic impacts of climate change on Montana's youth, giving voice to the testimony of the plaintiffs on the ways in which their lives and dignity are currently affected, and referring to the impacts on future generations if Montana does not change its energy policy.

The potential practical effects of the decision on fossil fuel mitigation are significant, as Montana is a major emitter of GHG emissions in global terms. As noted by the District Court, "[w]hat happens in Montana has a real impact on fossil fuel energy systems, CO_2 emissions, and global warming."[587]

Use and Importance of Climate Science in Evidence and Judicial Reasoning: The District Court had before it expert evidence (including from a lead author of the 4th IPCC Assessment Report) on the current and projected effects of GHG emissions globally and in Montana and made extensive findings of fact relying on this climate science. The District Court noted the "strong scientific consensus that as GHG emissions continue to increase, impacts to the climate will become more severe."[588] The District Court also accepted the science on the impacts on the natural environment of Montana, finding it would worsen if the State defendants continue to ignore GHG emissions and climate change.[589] The District Court addressed the "energy imbalance (the difference in energy from sun arriving at the Earth and the amount radiated back to space) as a "critical metric" for determining amount of global heating.[590]

The District Court discussed different technically and economically feasible models to replace existing fossil fuel energy.[591] Making findings on the climate costs that would be eliminated (USD$21 billion in 2050) to Montana and the world if the State converted to renewable energy.[592] The District Court found that the "current barriers to implementing renewable energy systems are not technical or economic, but social and political. Such barriers primarily result from government policies that slow down and inhibit the transition to renewables, and laws that allow utilization of fossil fuel development and preclude a faster transition to a clean, renewable energy system."[593]

The Supreme Court observed that District Court made extensive, undisputed factual findings that GHG emissions are drastically degrading Montana's environment.[594]

[587] Id. at ¶ 237, Findings of Fact.
[588] Id. at ¶ 95, Findings of Fact.
[589] Id. at ¶¶ 93, 140-193, Findings of Fact.
[590] Id. at ¶¶ 81-82, Findings of Fact.
[591] Id. at ¶¶ 272-279, Findings of Fact.
[592] Id. at ¶ 275, Findings of Fact.
[593] Id. at ¶ 282, Findings of Fact.
[594] Supreme Court of Montana, Held v. State of Montana, DA-23-0575, 18 December 2024, at ¶ 29.

Nature and Urgency of Climate Harm: The District Court made findings about the current rate of global warming and the amount the temperature of the Earth has increased since pre-industrial times. The Court found that until GHG atmosphere concentrations are reduced "extreme weather events and other climatic events such as drought and heatwaves will occur more frequently and in greater magnitude."[595] "[E]very ton of fossil fuel emissions contributes to global warming and impacts to the climate" therefore increasing the exposure of the youth plaintiffs' to harm now and in the future.[596] The Court found that "the science is clear that there are catastrophic harms to the natural environment of Montana and Plaintiffs and future generations of the State due to anthropogenic climate change", this environment degradation and harm to the plaintiffs' "will worsen if the State continues ignoring GHG emissions and climate change."[597]

Importance of Short-Lived Climate Pollutant Mitigation: The District Court acknowledged that it has "long been understood that certain GHGs, including CO_2 and methane (CH_4), trap heat in the atmosphere, causing the earth to warm" and set out a brief chronology of how far back scientists have research and published on this effect (beginning in the late 19th century).[598]

Climate Impacts on Vulnerable Groups (youth and indigenous youth): The District Court made detailed findings about the climate impacts on youth, relying both on plaintiffs' testimony and expert testimony on the physical and psychological impacts of climate change on youth.[599] These findings included that children "are uniquely vulnerable to the consequences of climate change, which harms their physical and psychological health and safety, interferes with family and cultural foundations and integrity, and causes economic deprivations.[600] All children are population sensitive to climate change because their bodies and minds are still developing.[601] The Court made specific findings about climate impacts on the youth plaintiff' from a native American community, noting that climate change was already impacting her "ability to partake in cultural and spiritual activities and traditions, which are central to her individual dignity."[602]

Fair Share Principles: While the District Court does not use the language of "fair share", the fact finding emphasizes Montana's role as a "major emitter of GHG emissions in the world in absolute terms, in per person terms, and historically."[603] The facts on Montana's fossil fuel industry demonstrates the significant amount of GHG emissions Montana is responsible for national and globally.[604] For example, total annual fossil fuels extracted in Montana in 2019 were higher than many other countries including Brazil, Japan, Mexico, Spain, or the United Kingdom,[605] and accounting for overlap among fossil fuels extracted, consumed, processed, and transported in Montana (166 million tons of CO_2) is equivalent to the emissions from Argentina, the Netherlands, or Pakistan.[606]

[595] Montana First Judicial District Court of Lewis and Clark County, Held v. State of Montana, CDV-2020-307, 13 August 2023 (U.S.), at ¶ 89, Findings of Fact.
[596] Id. at ¶ 92, Findings of Fact.
[597] Id. at ¶ 193, Findings of Fact.
[598] Id. at ¶¶ 73-75, Findings of Fact.
[599] Id. at ¶¶ 104-139, Findings of Fact.
[600] Id. at ¶ 104, Findings of Fact.
[601] Id. at ¶ 107, Findings of Fact.
[602] Id. at ¶ 197, Findings of Fact.
[603] Id. at ¶ 222, Findings of Fact.
[604] Id. at ¶¶ 215-220, Findings of Fact.
[605] Id. at ¶ 215, Findings of Fact.
[606] Id. at ¶ 219, Findings of Fact.

Climate Change Impacts on the Constitutional Right to a Clean and Healthful Environment: The Supreme Court affirmed the District Court's conclusion of law that Montana's right to a clean and healthful environment and environmental life supporting system includes a stable climate system.[607] The Supreme Court reasoned that the constitutional protection of a "right to a clean and healthful environment" provides environmental protections which are "both anticipatory and preventative" and can be invoked prior to harmful environmental effects.[608] Accordingly, the Supreme Court rejected Montana's argument that the right did not extend to climate change because of the nature of GHG pollution.

The Constitutional right does not permit the legislature to prohibit environmental reviews from evaluating GHG emissions.[609]

Moving from Voluntary Commitments to Binding Obligations: the right to clean and healthful environment is complemented by an affirmative duty upon the government to take active steps to realize the right,[610] including obligating the legislature to provide adequate remedies for the protection of the environmental life support system from degradation.[611] Montana conceded on appeal that provisions of the State law purporting to limit judicial remedies for legal challenges based in whole or in part upon GHG emissions and the impacts to the climate in and beyond Montana was unconstitutional.[612]

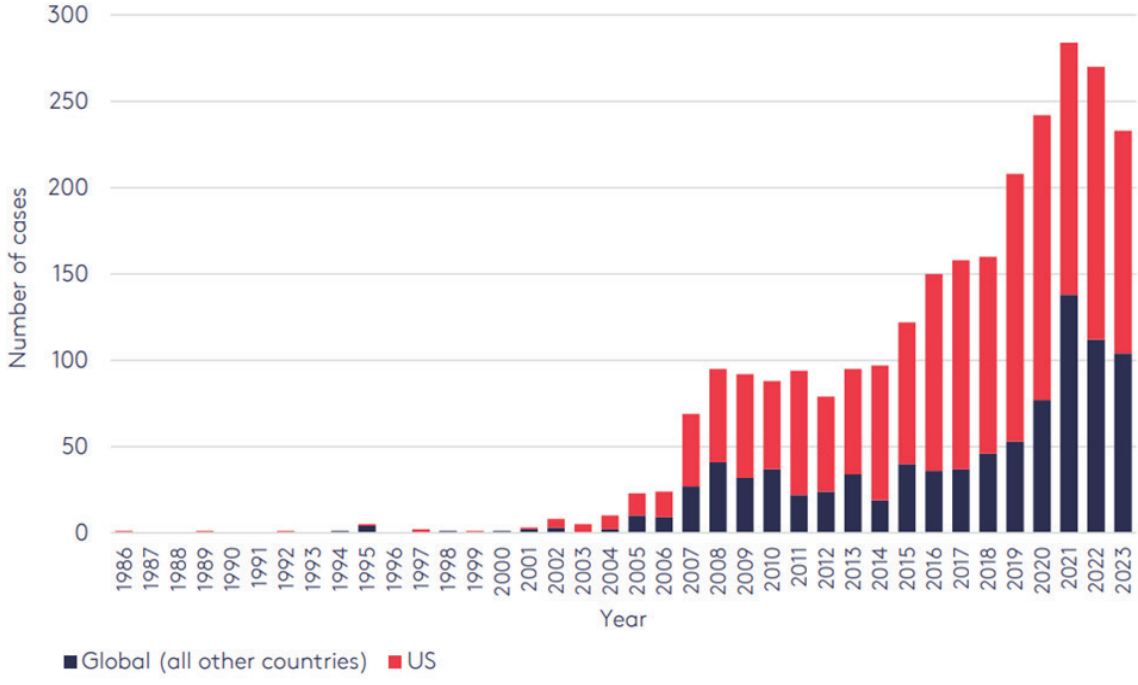
[607] Supreme Court of Montana, Held v. State of Montana, DA-23-0575, 18 December 2024, ¶ 30.
[608] Id. at ¶ 25, 28.
[609] Id. at ¶ 68.
[610] Montana First Judicial District Court of Lewis and Clark County, Held v. State of Montana, CDV-2020-307, 13 August 2023 (U.S.), at ¶ 45, Conclusions of Law.
[611] Id. at ¶ 46, Conclusions of Law.
[612] Supreme Court of Montana, Held v. State of Montana, DA-23-0575, 18 December 2024, at ¶ 69.

Annex: Reflections on Trends in Climate Litigation Globally

Since the signing of the Paris Agreement in 2015, there has been a significant surge in climate litigation globally.

A commonly used definition of "climate litigation" includes two criteria: (1) a case has been brought before a judicial body (broadly defined to include tribunals determining administrative matters or investigation requests) and (2) climate change law, policy, or science is a material issue of law or fact in the case.[613]

Figure 1.1. Number of climate litigation cases within and outside the US, 1986–2023



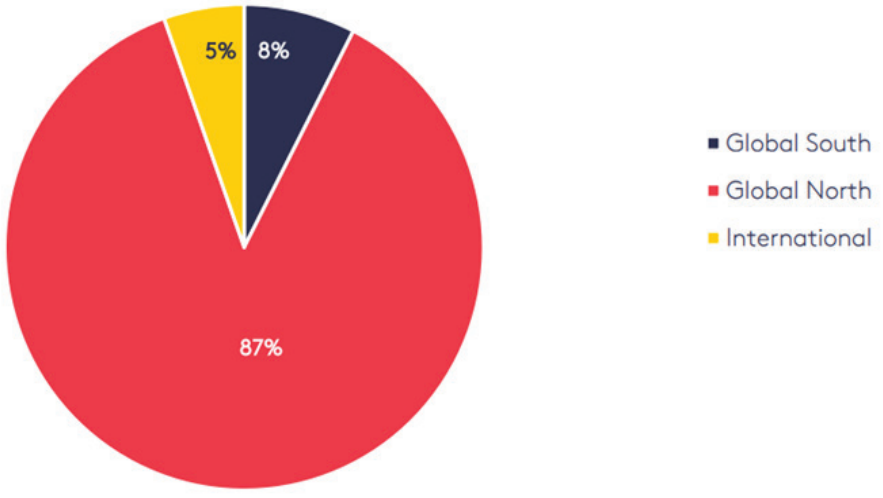
Source: Grantham Institute (2024) *Global trends in climate change litigation: 2024 snapshot,* 10 (Figure 1.1).

These figures highlight the increasing and widespread use of climate litigation. According to the Grantham Institute:

- There are over 2,666 climate litigation cases (about 70% of these cases have been filed since the adoption of the Paris Agreement).
- The U.S. remains the country with the highest number of documented climate cases, with 1,745 cases in total (with 129 new cases filed in 2023), followed by the UK (24), Brazil (10), and Germany (7).
- Cases in the Global South are increasing; there are more than 200 cases in Global South countries (about 8% of all cases in the database).
- 2023 was a landmark year for international climate litigation, particularly involving human rights. Around 45% of international cases and complaints filed to date have been filed before international human rights courts, bodies and tribunals, reflecting a growing trend in the use of human rights arguments in climate cases.
- In 2024, the International Tribunal of the Law of the Sea delivered a landmark advisory opinion on States' obligations to address climate change under the United Nations Convention of the Law of the Sea. In addition, advisory proceedings on climate change issues are pending before the International Court of Justice and the Inter-American Court of Human Rights.

[613] Grantham Institute (9 August 2024) *What is Climate Litigation?* ("A widely used definition stems from the approach adopted by the Sabin Center for Climate Change Law at Columbia University, which uses two criteria to identify cases for its Climate Change Litigation Databases: i) a case should have been brought before a judicial body (although certain examples of administrative matters or investigation requests are included); and ii) climate change law, policy or science must be a material issue of law or fact in the case."). See also Jacqueline Peel & Hari M. Osofsky (2020) Climate Change Litigation, ANNU. REV. LAW SOC. SCI. 16: 21–38.

Figure 1.3. Percentage of cases in the Global database filed in courts in the Global North, courts in the Global South, and international and regional courts



Source: Grantham Institute (2024) *Global trends in climate change litigation: 2024 snapshot,* 14 (Figure 1.4)

The impacts of climate litigation are significant and extend beyond the judgment or opinion of the court. As the Grantham Institute notes, climate litigation influences policy, governance, and public discourse as well as a range of key actors that experience and contribute to these impacts.[614]

Other Key Resources on Global Climate Litigation

1. *The Global Climate Change Litigation Database,* Sabin Center for Climate Change Law, Columbia Law School.
2. *Global Trends in Climate Change Litigation: 2024 Snapshot,* London School of Economics, Grantham Research Institute on Climate Change & Environment.
3. *Climate Law Accelerator,* New York University School of Law.
4. *Notre Dame Reparations Design and Compliance Lab,* University of Notre Dame, Kellogg Institute for International Studies.

[614] Grantham Institute (2024) *Global trends in climate change litigation: 2024 snapshot,* Part IV.