Introduction

Human rights claims are being used increasingly as a means to hold governments and corporations accountable for harm to the environment, including climate change.

Historically, human rights bodies were often asked to hear claims of violations of civil and political rights. Yet over the past few decades, United Nations and other human rights bodies have made clear that all human rights are universal and indivisible. Thus, under the eyes of the law, economic, social, and cultural rights are just as important as civil and political rights. Human rights bodies now regularly hear cases about economic, social, and cultural rights, as well as solidarity rights, which include environmental rights. Although some human rights bodies have been reluctant to consider environmental harm from climate change within the scope of their purview, in recent years UN and regional human rights bodies have increasingly recognized the implications that environmental harm, including from climate change, can have on human rights.

 Nonetheless, climate change has posed a challenge for some human rights bodies. For instance, the Inter-American Commission on Human Rights (IACHR) has received but not admitted two petitions on climate change. However, in December 2015, coinciding with the United Nations Framework Convention on Climate Change negotiations of the Paris Agreement, the IACHR issued a statement expressing concern about the effects of climate change on human rights and acknowledging that it has received hundreds of cases demonstrating that “climate change is a reality that is affecting the enjoyment of human rights in the region.” Also in 2015, some national courts began to consider and decide climate cases involving human rights claims. These developments set the stage for additional national courts, as well as human rights bodies like the IACHR, to hear cases premised on climate-related harms that implicate human rights in the future. This chapter provides some practical considerations in bringing such cases, reviews existing human rights–based climate change cases, and reflects on the future of human rights litigation to prevent or redress climate change–related harms.
Conceptualizing climate change harms as human rights claims: relevant facts and law

Constructing a human rights–based climate change case entails casting climate harms as the relevant facts and conceptualizing human rights as the relevant law. Impacts of climate change that threaten or violate human rights include sea level rise, droughts, heat waves, desertification, fires, the spread of tropical and vector-borne diseases, and more frequent and extreme floods, storms, and other natural disasters. These harms can provide the factual basis for a human rights claim where the harm (i) infringes on a human right; (ii) is sufficiently severe; and (iii) the causal link to climate change is sufficiently clear. The standards for severity of harm and causation vary by jurisdiction, but these elements are often relevant considerations for courts.

International human rights treaties, such as the major United Nations human rights treaties, provide a solid set of rights that can form the basis for a case, where a country has either ratified the relevant treaty or enshrined its rights in its national law. Those rights include the rights to life, health, food, water, housing, property, culture, freedom of residence and movement, and nationality, as well as procedural rights, such as the rights of access to information and justice, and the right to participation. The rights of Indigenous Peoples, women, and children also enjoy protection under international human rights law and can suffer from climate change impacts.

To understand how a climate change–related harm might infringe on a human right, consider the example of temperature rise, along with repeated intense droughts, in the Turkana region of Kenya. These impacts implicate the rights to water, food, livelihood, health, and security where they interfere with people’s ability to realize or enjoy those rights. The Maldives’s submission to the Office of the High Commissioner for Human Rights provides a useful table showing which human rights (in UN human rights treaties) certain climate change effects might implicate.

Causation has proven challenging in many lawsuits, given that climate change can combine with other factors in producing its effects. However, some courts have begun to recognize contributory action as a basis for liability. Sectors that clearly generate climate change impacts include fossil fuels, transportation, agriculture, and forestry. In addition, scientific data on climate change, including reports by the Intergovernmental Panel on Climate Change (IPCC), continue to become more specific, decisive, and robust. A relatively recent scientific study links 63% of historic, industrial carbon dioxide and methane emissions to 90 state, state-owned, and investor-owned entities, the so-called Carbon Majors. Climate attribution studies are also becoming more prevalent.

Building the lawsuit: essential elements

Litigation related to climate change and human rights can take many forms and proceed in many fora. International law provides a basis for cases in international human rights tribunals and treaty bodies, while many countries’ national constitutions provide human rights protections that enable domestic courts to hear claims of climate change effects’ harm to human rights.

To build a potential case (human rights–based or otherwise), questions of who, what, and where are essential to answer. The “who” element takes on two dimensions: who can sue and who can be sued. International human rights law generally provides individuals, and in some instances, groups, with “standing” to complain of violations to their human rights. Several human rights treaties establish that States subject themselves to complaints if they are alleged to have violated provisions of treaties they have ratified. Human rights law generally does not provide jurisdiction over private actors, but States’ duty to protect human rights entails ensuring that third parties, including private actors, do not interfere with enjoyment of human rights. In
addition, States’ domestic legal systems provide jurisdiction over private actors on constitutional or human rights claims.12

Regarding the “what,” as explained above, human rights law need not expressly recognize climate change to provide a basis for a claim. Rather, what matters is whether an applicable human rights treaty or law protects the human rights at issue. “Applicable” is important given that treaties only bind States that have ratified them (Parties), and most treaties and laws have jurisdictional limitations. Beyond such procedural limitations, the law must also apply to the substance of the harm. Thus, for instance, if climate change resulted in the spread of a vector-borne disease, thereby infringing on the right to health, then legal action is possible under an international body like the Committee on Economic, Social, and Cultural Rights (CESCR), which hears communications related to rights enshrined in the International Covenant on Economic, Social, and Cultural Rights (ICESCR). To be admissible to the CESCR, the State that allegedly violated the rights would need to have ratified both the ICESCR and its Optional Protocol, which provides jurisdiction to the CESCR to hear communications against States that ratify it. Litigation would also be possible under the domestic laws of a country that has enshrined the right to health in its national constitution or other laws, but the success of such a claim would depend on that country’s willingness to find the harm cognizable as a violation of the right to health.

With the relevant law identified, the next step (still part of the “what”) is to determine whether the harm at issue rises to the level of a violation of that law. The text of the law itself, as well as past decisions of the body charged with hearing claims under that law, will be instructive here. For instance, keeping with the right to health example, the text of ICESCR and decisions of the CESCR would be relevant in submitting a communication to the CESCR. The text of domestic law and decisions under that law (if considered under that legal system) would be relevant in bringing a case at the national level. In some instances, particularly under domestic law, this inquiry can stray into other areas of the law. In Chile, for example, whose constitution protects the right to a healthy environment, one way to establish a violation of this right is to show that the activity in question exceeded allowable pollution limits under its environmental quality standards.13

The question of “where” largely follows from the determinations of who and what. Identifying the proper parties and relevant law will often answer the question of where to bring the case, because those elements will establish which fora have jurisdiction to hear the claim. For example, if a fisherwoman in India sought to claim that the Indian government’s failure to adequately respond to climate change resulted in fish kills that infringed on her right to a means of subsistence, and found that Indian law protects the right to livelihood and clean environment under its constitutional right to life, then she would need to bring her claim in a forum that has jurisdiction to hear those claims, e.g., India’s Supreme Court or National Green Tribunal.14

Elements such as the actors, existence of relevant law, severity of the harm, and forum are all key determinants of whether a lawsuit will be admissible and successful on the merits.

Surveying the field: current cases

Notably, every country has ratified at least one of the major United Nations human rights treaties, signifying that they uphold those rights in their national legal systems,15 and at least 117 countries have established a national human rights commission.16 As explained in the “Conceptualizing Climate Change Harms as Human Rights Claims” section above, these bodies can provide a means of recourse for people who suffer climate change–related harm, where that harm rises to the level of violating their human rights in a way cognizable by those bodies.
Of the growing number of climate change–related lawsuits, several have asserted human rights claims. Of those cases that have asserted human rights claims, only a few have succeeded in achieving a favorable ruling on those claims. While this outcome may sound discouraging to those seeking to bring human rights claims related to climate change, it may well reflect the relatively new nature and understanding of both climate change and its implications on human rights. As domestic courts and human rights bodies develop their understanding and recognition of these implications, they will be better equipped to find human rights violations based on climate change–related harm where they exist. Similarly, as victims of climate change–related harm develop their understanding of that harm’s effects on their rights, they will be better equipped to avail themselves of courts and human rights bodies to hear their claims.

Climate change cases at both the domestic and international levels have included human rights claims. The discussion below describes these cases in order from greatest to least recognition of human rights claims, as one would write a legal brief, by focusing on the most relevant cases.

First, touching very briefly on these cases, at the domestic level, one case in Pakistan considered human rights as part of constitutional and fundamental rights claims. One case in the Netherlands raised human rights obligations under the European Convention on Human Rights, among other claims. Largely following the Netherlands’ case, one case in Belgium and another in Switzerland also included claims based on obligations under the European Convention. A Kiribati national asserted human rights arguments in seeking asylum in New Zealand, based on climate change harms to Kiribati. In the Philippines, Greenpeace Southeast Asia and other groups filed a petition before the Philippines’ Commission on Human Rights against 47 investor-owned major carbon producers regarding the human rights implications of climate change and ocean acidification in the Philippines and those companies’ responsibilities for them. Two domestic cases, one in Norway and one in Sweden, also involve human rights claims relating to fossil fuels. The Inter-American Commission on Human Rights has received two petitions on behalf of Arctic Indigenous Peoples regarding human rights violations caused by climate change effects in the North American Arctic. Each of these cases is discussed below, with a view to replicability in other cases.

Ashgar Leghari v. Federation of Pakistan (Sept. 2015)

In Ashgar Leghari v. Federation of Pakistan, a subsistence farmer claimed the government violated his constitutional rights by failing to act on climate change. The farmer sued the government of Pakistan for violations of his fundamental and constitutional rights – including the rights to life, healthy environment, human dignity, property, and information – due to its inaction on climate change. Asserting that “climate change is a serious threat to water, food and energy security of Pakistan which offends the fundamental right to life under . . . the Constitution,” along with other rights, Mr. Leghari challenged the government’s failure to make progress on its National Climate Change Policy, 2012 and the Framework for Implementation of Climate Change Policy (2014–2030). 18

On September 4, 2015, the Lahore High Court agreed with Mr. Leghari, noting that “[c]limate [c]hange is a defining challenge of our time and has led to dramatic alterations in our planet’s climate system,” with “heavy floods and droughts [in Pakistan] raising serious concerns regarding water and food security.” The court explained that in legal and constitutional terms, this was a “clarion call for the protection of fundamental rights of the citizens of Pakistan, in particular, the vulnerable and weak segments of the society who are unable to approach this Court.” The court thus found the State’s “delay and lethargy” in implementing the Framework “offend[ed] the fundamental rights of the citizens which need to be safeguarded.” Consequently,
the court ordered the government of Pakistan to appoint a climate change focal person in each of its relevant ministries, have each ministry develop a list of adaptation action points, and establish a national Climate Change Commission.20

Calling for a move from environmental justice to climate change justice, the court declared that the right to life [which includes the right to a healthy environment], right to human dignity, right to property and right to information under ... 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.21

This case demonstrates the ability of a judge to order and obtain swift, concrete action on climate change:

Within one month of having heard Ashgar Leghari’s case, Judge Shah had summoned all of the country’s main officials before him; appointed named climate change focal points for each government department; addressed individual capacity needs of departments; and appointed a named Climate Change Commission to ensure implementation [of Pakistan’s climate change framework].22

Although this case’s success was likely unusual in terms of the speed and concreteness of the results it obtained, it is theoretically replicable where a nation has (i) a constitution enshrining relevant rights (such as the rights to life, human dignity, property, and information); (ii) an unfulfilled mandate to act on climate change; and (iii) a willing judiciary.

Perhaps testing this theory, in April 2016, a seven-year-old sued the Pakistani government, alleging violations of her constitutional and human rights due to the government’s actions and inaction related to carbon pollution from coal, transportation, and industrial activity.23

Urgenda Foundation v. the State of the Netherlands (June 2015)

In Urgenda Foundation v. the State of the Netherlands, an organization representing 886 individuals sued the government for inaction on climate change. Beyond asserting the Netherlands’ failure to take adequate action on climate change, Urgenda claimed that the resulting emissions levels infringed on certain human rights, among other claims. The human rights claims pertained to the right to life and the right to health and respect for private and family life, both under the European Convention on Human Rights (ECHR), and the rights of future generations and the duty of care regarding the livability of the country and protection and improvement of the living environment, both under Dutch law.24 The court also referenced environmental law principles derived from rulings of the European Court on Human Rights (European Court).25

The court held that Urgenda could not rely directly on the ECHR because those rights apply only to natural persons and Urgenda was a legal, not natural, person.26 Notwithstanding, it considered the ECHR and the European Court’s interpretation of those rights relevant to its interpretation of Dutch civil law.27 The court reasoned it could rely on the jurisprudence of the European Court because “the State has the obligation to protect its citizens from it by taking appropriate and effective measures” when, as in that case, “there is a high risk of dangerous climate change with severe and life-threatening consequences for man and the environment.”28

Ultimately, the court ordered the Dutch government to limit GHG emissions to 25% below 1990 levels by 2020. The Dutch government appealed the ruling in October 2015.29
This case illustrates the applicability of human rights law to harms resulting from climate change – in this case, a State’s failure to adequately address climate change. While the court did not find violations of human rights law, the fact that human rights law informed its analysis shows that other courts may also find it relevant in their consideration of climate change–related harms. Moreover, the reasons the Dutch court did not directly consider the human rights claim would not necessarily arise in other cases. For instance, Urgenda’s inability as a legal person to assert human rights claims would be irrelevant if a natural person were to file the lawsuit. In addition, where the harm more closely affects the rights at issue (as opposed to there, where policy inaction was the basis for the rights violations), a court might be more inclined to find violations.

**VZW Klimaatzaak v. Kingdom of Belgium, et al. (pending)**

The Belgian case *VZW Klimaatzaak v. Kingdom of Belgium* draws significantly on the Urgenda case in the Netherlands in asserting the government’s failure to take adequate climate action, to the detriment of human rights. In December 2014, the organization Klimaatzaak wrote a letter to the Belgian government demanding that it take all necessary measures to guarantee a reduction in domestic greenhouse gas emissions to 40% below 1990 levels by 2020. Not satisfied with the response, in April 2015, Klimaatzaak sued the Belgian government, including for violations of the right to life under the ECHR, and the right to health and respect for private and family life, under the ECHR and the Belgian constitution. The plaintiffs also alleged inconsistencies with the precautionary and prevention principles, as well as negligence. The case is currently pending.

**Verein KlimaSeniorinnen Schweiz and others v. Federal Council of the Swiss Confederation and others (pending)**

Also drawing heavily on the Urgenda case, the Swiss case *Verein KlimaSeniorinnen Schweiz and others v. Federal Council of the Swiss Confederation and others*, filed in October 2016, argues that the government’s national mitigation target does not meet the standards set forth by the scientific community and therefore constitutes a violation of its duties. In that case, 459 elderly women sued the Swiss government, alleging that its climate policy violates their constitutional and human rights due to effects of heat waves and other climate change impacts. In particular, the case highlights that failure to take adequate climate action threatens the right to life under the Swiss constitution and the ECHR, and the right to private and family life under the ECHR. The plaintiffs, whose organization name translates to Senior Women for Climate Protection, base their legal application primarily around the recognition of the health implications associated with climate change – in particular for elderly people. While principles of environmental law feature among the legal grounds in the complaint, references to human rights are central to the request for legal remedies. As in the Urgenda complaint, the plaintiffs seek an order that the government strengthen its mitigation policy to meet the lower range of the IPCC’s suggested targets (25% emissions reductions by 2020). The application has yet to be considered by a court.

**Ioane Teitiota v the chief executive of the ministry of business, innovation and employment (July 2015)**

In *Ioane Teitiota v The Chief Executive of the Ministry of Business, Innovation and Employment*, a Kiribati national applied for asylum in New Zealand based on harm that climate change was causing...
to Kiribati. Specifically, in his 2012 complaint, he claimed “his homeland, Kiribati, [wa]s facing steadily rising sea water levels as a result of climate change,” giving rise to a fear “that, over time, the rising sea water levels and the associated environmental degradation will force the inhabitants of Kiribati to leave their islands.” Rejecting claims based on the 1951 United Nations Refugee Convention, the International Covenant on Civil and Political Rights (ICCPR), and New Zealand law, the High Court and Court of Appeals both found that Mr. T eitiota failed to qualify for refugee status based on the impacts of climate change on Kiribati. Affirming, in July 2015 the Supreme Court found Mr. T eitiota would not face “serious harm” if returned to Kiribati and found no evidence that Kiribati was failing to “take steps to protect its citizens from the effects of environmental degradation to the extent it could.” Finding the ICCPR inapplicable on the facts of that case and a lack of jurisdiction to review the appellate court’s rulings on New Zealand law, the Supreme Court dismissed the case. However, it noted that its dismissal “did not mean that environmental degradation resulting from climate change or other natural disasters could never create a pathway into the Refugee Convention or protected person jurisdiction.”

Thus, this case leaves the door open for possible international law claims by people who are forced from their country, or fear return, due to environmental degradation from climate change, at least in New Zealand. Indeed, in a case in which citizens of Tuvalu faced deportation from New Zealand, In re: AD (Tuvalu), the Immigration and Protection Tribunal cited the Kiribati case as “expressly acknowledg[ing]” that climate change impacts may affect enjoyment of human rights and noted the “wide accept[ance]” of this reality. While the tribunal did not expressly rule on the basis of human rights, it found that the facts taken together constituted “exceptional circumstances” that warranted granting asylum based in part on climate-based harms the applicants claimed they would suffer if sent to Tuvalu.

**Greenpeace Southeast Asia et al. v. Carbon Majors – Commission on Human Rights of the Philippines (pending)**

In contrast to the cases above, which involve claims brought against governments, several individuals and organizations filed a groundbreaking petition against the major carbon producers. In September 2015, Greenpeace Southeast Asia and other groups filed a complaint before the Commission on Human Rights of the Philippines against 47 investor-owned corporations that are among the largest historic emitters of greenhouse gases. The complaint asks the Commission to investigate the human rights implications of climate change and ocean acidification in the Philippines and those companies’ responsibility for resulting human rights violations or threats. Furthermore, the complaint requests that the Commission (i) ask the companies for plans on how they will eliminate, remedy, and prevent human rights violations resulting from climate change in the future; (ii) monitor communities most vulnerable to climate change in the Philippines; and (iii) recommend that policymakers and lawmakers develop corporate reporting standards on human rights issues related to the environment.

In December 2015, the Commission on Human Rights announced that it would launch an investigation as requested by the petitioners. In July 2016, the Commission ordered the companies to respond to the petition. Twenty-one companies complied, yet only one company (Rio Tinto) acknowledged the fact-finding nature of the investigation. (All of the other companies that responded challenged the Commission’s ability to exercise jurisdiction and to conduct an investigation on these matters.) In December 2016, the Commission confirmed that it would move ahead with a national public inquiry and hold public hearings. In February 2017, the petitioners submitted a consolidated reply to the corporate responses. The Commission expects to hold hearings in 2017.
Greenpeace Nordic Association and Natur og Ungdom (Nature & Youth) v. The Government of Norway represented by the Ministry of Petroleum and Energy (pending)

In October 2016, Greenpeace Nordic Association and Natur og Ungdom, with an alliance including Indigenous Peoples, youth groups, famed scientist James Hansen, sued the Norwegian government for opening up the Barents Sea to fossil fuel exploration. In their petition, the plaintiffs assert that the government’s decision to allow oil drilling there constitutes a violation of the government’s obligations with regards to environmental protection and human rights. In particular, the petition relies on article 112 of the Norwegian constitution, which provides a right of present and future generations to “an environment that is conducive to health and to a natural environment whose productivity and diversity are maintained.” The petition emphasizes that this provision must be interpreted in light of relevant international human rights instruments, in particular articles 2 and 8 of the ECHR, enshrining the rights to life and private and family life, and article 12 of the ICESCR, enshrining the right to the enjoyment of the highest attainable standard of physical and mental health. The petition contends that the production licenses Norway awarded would result in increased emissions incompatible with Norway’s commitment under the Paris Agreement. Trial is set to take place in November 2017.

PUSH Sverige, Fältbiologerna and others v. The Government of Sweden (pending)

The responsibility of a national government to prevent the extraction of fossil fuels as a matter of human rights is also at the core of a petition filed in September 2016 against the Swedish government. In this case, known as Magnolia, youth plaintiffs denounced the decision of the state-owned enterprise Vattenfall to sell one of its lignite coal mines in Germany to a private operator. The plaintiffs argue that such a sale would result in the future exploitation of the mine and that it was the government’s duty, based on its international climate commitments and its human rights obligations, to prevent such a deal and to ensure that the extraction of lignite coal is discontinued or takes place under strict standards. Referring to recent scientific literature, the summons emphasize that the continued exploitation of lignite coal is not compatible with the objective of keeping temperatures well below 2°C as agreed in the Paris climate agreement. The plaintiffs assert that, by allowing the commercial deal to take place, the government failed to meet its human rights obligations under the Swedish constitution, the ECHR, and the European Social Charter. They also argue that the Swedish government failed to guarantee the respect of the UN Guiding Principles on business and human rights by the state-owned operator.

Petitions to the Inter-American Commission on Human Rights

At the international level, the Inter-American Commission on Human Rights (Inter-American Commission), an organ of the Organization of American States, has received two petitions related to climate change harms. In both cases, indigenous people in the Arctic filed the petitions: Inuit Circumpolar Conference v. United States in 2005 for acts and omissions causing global warming and Arctic Athabaskan Council v. Canada in 2013 for inadequate regulation of black carbon emissions. Both cases alleged violations of the rights to culture, property, health, and means of subsistence.

The Inter-American Commission declined to rule on the 2005 petition, though it did provide a hearing for the petitioners, giving the case acclaim as the one that “put a human face on
the effects of climate change.” The Inter-American Commission has not yet responded to the 2013 petition. However, in a statement issued in December 2015, the Commission expressed concern about the effects of climate change on human rights and acknowledged that it “has received hundreds of cases related to conflicts over land and water and threats to food sovereignty, which evidence that climate change is a reality that is affecting the enjoyment of human rights in the region.” This development indicates that the Commission better understands the relevance of climate change to the cases it considers, and it may signal a greater willingness to hear cases alleging human rights claims based on climate change harms.

Assessing the future: lessons learned and challenges to confront

Given the clear impacts of climate change on the enjoyment of human rights, and States’ corresponding human rights obligations, courts can be an appropriate place to seek compliance with those obligations. The climate change–related cases discussed in the previous section illustrate this potential. However, some hurdles remain on the path to justice.

First, human rights cases based on climate change–related harm are rare so far, and some human rights bodies have been reluctant to recognize such cases as within their purview. However, this is changing. The Inter-American Commission’s 2015 statement on climate change and human rights demonstrates its evolving understanding of this link and its applicability to its cases. In addition, countries including India, Kenya, Chile, and Nigeria have found that environmental harm violated human rights, and they may be well positioned to consider climate change–related harm as the basis for future claims. Indeed, a study by the Environmental Law Alliance Worldwide (ELAW) identified Brazil, Colombia, Ecuador, India, Kenya, Mexico, Nigeria, and Pakistan as countries whose legal systems would be well suited to hear climate change damages cases based on constitutional rights and involving private actors.

Furthermore, in countries whose courts lack a strong recognition of human rights, victims of human rights violations from climate change–related harms may be able to seek relief based on constitutional rights that reach those violations without directly bringing human rights claims as such. For instance, in Juliana v. US, a U.S. district judge held that plaintiffs had “adequately alleged infringement of a fundamental right” under the U.S. constitution by claiming that “governmental action is affirmatively and substantially damaging the climate system in a way that will cause human deaths, shorten human lifespans, result in widespread damage to property, threaten human food sources, and dramatically alter the planet’s ecosystem.” In reaching this conclusion, the judge noted she had “no doubt that the right to a climate system capable of sustaining human life is fundamental to a free and ordered society [and] quite literally the foundation of society, without which there would be neither civilization nor progress.” (The Panjey petition to India’s National Green Tribunal recently cited this language.)

Second, proving causation remains a considerable challenge. This is particularly true for cases aiming to tie developed countries’ emissions to climate-related harms in developing countries. However, some courts and human rights bodies have not let this get in the way, such as the Urgenda v. Netherlands case and the Philippines’ investigation against the Carbon Majors. Moreover, the increase in scientific evidence tracing quantified emissions to particular actors, such as the Carbon Majors report, suggests that plaintiffs are inching closer to obtaining sufficient proof to link climate change impacts to states or businesses. With that element of the causal chain established, plaintiffs should be able to show that the climate change impacts, if sufficiently severe, infringe on human rights.

Third, climate-related legislation requirements are often not strong or concrete enough to provide the basis for a viable lawsuit. For instance, a law might require a government to “take
measures” or “develop a plan” without specifying minimum standards or otherwise enforceable content for those measures or plan, or to “consider” doing something. However, over time and in accordance with Paris Agreement commitments, legislation – at least in some countries – will likely contain more concrete requirements that could actionable if not met, including by the resulting effects on human rights. Furthermore, cases like *Leghari v. Pakistan* and *Urgenda v. Netherlands* provide examples of courts taking action for a State’s failure to make sufficient progress or take adequate action toward achieving an obligation.

Finally, some architectural considerations include that communities confronting climate-based harm do not necessarily organize themselves or identify in that way, and that, from a climate justice perspective, it may be unfair to bring cases against developing countries that have contributed relatively little to climate change–related harms.

**Conclusion**

As the UN Office of the High Commissioner for Human Rights (OHCHR) has explained, States clearly have human rights obligations related to climate change: “Because of the impacts of climate change on human rights, States must effectively address climate change in order to honour their commitment to respect, protect and fulfil human rights for all.” The OHCHR further acknowledged that, because “climate change mitigation and adaptation measures can have human rights impacts[,] all climate change–related actions must also respect, promote and fulfill human rights standards.”

Businesses have human rights responsibilities in this context, too: “It is not only States that must be held accountable for their contributions to climate change but also businesses which have the responsibility to respect human rights and do no harm in the course of their activities.”

Thus, when States or businesses fail to meet their obligations or responsibilities, courts and human rights bodies can provide a means for recourse. Courts and human rights bodies will likely increasingly serve this function in the years to come, as they develop their recognition of climate change’s implications on human rights, and as communities and individuals enhance their understanding of climate change–related harms they face in human rights terms.

**Notes**


7 Ibid.


9 See R. Heede, ‘Tracing Anthropogenic Carbon Dioxide and Methane Emissions to Fossil Fuel and Cement Producers, 1854–2010’, 122 Climate Change (2014) 229. (“The analysis presented here focuses attention on the commercial and state-owned entities responsible for producing the fossil fuels and cement that are the primary sources of anthropogenic greenhouse gases that are driving and will continue to drive climate change. The results show that nearly two-thirds of historic carbon dioxide and methane emissions can be attributed to 90 entities.”)


11 I confine this chapter to litigation based on human rights claims. Litigation related to climate change using administrative, civil tort, or criminal claims is also possible and indeed occurring. My focus here is solely on using human rights law to combat climate change.

12 See, e.g., Shri Bodhisattwa Gautam v. Miss Subha Chakraborty [1996] SCC (1) 490, Supreme Court of India, available online at http://indiankanoon.org/doc/642346/ (“Fundamental Rights can be enforced even against private bodies and individuals.”); See also Environmental Law Alliance Worldwide (ELAW), ‘Holding Corporations Accountable for Damaging the Climate’ (2014), available online at www.elaw.org/system/files/elaw.climate.litigation.report.pdf, at 6 (“[C]ourts in Brazil, Colombia, Ecuador, India, Kenya, and Mexico will hold or are likely to hold private entities liable for violations of fundamental rights”).


14 See Olga Tellis and Others v. Bombay Municipal Council, AIR 1986 SC 180, Supreme Court of India, available online at https://indiankanoon.org/doc/709776/, at para 2.1 (“The sweep of the right to life conferred by Article 21 [of the Indian constitution] is wide and far reaching . . . An . . . important facet of that right is the right to livelihood, because, no person can live without the means of living, that is, the means of livelihood.”); Shantistar Builders v. Nanayan Khimalal Totome, AIR 1990 SC 630, Supreme Court of India, available online at https://indiankanoon.org/doc/1813295/ (last visited 30 October 2016) (“Basic needs of man have traditionally been accepted to be three – food, clothing, and shelter. The right to life is guaranteed in any civilized society. That would take within its sweep the right to food, the right to clothing, the right to decent environment and a reasonable accommodation to live in.”); Bhopal Gas Peedidh Mahila Sangathan v. Union of India [2012] 8 SCC 326, Supreme Court of India, available online at http://indiankanoon.org/doc/178436640/ (instructing that environmental cases be filed before the National Green Tribunal).

15 See Conventions, supra note 5.


18 Ashgar Leghari v. Federation of Pakistan, Lahore High Court (4 September 2015), available online at https://elaw.org/system/files/pk.leghari.090415_0.pdf.

19 Ibid., at para. 6.

20 Ashgar Leghari v. Federation of Pakistan, supra note 20, at para. 8.

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21 Ibid., at para. 7. The court further noted that these fundamental rights and principles “include within their ambit and commitment, the international environmental principles of sustainable development, precautionary principle, environmental impact assessment, inter and intra-generational equity and public trust doctrine.”


23 Rabab Ali v. Federation of Pakistan & Another, Supreme Court of Pakistan (April 2016), available online at www.elaw.org/system/files/Pakistan%20Climate%20Case-FINAL.pdf.

24 See Arts 2, 8, European Convention on Human Rights (ECHR); Book 5, Section 37 and Book 6, Section 162 of the Dutch Civil Code; Art. 21, Constitution of the Netherlands.


26 Ibid., at para 4.45.

27 Ibid., at paras. 4.46, 4.52.

28 Ibid., at para. 4.74.


30 Klimaatzaak, Le Procès [The Lawsuit], available online at http://klimaatzaak.eu/fr/le-proces/.


37 A. Nelsen, Norway Faces Climate Lawsuit Over Arctic Oil Exploration Plans (18 October 2016), available online at www.theguardian.com/environment/2016/oct/18/norway-faces-climate-lawsuit-over-oil-exploration-plans.


41 For further discussion of these cases see S. Jodoin et al., ‘Look Before You Jump: Assessing the Potential Influence of the Human Rights Bandwagon on Domestic Climate Policy’ (this volume).
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43 Organization of American States, supra note 3.

44 See ELAW, supra note 12.


46 Ibid.


49 Ibid.

50 Ibid.