

Institute for Governance & Sustainable Development (IGSD)

COMPENDIUM OF CLIMATE CHANGE AND HUMAN RIGHTS JURISPRUDENCE

9 August 2023

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I. INTRODUCTION

This document contains a compilation of briefings of global climate cases and judicial opinions that best present the science of climate change, provide the most compelling legal precedent, or advance persuasive content on States' obligations to address the climate emergency. The compilation is designed to support the preparation of *amicus curiae* for the Advisory Opinion request currently before the Inter-American Court of Human Rights, taking into consideration the human rights protected in the Inter-American system.

Section A presents cases and judicial opinions. Each brief includes a description of the case's significance for the issues before the Inter-American Court of Human Rights in the Advisory Opinion. Where available, each brief includes links to key case documents and commentary. The case summaries highlight the issues set out in the issues key below.

Section B includes summaries of pending cases. Cases in this section are organized chronologically by filing date and divided into Latin American and Caribbean cases, followed by non-Latin American and Caribbean cases.

Case summaries spotlight four areas of particular importance to considerations before the Inter-American Court for its Advisory Opinion on climate change. These include: climate science, states obligations, the human rights affected by climate change, and the remedies or recommendations made by other courts and forums. Further details within each of these categories are highlighted within the case summaries, as applicable. The following table [Issues Key] summarizes these areas and sub-categories, and the second table highlight the cases that speak to each category.

Issues Key	
Climate science	<ul style="list-style-type: none">▪ science-based reasoning▪ best available science or best available technology▪ tipping points and feedbacks▪ super pollutants▪ differing impacts with increase in warming; difference between 1.5°C or 2°C limit▪ discussion of carbon sinks▪ carbon budgets
States obligations	<ul style="list-style-type: none">▪ due diligence▪ positive and negative obligations for mitigation and adaptation,▪ regulation, supervision and monitoring of third parties,▪ precautionary principle▪ principle of prevention▪ duty to cooperate
Human Rights impacted by Climate Emergency	<ul style="list-style-type: none">▪ Right to life▪ Right to personal integrity▪ Economic, Social, Cultural and Environmental Rights (ESCER), including the rights to adequate food, adequate housing, education, health, social security water and sanitation, work, and to take part in cultural life

	<ul style="list-style-type: none"> ▪ Right to equality and non-discrimination ▪ Right to private and family life ▪ Right to property ▪ Right to take part in cultural life (right to culture and self-identity) ▪ Access rights (information, justice, public participation) ▪ Rights of nature
Remedies and recommendations (legal / judicial)	<ul style="list-style-type: none"> ▪ cessation ▪ compensation (redress) ▪ satisfaction ▪ restoration ▪ guarantees of non-repetition ▪ supervision of executive action

Note on annotation:

- Case titles are hyperlinked to original case source, when possible.
- Paragraph reference numbers are shown in square brackets [¶###].

Cases by Category

The following table provides a thematic view of the main cases to facilitate navigation and identification of cases relevant to the spectrum of legal issues:

Acronyms	
Inter-American Court of Human Rights (IACtHR)	International Court of Justice (ICJ)
European Court of Human Rights (ECHR)	UN Human Rights Bodies (UN+)
International Tribunal of the Law of the Seas (ITLOS)	Domestic Courts (By country)

Climate Science
<p>Top Cases that best explain the Climate Science</p> <ol style="list-style-type: none"> 1. <i>In re: Application of Hawai'i Electric Light Company, Inc.</i> (2023) 2. <i>VZW Klimaatzaak v. Kingdom of Belgium & Others</i> (2021) 3. <i>Neubauer v. Germany</i> (2021) 4. <i>Milieudefensie v. Royal Dutch Shell</i> (2021) 5. <i>Commune de Grande-Synthe v. France</i> (2021) 6. <i>Sharma v Minister for the Environment</i> (2021) 7. <i>Friends of the Irish Environment v. Ireland</i> (2020) 8. <i>The State of the Netherlands v. Urgenda</i> (2019) 9. <i>Gloucester Res. Ltd. v. Minister for Plan.</i> (2019) 10. <i>Future Generations v. Ministry of the Environment et al.</i> (2018) 11. <i>Notre Affaire à Tous and Others v. France</i> (2018)
States Obligations
<p>Due diligence</p> <ul style="list-style-type: none"> ○ <i>Advisory Opinion OC-23/17</i> (IACtHR 2017) ○ <i>Lhaka Honhat Association v. Argentina</i> (2020) ○ <i>Re Greenpeace Southeast Asia and Others</i> (2022) ○ <i>Responsibilities and Obligations of States Sponsoring Persons and Entities with Respect to Activities in the Area</i> (ITLOS Advisory Opinion) (2011) ○ <i>Case of Community of La Oroya v. Perú</i> (2020) ○ <i>Nicaragua v. Costa Rica</i> (ICJ)
<p>Positive and negative obligations for mitigation and adaptation</p> <ul style="list-style-type: none"> ○ <i>The State of the Netherlands v. Urgenda</i> (2019) ○ <i>Neubauer v. Germany</i> (2021) ○ <i>Klimatická žaloba ČR v. Czech Republic</i> (District Court of Prague, (2022) ○ <i>VZW Klimaatzaak v. Kingdom of Belgium & Others</i> (2021) ○ <i>Shrestha v Prime Minister 10210</i> (Supreme Court of Nepal) (2017) ○ <i>Case of Community of La Oroya v. Perú</i> (2020) ○ <i>Amparo en revision 610/2019</i>
<p>Regulation, supervision, and monitoring of third parties</p> <ul style="list-style-type: none"> ○ <i>Milieudefensie v. Royal Dutch Shell</i> (2021) ○ <i>Lhaka Honhat Association v. Argentina</i> (2020)

- *Re Greenpeace Southeast Asia and Others* (2022)
- *Waratah Coal Pty. Ltd. v. Youth Verdict Ltd. & Ors. (No 6)* (2022)
- *Petition Requesting for Investigation of the Responsibility of the Carbon Majors for Human Rights Violations or Threats of Violations Resulting from the Impacts of Climate Change ('Carbon Majors Petition'), Republic of the Philippines* (2022)
- *Case of Community of La Oroya v. Perú* (2020)

Precautionary principle

- *Duarte Agostinho v. Portugal* (ECHR – pending)
- *KlimaSeniorinnen v. Switzerland* (ECHR – pending)
- *State of the Netherlands v Urgenda* (2019)
- *Sheikh Asim Farooq v. Federation of Pakistan etc.* (2019)
- *Amparo en revision 610/2019*
- *Future Generations v. Ministry of the Environment et al.* (2018)
- *D.G. Khan Cement Company v. Government of Punjab, Pakistan* (2019)
- *Atrato River Decision, Colombia* (2016)
- *Ashgar Leghari v. Pakistan* (2015)
- *Responsibilities and Obligations of States Sponsoring Persons and Entities with Respect to Activities in the Area (ITLOS Advisory Opinion)* (2011)
- *Nuestros Derechos al Futuro y Medio Ambiente Sano et. al., v. Mexico* (2021)

Principle of prevention

- *Advisory Opinion OC-23/17 (IACtHR 2017)*
- *Advisory Opinion on the Legality and Threat of Use of Nuclear Weapons (ICJ)*
- *Nicaragua v. Costa Rica (ICJ)*
- *Pulp Mills on the River Uruguay (Argentina v. Uruguay)* (2010)
- *Responsibilities and Obligations of States Sponsoring Persons and Entities with Respect to Activities in the Area (ITLOS Advisory Opinion)* (2011)
- *Tatar v Romania (ECHR)*
- *Öneryildiz v. Turkey (ECHR)*
- *Case of Community of La Oroya v. Perú* (2020)
- *Lopez Ostra v. Spain (ECHR)*
- *Lhaka Honhat Association v. Argentina* (2020)
- *Nuestros Derechos al Futuro y Medio Ambiente Sano et. al., v. Mexico* (2021)

Non-climate cases and opinions that serve to build on existing principles

- *Advisory Opinion on the Legality and Threat of Use of Nuclear Weapons (ICJ)*
- *Nicaragua v. Costa Rica (ICJ)*
- *Responsibilities and Obligations of States Sponsoring Persons and Entities with Respect to Activities in the Area (ITLOS Advisory Opinion)* (2011)
- *Tatar v Romania (ECHR)*
- *Öneryildiz v. Turkey (ECHR)*
- *Case of Community of La Oroya v. Perú* (2020)
- *Lopez Ostra v. Spain (ECHR)*
- *Lhaka Honhat Association v. Argentina* (2020)

Human rights impacted by the climate emergency

General/Overview

- *Advisory Opinion OC-23/17 (IACtHR 2017)*
- *Inter-American Commission on Human Rights, Climate Emergency: Scope of Inter-American Human Rights Obligations, Res. No. 3/2021*
- *Case of Community of La Oroya v. Perú (2020)*

Right to life

- *The State of the Netherlands v. Urgenda (2019)*
- *In re: Application of Hawai'i Electric Light Company, Inc. (2023)*
- *Billy et al v. Australia (2022)*
- *Neubauer v. Germany (2021)*
- *Rechtbank Den Haag (Netherlands, appeal pending 2021)*
- *Alvarez v. Peru (pending)*
- *Teitiota v. New Zealand (UNHRC)*
- *Öneryildiz v. Turkey (ECHR)*
- *Case of Community of La Oroya v. Perú (2020)*

Right to Personal Integrity

- *Neubauer v. Germany (2021)*
- *Kichwa Indigenous People of Sarayaku v. Ecuador (IACtHR 2012)*
- *Advisory Opinion OC-23/17 (IACtHR 2017)*
- *Case of Community of La Oroya v. Perú (2012)*

Economic, Social, Cultural, Environmental Rights (ESCER):

- *Lhaka Honhat Association v. Argentina (2020)*
- *Cuscul Pivaral v. Guatemala (2018)*
- *Advisory Opinion OC-23/17 (IACtHR 2017)*
- *Case of Community of La Oroya v. Perú (2020)*

Right to a Healthy Environment

- *Youth v. Mexico (pending)*
- *Alvarez v. Peru (pending)*
- *Lhaka Honhat Association v. Argentina (2020)*
- *Case of Community of La Oroya v. Perú (2012)*
- *Sheikh Asim Farooq v. Federation of Pakistan (2019)*
- *Shrestha v Prime Minister 10210 (Supreme Court of Nepal) (2017)*
- *Advisory Opinion OC-23/17 (IACtHR 2017)*
- *Ashgar Leghari v. Pakistan (2015)*

Right to Private and Family Life

- *Billy et al. v. Australia (2022)*
- *VZW Klimaatzaak v. Kingdom of Belgium & Others (2021)*
- *The State of the Netherlands v. Urgenda (2019)*
- *Notre Affaire à Tous and Others v. France (2018)*
- *Lopez Ostra v. Spain (1994)*

Right to Property

- *Lhaka Honhat Association v. Argentina (2020)*
- *Garífuna Triunfo de la Cruz Community and its Members v. Honduras (2015)*

<ul style="list-style-type: none"> ○ <i>Kichwa Indigenous People of Sarayaku v. Ecuador (IACtHR 2012)</i>
<p>Right to communal property, right to take part in culture and self-identity</p> <ul style="list-style-type: none"> ○ <i>Billy et al v Australia (2022)</i> ○ <i>Lhaka Honhat Association v. Argentina (2020)</i> ○ <i>Kichwa Indigenous People of Sarayaku v. Ecuador (IACtHR 2012)</i> ○ <i>Garífuna Triunfo de la Cruz Community and its Members v. Honduras (2015)</i>
<p>Access rights (information, justice, and public participation)</p> <ul style="list-style-type: none"> ○ <i>Amparo en revision 610/2019</i> ○ <i>D.G. Khan Cement Company v. Government of Punjab (2019)</i> ○ <i>Advisory Opinion OC-23/17 (IACtHR 2017)</i> ○ <i>Kichwa Indigenous People of Sarayaku v. Ecuador (IACtHR 2012)</i> ○ <i>Garífuna Triunfo de la Cruz Community and its Members v. Honduras (2015)</i> ○ <i>Atrato River Decision – Colombia (2016)</i>
<p>Rights of nature</p> <ul style="list-style-type: none"> ○ <i>D.G. Khan Cement Company v. Government of Punjab (2019)</i> ○ <i>Atrato River Decision – Colombia (2016)</i>
<p>Remedies</p>
<p>Cessation</p> <ul style="list-style-type: none"> ○ <i>Lhaka Honhat Association v. Argentina (2020)</i> ○ <i>Future Generations v. Ministry of the Environment et al. (2018)</i> ○ <i>Kichwa Indigenous People of Sarayaku v. Ecuador (IACtHR 2012)</i> <p>Restoration</p> <ul style="list-style-type: none"> ○ <i>Case of Community of La Oroya v. Perú (2020)</i> ○ <i>Lhaka Honhat Association v. Argentina (2020)</i> ○ <i>Garífuna Triunfo de la Cruz Community and its Members v. Honduras (2015)</i> ○ <i>Kichwa Indigenous People of Sarayaku v. Ecuador (IACtHR 2012)</i> ○ <i>Future Generations v. Ministry for the Environment et al. (2018)</i> <p>Guarantees of non-repetition</p> <ul style="list-style-type: none"> ○ <i>Case of Community of La Oroya v. Perú (2020)</i> ○ <i>The State of the Netherlands v. Urgenda (2019)</i> ○ <i>Neubauer v. Germany (2021)</i> ○ <i>Leghari v. Pakistan</i> ○ <i>Re Court on its own motion v. State of Himachal Pradesh and others</i> ○ <i>Garífuna Triunfo de la Cruz Community and its Members v. Honduras (2015)</i> ○ <i>Future Generations v. Ministry of the Environment et al. (2018)</i> ○ <i>Atrato River Decision, Colombia (2016)</i> ○ <i>Kichwa Indigenous People of Sarayaku v. Ecuador (IACtHR 2012)</i> ○ <i>Friends of the Irish Environment v. Ireland (2020)</i> ○ <i>Youth v. Mexico (pending)</i> ○ <i>Alvarez v. Peru (pending)</i> ○ <i>Asociación Civil por la Justicia Ambiental v. Province of Entre Ríos (pending)</i> <p>Satisfaction / Restoration / Supervision of executive action</p>

II. CLIMATE CHANGE AND OTHER RELEVANT CASES OF INTEREST FOR THE INTER-AMERICAN COURT OF HUMAN RIGHTS ADVISORY OPINION

A. Inter-American Court of Human Rights

1. *The Environment and Human Rights (State obligations in relation to the environment in the context of the protection and guarantee of the rights to life and to personal integrity – interpretation and scope of Articles 4(1) and 5(1) of the American Convention on Human Rights). Advisory Opinion OC-23/17, (2017)*

- **Citation:** The Environment and Human Rights (State obligations in relation to the environment in the context of the protection and guarantee of the rights to life and to personal integrity – interpretation and scope of Articles 4(1) and 5(1) of the American Convention on Human Rights).
- **Jurisdiction:** Inter-American Court of Human Rights
- **Background:** Colombia requested an advisory opinion on several questions relating to the “marine environment in the Wider Caribbean Region” and asked the Court how to interpret the Pact of San Jose in light of other environmental treaties [¶32]. The Court reformulated those questions in its opinion and broadly addressed the following [¶¶34 - 39]: (a) what is the scope of the term “jurisdiction” in Article 1(1) of the American Convention¹ regarding who can bring a claim about transboundary environmental harm; (b) what rights do citizens have related to environmental harm (focusing on the right to life and right to personal integrity); and (c) what are the obligations of States in the context of environmental harm.
- **Rights/Laws/Principles:** Obligation of due diligence – duty of prevention – right to a healthy environment – right to life – right to personal integrity.
- **Significance:** The IACtHR’s opinion was critical in developing the links between human rights and climate impacts. The Court went beyond the questions asked by Colombia in its opinion and discussed at length the right to a healthy environment as an autonomous right and the impacts of climate change on many human rights protected by the Convention. The Court also enumerated related State obligations for environmental harm, including transboundary harm.
- **Concepts that Serve to Evolve Principles, Rights, Duties:**
 - **Extraterritorial jurisdiction in environmental transboundary harm** – scope of “jurisdiction” in Article 1(1) extends beyond the national territory of a State [¶73] it covers a broader concept that includes certain exercises of jurisdiction beyond the borders of a State (potentially where the State exercises effective control, power or authority) – each exercise of extraterritorial jurisdiction must be examined on the particular circumstances of the specific case [¶81]
 - **Interrelationship between human rights and the environment** – Court noted there is an “undeniable relationship” between the protection of the environment and realization of other human rights [¶47] – Court reiterated the interdependence and

¹ Article 1(1) of the American Convention establishes that the States Parties “undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms.”

indivisibility of the civil and political rights, and the economic, social and cultural rights, affected by climate change [¶57]

- **Right to life and right to personal integrity** [¶¶109-121] – Right to life is essential because the realization of the other rights depends on its protection. States must create the necessary conditions for the full enjoyment of the right [¶104] -States must take “necessary measures to create an appropriate legal framework to deter any threat to the right to life” [¶109] -Access to food and water affected by pollution limits quality of right to life States have immediate obligations to ensure protection of these rights [¶111] – close relationship between right to life and right to personal integrity when lack of access to conditions that ensure “dignified life” may include violation of right to personal integrity, certain environmental activities constitute risks to people’s lives and personal integrity [¶114].
- **Right to a healthy environment** [¶¶59-66] – The IACtHR recognized that the right to a healthy environment is instrumental to the enjoyment of other fundamental rights and defined it as an autonomous human right [¶61-¶62]. The Court highlighted that the right to a healthy environment is recognized expressly in Article 11 of the San Salvador Protocol and should also be included among the economic, social and cultural rights protected by Article 26 of the American Convention [¶60]. The violation of this autonomous right can affect other human rights, most notably the right to life and personal integrity, as well as a range of other rights including health, water, and housing, and procedural rights, such as the right to information, expression, association, and participation [¶66].
- **Climate justice** – effects of environmental damage and climate change are felt “with greater intensity by certain groups in vulnerable situations” [¶67] including indigenous people, children, people living in extreme poverty, minorities, people with disabilities and women. Many cases these vulnerabilities lead to internal relocation and displacement [¶67]
- **States obligations** [¶¶145 - 154] – The IACtHR also held that state obligations include the obligation to take measures to prevent significant environmental harm, within and outside of their territories, with “significant” defined as any harm that could result in a violation of the right to life and personal integrity. As preventative measures, states have an obligation to regulate, supervise, and monitor activities that could cause environmental harm, conduct environmental impact studies when there is a risk of harm, establish contingency plans, and mitigate harm, if it has occurred despite the state's preventative actions.
- **States obligations in relation to corporations/non-State parties** [¶¶146-170] – States not responsible for every human rights violation within their jurisdiction but in context of environmental protect States have the responsibility extend to regulating, supervising or monitoring the conduct of third parties.
- **Duty to cooperate** [¶¶181-210] – established by Article 26 of the Convention [¶181] – in specific cases of transboundary environmental harm State require to cooperate with affected States [¶182] – States have a duty to cooperate with each other in good faith to ensure protection against environmental damage [¶185].
- **Precautionary principle** [¶175]—content of the principle depends on the instrument that establishes or enshrines it [¶179]. States must act in keeping with the principle in order to protect rights to life and personal integrity in cases where

there are plausible indications the activity could result in severe and irreversible environmental damage [¶180].

- **Procedural obligations (access rights to information and public participation):** States must ensure the right to access information related to possible environmental impacts, the right to public participation of people under its jurisdiction in decision-making and policies that may affect the environment, as well as the right to access justice [¶8].
- **Key links:**
 - **Sabin Centre blog post on AO significance:** “Arguably, the 2017 Advisory Opinion opened the door for rights-based climate litigation through the recognition of States’ responsibilities for transboundary harms (including climate change-related harms) and the precautionary principle... Notably, the IACtHR broadened the interpretation of extraterritorial jurisdiction in the 2017 Advisory Opinion to accept a link based on the factual nexus between a conduct in the territorial boundaries of the State and a human rights violation abroad. The IACtHR stated that jurisdiction could be established over human rights violations that take place outside the territory of a State if that State exercises effective control over damaging activities that cause the violation and thus could prevent the consequent harm [OC-23/17, ¶¶ 102-104]. This jurisdictional link is considered to be broader than any nexus previously recognized by a human rights court and reflects the responsibility of a State based on its failure to exercise due diligence within its territory in the context of human rights violations.”

2. *Case of the Indigenous Communities of the Lhaka Honhat (Our Land) Association v. Argentina (2020)*

- **Citation:** *Case of the Indigenous Communities of the Lhaka Honhat (Our Land) Association v. Argentina. Merits, reparations, and costs.* Judgment of February 6, 2020. Series C No. 400.
- **Jurisdiction:** Inter-American Court of Human Rights
- **Background:** Indigenous communities claimed ownership of lands in the Argentine province of Salta. Non-Indigenous people settled on the land, and livestock farming, installation of fences, and illegal logging occurred on the land. The Lhaka Honhat Association of Aboriginal Communities, whose members are the Indigenous communities whose rights were at issue, alleged that these activities had degraded their right to a healthy environment, right to property and violated the Indigenous communities’ rights to cultural identity and the State had failed to provide a fair trial within a reasonable time (and therefore effective remedies in domestic law to redress the rights violations). The complainants alleged that the State was fully aware of the environmental degradation but had failed to take any effective action.
- **Ruling:** The Court ordered that the State adopt and conclude the necessary actions to delimit, demarcate, and grant a collective title to the 400,000 hectare area [¶327]. The Court also required the State to relocate the *criollo* population (the non-Indigenous settlers), to set up a community development fund to redress the harm to cultural identity, and to take actions related to water, food, and forestry resources [¶¶332 - 336].

- **Holding:** The Court found that Argentina violated the right to property, the right to a healthy environment, the right to food, the right to water, the right to cultural identity, and the guarantee of a fair trial within a reasonable time.
- **Rights/Laws/Principles:** This case involved right to healthy environment, Right to Property, Right to culture; indigenous peoples connection to land; and right to a Fair Trial and effective remedy; State obligations, due diligence.
- **Significance:** The case is significant because it is the first contentious case in which the Court built upon its reasoning in *Advisory Opinion OC-23/17* and developed the rights to a healthy environment, to adequate food, to water, and to take part in cultural life as autonomous rights under Article 26.
- **Concepts that Serve to Evolve Principles, Rights, Duties:**
 - **Right to a Healthy Environment:** The Court reiterated that the right to a healthy environment is protected under Article 26 of the Convention and referred back to its *Advisory Opinion OC-23/17* for guidance on the content and scope of this right [¶202]. The right is a fundamental and autonomous right that protects the environment “even in the absence or certainty of a risk to individuals.” [¶203]. The Court established in *Lhaka Honhat* that States have obligations to respect and ensure the right to a healthy environment, including by preventing violations of the right, even violations committed by third parties [¶207]. States therefore “have the obligation to establish adequate mechanisms to monitor and supervise certain activities in order to ensure human rights, protecting them from actions of public entities and also private individuals.” The Court noted that this obligation also applies to the rights to adequate food, to water, and to take part in cultural life [¶207].
 - **States obligations:** The Court stated that based on the duty of prevention, “States are bound to use all the means at their disposal to avoid activities under its jurisdiction causing significant harm to the environment,” and States must take due diligence to fulfil this obligation [¶208]. The Court states that it is not possible to include a detailed list of every measure a State must take to fulfil this obligation, but the State must do the following “in relation to activities that could potentially cause harm: (i) regulate; (ii) supervise and monitor; (iii) require and approve environmental impact assessments; (iv) establish contingency plans, and (v) mitigate, when environmental damage has occurred.” [¶208] The Court also found that environmental problems may be felt more deeply by vulnerable groups, including Indigenous peoples and communities that depend on environmental resources, such as those from the marine environment, forests, and river basins [¶209].
 - **Rights to Food, Water, and Culture:** The Court found that the right to adequate food “protects access to food that permits nutrition that is adequate and appropriate to ensure health.” [¶216] The right to food extends to both present and future generations [¶216]. The Court stated that the right to water is protected by Article 26 of the Convention [¶222] and indicated that the right “entitles everyone to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses.” [¶200]
 - **Interdependence between Rights (rights to cultural life, right to water and food) and the Environment:** The Court examined the interdependence between

the rights to a healthy environment, food, water and cultural identity, specifically in relation to Indigenous peoples [¶244]. The Court observed that rights to food, right to take part in cultural life and right to water are “particularly vulnerable” to environmental impact [¶228], [¶245] relying on the CESCR General Comment on right to adequate food.

- **Indigenous peoples (right to take part in cultural life and manage natural resources) connected with right to healthy environment:** The Court acknowledged that “[I]ndigenous peoples play a significant role in the conservation of nature,” and respect for Indigenous rights may positively impact environmental conservation [¶250]. Indigenous people have the right to “be secure in the enjoyment of their own means of subsistence and development” and “to the conservation and protection of the environment and the productive capacity of their lands and territories, and to “determine and develop priorities” for land management in their territories (quoting Articles 20(1), 29(1) and 32(1) of the UN Declaration on the Rights of Indigenous Peoples) [¶¶250-251].
- **Right to communal property:** States must ensure that indigenous peoples be adequately consulted concerning their lands [¶173] – States must ensure effective ownership of indigenous peoples’ land and, therefore, must: (a)- demarcate indigenous lands from others and grant collective title to the lands to the communities; (b) “refrain from carrying out acts that may lead to agents of the State itself, or third parties acting with its acquiescence or tolerance, affecting the existence, value, use or enjoyment of their territory”, and (c) in turn, guarantee the right of indigenous peoples to effectively control and use their territory and natural resources, as well as to own their territory without any kind of external interference from third parties [¶98].

3. *Case of the Kichwa Indigenous People of Sarayaku v. Ecuador (2012)*

- **Citation:** Case of the Kichwa Indigenous People of Sarayaku v. Ecuador (Merits, Reparations, Costs) IACtHR Series C No 245 (27 June 2012).
- **Background:** In the 1990s, the State granted a permit to a private oil company to carry out oil exploration and exploitation activities in the territory of the Kichwa Indigenous People of Sarayaku without consulting them or obtaining their consent. The oil company began the exploration phase, and even introduced high-powered explosives in several places on indigenous territory. This case concerns the State's alleged lack of judicial protection, failure to observe judicial guarantees, and limits of rights to freedom of movement and to cultural expression of the indigenous population.
- **Ruling:** The Inter-American Court of Human Rights found in favour of the applicant.
- **Holding:** The State was deemed responsible for the violation of the rights to consultation, to indigenous communal property, and to cultural identity, as well as being responsible for jeopardizing the right to life and to personal integrity.
- **Remedy:** The Court ordered the State to remove and neutralize remove all pentolite left on the surface and buried in the territory of the Sarayaku People. It then had to implement measures necessary to ensure consultation with indigenous people in matters involving mineral extraction on their land. It ordered training programs to be implemented for public officials on the rights of indigenous people.

- **Rights/Laws Principles:** Rights to life, personal integrity, cultural identity, communal property and consultation.
- **Concepts that Serve to Evolve Principles, Rights, Duties:** An important case for the protection of vulnerable people (indigenous people) who must be consulted on environmental matters that affect their land and rights.
 - **Right to communal property:** The right to use and enjoy the territory of indigenous and tribal communities is deeply connected to the protection of natural resources in the territory. Therefore, the protection of the territories of indigenous and tribal peoples also stems from the need to guarantee the security and continuity of their control and use of natural resources, which in turn allows them to maintain their way of living. This connection between the territory and the natural resources that indigenous and tribal peoples have traditionally used and that are necessary for their physical and cultural survival and the development and continuation of their worldview must be protected under Article 21 of the Convention to ensure that they can continue their traditional way of living, and that their distinctive cultural identity, social structure, economic system, customs, beliefs and traditions are respected, guaranteed and protected by the States [¶146]. To ensure that the exploration or extraction of natural resources in ancestral territories did not entail a negation of the survival of the indigenous people as such, the State must comply with the following safeguards: (i) conduct an appropriate and participatory process that guarantees the right to consultation, particularly with regard to development or large-scale investment plans; (ii) conduct an environmental impact assessment, and (iii) as appropriate, reasonably share the benefits produced by the exploitation of natural resources, with the community itself determining and deciding who the beneficiaries of this compensation should be, according to its customs and tradition. [¶157]
 - **Prior consultation of indigenous peoples:** The obligation to consult the indigenous and tribal communities and peoples on any administrative or legislative measure that may affect their rights, as recognized under domestic and international law, as well as the obligation to guarantee the rights of indigenous peoples to participate in decisions on matters that concern their interests, is directly related to the general obligation to guarantee the free and full exercise of the rights recognized in the Convention. This entails the duty to organize appropriately the entire government apparatus and, in general, all the organizations through which public power is exercised, so that they are capable of legally guaranteeing the free and full exercise of those rights. This includes the obligation to structure laws and institutions so that indigenous, autochthonous or tribal communities can be consulted effectively, in accordance with the relevant international standards. Thus, States must incorporate those standards into prior consultation procedures, in order to create channels for sustained, effective and reliable dialogue with the indigenous communities in consultation and participation processes through their representative institutions [¶166].

4. *Garífuna Triunfo de la Cruz Community and its Members v. Honduras (2015)*

- **Citation:** Case of the Gaifuna Triunfo de la Cruz Community and its Members v. Honduras (2015) IACtHR (ser. C) No. 305, ¶1 (Oct. 8, 2015).
- **Jurisdiction:** Inter-American Court of Human Rights
- **Background:** The State had granted an indigenous community the group ownership of various parcels of its ancestral lands. However, it had subsequently failed to respect the autonomy of the indigenous community's land by expanding urban developments into the community's lands, selling or otherwise transferring the community's land for industrial and tourism purposes, and creating a protected national park on the community's land without consent or consultation. There were also concerns about the murder of environmental defenders of the land.
- **Ruling:** The Court found the State responsible for violating the rights of the community to property. It was not responsible for a violation of the right to life.
- **Holding:** The failure to appropriately consult and involve the community in decisions involving the land led to the violation. The lack of certainty regarding the deaths led the Court to determine a new investigation was needed.
- **Remedy:** The Court ordered the State to demarcate the land in accordance with the law and custom of the community. It ordered a new investigation into the death of the defenders and a guarantee of free use of the community land that overlapped with a national park.
- **Rights/Laws/Principles:** Right to communal property and the right to a fair trial
- **Concepts that Serve to Evolve Principles, Rights, Duties:**
 - **Prior consultation of indigenous peoples:** This case illustrates the obligation of the State to consult with indigenous people on matters involving their lands.
 - **Protection of environmental defenders.** importance of protecting environmental defenders and the
 - **Reparations.** In applying both concepts of pecuniary and non-pecuniary damages, the Court required the State to establish a \$1,500,000 Community Development Fund, for which the court considered the harms to the indigenous tribe, including: i) dispossession of their territory; ii) the damages caused to it, and iii) that indigenous people have the right to conservation and protection of the environment and the productive capacity of their territories and natural resources.
 - **Territorial and Cultural Rights.** The Court recognized, “the special meaning the land has for indigenous and tribal peoples in general, and for the Garífuna Community of Triunfo de la Cruz in particular, implies that all denial to the enjoyment or exercise of their territorial rights entails a damage to very important values for the members of those peoples, who are in danger of losing or suffering irreparable damages to their life and cultural identity and to the cultural heritage to be passed on to future generations.

5. *Case of Cuscul Pivaral v. Guatemala (2018) – ESCER rights*

* Non-environment/climate case that serves to illustrate key principles or ruling.

- **Citation:** *Case of Cuscul Pivaral v. Guatemala. Merits, reparations, and costs.* Judgment of August 23, 2018. Series C No. 400.
- **Jurisdiction:** Inter-American Court of Human Rights

- **Background:** Guatemalan state's inadequate medical care and judicial protection for HIV positive individuals. Despite the recognition of HIV as a national social emergency, the court found that the 49 victims were diagnosed with HIV between 1992 and 2004 and the majority had not received any state medical care before 2004.
- **Ruling:** The Inter-American Court of Human Rights found in favour of the applicants.
- **Holding:** The Court found that Guatemala violated the rights to health, life, personal integrity, equality and non-discrimination, and the progressive realization of Economic, Social, Cultural and Environmental Rights.
- **Remedies:** The Court ordered Guatemala to implement several reparation measures, including the implementation of health service supervision and oversight mechanisms, and design of a mechanism to improve the accessibility, availability, and quality of health benefits for people living with HIV.
- **Rights/Laws/Principles:** This case involved the right to health and the progressive realization of ESCER rights.
- **Significance:** The case is the first in the Court's jurisprudence to analyze the specific obligations stemming from the principle of progressive realization of rights under Article 26 of the American Convention, including the duty of non-regression.
- **Concepts that Serve to Evolve Principles, Rights, Duties:**
 - **Progressive realization of ESCER rights:** The Court clarified that there are two types of obligations that derive from the standards to protect ESCER rights: those of immediate enforceability, and those of a progressive nature. Regarding the latter, the Court considered that “the progressive development of economic, social, cultural, and environmental rights cannot be achieved in a short period of time and, to that extent, requires a mechanism of necessary flexibility that reflects the realities of the world and the difficulties each country faces in ensuring such effectiveness.” [¶141] The Court also found that within the framework of this flexibility regarding the timeframe and modalities of realization, the State essentially, although not exclusively, has an obligation to act. That is, to adopt provisions and provide the necessary means and elements to respond to the demands for effectiveness of the rights involved, always within the limits of the economic and financial resources available for fulfilling the respective international commitment acquired. Thus, the progressive implementation of these measures can be subject to accountability and, if applicable, the fulfillment of the respective commitment acquired by the State can be demanded before the bodies called upon to resolve potential human rights violations [¶142].
 - **Non-regression in the protection of ESCER rights:** There is a conditional duty of the State to ensure that deliberately regressive measures in the protection of ESCER rights are carefully considered and adequately justified, in the context of the full use of the maximum resources that the State has available [¶143].

B. Inter-American Commission of Human Rights

6. *Case of Community of La Oroya v. Perú (2020)*

- **Citation:** *Case of Community of La Oroya v. Perú*. Merits report of November 19, 2020.
- **Jurisdiction:** Inter-American Commission of Human Rights

- **Background:** This case pertains to the alleged international responsibility of the state for purported damages caused to a group of inhabitants of the La Oroya Community, resulting from pollution activities by a metallurgical complex in said community. Generally, it is argued that Peru's failure to fulfill its international obligations allowed mining activity to generate high levels of pollution, severely impacting the health of the alleged victims. It is argued that the state failed to act with due diligence in executing its duties to regulate, supervise, and oversee the behavior of private and state companies regarding the potential impact on the human rights of community residents, as well as its general obligation to prevent human rights violations. Moreover, the case alleges that the state did not adopt appropriate measures to address the risks caused by environmental pollution to the children's health in the community. It is also claimed that Peru did not guarantee public participation or the right to access information for the alleged victims in decisions directly affecting them, nor did it investigate threats, harassment, and reprisals against them. In this regard, it is argued that the state failed to fulfill its immediate obligations concerning the right to a healthy environment and health, as well as its obligation to progressively achieve the full realization of these rights.
- **Ruling:** The Inter-American Commission of Human Rights found in favour of the applicants.
- **Holding:** The Commission found that Perú violated the rights to life, personal integrity, healthy environment, health, freedom of expression, rights of children, access to justice and political rights.
- **Remedies:** The Commission recommended Perú to implement several reparation measures, including the remediation of environmental harm, align air quality standards to ESCER rights parameters, creating plans to ensure the due diligence of mining companies in the protection of human rights, and providing training on environmental matters to judicial and administrative authorities.
- **Rights/Laws/Principles:** Rights to life, personal integrity, healthy environment, health, freedom of expression, rights of children, access to justice and political rights.
- **Significance:** The case is the first in the Commission's jurisprudence to analyze the specific obligations stemming from the protection of the right to a healthy environment and its connection with other rights, particularly the right to health, life, and personal integrity. It clarifies immediate obligations of the State to protect ESCER rights, ensure a healthy environment and a safe climate, and protect health from environmental degradation.
- **Concepts that Serve to Evolve Principles, Rights, Duties:**
 - **Progressive realization of ESCER rights:** The Commission identified key immediate obligations States have to implement when protecting ESCER rights: i) general obligations of respect and guarantee, ii) application of the principle of non-discrimination to economic, social, and cultural rights, iii) obligations to take steps or adopt measures to achieve the enjoyment of the rights incorporated in said article, and iv) to provide suitable and effective resources for their protection. The methodologies or sources of analysis that are relevant to each of these obligations should be established according to the specific circumstances of each case. Furthermore, the State has basic obligations that must satisfy essential levels of such rights, which are not subject to progressive development but are of an immediate nature [¶130]

- **State obligations to guarantee the right to a healthy environment and ensure a safe climate:** The absence of measures to prevent foreseeable impacts on human rights caused by activities that notably and significantly contribute to climate change and environmental degradation, or the lack of regulation and inadequate supervision of corporate activities that contribute to these impacts, can generate international liability for the involved state [¶132]. The Commission further underscored that that environmental pollution impacts climate change, which poses a serious and direct threat to the enjoyment of all human rights. Therefore States must, “ensure that both public and private entities are held accountable for any harm they may cause to the environment and climate” and should “aim towards a continuous and progressive reduction of polluting and toxic gas emissions, rather than facilitating or promoting them”, ensuring “that public and private investments and activities align with their commitments on this matter.” [¶142]
- **Right to health and its relationship with the right to a healthy environment:** The guarantee of the right to healthy is intrinsically related to the protection of the environment. States must adopt “preventive measures and reduce the population’s exposure to harmful substances such as radiation and harmful chemicals, or other detrimental environmental factors that directly or indirectly affect human health.” [¶144]
- **Business and human rights:** In the context of business activities, States have specific duties of regulation, prevention, supervision, investigation, and access to remedies [¶156]. States must ensure that their regulatory frameworks align with international human rights provisions, which includes regulating any activities that could significantly harm the environment, including certain business practices and operations. Alongside, the state's duty to prevent necessitates the adoption of adequate measures to avert actual human rights risks emanating from corporate actions. States also bear the duty of supervising business activities that could impinge on human rights, with stricter obligations for high-risk activities like natural resource extraction. Lastly, the State's obligation to respect human rights means abstaining from behaviors tied to business activities that violate the exercise of human rights [¶158-161].

7. *Report on the Situation of Human Rights in Ecuador (1997)*

- **Citation:** *Report on the Situation of Human Rights in Ecuador*, OEA/Ser.L/V/II.96, doc. 10 rev. 1 (1997)
- **Jurisdiction:** Inter-American Commission on Human Rights
- **Background:** The Commission inquired into and reported on the human rights situation in Ecuador, focusing primarily on the 1992–96 period. Part of the Commission’s report highlighted issues related to development activities in the Oriente. These issues include the contamination of the environment and exposure of inhabitants to toxic byproducts through their water, air, and food, adversely affect their health. The report also drew attention to the obstacles facing Indigenous inhabitants of Ecuador, the Afroecuadorean population of Ecuador, and women in obtaining the full enjoyment of their rights.
- **Ruling:** The Commission indicated that the State was not fulfilling its obligations under the rights to life and physical integrity in the development of the Oriente. The Commission

also reported on other human rights threats, particularly in regard to the administration of justice, individuals incarcerated within the penal system, and the rights of Indigenous peoples, the Afro-Ecuadorean population, and women.

- **Holding:** Relevantly, the Commission determined that the degradation of the environment in the Oriente region endangered the right to life and physical integrity under Articles 4 and 5 of the American Convention.
- **Rights/Laws/Principles:** Articles I and XI of the American Declaration of the Rights and Duties of Man; Articles 4 and 5 of the American Convention; positive obligations; relationship between a healthy environment and human rights.
- **Significance:** This report established that Ecuador had an obligation, under the rights to life and physical integrity under the American Convention and the right to live in a safe environment under the Constitution of Ecuador, to take efforts to strengthen pollution protections and pursue clean-up activities. The Commission also linked a healthy environment to the enjoyment of human rights.
- **Concepts that Serve to Evolve Principles, Rights, Duties:**
 - **Reasoning on the Human Rights Situation of the Inhabitants of the Interior of Ecuador Affected by Development Activities: Background, facts, and allegations:** The Commission stated that the interior of Ecuador, the Oriente, was home to around 500,000 people, including multiple Indigenous peoples who have lived there for hundreds of years [Ch VIII, Introduction]. The discovery of commercially viable oil deposits and the opening of roads brought in new settlers. The inhabitants of oil development sectors unanimously (both Indigenous and settler communities) claimed that “the operations generally, and the improper handling and disposal of toxic wastes in particular, have jeopardized their lives and health” through contaminating their water, food, and air.”[Ch VIII] Frequently, the only water sources available for domestic use, agricultural use, and wildlife were contaminated due to improper treatment and disposal of toxic waste, collapsed or leaching waste pits, and oil spills. Some residents complained that the air was contaminated “when waste oil and gas are burned off without any kind of emission controls,” and many people lived and walked near “roads which have been sprayed with waste crude.” [Ch VIII] Due to exposure, some residents suffered from health problems, and a number of people stated that environmental contamination “was hindering their ability to feed their families.” The inhabitants alleged that “the Government has failed to regulate and supervise the activities of both the state-owned oil company and of its licensee companies;”; “the Government had failed to ensure that oil exploitation activities were conducted in compliance with existing legal and policy requirements;” and the Government had “violated and continues to violate the constitutionally protected rights of the inhabitants of the region to life and to live in an environment free from contamination.” [Ch VIII]
 - **Development of relationship between human rights and the environment:** The Commission stated that “[t]he realization of the right to life, and to physical security and integrity is necessarily related to and in some ways dependent upon one’s physical environment. Environmental contamination and degradation that pose a persistent threat to human life and health implicate the Article I (right to life, liberty, and personal security) and Article XI (preservation of the health and well-being of the individual) of the American Declaration, and Article 4 (right to life) and Article

5 (physical, mental, and moral integrity) of the American Convention as well as constitutionally protected rights.

- **State obligations:** The Commission recognized “that the right to development implies that each state has the freedom to exploit its natural resources,” but stated that “the Commission considers that the absence of regulation, inappropriate regulation, or a lack of supervision in the application of extant norms” may lead to violations of human rights protected by the American Convention.” [Ch VIII] The Commission stated that oil exploitation posed a “considerable risk” to human health and life. The Commission recommended that the State of Ecuador “take the measures necessary to ensure that the acts of its agents, through the State-owned oil company, conform to its domestic and inter-American legal obligations” and “take steps to prevent harm to affected individuals through the conduct of its licensees and private actors.”[Ch VIII] The Commission also stated that Ecuador “must ensure that measures are in place to prevent and protect against the occurrence of environmental contamination which threatens the lives of the inhabitants of development sectors.” Furthermore, where the right to life by inhabitants has been infringed by environmental contamination, “the Government is obliged to respond with appropriate measures of investigation and redress.” [Ch VIII]
- **Key environmental rights:** The Convention “is premised on the principle that rights inhere in the individual simply by virtue of being human. . . Conditions of severe environmental pollution. . . are inconsistent with the right to be respected as a human being.” [Ch VIII, conclusions] The Commission recommended measures to “support and enhance the ability of individuals to safeguard and vindicate those rights” by ensuring individuals have access to “information, participation in relevant decision-making processes, and judicial recourse” and measures for decontamination. Though the norms of the IAS “neither prevent nor discourage development,” they do require that “development take place under conditions that respect and ensure the human rights of the individuals affected.” [Ch VIII, conclusions]
- **Strengthening of rights and measures to respond development risks:** The Commission recommended that the State identify risks imposed by other development activities (such as gold mining), implement measures “to ensure that all persons have the right to participate, individually and jointly, in the formulation of decisions which directly concern their environment,” take measures to improve access to justice, and take measures to improve information dissemination systems. [Ch VIII]
- **Indigenous peoples’ rights negatively affected by oil development:** Within the Oriente region, the oil development and movement of settlers into the Oriente region had negatively impacted Indigenous peoples. [Ch IX]

C. Cases from Domestic Courts in Latin American and Caribbean

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

- **Citation:** *Future Generations v Ministry of Environment and Others*, Colombian Supreme Court, judgment 5 April 2018 (11001-22-03-000-2018-00319-01)
- **Jurisdiction:** Supreme Court of Colombia
- **Background:** 25 youth plaintiffs filed a tutela (Colombian constitutional claim) against the Colombian government, municipalities, and corporations, arguing that the climate crisis and continued Amazon deforestation threatens their fundamental rights.
- **Ruling:** The Supreme Court of Colombia ruled that the government must implement deforestation plans in the Colombian Amazon in line with their NDCs, reasoning that it is the duty of the government to keep within Paris Agreement goals, and continuing to allow deforestation violates this duty. Further, the Court held that the government’s failure to comply with its climate targets threatened the fundamental rights of the youth plaintiffs.
- **Remedies:** The Court ordered the government to prepare short, medium, and long term action plans to combat deforestation. All municipalities were ordered to update land management plans to reduce deforestation. It also ordered the creation of a intergenerational pact for the life of the Colombian Amazon – PIVAC in consultation with relevant groups to adopt measures aimed at reducing deforestation to zero.
- **Rights/Laws/Principles:** Rights to life, health, minimum subsistence, freedom, and human dignity (Constitution of Colombia); precautionary principle; principle of intergenerational justice.
- **Significance:** This is a landmark example of a youth-led case to compel government action on climate. This case is also significant for the Court’s findings that “fundamental rights of life, health, the minimum subsistence, freedom, and human dignity are substantially linked and determined by the environment and the ecosystem” and that “the Colombian Amazon is recognized as a “subject of rights,” entitled to protection, conservation, maintenance and restoration led by the State and the territorial agencies.”
- **Concepts that Serve to Evolve Principles, Rights, Duties:**
 - **Protection of the Rights of Future Generations:** The Court found that the rights of future generations are threatened by the severe impact of sea level rise and ocean acidification derived from deforestation-induced regional and global warming. The principle of intergenerational equity was relied upon to compel the State to take action without further delay so as not to burden disproportionately young persons and future generations.
 - **Protection of the Right to a Healthy Environment through Ambitious Climate Action:** The Court noted that continued deterioration of the environment due to the effects above was a violation of the right to a healthy environment.
 - **Protection of the Rights of Nature:** The Amazon was declared to be a subject of rights and thus it was entitled protection, conservation, maintenance, and restoration led by the State and the territorial agencies. This was to protect the ecosystem deemed vital to the global future.
 - **Protection of the Right to Life:** The right to a dignified life was determined to be linked to the quality of the environment and the ecosystem. Deforestation as a result of excessive activity threatened this right and thus the government’s failure to address the issue was a breach of the right to life.
 - **Protection of the Right to Water:** The Court took account of science showing threats to the water cycle of the Amazon caused by deforestation and how this in

turn impacted on access to water in localities dependent on this water As a result they declared there to have been a violation of the right to water.

- **Right to Public Participation in Environmental Policy:** The Court ordered the participation of the plaintiffs, affected communities, scientific organizations or environmental research groups, and interested population in general when formulating the Intergenerational Pact to protect the Amazon.
- **Key links**
 - [Dejusticia Summary](#)

9. *Amparo en revision 610/2019 (Mexico, 2019)*

- **Citation:** Supreme Court of Justice of Mexico, Amparo en Revisión 610/2019, Second Chamber, Alberto Pérez Dayán, J., decision of January 15, 2020, Mexico.
- **Background:** The Energy Regulatory Commission (CRE) issued an Agreement through which it modified the Official Mexican Standard NOM-016-CRE-2016, to increase the permitted parameter of added oxygen up to 10% in volume of ethanol in Regular and Premium gasoline outside the metropolitan areas of the Valley of Mexico, Guadalajara, and Monterrey. An inhabitant of the Valley of Mexico filed a demand for protection (amparo lawsuit) against this Agreement and the process through which the modification of the NOM-016-CRE-2016 was carried out. The lawsuit was dismissed, but the applicant contested the dismissal twice, until a collegiate court admitted the lawsuit and referred the case to the Supreme Court of Justice of the Nation to resolve the matter.
- **Ruling:** The Supreme Court of Justice of the Nation ruled for the applicants.
- **Holding:** The modification of the Official Mexican Standard NOM-016-CRE-2016, was deemed unconstitutional since it disregarded the right to a healthy environment, the principles of prevention and precaution, and the State's obligations under the Paris Agreement.
- **Rights/Laws/Principles:** Precautionary principle, the right to a healthy environment
- **Concepts that Serve to Evolve Principles, Rights, Duties:** This case served to establish that States must balance economic interests in the light of the Paris Agreement's targets and the protection of the environment.
 - **Precautionary principle:** The precautionary principle must guide public policy decisions relating to the environment and climate change [¶27-30]. Hence, given this uncertainty or fullness of scientific knowledge, the appropriate course of action is to adopt measures aimed at protecting the environment, in order to prevent unjustified and improper damage to ecosystems and species [¶29]
 - **Protection of human rights in the face of climate change:** The Court recognized that the State “has the obligation to protect those within its territory from the harmful effects of climate change.” [¶78]. In light of the above, in the judgement of the Constitutional Court, it is unequivocal that the evaluation of the plausible increase in the maximum percentage of ethanol as a gasoline oxygenate, as well as the increase in maximum vapor pressure for hydrocarbons using such alcohol for oxygenation, should not only be framed under the principles of precaution and citizen participation, but also should be valued in the context of state goals aimed at reducing greenhouse gas emissions and, consequently, of the State obligations to combat and mitigate climate change [¶80]

- **Right to public participation:** the ordinary procedure to modify or cancel a Mexican official standard must be followed, allowing the intervention of experts and interested citizens, especially when these regulatory changes may affect their right to a healthy environment. In these cases, “the conjunction of citizen participation and the application of the precautionary principle has the potential to allow and promote more democratic and inclusive decision-making processes, where different voices are heard and considered, as far as the plausible effects on the environment are concerned.” [¶46-47]

10. *Nuestros Derechos al Futuro y Medio Ambiente Sano et. al., v. Mexico (2021)*

- **Citation:** *Nuestros Derechos al Futuro y Medio Ambiente Sano et. al., v. Mexico*, Amparo Judgement 204/2021, Pending, (First District Judge in Administrative Matters).
- **Background:** In March 2021, five civil associations, backed by the #JóvenesPorNuestroFuturo collective, filed a lawsuit against the Mexican Congress and the President of Mexico over amendments to the 2021 Electric Industry Law. The amendments prioritized coal and fuel oil-fired power plants and removed the requirement for the Federal Electricity Commission to purchase basic electricity through long-term auctions, which had previously favored renewable energy. The plaintiffs contended that the Mexican State is constitutionally required to mitigate climate change and transition from fossil fuels to renewable energy, as per Article 25 of the Constitution and the 2013 Decree of Constitutional Energy Reforms. They argued that the amendments violated the constitutional right to a healthy environment and hindered Mexico's commitments under the Paris Agreement to reduce greenhouse gas emissions. An injunction to suspend the amendments was issued by the District Court in April 2021. By December 2022, the District Court ruled in favor of the plaintiffs, declaring the amendments to be unconstitutional due to violation of environmental rights and Paris Agreement commitments. This decision was appealed by the Mexican government, and the appeal is pending resolution by the appellate Collegiate Court as of the last update.
- **Ruling:** The District Court ruled for the applicants.
- **Holding:** The amendments to the 2021 Electric Industry Law were deemed unconstitutional since it disregarded the right to a healthy environment, the principles of prevention and precaution, and the State's obligations under the Paris Agreement.
- **Rights/Laws/Principles:** Prevention, precaution and their relation with UNFCCC.
- **Concepts that Serve to Evolve Principles, Rights, Duties:** This case served to establish that States must balance economic interests in the light of the Paris Agreement's targets and the protection of the environment and in formulating their electricity policies.
 - **Precautionary and prevention principles:** The state parties to the UNFCCC, in compliance with an environmental protection duty (8.C), have the obligation to be guided by the principles of precaution and environmental prevention. That is, they must foresee, prevent, or minimize the causes of climate change and mitigate its adverse effects. Among other implications, this means that when there is a threat of serious or irreversible damage, states should not use the lack of total scientific certainty as a reason to postpone such measures. The latter, taking into account that policies and measures to address climate change should be cost-effective in order to ensure global benefits at the lowest possible cost. [¶8.2.1.3].

- In accordance with the principle of prevention that governs environmental matters, it must be recognized as a notorious fact that the use of fossil fuels for electricity generation is risky for the environment; and according to the precautionary principle, even if this were not the case, it is not valid to demand concrete proof of actual and present or imminent harm to the environment, but rather to start from the assumption that such harm can be caused. Therefore, under both principles, the State has the duty of precaution and prevention, to take the necessary measures to prevent this harm from occurring or this risk from materializing. [¶9.2.4].

11. *PSB et al. v Brazil*

- **Citation:** S.T.F.J., DJe nº 194/2022 ADPF/708, Relator: Min. Roberto Barroso, 04.07.2022, Diário Oficial da União [D.O.U.], 28.09.2022, 43 (Braz.).
- **Background:** In 2009, Brazil set a greenhouse gas emission reduction target of 36.1%–38.9% by 2020 in its NDC, which it confirmed in the passage of a domestic law, and set up 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 planned 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.
- **Ruling:** The Court recognized the failure to implement the Climate Fund as an omission of the State, directed the government to reinstate the Climate Fund or allocate its resources, and to prohibit contingency of Climate Fund monies.
- **Holding:** 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 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 Nationally Determined Contribution, are in direct violation of the Brazilian constitution and human rights.
- **Rights/Laws/Principles:** right to a healthy environment, Paris Agreement, Brazilian Constitution, principle of the prohibition of retrogression
- **Significance:** This case recognizes treaties on environmental law, including the Paris Agreement, as human rights treaties that supersede national law.
- **Concepts that Serve to Evolve Principles, Rights, Duties:**
 - **Climate and environmental treaties as human rights treaties:** “Along the same lines, the Constitution recognizes the suprallegal 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" (p. 171). 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” [¶ 17].

- **Right to an “ecologically balanced environment” and intergenerational justice:** The Court stated that the 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” [¶ 16]. 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 State 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, and stated that the role of the judiciary is to prevent retrogression. 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.

12. *The Atrato River Case (2016)*

- **Citation:** Judgment T-622/16 (The Atrato River Case), Constitutional Court of Colombia (2016), translated and available at Dignity Rights Project, 2019.
- **Background:** Indigenous and afro-descendent communities living near the Atrato River in Colombia filed a “tutela” (amparo mechanism) 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. Claimants asserted illegal natural resource extraction activities as the main cause of Atrato River’s pollution and thus of the violation of their rights.
- **Ruling:** The Colombian Constitutional Court ruled for the applicants.
- **Holding:** The Atrato River was deemed to be a subject off 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.
- **Remedy:** 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.
- **Rights/Laws/Principles:** Precautionary principle, right to life, health, food, water, healthy environment, culture, and land property.
- **Concepts that Serve to Evolve Principles, Rights, Duties:** This case served to advance the case that crucial aspects of our ecosystem merit the same protection as people, and should have their rights protected accordingly.
 - **Right to public participation in the protection of the rights of nature:** The Court declared that the Atrato River is a subject of rights that imply 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. [¶9.32].

- **Access to Justice and Procedural Rights:** The Court ordered that a series of plans be drawn up to protect and restore the River, as well as to combat external threats to the River such as illegal mining. These plans had to be drawn up in consultation with the Guardians of the River, an external scientific advisory team, and with the ethnic communities of the plaintiffs.
- **Progressive Realization of Rights:** The orders that were made were designed to progressively and permanently realize and overcome the lack of resources and institutional capacity the government had to address the problems.
- **Right to a Healthy Environment:** 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 right to a healthy environment.
- **Right to Life:** Continued mining of the River was found to be a threat to the right to life of the plaintiffs.
- **Right to Culture:** 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.

III. CASES DECIDED IN EXTERNAL JURISDICTIONS RELATING TO COUNTRIES IN THE INTER-AMERICAN REGION

A. International Court of Justice

13. *Advisory Opinion on the Legality of the Threat and Use of Nuclear Weapons (1996)*

* Non-environment/climate case that serves to illustrate key principles or ruling.

- **Citation:** *Advisory Opinion on the Legality of the Threat and Use of Nuclear Weapons (1996)*
- **Jurisdiction:** International Court of Justice
- **Background:** The UN General Assembly submitted a request to the International Court of Justice (ICJ) in 1994, seeking an advisory opinion on whether the threat or use of nuclear weapons is permitted under international law. In its 1996 opinion, the ICJ stated that the use of force, regardless of the weapons used, is regulated by the United Nations Charter and the law applicable in armed conflict, including specific treaties on nuclear weapons. While it pointed out that the principle of proportionality might not exclude the use of nuclear weapons in self-defense in all situations, it also emphasized that any use of force must meet the requirements of humanitarian law. The ICJ concluded that while there is no explicit prohibition of nuclear weapons in current international law, the use of such weapons is hard to reconcile with the requirements of humanitarian law, and therefore, it could not definitively rule on the lawfulness of their use. It emphasized the obligation to negotiate nuclear disarmament in good faith.

- **Rights/Laws/Principles:** No-harm rule, intergenerational equity
- **Significance:** The ICJ recognized the customary nature of the no-harm rule and recognized the protection of the environment as a community interest for present and future generations.
- **Concepts that Serve to Evolve Principles, Rights, Duties:**
 - **No-harm rule:** The Court acknowledged that the “existence of the general obligation of States to ensure that activities within their jurisdiction and control respect the environment of other States or of areas beyond national control is now part of the corpus of international law relating to the environment.” [¶29]
 - **Intergenerational equity:** The Court recognized that the environment is “not an abstraction but represents the living space, the quality of life and the very health of human beings, including generations unborn.” [¶29]

14. *Pulp Mills on the River Uruguay (Argentina v. Uruguay) (2010)*

- **Citation:** Pulp Mills on the River Uruguay (Argentina v. Uruguay), Judgment, I.C.J. Reports 2010, p. 14.
- **Jurisdiction:** International Court of Justice
- **Background:** In 1975, Argentina and Uruguay ratified the Treaty of the Uruguay River to preserve and regulate the shared utilization of the Uruguay River. The crux of the controversy emerged when Uruguay authorized the establishment of a cellulose processing facility on the riverbank proximate Argentina. Argentina initiated legal proceedings in the International Court of Justice (ICJ), contending that the construction and subsequent operations of the plant adversely impacted the river, leading to environmental pollution.
- **Ruling:** The ICJ found that Uruguay violated procedural obligations under the 1975 Statute of the River Uruguay by failing to inform the Administrative Commission of the River Uruguay (CARU) of the proposed projects before issuing initial environmental authorizations for the mills and an associated port terminal. However, the ICJ concluded that there was insufficient evidence to conclude Uruguay failed to exercise the necessary due diligence to prevent environmental harm.
- **Holding:** The Court found that Uruguay had violated its duty to inform Argentina of the proposed mill projects under the 1975 Statute of the Uruguay River.
- **Rights/Laws/Principles:** Principle of prevention, due diligence.
- **Significance:** The case delves into the ICJ’s jurisprudence on the principle of prevention and due diligence obligations.
- **Concepts that Serve to Evolve Principles, Rights, Duties:**
 - **Principle of prevention:** the ICJ recognized that “the principle of prevention, as a customary rule, has its origins in the due diligence that is required of a State in its territory”, which requires States “not to knowingly allow its territory to be used for acts contrary to the rights of other States.” [¶45] “A State is thus obliged to use all the means at its disposal in order to avoid activities which take place in its territory, or in any area under its jurisdiction, causing significant damage to the environment of another State. This Court has established that this obligation “is now part of the corpus of international law relating to the environment.” [¶46]
 - **Due diligence:** The State duty to undertake an environmental impact assessment where there is a risk that the proposed industrial activity may have a

significant adverse impact in a transboundary context, in particular, on a shared resource, is considered to be a requirement under general international law. [¶73]

15. *Construction of a Road in Costa Rica along the San Juan River (Nicaragua v. Costa Rica) (2015)*

- **Citation:** Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua) and Construction of a Road in Costa Rica along the San Juan River (Nicaragua v. Costa Rica), Judgment, I.C.J. Reports 2015, p. 665
- **Jurisdiction:** International Court of Justice
- **Background:** In 2010, Costa Rica filed a case against Nicaragua for alleged incursions into and occupation of Costa Rican territory, connected to the construction of a canal and dredging works. Costa Rica sought measures including withdrawal of Nicaraguan troops and cessation of construction and dredging. Nicaragua counter-claimed alleging Costa Rica was undertaking harmful construction works along the border. The International Court of Justice joined the proceedings of both cases in 2013 for judicial economy.
- **Ruling:** The court ruled in December 2015 that Nicaragua's activities breached Costa Rica's sovereignty and ordered Nicaragua to compensate Costa Rica for material damages. The same judgment found Costa Rica's road construction could cause significant transboundary harm and breached international law obligations. In 2018, the court ruled Nicaragua should pay Costa Rica US\$378,890.59 in compensation for the damages caused by its activities, which Nicaragua paid in March that year.
- **Holding:** The Court found that Nicaragua had violated Costa Rica's sovereignty for its incursions into its territory, whilst Costa Rica had violated the duty to prevent transboundary environmental harm to Nicaragua.
- **Rights/Laws/Principles:** No harm rule, duty to prevent environmental harm, due diligence.
- **Significance:** The case delves into the ICJ's jurisprudence on the no-harm rule and is the first to allocate monetary compensation for environmental harm.
- **Concepts that Serve to Evolve Principles, Rights, Duties:**
 - **No-harm rule, and prevention of transboundary environmental harm:** the ICJ clarified that "to fulfil its obligation to exercise due diligence in preventing significant transboundary environmental harm, a State must, before embarking on an activity having the potential adversely to affect the environment of another State, ascertain if there is a risk of significant transboundary harm, which would trigger the requirement to carry out an environmental impact assessment." [¶104]

B. UN Human Rights Bodies

16. *Billy et al. v. Australia (2022)*

- **Citation:** Human Rights Committee, *Daniel Billy et al v Australia* No. 3624/2019, Communication of 13 May 2019.
- **Jurisdiction:** UN Human Rights Committee
- **Background:** In 2019, eight residents (the claimants) indigenous peoples of the Torres Strait Islands of Australia acting on behalf of themselves and their six children. The

claimants alleged that Australia has failed to take adequate mitigation and adaptation measures to combat the effects of climate change. The effects were having a disproportionate impact on the indigenous population of the Torres Strait Islands (low lying islands off the coast of northern Australia). The petitioners claimed Australia's insufficient climate action has violated their fundamental 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). 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-establish ferry services. However, Australia generally maintained the communication was inadmissible and lacked merit arguing that the international legal framework of climate change law was immaterial to the interpretation of the ICCPR because they are outside of its scope. Moreover, Australia argued the claimants had not shown any meaningful causation or connection between the alleged violations of their rights and the State party's measures or alleged failure to take measures. Relying on the Committee's position in *Teitiota v. New Zealand*, the State asserted that the authors invoke a risk that has not yet materialized. It 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. Australia further argued that because their 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 human rights law.

- **Ruling:** On September 23, 2022, the Committee delivered a landmark decision finding that the Australian Government is violating its human rights obligations to the indigenous Torres Strait Islanders through climate change inaction.
- **Remedy:** the State party 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. State to provide information on measures taken within 180 days [¶12].
- **Rights/Laws/Principles:** Article 6 (right to life), Article 17 (right to private, family life and home), Article 27 (right to culture); States obligations to adapt to climate emergency.
- **Significance:** This was the first legal action grounded in human rights brought by climate-vulnerable inhabitants of low-lying islands against a nation state in the UNHRC. It is the first time that indigenous peoples' right to culture has been found to be at risk from climate impacts. The also recognized that climate change was currently impacting the claimants' daily lives and that, to the extent that their rights are being violated, and that Australia's poor climate record is a violation of their right to family life and right to culture under the ICCPR.
- **Concepts that Serve to Evolve Principles, Rights, Duties:**

- **Admissibility of communication to Committee** –Rejecting Australia’s argument, the Committee found that it was appropriate for it to consider violations of the Paris Agreement and other international treaties under the ICCPR [¶7.10]
- **Right to culture and right to private and family life** – Committee found Australia’s failure to adequately protect indigenous Torres Strait Islanders inhabiting the islands and violated their rights to collectively enjoy their indigenous culture (which they could not practice on mainland Australia) [¶8.14] and be free from arbitrary interference with their private life, family life and home [¶8.12], [¶9]
- **Right to life** – 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” ([¶8.3]). However, while 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” [¶8.6]. Further, based on information provided by Australia regarding sea wall construction the Committee was “not in position to conclude the adaptation measures” were insufficient to be a direct threat to right to life [¶8.7]. Therefore, Committee found no violation [¶8.8]. Committee Members dissents on Right to Life findings - Committee Members Arif Bulkan, Marcia v. J. Kran, and Vasilka Sancin found that there is sufficient evidence of a “reasonable foreseeable threat” constituting a violation of article 6 based on impacts already felt by the islanders. Committee Member Duncan Laki Muhumuza also found violation of the right to life since the State party has failed to prevent a foreseeable loss of life from the impact of climate change by not reducing GHG emissions and continuing to promote fossil fuel extraction and use. He further noted that any further delays or non-action in mitigation measures by the State Party will continue to risk the lives of the citizens.
- **State’s obligations** – State parties should “take all appropriate measures to address the general conditions of society that may give rise to direct threats to the right to life or prevent individuals enjoying their right to life with dignity” [¶8.3]
- **Key links:**
 - [Climate Law Blog post](#)

17. *Teitiota v New Zealand (2020)*

- **Citation:** Human Rights Committee, *Ioane Teitiota v. New Zealand*, No. 2728/2016, Communication of 24 October 2019.
- **Jurisdiction:** UN Human Rights Committee
- **Background:** Ioana Teitiota (the complainant), a national of Kiribati (South Tarawa island) had his application for refugee status rejected by New Zealand. He claimed the State party violated his right to life under the ICCPR by removing him to Kiribati in 2015. The complainant claimed 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 [¶2.1] and saltwater contamination resulting in overcrowding and lack of access to fresh water and food. The UNHRC heard expert evidence that 60% of the island obtained fresh water only from rationed supplies provided by public utilities [¶2.4]. There was also

evidence from the complainant that internal relocation was not possible [¶2.5] and that Kiribati would be uninhabitable in 10-15 years [¶8.2]. The issue before the Committee was whether the complainant at the time of submission was whether he had substantiated the claim that he faced a real risk of irreparable harm to his life upon deportation to Kiribati [¶8.5]

- **Ruling:** The Committee accepted the claim that Kiribati is likely to be uninhabitable in 10-15 years [¶9.12] but that the risk to right to life was not “imminent” as timeframe was likely to allow relocation of the population. The Committee 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 was “clearly arbitrary or erroneous” [¶9.12]. Thus, on this basis there was no violation of the right to life within the scope of Article 6 [¶2.9].
- **Rights/Laws/Principles:** Right to life, non-refoulement obligations (climate migration and displacement).
- **Significance:** Committee set a high threshold for showing a violation of right to life (Article 6) based on climate impacts. But the decision nonetheless serves as a warning to States that they must consider climate impacts when evaluating non-refoulement obligations for climate refugees. Committee’s reasoning suggests 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.”
- **Concepts that Serve to Evolve Principles, Rights, Duties:**
 - **Right to life** – infringement requires sufficient level of imminence - sufficient evidence of a “reasonable foreseeable threat” constituting a violation of Article 6 (right to life)
 - **Climate refugees** – recognition of potential non-refoulement obligations of States for climate impacts in low-lying islands
- **Key links:**
 - [Oxford Human Rights Hub blogpost](#)

18. *Sacchi et al v Argentina (2021)*

- **Citation:** Committee on the Rights of the Child, *Sacchi et al v Argentina*, No. 107/2019, Communication of 23 September 2019.
- **Jurisdiction:** United Nations Committee on the Rights of the Child
- **Background:** 16 Children filed a petition alleging that Argentina, Brazil, France, Germany, and Turkey violated their rights under the UN Convention on the Rights of the Child by making insufficient cuts to greenhouse gases and failing to encourage the world's biggest emitters to curb carbon pollution. Petitioners claimed that climate change 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' asserted

obligations petitioners also 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 (3.4 – 3.7).

- **Ruling:** Committee rejected the petition as inadmissible on the basis the children had not exhausted all domestic remedies [¶¶ 11(a)].
- **Rights/Laws/Principles:** Rights of the child, principle of intergenerational equity
- **Significance:** The Committee adopted a broad approach and a new test to jurisdiction over transboundary harm. As a result, if the petition was inadmissible, 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 was reasonably foreseeable and triggered States' obligations.
- **Concepts that Serve to Evolve Principles, Rights, Duties:**
 - **Extraterritoriality of transboundary harm from GHG emissions** – Petitioners successfully relied on the IACtHR Advisory Opinion on the Environment and Human Rights which held that jurisdiction extends to individuals outside a State's territory that are harmed from foreseeable transboundary environmental damage [¶¶ 10.14, .21]. The Committee concluded it was "generally accepted" GHG emissions contributed to climate change and climate change has an "adverse effect" on people beyond the emitter's territory.
- **Key links:**
 - [Petition](#)
 - [Harvard Law Review comment](#)

IV. CASES FROM DOMESTIC COURTS

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

- **Citation:** Hoge Raad [¶HR] [¶Supreme Court] The Hague, Dec. 20, 2019, 19/00135 (*De Staat Der Nederlanden v. Stichting Urgenda*) (Neth.). ECLI:NL:HR:2019:2006.
- **Jurisdiction:** Supreme Court of the Netherlands
- **Background:** 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 for the Protection of Human Rights and Fundamental Freedoms 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.
- **Ruling:** The District Court held that given the severity of climate change impacts and the significant risk that dangerous climate change will occur without significant mitigation The Supreme Court of the Netherlands subsequently ruled that the Dutch government must reduce its GHG emissions by 25% below 1990 levels by 2020, upholding the lower courts.
- **Holding:** The Court held that Articles 2 (right to life) and 8 (right to respect private and family life) of the European Convention for the Protection of Human Rights and Fundamental Freedoms provide a positive obligation for the government to reduce its

climate emissions because climate change threatens the life and well-being of people in the Netherlands. 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. The Court also rejected the argument that determining the amount of climate mitigation was an issue solely for the legislative branch.

- **Remedy:** The Court issued an injunction compelling the Dutch government to reduce the emission of greenhouse gases originating from Dutch soil by at least 25% compared to 1990 levels.
- **Rights/Laws/Principles:** Articles 2 (right to life) and 8 (right to respect private and family life) of the European Convention for the Protection of Human Rights and Fundamental Freedoms; hazardous negligence; duty of care; precautionary principle; no harm principle.
- **Significance:** This was the first time a court of highest instance ordered the State to reduce greenhouse gas emissions to address the climate emergency. The case has inspired over 70 cases across the globe against both governments and corporations. The Supreme Court opinion is based on the extensive and undisputed factual record and informed by the 184-page advisory opinion with 597 endnotes by the Dutch Procurator General and Advocate General. The Attorneys General cited the relevant IPCC reports (Assessment Report 4 and Assessment Report 5) that confirm that warming beyond 1.5°C /2°C would lead to dangerous climate impacts, including crossing tipping points that would lead to abrupt and irreversible changes in the climate. The Court adopted this reasoning to find that the current Dutch climate targets were insufficient to meet the climate emergency.
- **Concepts that Serve to Evolve Principles, Rights, Duties:**
 - **Duty of Care on a State to take Action on Climate Change:** A combination of domestic Dutch law, European Court of Human Rights Law and international law derived from the UNFCCC 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 not wanting to reduce emissions by at least 25% by the end of 2020 in accordance with climate science.
 - **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 European Convention on Human Rights. This was due to the threat posed by dangerous climate change in line with the science presented by the IPCC and other relevant reports.
 - **Right to Privacy and Respect for Family Life:** The Court found that climate change threatened the right to respect for family life as enumerated in Article 8 of the European Convention on Human Rights.
 - **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.
 - **Use of Climate Science to Order Stricter Climate Targets:** The Court stated that "The fact that Annex I countries, including the Netherlands, will need to reduce their emissions by at least 25% by 2020 follows from the view generally held in climate science" [8.3.4]. It then used this science as a basis to order the Government of the Netherlands to set stricter climate targets.

- **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.
- **Court Powers:** Affirmation of the Court’s powers to order the State to take action to satisfy its duty of care and rejection of *trias politica* as a grounds to prevent a court from imposing an order on the State, noting the judicial obligation to determine questions of human rights.
- **Key links**
 - [Procurator General and Advocate General’s Advisory Opinion](#)
 - [Urgenda’s Notice on Appeal](#) (response to the 2018 appeal filed at the Hague Court of Appeal)
 - [Urgenda v State of the Netherlands: Lessons for international law and climate change litigants](#) (Urgenda AO discussion). “Drawing on analogous ECtHR jurisprudence, the Opinion states that, in order to enforce a State’s positive obligations to protect its population from climate change, it is *not* necessary for prospective victims of climate-related harm to be individually identified (citing *Di Sarno*, *Cordella*, and *Stoicescu*), nor to identify “immediate” risks of harm to the general population if there is evidence of “long-term” risks (citing *Taskin*) [¶2.54, 2.59/60]. It also determines that the existence of scientific uncertainty does not render a risk of harm irrelevant for the purpose of the State’s positive obligations (citing *Tatar*) [¶2.57]. Another element of the Opinion that deserves analysis is its conclusion that the Court of Appeal was right in determining that, in line with its obligations under the ECHR, the state must reduce its emissions by a minimum of 25 per cent on 1990 levels by 2020. The Advisory Opinion, similarly to the Court of Appeal, bases this recommendation on the finding of the Intergovernmental Panel on Climate Change (IPCC) in its [Fourth Assessment Report](#): the IPCC concluded that in order for the world to limit warming to under 2°C (above pre-industrial temperatures), industrialized and emerging economies need to reduce their emissions by 25–40 per cent by 2020 compared with 1990 (the ‘IPCC range’). This finding has been confirmed by several decisions taken at the annual UN climate conferences (COPs) that followed the IPCC’s report. In the *Urgenda* case, on the appeal before the Supreme Court, the State of the Netherlands objected to the use of the IPCC range as a legally binding rule. The State also rejected that the frequent recognitions of the necessity of achieving this range should be interpreted as legally binding. In addition, the State argued that the minimum level of emissions reduction that is required of a country in order to meet the below-2°C target is an inherently normative, not scientific, question that can only be answered by politics. In discussing these objections, the Opinion acknowledges that natural sciences are not able to determine the necessary reduction level of particular countries; rather, this is a matter of distributing global efforts [¶4.126]. However, it then notes that the IPCC also assesses scientific insights on what can constitute a “fair” and “equitable” distribution of this global effort, which finds its basis in the principle of common but differentiated responsibilities, as laid down in the UNFCCC [¶4.129, 2.75–2.76]. The Opinion acknowledges that such principles do not offer any “cut-and-dried answers” to the question of the division of reduction efforts, and, further, that the practical implementation of these principles would require the

making of choices which could impact the outcome [¶4.130, 4.137]. Nevertheless, it also notes that the IPCC range was derived from the latest available scientific studies, covering a broad spectrum of parameters and assumptions [¶4.131], and furthermore that the “reasoned proposal” of the IPCC gained further significance from its recognition in virtually all COP decisions that took place between the publication of the IPCC’s [Fourth](#) and [Fifth](#) Assessment synthesis reports.

- [Global trends in climate litigation 2020 report](#). “The Supreme Court rejected all of the state’s arguments, including the claim that emissions from the Netherlands are small – roughly around 0.4 per cent of global emissions – and therefore the impact of tightening its emissions reduction policies would just be a “drop in the ocean.” Instead, the Supreme Court determined that “a country cannot escape its own share of the responsibility to take measures by arguing that compared to the rest of the world, its own emissions are relatively limited in scope and that a further reduction of its own emissions would have very little impact on a global scale. The state is therefore obliged to reduce greenhouse gas emissions from its territory in proportion to its share of the responsibility” (Supreme Court’s summary of the decision). Secondly, the decision noted that while there might be uncertainty around what climate risks will materialise in the Netherlands and when, without significant emissions reductions in the short term the combined impact of such risks is likely to lead to hundreds of thousands of victims in Western Europe in the second half of this century alone (at [¶2.1]). The fact that these risks would only become apparent in the future and that there is a degree of uncertainty, therefore, is not an obstacle for applying Articles 2 and 8 of the ECHR in the present, when interpreted in light of the precautionary principle (at [¶5.6.2]). Moreover, the Supreme Court confirmed that it is not necessary to individually identify prospective victims of climate change, but that the state owes obligations to the general population (at [¶5.3.1] and [¶5.6.2]). Finally, the Supreme Court determined that the state was required to do its “part” to counter the risk of climate change and to reduce emissions in line with its “fair share” of global emissions reductions. This reflects the Netherlands’ commitment as a developed country to take the lead in mitigating climate change under international climate change law. In establishing this duty, the Supreme Court took into account the global nature of climate change and the “individual responsibility” of states to mitigate dangerous climate change, pursuant to their common but differentiated responsibilities, as established under the United Nations Framework Convention on Climate Change (UNFCCC) and the “no harm principle” of international law.

20. *Neubauer v. Germany* (2021)

- **Citation:** Bundesverfassungsgericht [BverfG] [Federal Constitutional Court] 1 BvR 2656/18, Mar. 24, 2021 ([Neubauer v. Germany](#)) (Ger.). Case No. BvR 2656/18/1, BvR 78/20/1, BvR 96/20/1, BvR 288/20.
- **Jurisdiction:** Federal Constitutional Court of Germany
- **Background:** Youth plaintiffs argued that the State’s Federal Climate Protection Act (KSG) was insufficient to protect their fundamental rights under German Basic Law, which imposes a constitutional obligation of the State to act on climate. 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.

- **Ruling:** The Court ordered the government to outline specific and clear emissions targets for the period beyond 2031 by the end of 2022 to “avoid future freedom being curtailed suddenly, radically and with no alternatives.” In response to the decision, the State amended the emissions reduction requirement in the KSG to 65% below 1990 levels by 2030.
- **Holding:** The Court held that the German Basic law obliged the State to safeguard fundamental freedoms across time and ensure that the opportunities associated with fundamental freedoms are shared proportionately across generations. Relying on the science of carbon budgets and the need for Germany to align its emissions reductions targets with the Paris Agreement’s temperature limits, and discussing the increased future risks posed by tipping point dynamics, the Court found that the climate law failed to fairly distribute the remaining budget between current and future generations, which allowed the current generation to consume a greater portion of the remaining carbon budget with less mitigation effort while placing a disproportionate risk and burden on future generations.
- **Remedy:** The Court ordered the legislature to set clear provisions for reduction targets from 2031 onward by the end of 2022. Any specifications made for the future had align with a reduction pathway that leads to climate neutrality while staying within the remaining emission budget set out by the legislature.
- **Rights/Laws/Principles:** Article 20a (Protection of the natural foundations of life and animals) and 2(2) (Right to life and physical integrity) of the German Basic Law
- **Significance:** The Court held that respect for the foundations of life for future generations required time-sensitive implementation of the Paris temperature targets, failing which unconstitutional harm was reasonably foreseeable. The Court further noted that the scope of fundamental rights included future generations, including the children who brought the action.
- **Concepts that Serve to Evolve Principles, Rights, Duties:** *Urgenda*-style litigation; States obligations to mitigate shaped by human rights (right to life and right to private family life).
- **Key links**
 - [Constitutional Court Order March 2021](#)
 - [Complaint Yi Yi Prue et al. 2020](#). (in German) provides an extensive overview of the climate science, including tipping points and Hothouse Earth scenario.
 - Press release: [Constitutional complaints against the Federal Climate Change Act partially successful](#) (29 Apr 2021)

21. *Sharma v Minister for the Environment (2021)*

- **Citation:** Federal Court of Australia. *Sharma by her litigation representative Sister Marie Brigid Arthur v. Minister for the Env’t*. Judgment of May 27, 2021. [2021] FCA 560 (**Trial judge**); Judgment of 8 July, 2021 (**Orders**). [2021] FCA 774. Judgment of 15 March, 2022 [2022] FCAFC 35 (**Appeal**).
- **Jurisdiction:** Federal Court of Australia

- **Background:** In 2021, 8 young people (under 18 years old) brought a representative action in the Federal Court of Australia arguing that held that the Minister of Environment had a duty of care to take reasonable care to avoid harm to youth ordinarily residing in Australia, and ruled that the risk of climate change's impacts on young people must be considered in the decision to approve an extension of a coal mine. 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 (CO₂) to be emitted into the Earth's atmosphere when that coal is burned. The applicants argued the Minister would breach this novel duty of care if she approved the extension exercising statutory powers under Australia's environmental protection legislation.
- **Ruling:** The Federal Court at first instance 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 (Orders [¶1]). On appeal, the Full Court overturned the holding that the minister owed a duty of care. But upheld all the evidential findings (unchallenged by the Australian government at first instance and largely undisputed on appeal: Appeal [¶1]). The Full Court held that all the trial judge's findings were open to him and supported by the expert evidence. about climate changes, and the dangers to the world and humanity in the future Appeal [¶2].
- **Remedies:** 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 ordinarily 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.
- **Rights/Laws/Principles:** tort law, negligence and duty of care, climate impacts on future generations, significance of tipping points, feedback loops, carbon budget to exercise of statutory powers.
- **Significance:** The first instance decision was the first time in a common law jurisdiction where a court found a novel duty of care to avoid serious harm from actions that lead to GHG emissions. Although the tort-based finding was overturned on appeal, the extensive and detailed use of science to show the future impacts of climate change provides a template for litigation, especially cases raising issues of intergenerational justice.¶
- **Concepts that Serve to Evolve Principles, Rights, Duties:**
 - **Use of climate science** – The Minister accepted the projected effects of climate change depended on the amount of GHG emitted globally – the Minister accepted the findings of the IPCC and expert evidence of Professor William Steffen [¶31]. The trial judge made extensive findings on the evidence on climate impacts based upon the science.
 - **Carbon sinks, feedbacks, tipping cascade and hothouse earth** – [¶¶ 44-55] concepts outlined in detail accepting evidence of Professor Steffen.

- **Modelling different scenarios of global temperature increases** – trial judge examined and accepted evidence of Steffen on the effects of a 2C, 3C and 4C future world [¶¶ 55-69, 74].
- **Risks and impacts of climate change on youth and future generations** – trial judge characterized the potential harms as “catastrophic”, particularly if global average surface temperatures rise to and exceed 3°C beyond the pre-industrial level. Made findings on evidence, including that one million of Australian children alive in 2021 are expected to suffer at least one heat-stress episode serious enough to require acute care in a hospital [¶¶205-221]. Many thousands will suffer premature death from heat-stress or bushfire smoke [¶¶226]. Increased risk of cyclones and flooding and substantial economic loss and property damage [¶¶236].
- **Intergenerational justice** – 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” [¶¶293].
- **Key links**
 - [Federal Court Order](#) (initial)
 - [Federal Court Order](#) (on appeal) [2022] FCAFC 35

22. *Gloucester Res. Ltd. v. Minister for Plan. (2019)*

- **Citation:** Gloucester Resources Limited v. Minister for Planning [2019] NSWLEC 7 (Austl.).
- **Jurisdiction:** New South Wales Land and Environment Court
- **Background:** In this case, “Rocky Hill,” a coal mining company challenged the government’s denial of its application to expand a coal mine. The government had based its denial in part on the climate impacts of the project.
- **Ruling:** The Court upheld the government’s denial of the permit to expand the coal mine.
- **Holding:** The Court held that the government’s determination was valid that the coal mine was not in the public’s interest given that it would adversely impact the land, community, and local culture.
- **Rights/Laws/Principles:** Domestic laws for environmental protection, planning, and assessment, as well as the Paris Agreement; legal explanation and justification of carbon budget and importance of 1.5C.
- **Significance:** The court’s in-depth treatment of the science, in particular temperature thresholds, the relevance of non-CO2 emissions, and feedbacks in the discussion of the “carbon budget” to support its decision.
- **Concepts that Serve to Evolve Principles, Rights, Duties:**

- The mining company argued that the expected climate emissions were negligible compared to overall global emissions and would occur regardless of whether the project was approved. The Court rejected these arguments because none of the evidence supported the alternative scenario that emissions would sustain or rise in other areas if this project were not approved, and a hypothetical alternative scenario did not justify approving a source that was certain to cause emissions.
- **Use of climate science and extensive references to carbon budgets and best methods to mitigate GHG emissions** – [¶¶ 431–450]. The Court explained that the carbon budget was influenced (and reduced) by uncertainties regarding the probability of exceeding temperature thresholds, the impacts of non-CO₂ GHGs such as methane, and the impacts of feedbacks, which could “virtually wipe out” the remaining carbon budget. The Court stated that even if the project only represents a small fraction of global emissions, the global problem of climate change must also be addressed through local actions. The mining company declined to appeal.
- **Difference between 1.5C and 2C of warming** - “A commonly used approach to determine whether the NDCs of the parties to the Paris Agreement cumulatively will be sufficient to meet the long term [sic] temperature goal of keeping the global temperature rise to between 1.5°C and 2°C is the carbon budget approach. The carbon budget approach is based on the well-proven relationship between the cumulative anthropogenic emissions of GHGs and the increase in global average surface temperature. The carbon budget approach “is a conceptually simple, yet scientifically robust, approach to estimating the level of greenhouse gas emission reductions required to meet a desired temperature target”, such as the Paris Agreement targets of 1.5°C or 2°C (Steffen report [¶38]). The approach is based on the approximately linear relationship between the cumulative amount of CO₂ emitted from all human sources since the beginning of industrialization (often taken as 1870) and the increase in global average surface temperature (Figure 2 in IPCC (2013) Summary for Policy Makers, cited in Steffen report, [¶39]). Once the carbon budget has been spent (emitted), emissions need to become “net zero” to avoid exceeding the temperature target. “Net zero” emissions means the magnitude of CO₂ emissions to the atmosphere is matched by the magnitude of CO₂ removal from the atmosphere (Steffen report, [¶40]). The carbon budget required to meet a temperature target is influenced by at least three areas of uncertainty: the probability of meeting the target; accounting for other greenhouse gases; and accounting for feedbacks in the climate system. Professor Steffen explained these three areas of uncertainty: “There are several key areas of uncertainty that influence the carbon budget required to meet a temperature target: a) Probability of meeting the target. Higher probabilities of meeting a given temperature target (e.g., 2°C) require a more stringent carbon budget. Thus, there is a critical trade-off: relaxing the carbon budget to make it more feasible to meet means that there is a lower probability of achieving the desired temperature target. b) Accounting for other greenhouse gases. Non-CO₂ gases (e.g., methane (CH₄) and nitrous oxide (N₂O)), which are important contributors to warming, are assumed to be reduced to zero at the same rate as CO₂ is reduced to zero. If non-CO₂ gases are not reduced, or reduced more slowly than CO₂, then the CO₂ budget is reduced accordingly. Most

of the CH₄ and N₂O emissions arise from the agricultural sector, where emission reductions are generally considered to be more difficult and expensive to achieve than for the electricity generation sector. Thus, carbon budgets are often configured on the basis that reduction of CO₂ emissions from the electricity and transport sectors is more technologically feasible and less expensive than for the non-CO₂ gases, and therefore CO₂ emissions should be reduced even further to compensate for the continued emission of non-CO₂ gases. c) Accounting for feedbacks in the climate system. Carbon cycle feedbacks, such as permafrost melting or abrupt shift of the Amazon rainforest to a savanna, are not accounted for in the carbon budget approach. Including estimates for these would reduce the budget further (Ciais et al. 2013). These are likely to be very significant. Quantitative estimates suggest that at a 2°C temperature rise (the upper Paris accord target), about 100-200 Gt C (billion tonnes of carbon, emitted as CO₂) of additional emissions to the atmosphere (about 10-20 years' worth of human emissions at current rates) would be emitted (Ciais et al. 2013; Steffen et al. 2018). The upper estimate would virtually wipe out the remaining carbon budget (see Table 1 below).” (Steffen report, [¶41]).” [¶¶ 441–443]

- **Legal justification for considering both direct and indirect GHG emissions** can be found [¶486–513]. Court reasoned that “All anthropogenic GHG emissions contribute to climate change. As the IPCC found, most of the observed increase in global average temperatures is due to the observed increase in anthropogenic GHG concentrations in the atmosphere. The increased GHG concentrations in the atmosphere have already affected, and will continue to affect, the climate system...The direct and indirect GHG emissions of the Rocky Hill Coal Project will contribute cumulatively to the global total GHG emissions. In aggregate, the Scope 1, 2 and 3 emissions over the life of the Project will be at least 37.8Mt CO₂-e, a sizeable individual source of GHG emissions. It matters not that this aggregate of the Project’s GHG emissions may represent a small fraction of the global total of GHG emissions. The global problem of climate change needs to be addressed by multiple local actions to mitigate emissions by sources and remove GHGs by sinks. As Professor Steffen pointed out, “global greenhouse gas emissions are made up of millions, and probably hundreds of millions, of individual emissions around the globe. All emissions are important because cumulatively they constitute the global total of greenhouse gas emissions, which are destabilizing the global climate system at a rapid rate. Just as many emitters are contributing to the problem, so many emission reduction activities are required to solve the problem” (Steffen report, [¶57]). Many courts have recognized this point that climate change is caused by cumulative emissions from a myriad of individual sources, each proportionally small relative to the global total of GHG emissions and will be solved by abatement of the GHG emissions from these myriad of individual sources.” [¶¶ 514–516]

- **Key links**

- Harned, G. (2019) [The wrong place and the wrong time: The Rocky Hill Case, a landmark legal win for climate action](#), Georgetown Env. L. Rev. blog.
- Hughes, L. (2019) [The Rocky Hill decision: a watershed for climate change action?](#), Journal of Energy & Natural Resources Law, DOI:10.1080/02646811.2019.1600272. “By placing an understanding of the

rapidly dwindling carbon budget at the core of the argument against the mine, it would seem that the law, at least in this case, has caught up with the scientific understanding of global climate change. Emissions from fossil fuels, and the impacts they cause, do not respect country or jurisdictional boundaries – a notion that would be obvious to anyone with the only the barest understanding of this global issue.”

23. *Notre Affaire à Tous and Others v. France (L’affaire du siècle’) (2018)*

- **Citation:** Tribunal administratif [TA] [Administrative Court of Paris] Paris, Oct. 14, 2021. (Fr.).
- **Jurisdiction:** Administrative Tribunal of Paris
- **Background:** In *Notre Affaire à Tous and Others v. France* (2018), nicknamed “[the Case of the Century](#),” plaintiffs alleged that the government, by not fully implementing legislative and regulatory instruments to combat climate change, failed to meet its obligations under the European Court 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.
- **Ruling:** In February 2021, the Administrative Tribunal of Paris held the government liable for ecological damage that has occurred because the government has insufficiently acted on its climate commitments and fined the government a symbolic one Euro in damages. In a subsequent decision in October 2021, the Tribunal [ordered](#) the government by 31 December 2022 to meet its emissions-reduction commitments and to remedy the damage that occurred from France’s emissions exceeding the statutory ceiling for carbon budgets.
- **Rights/Laws/Principles:** Articles 2 (right to life) and 8 (right to respect private and family life) of the European Convention for the Protection of Human Rights and Fundamental Freedoms; French Environment Code; and international law instruments (Stockholm Declaration, Paris Agreement, etc.).
- **Significance:** This was one of the first cases after *Urgenda* where a national court of highest instance found the State’s climate mitigation actions inadequate under the law.
- **Concepts that Serve to Evolve Principles, Rights, Duties:**
 - **Causation.** The Court confirmed the causal link between the inaction of the French Government and the environmental damages, and that the State should be held responsible for at least part of these damages.
 - **Damages.** The Court held that damages equated to the uncompensated share of greenhouse gas emissions under the initial carbon budget (i.e. 15 million tons of CO₂ equivalent) and ordered the recuperation of this damage.
 - **Urgency.** The Court gave the government two months to submit a plan to address the damages, and reserved the remainder of the judgment for after the submission was received and reviewed.
- **Key links**

- [Final decision](#) (in English) (Oct 2021)
- Judgment of the Administrative Tribunal of Paris [Unofficial English translation](#).

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

- **Citation:** *Waratah Coal Pty. Ltd. v. Youth Verdict Ltd. & Ors. (No 6)* [¶2022] QLC 21 (Austl.).
- **Jurisdiction:** Land Court of Queensland
- **Background:** The case challenged a major coal mine in Queensland, arguing that the mine infringes on children's human rights protected under Queensland's statutory charter of rights. In August 2020 the court [rejected](#) the coal company's application to strike EDO's human rights objections. This case received [significant media attention](#), as the mine is owned by Clive Palmer, a well-known Australia businessman. It was the first climate case in Australia brought by youth plaintiffs as well as the first challenge to a coal mine on human rights grounds.
- **Ruling:** In a [landmark decision](#), the Land Court recommended against the approval of a mining lease and environmental authority to open a new coal mine, relying on the science of tipping points and feedbacks. The Court used the carbon budget, which it identified as "the most robust way to determine the changes in human activity required to meet the aims of the Paris Agreement," to assess the significance of the proposed mine's future impacts. To calculate the remaining carbon budget, the Court chose a climate scenario that would avoid feedback loops and tipping points. Although the executive branch holds the authority to ultimately approve or deny the mine's permit, the Court's decision is persuasive, and its reasoning paves a path for future rights-based climate suits in Australia in relevant jurisdictions. The coal company appealed, but [withdrew its appeal](#) 10 Feb 2023.
- **Rights/Laws/Principles:** Right to life, property, private life, of children, and cultural rights of First Nations people (Human Rights Act of 2019).
- **Significance:** The Court relied on expert evidence on the climate science including a lengthy analysis of tipping points to inform its decision. It is the first successful case in Australia to use a State human rights charter to positively restrain fossil fuel companies.
- **Concepts that Serve to Evolve Principles, Rights, Duties:** detailed discussion of carbon budget, tipping points; rights to life, cultural rights of indigenous people, rights of children, rights of property.
- **Key links**
 - [CLX Summary](#)
 - **Relationship between the 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 President, Fleur Kingham, 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." 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” (at [44]). 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” (at [1486]). 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. Her Honor also 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.”

- **Rejection of Arguments That the Mine Would Not Negatively Impact the Climate:** Waratah argued that the mine would not have any negative implications for climate change and that to the extent it might, the Court should not take any potential future emissions into account. Waratah argued that those emissions: (a) are too uncertain to be considered; and (b) are not sufficiently related to the mine and applications themselves, being caused by other parties eventually burning the coal.
- The Court rejected these arguments. The President considered that there was sufficient scientific certainty on the relationship between greenhouse gas emissions and temperature increases for that evidence to be considered. The estimated emissions from the project would make a “material contribution” to the remaining carbon budgets required for Australia to meet its Paris Agreement goals. Even though it was not possible to specifically attribute the role of the proposed mine to specific climate change impacts, that did “not provide a complete answer” to the challenge [634 - 635].
- Waratah also argued that approving the mine would have a positive impact on climate emissions as the coal produced at this mine would displace other lower quality coal with higher emissions (sometimes known as the ‘market substitution argument’). These arguments were not accepted by the Court.
- This is significant, as previous Land Court decisions on other mines over the last decade had accepted market substitution arguments. Rather, the Court found that

the mine would make a “material contribution” to Australia’s carbon budget under the Paris Agreement.

- The Court also rejected Waratah’s argument that it should not take the emissions resulting from the eventual burning of coal by third parties into account when determining the likely impact of the mine. The Court held that “granting permission to mine the coal cannot be logically separated from the coal being used to generate electricity” [¶25]. The emissions caused by burning coal mined from the Galilee Basin would contribute to environmental harm and therefore was relevant to the principles of ecologically sustainable development and whether the applications were in the public interest.

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

- **Citations:** *Friends of the Irish Environment v. Ireland*. Judgment of September 19, 2019 [2019] IEHC 747 [2017 No. 793 JR]; Supreme Court (Ireland). *Friends of the Irish Environment v. Ireland*. Judgment of July 31, 2020. Appeal No: 205/19.
- **Jurisdiction:** Supreme Court of Ireland
- **Background:** Friends of the Irish Environment (FEI), a non-government organization, filed suit in the High Court challenging the Irish government’s approval of National Mitigation Plan as a violation of the Climate Action and Low Carbon Development Act 2015 (Act), the Constitution of Ireland, and Ireland’s commitments under the European Convention on Human Rights. The High Court ruled against FEI, reasoning that the government exercised appropriate discretion and that the Plan was an initial step in achieving target. FEI, on appeal, was granted permission by the Supreme Court to bypass the traditional appeal process.
- **Ruling:** The Supreme Court reversed the lower court’s decision and found that the Plan did not comply with the specificity requirements of the Act, though it declined to consider the rights-based arguments on standing grounds.
- **Remedy:** The Court quashed the existing climate action plan. It then determined that any future climate action plan must be sufficiently specific as to show a realistic pathway towards the statutory net zero target.
- **Rights/Laws/Principles:** 2015 Climate Action and Low Carbon Development Act
- **Significance:** This was one of the first cases after *Urgenda* where a national court of highest instance found the State’s climate mitigation actions inadequate under the law. The Court noted the need to address climate change to avoid reaching tipping points: “There is as yet no consensus as to the precise level of climate change which is likely to trigger many of the tipping points in question. However, there are strong suggestions that even a level of global warming limited to below 2°C may give rise to some important tipping elements. It has, for example, been suggested that the tipping point for marine ice sheet instability in the Amundsen Basin of West Antarctica may already have been crossed. While, therefore, it is not possible to predict the precise temperatures at which irreversible adverse events will occur, there does appear to be a consensus that the risk of such tipping points occurring is materially increased as temperatures themselves rise. 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.”

- **Concepts that Serve to Evolve Principles, Rights, Duties:**
 - **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.
 - **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.
 - **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” [3.7] However, it was emphasized that the Court was focused on the lawfulness of the plan rather than matters of policy.
- **Key links**
 - [Judgment](#) (Sept 2019)
 - [Opinion](#) (July 2020)

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

- **Citation:** *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 (Haw. Mar. 13, 2023); and *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 (Haw. Mar. 13, 2023) (Wilson, J., concurring).
- **Jurisdiction:** Hawaii Supreme Court
- **Background:** Energy company appealed the denial of a biomass power plant.
- **Ruling:** The Hawaiian Supreme Court unanimously affirmed the PUC’s decision to reject the biomass power plant.
- **Holding:** The Court held that the PUC’s decision to reject the biomass power plant on climate grounds was lawful, stating that the right to a clean and healthy environment includes the right to a “life-sustaining climate system.” The concurrence by Justice Wilson added 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. He concluded that, “Given the climate emergency, and the need to limit atmospheric CO₂ 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 CO₂ concentrations to below 350 ppm.”
- **Rights/Laws/Principles:** Hawaiian Constitution.
- **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. A step forward

in American litigation on the interpretation of the right to health to include the duty of the State to require and use best available technologies. A step forward on the right to life that includes the State obligation to develop and enact policies that are based on the latest climate scientific consensus rather than the political consensus.

- **Concepts that Serve to Evolve Principles, Rights, Duties:**
 - **Climate-Specific Constitutional Right** – The Court unanimously found that Hawaii's constitutional right to a clean and healthy environment encompasses the “right to a life-sustaining climate system.”
 - **Climate-Specific Constitutional Right** – Further, the concurrence found that the right to a life-sustaining climate system is not only subsumed in the constitutional right to a clean and healthy environment but is also embedded in the due process right to “life, liberty, and property” as well as in “the public trust doctrine” which requires the conservation and protection of natural resources “for the benefit of present and future generations.”
 - **The Climate System is a Public Trust Resource** – Additionally, the concurrence found that, “the climate system is a ‘natural resource’ held in trust by the State for the benefit of present and future generations.” This is not expanded upon below but would be happy to provide more information.
 - **Right to healthy environment requires life-sustaining climate system** - right to a clean and healthy environment encompasses the “right to a life-sustaining climate system.” (Majority at ¶16 and ¶18; see also, Concurrence at ¶¶2, 3, 23, 28, 30, 36-38), which “is not just affirmative; it is constantly evolving.” (Majority at ¶18) such that “yesterday’s good enough has become today’s unacceptable.” (Majority at ¶19). The majority and concurring opinions address the concrete human rights threats to the people of Hawai‘i, expressly stating that “[f]or the human race as a whole, the threat is no less existential,” and that “[w]ith each year, the impacts of climate change amplify and the chances to mitigate dwindle.” (Majority at ¶19). As such, “[a] stepwise approach is no longer an option.” (Majority at ¶19).
 - **Impacts on present and future generations and science-based remedy** - Judge Wilson’s concurring opinion further emphasizes 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.” (Concurrence at 15). It then proceeds to make three additional landmark findings.
 - **Finding 1 – A Science-based Remedy Is Necessary.** 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 [¶1] and to call on the State to urgently reduce greenhouse gas emissions in line with what is scientifically and constitutionally required.
 - After summarizing the litany of “grievous human harms” that would result from the global temperature increases sanctioned by the Paris Agreement (Concurrence at ¶¶8, 11-15 n. 6-14), Justice Wilson candidly underscores why emissions mitigation strategies must be based on the best available science. Citing climate expert, Dr. James Hansen, the opinion states, “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 CO₂ concentrations below 350 parts per million ('ppm') by 2100.” (Concurrence at 10). He 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.” (Concurrence at 9-10 n. 4). Nor can government “use the 1.5°C Paris Agreement target as a mechanism to delay reducing emissions until that threshold has been met... The target for emissions reductions must instead be based on the level of atmospheric CO₂ that ensures a life-sustaining climate system.” (Concurrence at 9, citing Andrea Rodgers et al., *The Injustice of 1.5°C-2°C*).

- **Finding 2 – The Climate Crisis Threatens the Rule of Law.** Linked to the finding that a life-sustaining climate system requires States to reduce atmospheric CO₂ concentration to 350 ppm, the concurrence finds, “The effects of failing to reduce atmospheric CO₂ concentrations to below 350 ppm will lead to ‘social, political and economic chaos, and in that chaos[¶], the rule of law cannot survive.’” (Concurrence at 27). This conclusion is rooted in the understandings that “It is beyond cavil that a life-sustaining climate system is implicit in the concept of ordered liberty and lies ‘at the base of all our civil and political institutions.’ . . . Indeed, a stable climate is the foundation upon which society and civilization exist in Hawai‘i and throughout the globe.” (Concurrence at 26). Furthermore, “the right to a life-sustaining climate is deserving of fundamental status as essential to our scheme of ordered liberty because it is ‘preservative of all rights.’” (Concurrence at 28-29).
- **Finding 3 – There Is a Constitutional Right to a Life-Sustaining Climate That Governments Are Responsible to Protect Under the Due Process and Public Trust Doctrine.** Justice Wilson specifically emphasizes that the right to a life-sustaining climate system is not only subsumed in the constitutional right to a clean and healthy environment but is also embedded in the due process right to “life, liberty, [and] property” as well as in “the public trust doctrine” which requires the conservation and protection of natural resources “[f]or the benefit of present and future generations.” (Concurrence at 3).
- **Conclusion.** Justice Wilson makes clear that “[t]he remedy for violation of the right to a stable climate capable of supporting human life is discreet: to reduce greenhouse gas emissions.” (Concurrence at 20). Based on that

understanding, he concludes, “We are facing a sui generis climate emergency. The lives of our children and future generations are at stake. With the destruction of our life-sustaining biosphere underway, **the State of Hawai‘i is constitutionally mandated to urgently reduce its greenhouse gas emissions to reduce atmospheric CO2 concentrations to below 350 ppm.**” (Concurrence at 38, emphasis added).

- **Key links**
 - [CLX summary and analysis](#)
 - **Climate Law Summary:** On 13 March 2023, Hawai‘i’s highest court issued a unanimous landmark decision rejecting a power purchase agreement (PPA) between the energy company Hu Honua and the Hawai‘i Electric Light Company, Inc. (HELCO). The PPA proposed the development of a biomass power plant that would have emitted over 8 million metric tons of carbon into the atmosphere over the course of thirty years. While the Hawai‘i Supreme Court’s denial of this PPA stops dangerous greenhouse gas (GHG) emissions and is therefore significant in its own right, the Court’s further landmark findings have global implications for the protection of human rights.

27. *VZW Klimaatzaak v. Kingdom of Belgium & Others (2021)*

- **Citation:** Brussels Court of First Instance (Belgium). *VZW Klimaatzaak v. Kingdom of Belgium*. Judgment of June 17, 2021. 2015/4585/A.
- **Jurisdiction:** Brussels Court of First Instance
- **Background:** 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.
- **Ruling:** The Court did not issue the requested injunction, citing separation of powers, but found the government in breach of its duty of care.
- **Holding:** The Brussels Tribunal of First Instance held that the Belgian government’s failure to adequately address climate change was a breach of its duties under the Belgian Civil Code and Articles 2 and 8 of the European Convention on Human Rights.
- **Rights/Laws/Principles:** Articles 2 (right to life) and 8 (right to respect private and family life) of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR); Articles 6 (right of the child to life & protection of their survival and development) and 24 (right of the child to enjoy health) of the Convention on the Rights of the Child; Article 1382 of Civil Code.
- **Significance:** The Court found a positive obligation of the State to act on climate under the rights to life and to private and family life in the European Convention on Human Rights.
- **Concepts that Serve to Evolve Principles, Rights, Duties:**
 - **Due diligence** - In its reasoning, the court observed that the Belgian state appeared as of 2019 reporting to be failing to meet its commitment under the Kyoto Protocol and Doha amendment of 20% reduction against 1990 levels, the government failed to engage in good climate governance, and the government had been on notice for ten years of its lack of due diligence in combatting climate change. Having established that the plaintiffs were personally and directly affected by climate change, the court noted that by holding public authorities partly responsible for the

effects of climate change, the plaintiffs established a direct and personal interest in the action sufficient for admissibility. The court's finding that the individual co-plaintiffs have standing offers one of the few explicit uses of scientific findings in the judgment.

- **Standing to challenge climate inaction** - The court first asserted that under Belgian law, to be party to an action on environmental matters a plaintiff must have a “personal and direct” interest at stake; “i.e., the proceedings must provide a benefit to the plaintiff” [at 47].
- **Engagement with climate impacts** - These findings come primarily from IPCC's SR1.5, a 2007 “green paper” by the European Commission, and a 2017 study by the European Environment Agency. The court particularly emphasized extreme heat days, heat waves, flooding, drought, and storm damage to deduce that “Belgium is already experiencing the direct impacts of this climate change” and to conclude that “diplomatic consensus based on the most authoritative climate science leaves no room for doubt that a real threat of dangerous climate change exists. This threat poses a serious risk to current and future generations living in Belgium and elsewhere that their daily lives will be profoundly disrupted” [50].
- **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.
- **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.
- **Key links**
 - [Main conclusions of the plaintiffs](#) (28 June 2019) (in French)
 - [Final synthesis conclusions of the plaintiffs](#) (16 Dec 2019) (in French)
 - [Unofficial English summary of plaintiffs' arguments](#) (16 Dec 2019)
 - [Judgment](#) (in French)
 - [Unofficial English translation of judgment](#)

28. *Tatar v. Romania* (2009)

- **Citation:** *Tatar v. Romania*, App. No. 67021/01, Eur. Ct. H.R. (2009).
- **Jurisdiction:** European Court of Human Rights
- **Background:** This case concerned a gold mine in Romania. A company obtained a license to exploit the resources [¶20], using sodium cyanide in the extraction process [¶10], [¶15]. During the course of the mine's operation, a dam breached at the site, releasing almost 100,000 cubic meters of cyanide-contaminated tailings water into the environment [¶24]. The first applicant, who lived with his family in the vicinity of the accident, filed administrative complaints concerning the risks incurred by the applicants as a result of the

use of sodium cyanide and questioned the validity of the operating license [¶34 - 35]. Romanian authorities asserted that the company's activities were not a public health hazard and this same technology was used in other countries [¶40]

- **Ruling:** The Court ruled that the Romanian officials had violated Article 8 of the European Convention on Human Rights (the Convention) and that Romania had to pay EUR 6,266 euros to the applicants.
- **Holding:** The Court found that Romania failed in its obligation to guarantee the right to respect for their private and family life under Article 8 of the European Convention on Human Rights (the Convention) [¶125]. The Court observed that pollution could interfere with this right by harming an individual's well-being and that Romania had the positive obligation under this right to put in place a legislative framework and adequate measures seeking effective prevention of damage to human health and the environment [¶85 - 88].
- **Rights/Laws/Principles:** Article 8 of the Convention, States positive obligations; public's right to information.
- **Significance:** The Court observed that pollution in the environmental context could interfere with the right to respect for private and family life and indicated that this right implied both positive and negative obligations for the State.
- **Concepts that Serve to Evolve Principles, Rights, Duties:**
 - **Article 8's application to environmental cases:** The Court stated that Article 8 may be applied in environmental cases, "whether the pollution is directly caused by the State or whether the responsibility of the [State] arises from the absence of adequate regulation of the environment." [¶87]
 - **States' obligations:** Article 8 primarily implies negative obligations on the State to refrain from arbitrarily interfering with the individual, but also implies positive obligations "inherent in effective respect for private or family life." [¶87] This principle of prevention imposes a positive obligation that requires that States "take all reasonable and adequate measures to protect the rights which the applicants draw from paragraph 1 of Article 8," which implies, above all, "the primary duty to put in place a legislative framework and administrative measures aimed at effective prevention of damage to the environment and human health." [¶88] In the context of complex environmental and economic questions, and particularly when dealing with dangerous activities, the State must "reserve a special place for regulations adapted to the specificities of the activity involved, particularly in terms of the risk that could result. This obligation must determine the authorization, commissioning, operation, security and control of the activity in question as well as requiring any person concerned by it to adopt specific practical measures." [¶88] The decision-making process must thoroughly assess the risks and provide information to the affected individuals. The Court noted that the State authorized the operation of the company and was a shareholder in the company [¶99]; the State authorized the use of a new technology with unknown consequences in an area that was already very polluted [¶108]; the danger to the environment and the well-being of individuals was foreseeable [¶111]; and information on risks was not shared with the public [¶113-114].

29. *Öneryildiz v. Turkey (2004)*

- **Citation:** Öneriyildiz v. Turkey (No. 48939/99), Eur. Ct. H.R., 657 (2004)
- **Jurisdiction:** European Court of Human Rights
- **Background:** Mr. Öneriyildiz lived in a slum area of Istanbul near the municipal rubbish tip. An expert report noted that there was a risk of a methane gas explosion from the tip and that no measures had been taken to prevent this risk. Such an explosion occurred two years later. The explosion killed 39 people and buried some 10 dwellings, including Mr. Öneriyildiz's dwelling, and nine of Mr. Öneriyildiz's family members died.
- **Ruling:** The Court held that Turkey violated Article 2 of the European Convention on Human Rights (the Convention) and awarded Mr. Öneriyildiz and his surviving children damages.
- **Holding:** The State's positive obligation to ensure the right to life implies a primary duty to, above all, put in place a legislative and administrative framework that effectively deters threats to the right to life. This obligation particularly applies in the context of dangerous activities [¶¶69-73].
- **Rights/Laws/Principles:** Article 2 (Right to Life) of the Convention; States positive obligations; mitigation of dangerous activities.
- **Significance:** This was the first environmental case involving loss of life decided by the Court, and the Court established that the right to life places positive obligations on States.
- **Concepts that Serve to Evolve Principles, Rights, Duties:**
 - **Article 2's application to environmental cases:** [¶¶71-72] The right to life and both positive and negative obligations deriving from it apply in the context of the environment.
 - **States' obligations:** Article 2 does not merely apply to deaths resulting from the use of force by State agents, but also places a positive obligation on the state "to take appropriate steps to safeguard the lives of those within their jurisdiction." [¶71] This obligation applies "in the context of any activity, whether public or not, in which the right to life may be at stake, and *a fortiori* in the case of industrial activities, which by their very nature are dangerous." [¶71] This obligation must be "interpreted and applied in such a way as to make its safeguards practical and effective." [¶69] For dangerous activities, the State must establish regulations that "govern the licensing, setting up, operation, security and supervision of the activity and must make it compulsory for all those concerned to take practical measures to ensure the effective protection of citizens whose lives might be endangered by the inherent risks." Here, the national authorities were in control of the rubbish tip and "did not do all that could have been expected of them to prevent the deaths of the applicant's close relatives." [¶70]
 - **Key reasoning:** The Court noted as a decisive factor that there was information available to the authorities that indicated that certain slum areas surrounding the rubbish tip were faced with a threat to their physical integrity, and that an expert report had noted the risk of a methanogenesis-driven explosion [¶98]. Multiple levels of Turkish officials "knew or ought to have known that there was a real and immediate risk to a number of persons," and these officials therefore had a positive obligation under Article 2 of the Convention to take preventative operational measures that were necessary and sufficient to protect those individuals [¶101]. Turkey also failed to inform the inhabitants of these risks [¶108]. Mr. Öneriyildiz also alleged violation of his right to respect for his private and family life under

Article 8 of the Convention, but the Court found it unnecessary to examine that complaint separately because it concerns the same facts as those examined under Article 2 of the Convention [¶160]. In addition, Mr. Öneriyıldız alleged that the ineffectiveness of the domestic remedies of which he had availed himself violated Article 13 of the Convention [¶139]. The Court noted that Article 13 requires domestic legal systems to make available an effective remedy but does not prescribe any form of remedy [¶145-146]. The Court held that there was a violation of Article 13 as regards the complaint under Article 2 because of the ineffectiveness of the compensation proceedings, and the Court considered it decisive that the damages awarded to Mr. Öneriyıldız were never paid to him [¶¶152 - 155].

30. *Lopez Ostra v. Spain (1994)*

- **Citation:** Lopez Ostra v. Spain, Eur. Ct. H.R. 16798/90 (1994)
- **Jurisdiction:** European Court of Human Rights
- **Background:** Several leather tanneries, all belonging to a limited company called SACURSA, in the town of Lorca had a plant for the treatment of liquid and solid waste. The plant was built with a State subsidy on municipal land 12 meters from the applicant's home. The plant began operating in 1998 without the municipal permit required for activities classified as causing nuisance and being unhealthy, noxious, and dangerous. It also had not followed the procedure for obtaining said license. The start-up of the plant released gas fumes, pestilential smells, and contamination due to a plant malfunction.
- **Ruling:** The Court held that the State had breached Article 8 (right to private family life) of the European Convention on Human Rights ("the Convention") and that the State had to pay damages to the applicant.
- **Holding:** The State's failure to control industrial pollution violated Article 8. The State did not succeed in striking a fair balance between the town's economic well-being and the applicant's enjoyment of her right to respect for her home and her private and family life [¶51]. Severe environmental pollution may affect an individual's wellbeing and their right to private and family life without seriously endangering their health [¶51].
- **Rights/Laws/Principles:** Article 8; States positive obligations; balancing competing public interests (economic and environmental).
- **Significance:** This was a landmark case that established that a State's failure to control industrial pollution violated the Convention.
- **Concepts that Serve to Evolve Principles, Rights, Duties:**
 - **States' obligations:** There is a positive duty on the State "to take reasonable and appropriate measures to secure the applicant's rights under paragraph 1 of Article 8," [¶51] and this duty extends to controlling pollution.
 - **Article 8 and States' margin of appreciation to balance interests** The Court noted that a fair balance must be struck between the competing interests of the individual and the community as a whole, and that the State enjoys a certain margin of appreciation in determining this balance [¶51]. However, the State did not strike this balance here and thus violated Article 8 [¶58]. The Court came to this conclusion based on the municipality's and the relevant authorities' failure to act; [¶46] the continuation of the emission of fumes, repetitive noise, and strong smells; [¶47] the potential causal link between the emissions and health problems

[¶47 - 50]; the fact that the town council was definitely aware of the environmental problems caused by the plant [¶53]; the failure by the State to take action and resistance by the State to judicial orders requiring the State to take action [¶56]; and that the applicant's family lived near the plant for three years before the town relocated the applicant's family [¶57].

- **Breach of Right to Respect for Privacy and Family Life:** The Court noted that the situation at the plant could continue indefinitely and that had been what led the applicant to relocate. The plant had also caused multiple health and wellbeing problems to residents near the plant. As a result, there was a breach of the applicants right to respect for privacy and family life.

31. *Carrion et al. v. Ministry of the Environment et al. (2020)*

- **Citation:** *Herrera Carrion et al. v. Ministry of the Environment et al.* (Caso Mecheros) (Ecuador, Provincial Court of Justice of Sucumbíos). No. 21201-2020-00170.
- **Background:** 9 children filed a constitutional claim against the Ecuadorian government, alleging that the State's common practice of gas flaring violated their fundamental rights and the rights of Nature. The plaintiffs sought an injunction to eliminate gas flaring.
- **Ruling:** The Provincial Court of Justice reversed the lower court's dismissal of the case and ordered the government to update its plan to gradually eliminate gas flares and have until December 2030 to remove all gas flares.
- **Holding:** The Court held that the government ignored the youth plaintiffs' right to live in a healthy and ecologically balanced environment and right to health by promoting polluting activities and by refusing to use environmentally clean and energy-efficient technologies through its gas flaring operations. Further, the Court held that authorizing gas flaring disregards international commitments, including Ecuador's NDCs.
- **Rights/Laws/Principles:** Rights to health, water & food sovereignty, healthy environment, and of nature (Constitution of Ecuador).
- **Concepts that Serve to Evolve Principles, Rights, Duties** A step forward on the interpretation of the right to life to include the duty of the State to require and use best available technologies.

32. *D.G. Khan Cement Company v. Government of Punjab (2019)*

- **Citation:** *D.G. Khan Cement Company v. Government of Punjab* (2019) W.P. No. 5898/2019 (Pak.).
- **Jurisdiction:** Lahore High Court, Pakistan
- **Background:** D.G. Khan Cement Company challenged a notification issued by the provincial government of Punjab to bar construction of new or the expansion of existing cement plants in environmentally fragile zones ("Negative Areas"), alleging that the ban was discriminatory and violated the right to freedom of trade, business, and profession under Article 18 of the Constitution of Pakistan.
- **Ruling:** The High Court dismissed the cement company's petition and upheld the provincial government's notification. The Supreme Court relied on a scientific and economic report detailing the adverse impacts of allowing construction of new or expansion of existing cement plants in the Negative Area. Furthermore, the Supreme Court

investigated claims that the cement plant was implementing a new technology that will minimize the plant's impact on water resources in the area. The Court applied the precautionary principle and the principle of *in dubio pro natura*, stating that “[a]ctions should not be undertaken when their potential adverse impacts on the environment are disproportionate or excessive in relation to the benefits derived therefrom.” Further, the Court recognized the concepts of intergenerational justice and climate democracy, stating that rule of law must recognized the need to combat climate change.

- **Rights/Laws/Principles:** precautionary principle, rights of nature; climate justice, protection of procedural rights, Rights to freedom of trade, business, and profession (Constitution of Pakistan).
- **Significance:** The Court recognized the need to protect rights of nature and the need to consider intergenerational justice, saying that courts had a duty to “decolonize our future generations from the wrath of climate change, by upholding climate justice at all times.” The Court further held that “the environment needs to be protected in its own right.”
- **Concepts that Serve to Evolve Principles, Rights, Duties:** application of precautionary principle and *in dubio pro natura* and principles of intergenerational justice and climate democracy.

33. *Shrestha v. Office of the Prime Minister (2017)*

- **Citation:** *Shrestha v. Office of the Prime Minister et al.* (2015) Supreme Court of Nepal, 61 NKP 3.
- **Jurisdiction:** Supreme Court of Nepal
- **Background:** Padam Bahadur Shrestha, an environmental lawyer, petitioned the Supreme Court of Nepal to issue a writ of mandamus or other appropriate order to enact a climate change law after a previous application to the government of Nepal to enact such a law failed. Shrestha argued that Nepal's Environmental Protection Act (1997) and Climate Change Policy (2011) were not implemented, resulting in adverse environmental and climate impacts. Shrestha argued further that the failure to implement those laws violated his constitutional rights to a dignified life and a healthy environment and Nepal's commitments under UNFCCC and the Paris Agreement.
- **Ruling:** 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. The Court found that the government has not given enough attention to implementing its climate change policies, which “suppresses” the enjoyment of the right to live with dignity under Art. 16 and Art. 30 of the Nepal Constitution, and Nepal's commitments under UNFCCC and its Kyoto Protocol, and the Paris Agreement. Further, the Environmental Protection Act contains no provisions on climate change. The Court mentioned research finding that climate change increased global temperatures at an average of 0.01°C - 0.3°C and that despite the “direct impact” of climate change on human beings and the ecosystem, the government failed to take substantive steps.
- **Rights/Laws/Principles:** Rights to live with dignity, live in a healthy & clean environment, access basic healthcare services, and food (Constitution of Nepal).
- **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.

- **Concepts that Serve to Evolve Principles, Rights, Duties:**
 - **State’s positive and negative duties to prevent human rights violations resulting from failure to implement or enforce adequate laws** – The Court stated that “mere enlistment of direct policies and plans is not enough” for States to meet their obligations to adequately protect humans and ecosystems from the impacts of climate change; comprehensive laws and proper enforcement are required. 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” [¶ 6].
 - **Right to a healthy environment** – this case is an example of a court of highest instance finding that the right to a healthy environment includes the right to a sustainable climate system to avoid impacts of climate change on human populations and the environment.

34. *Ashgar Leghari v. Pakistan (2015)*

- **Citation:** *Leghari v. Federation of Pakistan* (2015) Lahore High Court, W.P. No. 25501/2015.
- **Jurisdiction:** Lahore High Court, Pakistan
- **Background:** Ashgar Leghari, a Pakistani farmer, sued the national government for its failure to implement the National Climate Change Policy of 2012 and the Framework for Implementation of Climate Change Policy. Leghari argued that such failure resulted in adverse immediate impacts on Pakistan’s water, food, and energy security, and consequently, violated his fundamental right to life.
- **Ruling:** The Lahore High Court found that the national government’s “delay and lethargy” 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. The High Court ordered the formation of a climate change commission to oversee implementation of the policy instruments.
 - The High Court noted in particular the potential adverse impacts of climate change to water sources, agriculture, livestock, and land degradation. It recognized that “[c]limate change is the defining challenge of our time” and that the rights to life, human dignity, property, and information lay at the foundation of environmental and climate justice.
 - Further, the High Court stated that fundamental human rights should be read in conjunction with international environmental principles like the precautionary principle and the inter-and intra-generational equity.
- **Remedy:** The Court formulated a Commission consisting of a variety of experts and relevant stakeholders to oversee and monitor progress on the implementation of the

Framework. It then ordered each government ministry to create a focal person to ensure implementation of the Framework. The Commission was to report back to the Court about progress on implementation. After three years, the Commission was disbanded and replaced it with a smaller standing committee to act as a liaison between it and the government and reactivate the petition if needed.

- **Rights/Laws/Principles:** Article 9 right to life and Article 14 right to a healthy and clean environment and to human dignity (Constitution of Pakistan); precautionary principle and *in dubio pro natura*; and principles of inter- and intra-generational justice and climate democracy; public trust doctrine.
- **Concepts that Serve to Evolve Principles, Rights, Duties:** application of precautionary principle and *in dubio pro natura* and principles of intergenerational justice and climate democracy.
 - **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 application of the right to a healthy and clean environment evolving beyond local and regional ecosystems and biodiversity.
 - **Concept of climate justice** – The judgment discusses the shift from environmental justice to climate justice and the subcategory of water justice that fall under the purview of the right to life and the right to a healthy and clean environment and to human dignity. “Enter Climate Change. With this the construct of Environmental Justice requires reconsideration. Climate Justice links human rights and development to achieve a human-centered approach, safeguarding the rights of the most vulnerable people and sharing the burdens and benefits of climate change and its impacts equitably and fairly. Climate justice is informed by science, responds to science and acknowledges the need for equitable stewardship of the world’s resources” [¶ 21]. A human right exists to access to clean water for survival and for recreation. Ensuring water justice requires that all communities be able to access and manage water resources for beneficial purposes, which include drinking, subsistence, sanitation, religious and spiritual practices, sustaining wildlife, and recreation.
 - **Precautionary principle** - The Court identified climate change to be a “clarion call for the protection of fundamental rights of the citizens of Pakistan, in particular, the vulnerable and weak segments of society who are unable to approach the Court” [¶ 11]. The rights to life, to a healthy and clean environment, and to human dignity as interpreted through constitutional principles of democracy, equality, social, economic, and political justice encompass “the international environmental principles of sustainable development, precautionary principle, environmental impact assessment, inter and intragenerational equity and public trust doctrine.” The government’s failure to take measures to implement its climate change policies, particularly adaptation measures, violated these rights.
- **Key links:**
 - [Order](#)

35. *Re Court on its own motion v. State of Himachal Pradesh and others (2013)*

- **Citation:** Re Court on its own motion v. State of Himachal Pradesh and others (2013) (CWPIIL No. 15 of 2010).
- **Background:** The National Green Tribunal was, on its own motion, considering the obligation on the State of Himachal Pradesh to impose restrictions on activity in the environmentally sensitive Rohtang Pass area. Among the primary issues was how to address the emissions of black carbon from vehicle use.
- **Holding:** Citing a study that showed a connection between black carbon emissions rapid melting of glaciers in the Himalayan region, the Tribunal ordered the State to more to reduce such emissions in the region.
- **Remedy:** The Tribunal ordered the government of Himachal Pradesh to undertake sweeping measures to reduce pollution, including random pollution checks, restricting transport in certain areas to compressed natural gas and electric buses, and implementing a reforestation program. These measures must be overseen by a Monitoring Committee that makes quarterly reports to the court.
- **Rights/Laws/Principles:** Right to a healthy environment.
- **Concepts that Serve to Evolve Principles, Rights, Duties:** Case is a demonstrate of the use of science-based evidence to justify the imposition of restrictions on a super climate pollutant. Also shows that a government can be obligated to reduce emissions despite the global nature of climate change. Links broadly to the concept of tipping points.

36. *Okyay and Others v. Turkey (2005)*

- **Citation:** Okyay and Others v. Turkey Application no. 36220/97 (2005)
- **Background:** A domestic court had ordered Turkey to shut down three thermal power plants which were polluting the environment in the province of Muğla. The plaintiffs complained that their Article 6 European Convention right to a fair hearing had been violated by this failure.
- **Holding:** The Court held that there has been a violation of Article 6. The Court noted that the applicants were entitled to live in healthy and balanced environment and the State was duty bound to protect the environment and prevent environmental pollution.
- **Remedy:** The Court ordered the State to provide compensation to the applicants.
- **Rights/Laws/Principles:** Right to a fair hearing. Right to a healthy environment.
- **Significance:** In examining this case the Court referred to the Rio Declaration and the Council of Europe Assembly Recommendation on human rights and the environment. This helped them formulate the connection between harm to the environment and harm to human rights.
- **Concepts that Serve to Evolve Principles, Rights, Duties:**
 - **Protection of the Right to a Healthy Environment:** While the Court did not explicitly recognize an independent right to a healthy environment, they did note that the applicant's were entitled to live in a healthy environment on the basis of Turkish domestic law, European law, and international law.

37. *Sheikh Asim Farooq v. Federation of Pakistan (2019)*

- **Citation:** Sheikh Asim Farooq v. Federation of Pakistan (2019) W.P. No. 192069/2018

- **Background:** The plaintiffs alleged that the State had violated the right to life, the right to dignity, the right to access to public places of entertainment, and the obligation on the State to provide leisure places, due to the State’s failure to plant, protect, manage, preserve, and conserve the trees and forests in Punjab.
- **Holding:** The Court found that there had been a violation, and ordered the government to fulfill their obligations under the law “to safely manage, conserve, sustain, maintain, protect and grow forests and plant trees in urban cities.
- **Remedy:** The Court ordered that the State implement its Urban Trees Plantation Policy that the government had already developed. the court order included instructions to the government bodies to consider revising requirements and penalties under the Trees Act, publish annual reports on expansion of the forest area, impose penalties against delinquent officers, and to issue directions to the housing societies and authorities to support the planting of trees in the green belt and issue penalties for cutting those trees down.
- **Rights/Laws Principles:** Right to life, right to dignity, precautionary principle.
- **Significance:** The case is important through the use of both constitutional rights and international environmental law such as the precautionary principle to impose positive obligations on the State to protect and preserve forests.
- **Concepts that Serve to Evolve Principles, Rights, Duties**
 - **Integration of the Precautionary Principle into Domestic Law:** It was noted that the precautionary principle was a part of Pakistani international law.
 - **Duty to Protect, Preserve, and Restore Forests:** The Court noted that the combination of government policy, constitutional rights, and international environmental law all placed an obligation on the government to implement its existing policies on forest conservation and take measures to restore the forests.
 - **Use of Climate Science to Link Forestry and Climate Change:** In its statements, the judgment contains an explicit section on the impact of climate change on forestry [4.4]. The Court stated, “The most likely impacts of climate change will be decreased productivity, changes in species composition, reduced forest area, unfavorable conditions for biodiversity, higher flood risks and the like.” [4.4].

38. *GroundWork Trust & Vukani Environmental Justice Alliance Movement in Action v Minister of Environmental Affairs & Others (Highveld Priority Area #DeadlyAir judgment)*

- **Citation:** *Trustees for the time being of Groundwork Trust and Another v Minister of Environmental Affairs and Others* (39724/19) [2022] ZAGPPHC 725 (S. Afr.).
- **Background:** In 2007, the former Minister of Environmental Affairs delineated heavily-polluted lands in the Gauteng and Mpumalanga regions as the “Highveld Priority Area” pursuant to the Air Quality Act. In 2012, the government published the Air Quality Management Plan (the “Highveld Plan”) outlining goals for reducing ambient air pollution the area. The plan was intended to be updated every five years, but the government had neither updated the plan nor made substantive efforts to do so for nine years. Pollution in the Highveld Priority Area continued to fall short of allowable National Ambient Air Quality Standards. The plaintiffs argued that the ongoing poor ambient air quality violated their constitutional right to an environment that is not harmful to human health and well-being, and that the Minister of Environmental Affairs had breached a duty under the Air Quality Act to enact regulations to carry out the Highveld Plan.

- **Ruling:** The Court issued a declaration that the poor air quality in the Highveld Priority Area violated the constitutional right to an environment that is not harmful to health and well-being, and a declaration that the Minister had and breached a duty under the Air Quality Act to implement and enforce the Highveld Plan. The Court ordered the Minister to prepare, initiate, and prescribe regulations to implement and execute the Highveld Plan within one year.
- **Holding:** The Court held that the constitutional right to an environment that is not harmful to health and well-being “establishes distinct rights, with a basic set of unqualified, immediately realisable entitlements,” and the government’s failure to expeditiously enact measures to protect against air pollution violated these rights [¶ 27]. The Court stated that the “principle that the “negative” component of all socio-economic rights – the right to be free from interferences in the enjoyment of that right – is always unqualified and is not subject to any requirements of reasonableness” and that “the right of residents to live in conditions in which their health and wellbeing is not harmed by dangerous levels of air pollution is the clearest example of such a negative right” [¶ 38].
- **Status:** On 20 March 2023, the [Supreme Court granted the Minister leave to appeal](#) on the narrow issue of whether the National Environmental Management: Air Quality Act.
- **Rights/Laws/Principles:** constitutional right to an environment that is not harmful to health and well-being, South African Air Quality Act 39 of 2004
- **Significance:** This case concluded that the State has a negative obligation to prevent violations of socio-economic rights, including the right to a healthy environment. This was also the first time that the office of the UN Special Rapporteur on Human Rights & Environment intervened in a court application in South Africa.
- **Concepts that Serve to Evolve Principles, Rights, Duties:**
 - **Right to a healthy environment:** The Court noted that not all air pollution violates the right to a healthy environment, but that air pollution in excess of legally-allowable limits presents a prima facie violation. The Court stated that “when the failure to meet air quality standards persists over a long period of time, there is a greater likelihood that the health, well-being, and human rights of the people subjected to that air is being threatened and infringed upon” [¶ 10]. These findings can be extended to ongoing failures of States to protect against climate change, particularly where the right to a healthy environment has been found to encompass the right to a sustainable climate system.
 - **Intergenerational justice and the concept of substantial and imminent harm:** The Court linked the principle of sustainable development to the principle of intergenerational justice, stating that both require the State to consider the long-term impacts of pollution. The principle of intergenerational justice creates a qualified right binding the State to enact reasonable legislative and other measures to protect the environment even where human health and well-being are not immediately threatened. This interpretation can be applied in future cases to require States to enact measures to address the climate emergency to overcome standing challenges based on the concept of imminent harm.

C. Advisory Opinions and Reports from Comparative Jurisdictions

39. *National Inquiry on Climate Change Report [Commission on Human Rights of the Philippines] (2022)*

- **Citation:** Republic of the Philippines Commission on Human Rights, (2022) ‘National Inquiry on Climate Change Report’
- **Jurisdiction:** Philippines Commission on Human Rights (independent National Human Rights Institution created by 1987 Philippine Constitution)
- **Background:** In 2014, a group of Filipino citizens and other NGOs (including Greenpeace) petitioned the Commission to inquiry into the impact of climate change on the human rights of the Filipino people and the role played by investor-owned fossil fuel companies (“Carbon Majors”). The petition claimed that: (a) climate change was negatively impacting the human rights of Filipino people; and (b) the carbon majors globally were knowingly contributing to climate change. The petition followed a series of typhoons, including typhoon Haiyan, which caused deaths and widespread damage in the Philippines. Based on data over a 20-year period, the Philippines is the fifth most climate change-affected country in the Global Climate Risk Index, despite only accounting for 0.3% of global emissions [¶32]. In 2015, the Commission confirmed that it would conduct an inquiry into the role of the Carbon Majors in breaching the human rights of Filipino people. The Commission released its report in 2022.
- **Recommendations:** The Commission held major fossil fuel companies accountable for human rights impacted by climate change in the Philippines. The report made a number of recommendations primarily directed to the Philippine government (including the courts) and carbon majors aimed at speeding up decarbonization, strengthening protecting of human rights and achieving a just transition.
- **Rights/Laws/Principles:** Rights to health, food security, water and sanitation, livelihood, adequate housing, preservation of culture and self-determination, right to non-discrimination and equality; climate justice; corporate responsibility.
- **Significance:** The petition’s framing of climate change as a human rights issue was the first in the world to be accepted by a national human rights institution for investigation. The Commission’s report was the first in the region to hold fossil fuel companies accountable for human rights climate impact. The petitioners successfully argued that Carbon Majors are responsible for exacerbating the climate vulnerabilities in the Philippines, even though their activities occurred outside the jurisdiction. This is especially relevant for similarly situated countries with relatively small contributions in CO₂ emissions but suffer large losses due to climate change. The Commission’s report is non-binding but instructive to Philippine courts. NGOs in the Philippines have been conducting outreach programs to environmental lawyers to emphasize the importance of this report and its potential contribution to Philippine jurisprudence.
- **Concepts that Serve to Evolve Principles, Rights, Duties:**
 - **Climate science:** The Commission considered that the reports of the IPCC provided “unequivocal evidence of global warming” highlighting extreme weather events, cryosphere loss, sea level rise and ocean warming and acidification [¶¶25-27]. The Commission repeatedly referred to the IPCC Sixth Assessment Report that demonstrated even a rise in global temperature above 1.5C will “significantly harm natural and human systems” [¶104]. There was an “urgent need for a significant increase” in ambition of NDCs [¶104].

- **Climate change impacts many, if not all, human rights:** The Commission found that human rights are “interrelated, interdependent, and indivisible; that one cannot consider civil and political rights separately from economic, social, and cultural rights.” [¶3] The Commission summarized the impacts of climate change in the Philippines on the rights to life, health, food security, water and sanitation, livelihood, adequate housing, preservation of culture, self-determination, equality and non-discrimination. Noting that climate change disproportionately impacted vulnerable groups and the rights of future generations [¶61].
- **States have duty to protect human rights impacted by climate change** relying on the UN Guiding Principles on Business and Human Rights consistent with duty of due diligence, States must take “adequate measures to protect all persons from human rights harms caused by businesses” including those arising from the impacts of climate change [¶64]. International regulation needs to close governance gaps and make business accountable for climate impacts and participate in mitigation and adaptation efforts [¶108].
- **Carbon majors are responsible for climate change:** The Carbon Majors’ activities contributed to 21.4% of global emission from fossil fuel combustion and cement production. The Carbon Majors had early awareness, notice or knowledge of their products’ adverse impacts on the environment and climate system in 1965 at the latest (and possibly as early as 1930) [¶90]. The Carbon Majors, directly by themselves or indirectly through others, singly or through concerted action, engaged in willful obfuscation of climate science in concealing the environmental damage their products. As a result, the ability of the public to make informed decisions about their products has been prejudiced [¶94].
- **Carbon majors have corporate responsibility to undertake human rights due diligence and provide remediation** [¶99] this obligation may apply to all corporate entities within the carbon majors’ value chasing [¶101]
- **Climate justice and duty of cooperation** requires highly industrialized countries to bear a larger share in solving climate change. Global action must involve “the pooling of resources and a sharing of skills across the world” [¶106]
- **Key links:**
 - [Petition](#)
 - Report: [National Inquiry on Climate Change Report \(chr.gov.ph\)](http://chr.gov.ph)

40. *Responsibilities and Obligations of States Sponsoring Persons and Entities with Respect to Activities in the Area (Advisory Opinion) (2011)*

- **Citation:** Responsibilities and Obligations of States Sponsoring Persons and Entities with Respect to Activities in the Area (Advisory Opinion) (2011) (List of Cases No 17).
- **Jurisdiction:** Seabed Disputes Chamber of the International Tribunal for the Law of the Sea (ITLOS)
- **Background:** In 2011, Nauru and Tonga applied to the International Seabed Authority (ISBA) (the organization responsible for regulating activities in the seabed, ocean floor and subsoil beyond the limits of national jurisdiction) for approval to be a sponsoring State (ie to contract with private companies for seabed exploration). ISBA requested an advisory opinion on three questions: (1) what are the legal responsibilities and obligations of State

Parties to the Law of the Sea Convention with respect to sponsorship of activities in the seabed area (2) what is the extent of State liability for failure to comply with the provisions of Convention within the meaning of the relevant articles of the Convention; (3) what are the necessary and appropriate measures that a sponsoring State must take to fulfill its responsibility under the Law of the Sea Convention.

- **Rights/Laws/Principles:** States obligation of due diligence – precautionary principle (in the context of the relevant provisions in the Law of the Sea Convention and related instruments).
- **Significance:** The opinion’s reply to the first question is significant to developing obligations of States as sets the highest standards of due diligence for all sponsoring States to take adequate measures to protect against damage to the marine environment through its direct activities or a private party. This standard applies irrespective of whether a State is a developed or developing state and its financial capabilities.
- **Concepts that Serve to Evolve Principles, Rights, Duties:**
 - **Content of due diligence obligations changes over time** – due diligence is a “variable concept” [¶117] that may “change over time as measures considered sufficiently diligent at a certain moment may become not diligent enough in light, for instance, of new scientific or technological knowledge” or “the risks involved in the activity.” The standard of due diligence must be more severe for riskier environmental activities [¶117]
 - **Due diligence obligation “to ensure” in relation to third parties** - States’ obligation “to ensure” was an obligation under international law equivalent to an obligation of “due diligence” which required the sponsoring State to exercise their power over private entities under their control. Both are obligations “of conduct” and not “of result” (applying the *Pulp Mills Case, Argentina v. Uruguay*) which require a State to “deploy adequate means, to exercise best possible efforts, to do the utmost” to control contractors [¶111].
 - **Precautionary principle** – trend towards “making this approach part of customary international law” [¶135] - in the context of activities in the seabed area the principle is coupled with an obligation to apply “best environmental practices,” and this is enshrined within the sponsoring States’ obligation of due diligence [¶136].
- **Key links:**
 - **Opinion**

V. PENDING CASES

A. Latin America and the Caribbean

1. *Youth v. Gov of Mexico*

- **Citation:** *Youth v. Government of Mexico* (2020) 1854/2019.
- **Background:** Youth plaintiffs in Mexico have also filed suit challenging the government’s failure to issue regulations and public policies consistent with Mexico’s Constitution and General Law on Climate Change. The plaintiffs seek the immediate creation and enactment of mechanisms to ensure swift and proper implementation of the country’s General Law on Climate Change.

- **Status:** Pending. District Court dismissed the case for lack of standing in May 2022. Youth plaintiffs appealed in June 2022, which is still pending.
- **Remedy:** The plaintiffs are requesting a writ of Amparo to compel the government to issue regulations and public policies derived from the General Law on Climate Change and the Mexican Constitution.
- **Rights/Laws/Principles:** Right to life, health, and a healthy environment (Mexican Constitution).
- **Key links:** [Sabin Centre case summary](#)

2. *Alvarez et al. v. Peru*

- **Court:** Superior Court of Justice of Lima
- **Background:** In 2019, youth plaintiffs filed a suit against the Peruvian government, alleging that the government insufficiently addressed climate change and deforestation of the Peruvian Amazon. The plaintiffs allege the government's failure to act violates rights protected by the constitution of Peru and various international agreements, including rights to a healthy environment, water, life, and health. They seek an order requiring that, *inter alia*, the national government of Peru establish concrete goals to reduce deforestation to zero by 2025.
- **Status:** Pending
- **Remedy:** The complaint seeks an order directing the government to create concrete goals and objectives to reduce net deforestation in the Peruvian Amazon to zero by 2025; an order directing the regional governments of Loreto, Ucayali, Madre de Dios, Amazonas and San Martin to develop regional action plans to reduce net deforestation to zero by 2025, including climate change adaptation and mitigation measures; an order requiring the Ministry of Agriculture and Irrigation to suspend granting deforestation permits on public lands in the five regions at issue until the national and regional plans have been created; recognition of the Peruvian Amazon as an entity subject to the rights of protection, conservation, maintenance and restoration; and a declaration that the situation of environmental conservation in the Peruvian Amazon is unconstitutional.
- **Rights/Laws/Principles:** Right to healthy environment; life; water; health (Constitution of Peru; American Convention on Human Rights; International Pact of Economic, Social and Cultural Rights).
- **Key links:**
 - [Sabin center case summary](#)
 - [Complaint](#)

3. *Asociación Civil por la Justicia Ambiental v. Province of Entre Ríos, et al*

- **Citation:** Corte Suprema de Justicia de la Nación (CSJN) (National Supreme Court of Justice) 11/8/2020, “Asociación Civil por la Justicia Ambiental v. Province of Entre Ríos, et al”, CSJ 468/2020 (Arg.)
- **Background:** The case arose out of the burning of a wetlands ecosystem in Argentina. A group of NGO's and children are alleging that government entities are failing in their duties regarding the protection and sound environmental management of the inter-jurisdictional ecosystem, which is key for mitigation and adaptation of climate change while also being

at risk due to its negative impacts. The Supreme Court of Argentina has agreed to combine the complaints and render a single judgement.

- **Status:** Pending
- **Remedy:** The plaintiffs are seeking that the wetlands be deemed a subject of rights, a guardian to monitor those rights, an order compelling the government to prepare and implement a coordinated environmental management and land use plan that recognizes the vulnerability of the ecosystem and its relevance for future generations, and an order that broad, early and effective public participation is guaranteed in any decision-making regarding the future management of the ecosystem.
- **Rights/Laws/Principles:** Argentinian constitution, the Convention on the Rights of the Child, the UNFCCC, the Paris Agreement, General Environmental Law No. 25.675 and Environmental Law to Control Burning Activities No. 23.919.
- **Significance:** This case would assist with expanding on the concept of deeming essential ecosystems as the subject of rights.
- **Key links:** [Sabin center case summary](#)

4. *IEA v. Brazil*

- **Court:** Federal Regional Court of the 4th Region, Curitiba
- **Background:** A case to compel the government to comply with Brazil’s climate law that requires the government to reduce the annual deforestation rate in the Amazon region by 80% by 2020. The case would compel the government to meet the deforestation limits and require reforestation if the limits are exceeded. If successful, this case will help avoid the Amazon’s tipping point and provide time for reforestation efforts. The Federal Court ruled in favor of IEA’s appeal of the initial judge’s decision to decline jurisdiction and send the case to the court in Brasilia. The first judicial hearing of the case was held on 8 June 2022 before the Curitiba Federal Court during which Carlos Nobre delivered expert testimony.
- **Status:** The plaintiffs filed a request for precautionary measures, which is still pending.
- **Significance:** This case seeks to have the Court recognize the fundamental right to a stable climate.
- **Concepts that Serve to Evolve Principles, Rights, Duties**
 - **Human right to a stable climate:** The interlocutory appeal order in this case cites to the Inter-American Court of Human Rights’ opinion OC 23/2017 on human rights and the environment, and recognizes “an ecological dimension inherent to the principle of human dignity, which calls for a minimum threshold of ecological quality and integrity as a premise for a dignified life and the exercise of other fundamental rights, also on the basis of the interdependence and indivisibility of such rights” [p. 3].² The order also emphasized that “delaying the examination of the factual and legal arguments raised in the climate class action will result in serious and difficult to remedy harm to the environmental asset for which protection is being sought, namely, the fundamental right of all citizens to climate stability” [p. 12].
- **Key links:** [Interlocutory appeal](#) decision (in Portuguese) and in [English](#) (unofficial translation)

² INTERLOCUTORY APPEAL NO. 5033746-81.2021.4.04.0000/PR.

B. Non-Latin American & Caribbean Cases

5. *Notre Affaire à Tous v. BNP Paribas*

- **Citation:** Tribunal judiciaire de Paris [TJ] [Judicial Court of Paris] Paris, Feb. 23, 2023. (*Notre Affaire à Tous v. BNP Paribas*) (Fr.).
- **Background:** NGOs filed a summons for injunctive relief against BNP Paribas (bank), alleging that the bank failed to comply with the French duty of vigilance law (French Commercial Code) by continuing to fund fossil fuel projects. The remedy sought is a Court order to force BNP to comply with legal climate obligations, terminate new fossil fuel financing, and divest from existing fossil fuel projects.
- **Status:** Hearing expected June 2023
- **Significance:** First climate change lawsuit against a commercial bank. If successful, the case would be another significant step in seeking to hold corporations (particularly financial institutions) to account for their indirect contributions to climate change.
- **Key link:** [Columbia Climate Law Blog](#)
 - The summons sent by Notre Affaire à Tous et al. to BNP Paribas details multiple violations of the law. The violations relate not only to how BNP Paribas' plan is drafted but also the lack of clarity concerning the report of information about investments and loans and the shortcomings of the measures that the bank allegedly implements to respect the parameters of the Paris Agreement. According to the summons, the plan:
 - is not self-sufficient, but refers to other documents that do not provide for binding commitments;
 - does not identify with sufficient clarity the climate risks deriving from BNP Paribas' activities, both for fossil fuel projects in which BNP Paribas is directly involved and for the companies that it supports through its financing and investments;
 - is not transparent concerning the disclosure and reporting of the information concerning BNP Paribas' financing and investment activities, as it limits only to some sectors and does not include scope 3 emissions;
 - does not contain any precise and exhaustive information on the stocks and flows of financing and investments to companies active in the fossil fuel sector; and
 - does not include a commitment to cease all financing and investments that support the expansion of fossil fuels that is necessary to comply with the law on the duty of vigilance.
 - Therefore, the plaintiffs claim that BNP Paribas must immediately terminate any financing to, or investment in, companies which develop new fossil projects. Concerning its existing investment, BNP Paribas must exercise its voting rights and its influence in order to force the invested company to renounce to new fossil projects and adopt, detail and publicly implement measures compatible with limiting global warming to 1.5°C. If this is not possible, BNP Paribas has to divest. Moreover, concerning its activities of financing and investment in any GHG

emitting activities, BNP Paribas must adopt, publish, and effectively implement all measures compatible with a 1.5°C trajectory.

6. *Mun. of Bayamón v. Exxon Mobil Corp.*

- **Citation:** *Mun. of Bayamón v. Exxon Mobil Corp.*, No. 3:22-cv-01550, 2022 WL 17325711, 4–246 (D.P.R. Nov. 22, 2022)
- **Background:** 16 municipalities in Puerto Rico filed a class action suit against fossil fuel companies, alleging they knowingly contributed to climate change and implemented “fraudulent marketing scheme” to continue to sell their products. The plaintiffs seek \$124B in damages for the impacts of Hurricane Maria & Irma. This is the first climate case launched under the RICO Act (racketeering).
- **Status:** Hearing expected June 2023.
- **Significance:** This case is a novel use of the racketeering legislation being used to attempt to hold fossil fuels companies liable for direct emissions.
- **Key links:**
 - [Complaint](#)
 - [Columbia Climate Law Blog](#)
- Relying on the Climate Accountability Institute’s [Carbon Majors](#) research, the municipalities allege that the defendants were responsible for 40.01% of all global industrial greenhouse gas emissions from 1965 to 2017, and that these collective emissions were a “substantial factor in the increase in intensity of the 2017 Atlantic Hurricane Season.”
 - *This is the first climate case filed in Puerto Rico against fossil fuel companies.* The extreme climate harms that the cities in Puerto Rico have faced, including hurricanes made more destructive by climate change, present a compelling fact pattern in the complaint. This may serve as a model for complaints filed by small island states against fossil fuel companies. Further, the complaint cites the Puerto Rican constitution’s guarantees of the rights to life, liberty and enjoyment of property under Article II, Section 7 and rights to education, employment, and adequate standard of living under Article II, Section 20. Although the complaint does not assert constitutional causes of action, the plaintiffs allege that the defendants have intentionally interfered with these rights by profiting from products that have caused climate harms and misleadingly marketing those products as safe.
 - *The case is the first climate case against fossil fuel companies alleging harms against cities as a class of plaintiffs.* While other climate cases have involved cities and counties filing together, this is the first to claim that cities are a class of plaintiffs, and includes a proposed class of “[a]ll Municipalities within Puerto Rico.” The plaintiffs make a number of arguments for class certification, including that the 78 towns and cities are numerous, their action involves common questions of law and fact around fossil fuel company conduct related to consumer fraud, and that a class action is an efficient way to proceed as litigating each individual claim would involve considerable expense. Depending on the court’s ruling on class certification, this could serve as a model for future class action climate litigation.
 - *The case is unique in climate litigation in its inclusion of and central focus on RICO claims.* RICO establishes penal prohibitions and civil remedies against those that

participate in a pattern of racketeering activity, which applies to a variety of criminal actions, including fraud, that make up long-term, organized conduct. An overview of key elements of RICO claims is available [here](#). The cities and towns of Puerto Rico allege that the fossil fuel companies knowingly engaged in decades of fraudulent concealment and other activities that caused the municipalities and their citizens to face climate risks. These claims aim to build on successful use of civil RICO claims in other contexts, such as tobacco litigation. After the Department of Justice filed a RICO suit against the tobacco industry in 1999, a district court judge issued a [2006 opinion](#) finding that “over the course of more than 50 years, Defendants lied, misrepresented, and deceived the American public . . . about the devastating health effects of smoking and environmental tobacco smoke, . . . and they abused the legal system to achieve their goal – to make money with little, if any, regard for individual illness and suffering, soaring health costs, or the integrity of the legal system.” The municipalities of Puerto Rico aim for similar findings about fossil fuel company activity. If they are successful, the case may provide a model for other jurisdictions to bring RICO claims.

7. *Klimatická žaloba ČR v. Czech Republic (2021)*

- **Citations:** Municipal Court in Prague (Czech Republic). *Klimatická žaloba ČR v. Czech Republic*. Judgment of June 15, 2022. Judgment No. 14A 101/2021; Supreme Administrative Court (Czech Republic). *Klimatická žaloba ČR v. Czech Republic*. Judgment of February 20, 2022. Judgment No. 9 As 116/2022-166.
- **Background:** *Urgenda*-style case challenging the government’s failure to act on climate, claiming a violation of fundamental rights. Filed on 21 April 2021. The court issued a partly favorable ruling, ordering the Czech Government to immediately adopt measures to reduce national greenhouse gas emissions 55% by 2030 compared to 1990 levels. Because this figure falls well below the 81% proportionate share for Czechia identified by scientists—and because the responsible Ministries have not yet fulfilled the court order to adopting the reduction measures, and have all appealed—the grantees appealed to the Supreme Administrative Court on 21 July 2022. The key issues on appeal are whether carbon budgets are an essential concept implied by the UNFCCC, and what Czechia’s actual carbon budget is, given the myriad possible methods of measuring.
- **Status:** Pending. On 20 February 2023 the Supreme Administrative Court remanded the case to the Municipal Court in Prague to reevaluate the 55% target and the State’s adaptation measures.
- **Significance:** Another case developing and applying *Urgenda*-style arguments in another domestic context. The issues on appeal are likely to develop the utility of carbon budgets as an important concept in climate litigation.
- **Key links:** Documents in the case, including defendants’ response and the reply to the responses, are [here](#) (in Czech).

8. *Milieudefensie v. Royal Dutch Shell (2021)*

- **Citation:** Rechtbank Den Haag [¶Rb.] [¶The Hague District Court] The Hague, May 26, 2021, C/09/571932 / HA ZA 19-379 ([Milieudefensie v. Royal Dutch Shell plc.](#)) (Neth.).

- **Background:** In 2019, an environmental group (Milieudefensie/Friends of the Earth Netherlands) and co-plaintiffs filed a summons in the Hague District Court alleging that Royal Dutch Shell’s contribution (as the holding company with the ultimate responsibility for the general management of the Shell group) to climate change violates its duty of care under Dutch law and its human rights obligations (expressly Articles 2 and 8 of the European Convention on Human Rights. They claimed that RDS’s must reduce CO2 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 [¶ 3.1]. And that RDS will act unlawfully if it fails to reduce its scope 1, 2 and 3 emissions by at least 45% by 2030 [¶3.1]. The plaintiffs’ claims build on the *Urgenda* decision and seek to extend the reasoning to private companies.
- **Ruling:** The District Court of the Hague ordered Shell to immediately reduce its entire energy portfolio (aggregate Scope 1–3 emissions³) by 45% below 2019 levels by 2030, mandating an “obligation of result” for RDS’ direct emissions and a “significant best-efforts obligation” for RDS’ indirect emissions. This obligation must be set in the Shell group’s corporate policy.
- **Holding:** The Court held that Shell’s actions breached its legal obligations because it continued to be a major emitter, with climate plans that were “intangible, undefined and non-binding.” The Court ruled that RDS is obligated to follow a domestic duty of care standard. This standard is informed by and should conform with international and multilateral soft law instruments, including the 2015 Paris Agreement, as well as the European human rights convention (applying *Urgenda*) and International Covenant on Civil and Political Rights, which affirm the rights to life and respect for private and family life. The duty requires companies to avoid causing or contributing to adverse human rights impacts through its direct or indirect activities.
- **Remedies:** The Court ordered Shell to reduce its Scope 1, 2, and 3 emissions, across its entire energy portfolio, by 45% by 2030, relative to 2019 emission levels. The Court gave Shell flexibility in allocating emissions cuts between Scope 1, 2, and 3 emissions, so long as in aggregate, the total emissions were reduced by 45% [¶¶4.4.55, 5.3]. The Court made its decision provisionally enforceable, meaning Shell is required to meet its reduction obligations while the decision is under appeal. Shell has not yet complied with the order [¶¶4.5.7, 5.8].
- **Status:** Appeal pending
- **Rights, Laws, Principles:** Corporate mitigation responsibilities for protecting rights; right to life and right to private and family life.
- **Significance:** The District Court’s decision is a leading first instance decision that extended the *Urgenda* reasoning to impose duties on non-State actors to mitigate to comply with human rights obligations. The District Court decision also reasons with a strong climate science focus.
- **Concepts that Serve to Evolve Principles, Rights, Duties:**

³ 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 World Business Council for Sustainable Development & World Resources Institute (2004) [The Greenhouse Gas Protocol: A Corporate Accounting and Reporting Standard](#), 25.

- **The capacity of Courts to order private companies to mitigate** – Court rejected RDS’ argument that the claims went beyond the proper function of the court [¶4.1.3]. Court 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.
- **Reasoning that is focused and informed by climate science** – Court considered the nature and impacts of climate change on the Netherlands and risks to Dutch residents [see eg ¶ 4.4.6.]. Court’s reasoning also led by science in IPCC reports to determine what is needed to prevent dangerous climate change (including limitations on global concentrations of GHG and the remaining carbon budget) [¶¶2.3.4, 4.4.27-4.4.28]. See generally [¶2.3]
- **Corporations’ duty to respect human rights** – requires companies to (a) avoid causing or contributing to adverse human rights impacts through their own activities (actions or omissions), and to address such impacts when they occur (b) 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 [¶4.4.17].
- **Mitigation responsibility of non-State actors** - The Court relied on several international business instruments, including the United Nations Guiding Principles on Business and Human Rights, to determine that businesses must respect human rights and follow a global standard of expected conduct, which includes an individual responsibility to fulfill their human rights obligations independent of State policies [¶¶4.4.13-4.4.15]. This responsibility extends to all business enterprises regardless of size, sector, operational context, ownership and structure [¶4.4.16]. While Court agreed with parties that climate change is a global problem and RDS is not solely responsible, this did not absolve it from mitigation obligations [¶¶4.4, 4.4.33, 4.4.37].
- **Key links**
 - [Summons](#)
 - See page 158 for discussion of human rights and climate
 - [District Court judgment](#) (court issued English translation)
 - [Global trends in climate litigation 2021 report](#). Commentators observed the importance of the court’s reliance on the ‘unwritten duty of care’ under Dutch tort and the use of non-binding goals (of the Paris Agreement) as well as non-binding instruments (the UN Guiding Principles on Business and Human Rights and the OECD’s Guidelines for Multinational Enterprises) (Van Asselt et al., 2021). These international standards and the common facts that comprise the basis of the case arguably make this case replicable, increasing the risk of litigation against companies that set net-zero targets without credible short-term action, with knock-on effects expected for the cost of capital for oil and gas projects (Khan, 2021).

9. *A Sud et al v. Italy*

- **Citation:** Civil Court of Rome

- **Background:** In June 2020, an environmental justice NGO (A Sud) and more than 200 plaintiffs filed suit alleging the Italian government was failing to take actions necessary to meet its Paris Agreement targets and was violating fundamental rights, including the right to a stable and safe climate. This right is based on guarantees in Article 6 of the Treaty of the European Union (guarantee of fundamental rights), Article 2 (right to life) and Article 8 (right to private and family life) of the European Convention on Human Rights and the normative framework of the UNFCCC. The plaintiffs argue that the primary duty of this obligation is mitigation and protecting the stability processes of the climate systems (specifically carbon sinks) and the secondary duties define the limits of implementing the primary duty (these are “fair share”, climate precaution, recourse to science and communication of information about climate change and its impacts). The plaintiffs are seeking a declaration that the government’s inaction is contributing to the climate emergency and an order that the government reduce emissions 92% by 2030 compared to 1990 levels.
- **Status:** Pending hearing (anticipated September 2023).
- **Rights/Laws/Principles:** Right to a stable and safe climate; State’s positive obligations; intergenerational inequality and justice; fair share
- **Significance:** The case seeks to recognize a right to a stable and safe climate based on the best available science. The plaintiffs also seek to establish a methodology for calculating fair share in determining a State’s mitigation obligations.
- **Key links:**
 - [Summons](#) (in English)

10. *Lliuya v. RWE AG*

- **Citations:** Landesgericht Essen [LGE] [District Court of Essen], Dec. 16, 2016, 2 O 285/15 (*Lliuya v. RWE AG*) (Ger.).(District Court); Oberlandesgericht Hamm [OLGHAM] [Higher Regional Court of Hamm], Nov. 2017, Az. 5 U 15/17 (Ger.)
- **Background:** An Indigenous Peruvian farmer, Saúl Luciano Lliuya, filed a complaint in a German court, against the multinational company RWE (Germany’s largest electricity producer). The plaintiff argues that RWE’s greenhouse gas emissions contributed to glacial melting in the Andes mountains, which increased the risk of flooding to the lake adjacent to Lliuya’s hometown of Huaraz, Peru, and necessitated building a dam. The plaintiff argues that the ongoing risk of flooding threatens his property, family, and livelihood as a mountain guide. The plaintiff alleges that RWE knowingly contributed to climate change through its greenhouse emissions and bears some measure of responsibility for the melting glaciers. He seeks reimbursement for a portion of expected flood protection costs proportional to RWE’s contribution to overall greenhouse gas emissions (0.47%).
- **Ruling:** The District Court found the plaintiff’s claims inadmissible, but the ruling was overturned on appeal by the Oberlandesgerichtshof (Higher District Court) of Hamm in November 2017, and the case has progressed to the evidentiary stage. German judges and court-appointed experts traveled to Peru in May 2022. If the court decides that the risk to the plaintiff’s property is high enough to merit a claim under German civil law, it will move to the next stage.
- **Status:** Pending (as of July 2023, the case is in the evidentiary stage).
- **Rights/Laws/Principles:** Transboundary pollution

- **Significance:** This is a rare case challenging a corporate polluter for its contribution to climate change using attribution science. It is the first time a European court traveled to another continent to investigate climate harms by a carbon major.
- **Concepts that Serve to Evolve Principles, Rights, Duties:**
 - **Transboundary pollution:** The case raises cross-jurisdictional claims and questions of measuring transboundary pollution and uses climate attribution science to calculate a polluter’s responsibility.

11. *Juliana v. United States*

- **Citation:** *Juliana v. United States*, 217 F. Supp. 3d 1224 (D. Or. 2016)
- **Jurisdiction:** United States District Court
- **Background:** 21 youth plaintiffs filed constitutional climate lawsuit against the U.S. government, alleging that the federal government violated their constitutional rights by causing dangerous CO₂ concentrations. Adopting the notion of ordered liberty as a fundamental right, based on the substantive due process clause in *Obergefell*, 80 Judge Aiken asserted that ‘[e]xercising my reasoned judgment, I have no doubt that a climate system capable of sustaining human life is fundamental to a free and ordered society’. 81 Thus, governmental actions that harm the climate system may compromise fundamental rights such as life, freedom and property, which are protected constitutionally under the substantial due process clause.
- **Status:** In March 2023, the U.S. District Court denied 18 Republican attorneys’ general request to intervene as defendants in *Juliana*. The youth plaintiffs continue to await a ruling on their Motion for Leave to File a Second Amended Complaint.
- **Rights/Laws/Principles:** Right to due process & equal protection (US Constitution).
- **Significance:** A case applying and developing traditional standing principles to challenge climate inaction in American system, the merits of the case (if determined by a court) would be the first case to applying American constitutional rights to climate change.
- **Key links**
 - 2020 [Amnesty International/CIEL/ELAW Amicus Brief](#) [¶See pages 7–9]. This amicus does not deeply integrate the science into legal arguments beyond stating the dangerous future impacts of climate, but it includes many references to global cases recognizing or supporting the right to a stable climate. “The extent to which a certain concentration of greenhouse gases causes climate change is no more a political question than the extent to which a certain concentration of a hazardous chemical substance causes cancer. Foreign courts have affirmed that this is a question for experts, not politicians, and thus provides an objective basis for the courts to evaluate the legal compliance of government action” [¶p. 11]
 - 2019 [CIEL/ELAW Amicus Brief](#). This brief does not deeply integrate the science into legal arguments beyond stating the dangerous future impacts of climate, but cites to AR5 and the IPCC 2018 Special Report on Global Warming of 1.5 °C, and includes many references to global cases recognizing or supporting the right to a stable climate. Cites to Inter-Am Court Advisory Opinion OC-23-17 (15 Nov 2017) in the argument that States’ duties to protect human rights to life and personal integrity extend to climate [See page 16].
 - *Juliana* timeline: <https://www.ourchildrenstrust.org/juliana-v-us>

- **Dissent** by Judge Staton
 - “What sets this harm [GHG 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” (emphasis added). Indeed, another of plaintiffs’ experts echoes, “[t]he fact that GHGs dissipate very slowly from the atmosphere . . . and that the costs of taking CO₂ 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” (emphasis added). 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,**” (emphasis added).
 - “[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.”

12. *Duarte Agostinho v. Portugal*

- **Citation:** Duarte v. Port., App. No. 39371/20 (Dec. 2020)
- **Background:** The applicants contend that thirty-three member states of the Council of Europe must take more ambitious climate change mitigation actions in order to comply with their positive obligations under Article 2 and 8 of the European Convention of Human Rights read in light of other international commitments including those under the 2015 Paris Climate Agreement and the United Nations Convention on the Rights of the Child. The applicants are six Portuguese children and young people who claim that their generation will be particularly harmed by the impacts of climate change and by the thirty-three states’ contribution to climate change. The applicants point to specific risks to their physical and mental health. The applicants ask the Court to require urgent action on climate change by the 33 States to act to keep global temperatures below 1.5°C.
- **Status:** Pending. The case [moved to the Grand Chamber](#) on 30 June 2022. The Court accepted additional intervenor requests until 22 September 2022. The case is scheduled to be heard 27 September 2023

- **Significance:** The case raises significant issues about intergenerational inequality caused by climate change and the positive obligations of States under the European Convention of Rights and is likely to evolve norms and principles of domestic and international law.
- **Key links:** [Case file](#)

13. *KlimaSeniorinnen v. Switzerland*

- **Citation:** *KlimaSeniorinnen v. Switz.*, App. No. 53600/20 (Apr. 2020)
- **Background:** The applicants, a Swiss association of senior women (KlimaSeniorinnen Schweiz) and four individual senior women, allege that their rights to life and private and family life are threatened by heat waves induced by climate change. They allege that Switzerland’s inadequate climate policies violate Articles 2 and 8 of the European Convention on Human Rights (ECHR) by failing to put in place the necessary measures required to protect the applicants. The applicants argue that Switzerland “must do everything in its power to reduce its share to prevent a global temperature increase of more than 1.5°C above pre-industrial levels.”
- **Status:** Pending
- **Significance:** The case is likely to be significant in evolving principles and norms of domestic and international law concerning the positive obligations of States under the European Convention of Rights.
- **Key links:** [Application](#)

14. *Gbemre v. Shell*

- **Citation:** *Gbemre v. Shell Petroleum Development Company of Nigeria Ltd. and Others* (2005) 53 FHCLR 05 Judgment fhc/b/cs/53/05 (Benin Judicial Division, Nigeria)
- **Background:** Jonah Gbemre, on behalf of himself and the Iwherekan community, brought suit against Royal Dutch Shell and company for engaging in gas flaring in the course of their oil extraction and production processes, which the applicants alleged have caused high instances of respiratory and other health impacts on the local population. The applicants also alleged that the flaring activities were performed without a required Environmental Impact Assessment, and that the law providing for some authorized flaring was unconstitutional.
- **Ruling:** The Court ruled that gas flaring violates human rights guaranteed in the Nigerian constitution, and ordered the company respondents to immediately cease gas flaring and ordered the Attorney General to initiate the necessary processes to repeal the legislation enabling flaring.
- **Holding:** The Constitution of the Federal Republic of Nigeria and the African Charter on Human and People’s Rights include the right to a “clean poison-free, pollution-free and healthy environment,” and the respondents violated these rights by flaring gas [p. 30 ¶¶ 1, 2] The Court also held that the respondents’ failure to complete and Environmental Impact Assessment contributed to further violation of these rights [p. 30–31 ¶ 3]. Finally, the Court declared the law authorizing gas flaring unconstitutional [p. 31 ¶ 4], though this is currently being challenged on appeal.
- **Status:** The respondents were permitted to appeal, and the case is still pending as of July 2023.

- **Rights/Laws/Principles:** Right to life (Constitution of the Federal Republic of Nigeria Section 33(1)), right to dignity of human person (Constitution of the Federal Republic of Nigeria Section 34(1)), African Charter on Human and Peoples Rights, African Charter on Human Procedural Rules
- **Significance:** This case banned gas flaring in Nigeria as a violation of constitutional and human rights to life and to dignity of human person. The case could provide precedent for groups in other countries affected by flaring to bring cases against the responsible companies and governments
- **Concepts that Serve to Evolve Principles, Rights, Duties:**
 - **Right to life:** Counsel for the applicants, with whom the judge agreed, argued that the right to life should not be narrowly construed as a right to the opposite of death but should instead encompass a right to a state in which organs are capable of performing their functions and all faculties of a full life are enjoyed. Because gas flaring affects air, water, food, and vegetation in ways that cause terminal diseases such as bronchitis, decreased lung function, painful breathing and lung cancer, the right to life is violated even in the absence of death, and the right to life “will only have meaning if we remove the things that endanger or diminish it” [p. 19].
 - **Right to dignity of human person:** Counsel for the applicants, with whom the judge agreed, argued that a life with dignity includes a right for protection from bodily harm as well as from mental anguish and suffering [p. 22]. This right is impaired when pollution from gas flaring interferes with human health and communities.