INPUT FOR GA REPORT

**Annalisa Savaresi**,

Associate Professor, Centre for Climate Energy and Environmental Law, University of Eastern Finland and University of Stirling, School of Law. Email: annalisa.savaresi@uef.fi

**A. Enhancing climate change legislation**

**1. State accountability**[[1]](#footnote-1)

Framework laws on climate change are increasingly common all over the world. These laws are largely built on the template of the UK Climate Change Act of 2008. From an international perspective, national climate laws can play an important role in the implementation of the Paris Agreement. The Paris Agreement is commonly viewed as creating procedural obligations of conduct, rather than substantive obligations of result to achieve the climate targets contained in NDCs. Framework climate laws can therefore play an important role in strengthening the legal framework for the Agreement’s implementation, by making national climate targets legally binding through domestic law. By enshrining climate targets in law, framework climate laws provide long-term direction for national climate policy. This enhances predictability and legal certainty. Framework laws commonly establish governance procedures and institutional responsibilities for achieving climate targets, such as those relating to planning, monitoring, reporting and possible additional measures. Many also include provisions on scientific advisory bodies, as well as on enhanced transparency and public participation. By doing so, framework climate laws create mechanisms that can enhance the legitimacy of climate policy and help hold governments and other actors accountable to achieve climate laws’ objectives. Extant climate laws however largely do not provide specific means to ensure accountability of national authorities, should they fail to meet climate targets and objectives. In many States with climate laws, access to judicial review to question progress over the achievement of climate targets is also limited. In this connection, rights-based climate litigation potentially is a helpful, albeit imperfect tool, to challenge state authorities for failure to meet climate targets. As discussed further below, under B, however, the potential of this litigation is however yet to be fully explored, as the vast majority of pending and decided climate cases does *not* concern the enforcement of missed climate targets.

**2. Corporate accountability**[[2]](#footnote-2)

Countries in the Global North, especially in Europe, are increasingly adopting mandatory human rights and/or environmental due diligence legislation. Recent due diligence laws have begun to either explicitly cover corporate climate impacts and responsibilities, or to extend the interpretation of general due diligence obligations to cover also GHG emissions. However, corporate climate accountability based on due diligence laws suffers from several structural weaknesses, such as a limited scope and weak enforcement. Climate change concerns are neither normatively nor operationally fully embedded in existing corporate due diligence duties. Substantively, the interplay between climate change, liability, and human rights due diligence needs to be further explored. Specifically, due diligence laws can both expand corporate liability to cover climate change but also create new defences to exempt them from liability. Despite these drawbacks, due diligence laws clearly provide entry points to strengthen corporate climate accountability. Whether based on dedicated due diligence laws or embedded in tort, public, and human rights law, corporate due diligence obligations increasingly feature in national and transnational climate litigation. The practice in this area at present remains limited and mostly confined to European countries, but it is likely to expand in the future, providing a tool—albeit an imperfect one—to hold companies accountable for their GHG and climate impacts. The progressive inclusion of climate change obligations in due diligence laws has a clear, but not yet fully understood, role in developing and concretizing the legal framework for climate liability. At least in principle, ongoing litigation associated with due diligence legislation may shed light on the possible remedies and thus feed into the design of climate liability instruments.

**B Support for climate change litigation**

1. **Human rights-based climate litigation**[[3]](#footnote-3)

By 31 May 2021, 112 out of the 1,841 climate litigation cases reported in the world’s most established climate litigation database,[[4]](#footnote-4) relied in whole or in part on human rights. We analysed these 112 rights-based climate cases, focussing exclusively on pro-climate cases – e.g. cases in support, and not against, climate action.

*Geographically*, rights-based climate cases have been predominantly filed in Europe, followed by North America, Latin America, the Asia-Pacific and Africa. Roughly 13 per cent of rights-based complaints have been lodged before international and regional human rights bodies.

*Chronologically*, rights-based climate litigation is a recent phenomenon, featuring more prominently since the adoption of the Paris Agreement in 2015. Many of the cases are thus still pending. Of the 57 that have been decided, 56 per cent have found against applicants and 44 per cent in their favour, and not all of the court victories have been attributable to successful human rights arguments.

*Applicants* in rights-based climate litigation are typically individuals and groups. *Defendants* in climate cases are typically states and public authorities, who are the primary duty-bearers in human rights law. However, a small but rapidly increasing number of rights-based climate cases are specifically targeting corporations, asking domestic courts and non-judicial bodies to interpret corporate due diligence obligations in light of human rights law and of the temperature goal enshrined in the Paris Agreement. These cases have attracted considerable attention, due to their [ground-breaking nature and potentially revolutionary impacts](https://gnhre.org/2021/05/31/friends-of-the-earth-netherlands-v-royal-dutch-shell-human-rights-and-the-obligations-of-corporations-in-the-hague-district-court-decision/).

Building on the categories identified by the UNSR in his 2019 report,[[5]](#footnote-5) weidentified the following types of human rights most frequently invoked in rights-based climate cases against states (Figure 1) and against corporate actors (Figure 2).

*Figure 1: States’ human rights obligations associated with climate change (no. of cases shown in parentheses)*

*Figure 2: Corporate human rights responsibilities associated with climate change (no. of cases shown in parentheses)*

Applicants in right-based climate cases **against states** often opt for a classic strategy in rights-based litigation: i.e. demand for the fulfilment of substantive positive or negative obligation from states. Fewer cases rely on procedural human rights obligations. Cases based on substantive positive obligations ask states to take legislative and/or executive action to tackle climate change (e.g. [*Urgenda*](https://climate-laws.org/geographies/netherlands/litigation_cases/urgenda-foundation-v-state-of-the-netherlands) for mitigation and [*Torres Strait Islanders*](https://climate-laws.org/geographies/international/litigation_cases/petition-of-torres-strait-islanders-to-the-united-nations-human-rights-committee-alleging-violations-stemming-from-australia-s-inaction-on-climate-change)on adaptation) or demanding the enforcement of extant legislation (e.g. [*Leghari*](https://climate-laws.org/geographies/pakistan/litigation_cases/ashgar-leghari-v-federation-of-pakistan-lahore-high-court-green-bench-2015)*).* In the case of [*Institution of Amazonian Studies v. Brazil*](https://climate-laws.org/geographies/brazil/litigation_cases/institute-of-amazonian-studies-v-brazil) applicants also requested the legal [recognition of a newly articulated human right](https://onlinelibrary.wiley.com/doi/full/10.1111/reel.12409) – the right to a stable climate system. Substantive negative obligations invoked in climate litigation include those to refrain from authorising activities leading to climate change, such as new oil and gas licenses (e.g. [*Nature and Youth and Greenpeace Norway v. the Government of Norway*](https://climate-laws.org/geographies/norway/litigation_cases/greenpeace-norway-v-government-of-norway)).

In rights-based climate cases brought **against corporations**, applicants typically argue that corporate actors have a *positive* duty to reduce emissions (e.g. [*Milieudefensie*](https://climate-laws.org/geographies/netherlands/litigation_cases/milieudefensie-et-al-v-royal-dutch-shell-plc)) or a *positive* duty to support, rather than oppose, climate policies and their enforcement (e.g. [*Carbon Majors inquiry*](https://climate-laws.org/geographies/philippines/litigation_cases/in-re-greenpeace-southeast-asia-et-al-2015-__-commission-on-human-rights-of-the-philippines-2015)). Applicants have more ferequently relied on corporations’ negative duty to refrain from activities causing harm (the [*Carbon Majors inquiry*](https://climate-laws.org/geographies/philippines/litigation_cases/in-re-greenpeace-southeast-asia-et-al-2015-__-commission-on-human-rights-of-the-philippines-2015) being an example again here). Complaints relying on corporate procedural duties are scarce.

1. **Climate complaints brought before international human rights bodies**[[6]](#footnote-6)

Within the context of rights-based litigation analysed above, we analysed in detail the 18 complaints before international human rights bodies reported in climate litigation databases as of 30 September 2022. We however excluded from the scope of our analysis some complaints, where climate change concerns were merely peripheral.[[7]](#footnote-7)

Ten complaints were filed with a *judicial* body—namely, the European Court of Human Rights;[[8]](#footnote-8) five were lodged a *quasi-judicial* body—two with the UN Human Rights Committee,[[9]](#footnote-9) one with the Committee on the Rights of the Child[[10]](#footnote-10) and two with the Inter-American Commission on Human Rights;[[11]](#footnote-11) and three were lodged with *non-judicial* bodies—namely, various Special Procedures of the Human Rights Council.[[12]](#footnote-12)

These complaints have been brought exclusively against States, by individuals and groups, with NGOs acting as applicants alongside individuals in eight instances. The first complaint was filed in 2005, but the vast majority was lodged after 2015. This geographical and chronological distribution aligns with general trends in climate litigation, with the number of cases rising significantly following the adoption of the Paris Agreement. Most of the complaints lodged with international human rights bodies remain pending at the time of writing. With only one exception, all complaints have been brought by representatives of what various international human rights bodies have described as particularly ‘vulnerable groups’. All applicants based their complaints on their alleged special vulnerability to climate impacts. Eight complaints were brought by children and young adults; five include representatives of indigenous peoples. The remainder of complaints was brought by a group of elderly women, an asylum seeker and an individual suffering from a rare disease. International human rights bodies enable multiple applicants from different countries to simultaneously complain about human rights violations carried out by multiple States. At least in theory, this unique feature of international human rights bodies is an advantage for climate applicants and, so far, seven climate complaints have been brought against States other than the one where the applicants reside.

In principle, complaints before international human rights bodies provide avenues to enforce States’ international obligations and put pressure on States to make good of the pledges they made under international climate treaties. In practice, however, these complaints must overcome significant hurdles. Some have already been rejected on the basis of considerations related to lack of exhaustion of domestic remedies, jurisdiction or compliance with victimhood requirements. [*Torres Strait Islanders*](https://climate-laws.org/geographies/international/litigation_cases/petition-of-torres-strait-islanders-to-the-united-nations-human-rights-committee-alleging-violations-stemming-from-australia-s-inaction-on-climate-change)is the only decision of an international human rights body granting the claims of climate applicants, at least in part. The decision was narrowly construed on the basis of the rights to culture and home, private and family life and only recognized human rights violations resulting from the State’s failure to undertake ‘timely adequate’ measures to ensure climate change adaptation. The decision, however, has left unaddressed questions over States’ human rights obligations concerning climate change mitigation, neither confirming nor disproving the reading of these obligations provided in some strategic domestic climate litigation.

This state of affairs makes it difficult to assess the role played by international human rights bodies in climate litigation. Judicial dialogue and cross-fertilization is evident in *Sacchi*, where, the CRC applied the IACtHR’s interpretation of extraterritorial jurisdiction. International human rights bodies can help bridging the accountability gap plaguing global climate governance and provide a tool to scrutinize the implementation of States’ NDCs, long-term low greenhouse gas emission development strategies and national adaptation plans submitted under the Paris Agreement. It seems however fair to conclude that at present their potential is yet to be exploited.

**Just transition litigation**[[13]](#footnote-13)

We describe ‘just transition litigation’ as cases that rely in whole or in part on human rights arguments to question the distribution of the benefits and burdens of the transition away from fossil fuels and towards net-zero emissions.

Just transition litigation may marginally overlap with so-called ‘[anti-regulatory](https://scholarship.law.ufl.edu/flr/vol64/iss1/2/)’, ‘[defensive](https://brill.com/view/journals/clla/1/1/article-p31_3.xml?language=en)’ or ‘[anti](https://centaur.reading.ac.uk/16703/)’ climate litigation, but should be regarded as a self-standing type of litigation. Just transition litigation does not object to climate action *per se*, but rather to the way in which it is carried out and/or to its impact on the enjoyment of human rights. Examples include litigation targeting *corporate actors* and *states* for breaches of human rights obligations associated with creation of wind farms (e.g. [*ProDESK v. EDF*](https://www.ecchr.eu/fileadmin/Fallbeschreibungen/20201013_Case_report_EDF_EN.pdf)). International human rights bodies have also received [complaints challenging measures to reduce forest emissions](https://www2.ohchr.org/english/bodies/cerd/docs/cerd.c.idn.co.3.pdf) and the [construction of hydroelectric dams](https://www.business-humanrights.org/en/latest-news/cons%C3%B3rcio-norte-energia-lawsuit-re-belo-monte-dam-in-brazil/), alleging breaches of human rights in respect to culture, food, water and the rights of Indigenous Peoples.

Applicants have also alleged breaches of the right to access to justice in the authorisation of wind farms (e.g. [*Fägerskiöld v. Sweden*](https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-85411%22]})). Both the [UK and the EU](https://unece.org/env/pp/cc/accc.c.2012.68_european-union-and-united-kingdom) have been found to have breached their obligations under the Aarhus Convention for having adopted renewable energy laws and policies without adequate public participation.

This phenomenon of opposition to climate action on human rights grounds is hardly a surprise. Fossil fuel-based economies may have created winners and losers but changing the *status quo* entails striking [new equilibria between competing societal interests](https://www.tandfonline.com/doi/abs/10.1080/17565529.2017.1301864).Here, the notion of a ‘just transition’ has been invoked to highlight that the [benefits of decarbonisation should be shared](https://www.tandfonline.com/doi/abs/10.1080/14693062.2019.1657379?journalCode=tcpo20), and that those who stand to lose should be supported.

The rise of just transition litigation emphasises the importance of safeguarding both procedural and substantive rights, and of protecting individuals and groups from the arbitrary and unjust decisions of governments and corporations. Greater understanding of this litigation is necessary to appreciate the tensions associated with a transition towards zero carbon societies, and the ways in which they may be resolved through the adoption of a [rights-based approach to climate change decision-making](https://www.sciencedirect.com/science/article/pii/S1877343521000762)

1. **This answer is based on: Kati Kulovesi, Sebastian Oberthur, Annalisa Savaresi, and Harro van Hasselt, ‘Not there yet!? Assessing the European Climate Law’ (under review).** [↑](#footnote-ref-1)
2. **This answer is based on: Mikko Rajavuori, Annalisa Savaresi and Harro van Asselt, ‘Mandatory due diligence laws and climate change litigation: Bridging the corporate climate accountability gap?’ (2023) Regulation and Governance** [**https://onlinelibrary.wiley.com/doi/10.1111/rego.12518**](https://onlinelibrary.wiley.com/doi/10.1111/rego.12518) **(open access)** [↑](#footnote-ref-2)
3. **This answer is based on Savaresi, A. and Setzer, J. ‘Rights-Based Litigation in the Climate Emergency: Mapping the Landscape and New Knowledge Frontiers’ (2022) 13 J Human Rights & Envt 7** [**https://www.elgaronline.com/view/journals/jhre/13/1/article-p7.xml**](https://www.elgaronline.com/view/journals/jhre/13/1/article-p7.xml) **(open access)**  [↑](#footnote-ref-3)
4. <<http://climatecasechart.com/>>. [↑](#footnote-ref-4)
5. ‘Report of the Special Rapporteur on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment’ and (1 October 2019) A/74/161 [↑](#footnote-ref-5)
6. **This answer is based on Luporini, R. and Savaresi, A. International human rights bodies and climate litigation: Don't look up? (2023) 1 RECIEL 1-12** [**https://onlinelibrary.wiley.com/doi/full/10.1111/reel.12491**](https://onlinelibrary.wiley.com/doi/full/10.1111/reel.12491) **(open access)** [↑](#footnote-ref-6)
7. These are: *Marangopoulos Foundation for Human Rights v Greece* Comm. No. 30/2005 (European Committee of Social Rights, 16 January 2008); IACtHR, *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, Inter-American Court of Human Rights Series A No 23 (15 November 2017); *Petition Seeking to Redress Violations of the Rights of Children in Cité Soleil, Haiti* (IACommHR, 4 February 2021) (Advisory Opinion OC-23/17); *Pavlov and others v Russia* App No 31612/09(ECtHR, 11 October 2022). [↑](#footnote-ref-7)
8. *Duarte Agostinho et al v Portugal et al* App No 39371/20 (ECtHR); *Verein KlimaSeniorinnen Schweiz et al v Switzerland* App No 53600/20 (ECtHR); *Müllner v Austria* (ECtHR); *Greenpeace Nordic et al v Norway* App No 34068/21 (ECtHR); *Carême v France* App No 7189/21 (ECtHR); *Uricchio v Italy et al* App No 14165/21 (ECtHR); *De Conto v Italy et al* App No 14620/21 (ECtHR); and *Soubeste and Others v Austria and 11 Other States* (ECtHR); *Plan B Earth and others v the United Kingdom*, (ECtHR); *Humane Being v the United Kingdom* (ECtHR). [↑](#footnote-ref-8)
9. Human Rights Committee ‘Views Adopted by the Committee under Article 5 (4) of the Optional Protocol, Concerning Communication No. 3624/2019’ UN Doc CCPR/C/127/D/2728/2016 (7 January 2020); and Human Rights Committee ‘Views Adopted by the Committee under Article 5 (4) of the Optional Protocol, Concerning Communication No. 3624/2019’ UN Doc CCPR/C/135/D/3624/2019 (22 September 2022). [↑](#footnote-ref-9)
10. Committee on the Rights of the Child ‘Decision Adopted by the Committee under the Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure, Concerning Communication No. 104/2019’ UN Doc CRC/C/88/D/104/2019 (11 November 2021). [↑](#footnote-ref-10)
11. *Petition Seeking Relief from Violations Resulting from Global Warming Caused by Acts and Omissions of the United States*,Petition No P-1413-05 (IACommHR, 16 November 2006); *Petition Seeking Relief from Violations of the Rights of Arctic Athabaskan Peoples Resulting from Rapid Arctic Warming and Melting Caused by Emissions of Black Carbon by Canada* (IACommHR, 23 April 2013). [↑](#footnote-ref-11)
12. *Rights of Indigenous Peoples in Addressing Climate-Forced Displacement*, AL USA 16/20 (15 January 2020); *Violations of Human Rights by Federation of Bosnia Herzegovina (BiH) and China due to Coal Fired plants in BiH*, AL BIH 2/2021 and AL CHN 2/2021 (17 March 2021); *Environmental Justice Australia v Australia* (25 October 2021). [↑](#footnote-ref-12)
13. **This answer is based on Savaresi, A. and Setzer, J. ‘Rights-Based Litigation in the Climate Emergency: Mapping the Landscape and New Knowledge Frontiers’ (2022) 13 J Human Rights & Envt 7** [**https://www.elgaronline.com/view/journals/jhre/13/1/article-p7.xml**](https://www.elgaronline.com/view/journals/jhre/13/1/article-p7.xml) **(open access)** and on [↑](#footnote-ref-13)