The Trends and Challenges of Climate Change Litigation and Human Rights

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Abstract

This article provides an overview of the recent developments in three high-profile climate change human rights litigation cases: *Urgenda, Teitoita and Juliana*. There has been a proliferation of research and rights-based litigation relating to climate change. Understanding these landmark judgments, the challenges and opportunities ahead is important as we enter into a period of increasing climate change related litigation in jurisdictions across the world. Many of these cases have a particular human rights dimension.

I. Introduction

On the 20 December 2019, the Supreme Court of the Netherlands handed down a landmark judgment in *Urgenda v de Staat der Nederlanden*, confirming the lower court's decision that the State is obliged to reduce its greenhouse gas emissions.[1] Readers of this journal will be particularly interested in the discussion of the Dutch Supreme Court of Articles 2 (right to life) and Article 8 (private life) and how they relate to the danger and the effects of climate change.[2] Even prior to the Supreme Court judgment, the case has received widespread attention including from the Special Rapporteur on human rights and the environment and the Special Rapporteur on extreme poverty and human rights.[3] Following the Supreme Court decision, current United Nations High Commissioner for Human Rights, Michelle Bachelet, recognised that "the decision confirms that the Government of the Netherlands and, by implication, other governments have binding legal obligations, based on international human

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[1] *Urgenda v de Staat der Nederlanden* (App. No. 19/00135), Supreme Court of the Netherlands, judgment of 20 December 2019.

[2] Kate Cook, "A Mutually Informed Approach: The Right to Life in an Era of Pollution and Climate Change" (2019) 24(3) *European Human Rights Law Review* 274.

[3] Report A/HRC/41/39 (2019) *Climate Change and Poverty Report of the Special Rapporteur on Extreme Poverty and Human Rights* (United Nations General Assembly, Human Rights Council).

rights law, to undertake strong reductions in emissions of greenhouse gases".[4] The *Urgenda* case is the first in the world to establish that a government has a legal duty to prevent climate change.[5]

Three weeks later, on the 7 January 2020, the Human Rights Committee handed down its long awaited decision in the case of *Ioane Teitiota v New Zealand* ("the Teitiota case").[6] The *Teitiota* case concerns the circumstances of "climate refugees" affected by climate change and the rise of sea levels which forced the applicant to migrate from the island of Tarawa in the Republic of Kiribati to New Zealand. The Committee held that ultimately that it was not in a position to conclude that the author's rights under article 6 of the Covenant were violated upon his deportation to the Republic of Kiribati in 2015 (§9.14). But this finding was made without prejudice to future changes. Significantly, the Committee made important statements in the decision relating to the non-refoulement obligation in relation to climate change related harm. The decision comes in the context of very limited progress on the issue of migration under the UN Framework Convention on Climate Change (UNFCCC). As such the development of jurisprudence in relation to climate migration is particularly important.

As well as these human rights decisions, it would be remiss not to mention another significant development in the field of climate change litigation: *Juliana v United States*. The *Juliana* case forms part of a wider social movement led by young people to hold States and corporations to account for the destruction of the planet.

The aim of this article is to provide an overview of the recent developments in three high-profile climate change human rights litigation cases: *Urgenda, Teitoita and Juliana*. There has been a proliferation of research on climate change litigation, with at least 130 articles

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[4] Available on https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25450&LangID=E [Accessed 6 February 2020].

[5] Benoît Mayer, "The State of the Netherlands v. Urgenda Foundation: Ruling of the Court of Appeal of The Hague (9 October 2018)" (2019) 8(1) *Transnational Environmental Law* 167; Jonathan Verschuuren, "The State of the Netherlands v Urgenda Foundation: The Hague Court of Appeal Upholds Judgment Requiring the Netherlands to Further Reduce its Greenhouse Gas Emissions" (2019) 28(1) *Review of European Comparative and International Environmental Law* 94.

[6] CCPR/C/127/D/2728/2016 (2020) *Ioane Teitiota v New Zealand (advance unedited version)* (United Nations Human Rights Committee)

published on the topic up until 2018[7], and many more since. Similarly, there has been a proliferation of rights-based litigation relating to climate change, with recent cases filed with the Human Rights Committee and perhaps most famously, by Greta Thurnberg and others with the Committee on the Rights of the Child.[8] Understanding these landmark judgments and the challenges ahead is important as we enter into a period of increasing climate change related litigation in jurisdictions across the world which focus on human rights violations.[9] These cases now form part of what the former Special Rapporteur on the Environment and Human Rights has termed the "greening" of human rights.[10]

II. Climate Change and Human Rights Litigation: an overview

Whereas until recently courts were reluctant to adjudicate in ways that highlight the linkages between human rights and climate change[11], increasingly petitioners are employing rights based claims in climate change lawsuits, and it is possible to observe a growing receptivity of courts to this framing.[12] The emerging movement of climate litigation in the Global South is equally turning to rights-based arguments to galvanize action to address the climate crisis.[13] In some of these countries litigants follow a path opened over the past thirty years by lawsuits based on constitutional rights in general and socioeconomic rights in particular.[14] These cases form part of the 'human rights turn' in climate litigation, [15] with numerous groups and persons

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[7] Joana Setzer and Lisa Vanhala, "Climate Change Litigation: A Review of Research on Courts and Litigants in Climate Governance" (2019) 10(e580) *WIREs Climate Change*.

[8] The complaint is available at: https://earthjustice.org/sites/default/files/files/CRC-communication-Sacchi-et-al-v.-Argentina-et-al.pdf [Accessed 6 February 2020].

[9] Jacqueline Peel and Hari M. Osofsky, "A Rights Turn in Climate Change Litigation?" (2018) 7(1) *Transnational Environmental Law* 37. For rights-based climate litigation in the Global South see: Joana Setzer and Lisa Benjamin, "Climate Litigation in the Global South: Constraints and Innovations" (2019) *Transnational Environmental Law* 1.

[10] A/73/188 (2008) *Report of the Special Rapporteur on Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment* (United Nations General Assembly).

[11] Sumudu Atapattu, *Human Rights Approaches to Climate Change: Challenges and Opportunities* (London: Routledge, 2015).

[12] Peel and Osofsky, "A Rights Turn," 40., supra n. 9.

[13] Jacqueline Peel and Jolene Lin, "Transnational Climate Litigation: The Contribution of the Global South" (2019) 113(4) *American Journal of International Law* 679; Setzer and Benjamin, "Climate."

[14] César Rodríguez-Garavito, "Human Rights: The Global South's Route to Climate Litigation" (2020) 114 *AJIL Unbound* 40.

[15] Peel and Osofsky, "A Rights Turn" supra n.9.

turning to human rights law to support their arguments in relation to climate related litigation.[16]

Climate cases that draw on human rights norms and arguments are seen by scholars and litigants as having significant potential to transform the politics of combating climate change, infusing it with greater concern for the ways in which climate change may harm affected communities, fostering alliances between climate justice activists and other social movements, and generating opportunities for climate activists to mobilise citizens from disadvantaged segments of the population[17].

This strategy has also received international encouragement, for instance by the UN Human Rights Treaty Bodies. In 2019 five treaty bodies stated that "[i]n order … to comply with their human rights obligations, and to realize the objectives of the Paris Agreement, [States] must adopt and implement policies aimed at reducing emissions, which reflect the highest possible ambition [Article 4.3], foster climate resilience and ensure that public and private investments are consistent with a pathway towards low carbon emissions and climate resilient development [Article 2.1]."[18]

This reference to human rights in the Paris Agreement cannot be underestimated. The Paris Agreement is the first international environmental agreement to refer specifically to human rights.[19] Because of significant resistance from some States to address human rights in the

[16] Climate change is defined in Article 1 of the UNFCCC as "a change of climate which is attributed directly or indirectly to human activity that alters the composition of the global atmosphere and which is in addition to natural climate variability observed over comparable time periods." UNFCCC (adopted 9 May 1992, entered into force 19 June 1993) 1771 UNTS. The UNFCC is a *lex specialis*. Its relationship to human rights is comprehensively explores in Margaretha Wewerinke-Singh, *State Responsibility, Climate Change and Human Rights under International Law* (Oxford: Hart Publishing, 2018).

[17] Annalisa Savaresi and Juan Auz, "Climate Change Litigation and Human Rights: Pushing the Boundaries" (2019) 9(3) *Climate Law* 244.

[18] Committee on the Elimination of Discrimination Against Women; Committee on Economic, Social and Cultural Rights; Comm. on the Protection of the Rights of All Migrant Workers and Members of their Families; Comm. on the Rights of the Child; and Comm. on the Rights of Persons with Disabilities, Joint Statement on "Human Rights and Climate Change" (16 September 2019), https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=24998&LangID=E [Accessed 20 February 2020].

[19] John H. Knox, "The Paris Agreement As a Human Rights Treaty". In *Human Rights and 21st Century Challenges: Poverty, Conflict, and the Environment.* Dapo Akande, Jaakko Kuosmanen, Helen McDermott, and Dominic Roser eds (Oxford: Oxford University Press, 2018). Available at SSRN: https://ssrn.com/abstract=3192106 [Accessed 20 February 2020].

operative part of the text, reference to human rights is only found in the Preamble[20]. A draft of the Paris Agreement referred to human rights in Article 2 as well as in the Preamble, but Saudi Arabia, the US and Norway explicitly objected to any reference to human rights in the operative part of the Agreement, and several Member States of the European Union expressed non-public objections.[21]

Despite this limited scope, it has been argued that the reference to human rights made by the Paris Agreement helps to mainstream human rights norms into the ongoing implementation and evolution of the climate regime.[22] Combined, the preambule and other articles of the Paris Agreement are being used to interpret and clarify the substance of human rights obligations with respect to climate change.[23] At the same time, climate litigation is being brought to help clarifying the scope of these obligations in relation to climate change, as well as the more concrete and immediate duty of States to fulfill these obligations in the context of implementing the Agreement.

However, it is worth noting that hypotheses concerning the impact of climate litigation have not been subjected to much empirical scrutiny,[24] and there is little known about whether human rights litigation is likely to lead to transformative legal, social, and political outcomes. A recent analysis of the framing processes and outcomes associated with a petition submitted by Inuit communities in the Arctic on the human rights violations caused by climate change before the Inter-American Commission of Human Rights in 2005 suggests that "the petition did not have much success in terms of mobilizing Inuit communities in the Canadian Arctic on issues relating to climate justice. Instead, the primary way in which the petition has exerted

[20] The preamble to the Paris Agreement stated that State Parties should, when taking action to prevent climate change, "respect, promote and consider their respective obligations on human rights." The Paris Agreement was adopted as a decision of the Conference of the Parties to the UNFCCC, and its text is included as an annex to that decision. Conference of the Parties, Draft decision _/CP.21, *Adoption of the Paris Agreement*, U.N. Doc. FCCC/CP/2015/L.9/Rev.1 (12 December 2015).

[21] Sam Adelman, "Human Rights in the Paris Agreement: Too Little, Too Late?" (2018) 7(1) *Transnational Environmental Law* 26.

[22] Ibid, p. 1.

[23] John H. Knox and Christina Voigt, "Introduction to the Symposium on Jacqueline Peel & Jolene Lin, 'Transnational Climate Litigation: The Contribution Of The Global South' (2020) 114 *AJIL Unbound* 35, 38.

[24] Setzer and Vanhala, "Climate Change Litigation".

influence is through its effects on the broader transnational legal process at the intersections of climate change and human rights."[25]

Moreover, there are still considerable hurdles for human rights-based climate litigation to demonstrate that the courts are an appropriate mechanism through which to address climate change. The first is the "causality challenge": the need to establish a relationship between a country's or company's GHG emissions, a State's failure to implement adaptation policies, and the resulting impacts on the one hand, and the subsequent effect on human rights on the other.[26] The second, is the "cross-temporal challenge": the reactive nature of human rights law means that it is difficult to establish the human rights impact of climate change when it can potentially take a significant period of time after the environmental violation for its impacts to become manifest. Claims of human rights violations are normally established immediately after actual harm has occurred, whereas in environmental law the precautionary principle accommodates potential future-focused impacts and harms.[27] Thirdly, there is the "extra-territorial challenge": the difficulty of applying rights protections extraterritorially in terms of holding individuals, corporations, or governments to account for the types of harmful activities that cause effects in other States.[28] The final challenge to rights-based climate legal action is the potential for backlash: the very idea of human rights is currently under scrutiny[29], with some even calling this "the endtimes of human rights"[30] or "the post-human rights era."[31] This questioning of the legitimacy and authority of human rights at both

[25] Sébastien Jodoin, Arielle Corobow and Shannon Snow, "Realizing the Right to Be Cold? Framing Processes and Outcomes Associated with the Inuit Petition on Human Rights and Global Warming" (2020) 54(1) *Law & Society Review* 168, 193. See also Sébastien Jodoin, Rosine Faucher, and Katherine Lofts, "Look Before You Jump: Assessing the Potential Influence of the Human Rights Bandwagon on Domestic Climate Policy", in Sébastien Duyck, Sébastien Jodoin, and Alyssa Johl (ed.), *Routledge Handbook of Human Rights and Climate Governance* (London: Routledge, 2018), Chapter 11.

[26] A/HRC/10/61 (2009) Report of the Office of the United Nations High Commissioner for Human Rights on the Relationship between Climate Change and Human Rights (United Nations OHCHR); Abby Rubinson Vollmer, "Mobilizing Human Rights to Combat Climate Change Through Litigation," in Sébastien Duyck, Sébastien Jodoin, and Alyssa Johl (ed.), *Routledge Handbook of Human Rights and Climate Governance* (London: Routledge, 2018), pp.359-371.

[27] Peel & Osofsky, "A Rights Turn", 2018.

[28] OHCHR, Report; Peel & Osofsky, "A Rights Turn.".

[29] Philip Alston, "The Populist Challenge to Human Rights" (2017) 9(1) *Journal of Human Rights Practice* 1.

[30] Stephen Hopgood, *The Endtimes of Human Rights* (Ithaca, NY: Cornell University Press, 2013).

[31] Ingrid Wuerth, "International Law in the Age of Trump: A Post-Human Rights Agenda" (14 November 2016), *Lawfare Blog* https://www.lawfareblog.com/international-law-age-trump-post-human-rights-agenda [Accessed 20 February 2020].

the national and international level adds an additional layer of complexity to rights-based climate change litigation.[32]

III. Human rights as a basis for obliging States to reduce their emissions: *Urgenda*

Litigants using human rights as a basis for obliging States to reduce their emissions claim that reducing emissions at the highest possible ambition amounts to a due diligence standard for complying with human rights obligations. Likewise, in the context of emissions reductions, the notion of "fair share" or the "common but differentiated responsibilities" of States is a critically important principle that has consistently shaped the international climate regime around mitigation. Because States' have a due diligence standard as well as common but differenciated responsibilities, they must take all appropriate measures to address climate change and its adverse effects, employ their best efforts or, simply, do "as well as they can."[33]

This is a bold claim, but at the date of writing, *Urgenda* succeeded in getting the Dutch Supreme Court to hold the State accountable to further reduce its greenhouse gas emissions on the basis of its human rights obligations. It became the first case in the world in which a court has established that a State's legal obligations give rise to a duty to reduce emisisons by an absolute minimum amount.

In 2007, the Netherlands had a 30% reduction target (compared to 1990) by 2020, but after 2011 the Dutch reduction target was adjusted to the EU-level reduction of 20% by 2020. In 2013 the Urgenda Foundation (the name Urgenda is a short for "urgent agenda"), a Dutch organisation for sustainability and innovation, along with 900 Dutch citizens, sued the Dutch government with the aim of obtaining an order compelling the State to further reduce Dutch GHG emissions by 40% at the end of the year 2020, or at least by a minimum of 25% in comparison the year 1990. The Hague District Court found in the plaintiffs' favour in 2015, ordering the Dutch State to reduce its greenhouse gas emissions by at least 25% below 1990 levels by 2020 (as opposed to a projected reduction of 14–17%), becoming the first court in the world to do so. The Dutch government appealed and, in 2018, the Court of Appeal

[32] Vollmer, "Mobilizing."
[33] Christina Voigt, "The Paris Agreement: What is the Standard of Conduct for Parties?" (2016) 26 *Questions of International Law* 17.

affirmed the order of the District Court. Importantly, the Court of Appeal premised the State's obligation to reduce GHG emissions squarely on its "positive obligations" under Articles 2 and 8 ECHR, unlike the District Court which had grounded the duty under the tort of hazardous negligence (although it did not challenge the lower court's reasoning). The State appealed to the Dutch Supreme Court. In September 2019, the Supreme Court's independent legal advisers (the Advocate-General and deputy Procurator-General) issued a lengthy Advisory Opinion recommending that the Supreme Court uphold the Court of Appeal's ruling. On 20 December 2019, the Supreme Court affirmed the decision of the Court of Appeal.

The legal framework relevant to this case included the Dutch Civil Code, the Dutch Code on Civil Procedure, and provisions of Dutch constitutional law relating to the effect of international law in the domestic legal order. The findings of the Intergovernmental Panel on Climate Change (IPCC), international climate targets, and international law all played an important role in the Court's reasoning. The Court of Appeal and the Supreme Court recognised the direct effect of the European Convention on Human Rights (ECHR). Other environmental law principles were relied upon for interpretative purposes or to support conclusions, including the 2015 Paris Agreement, the obligation to exercise due diligence in preventing significant transboundary harm, and the precautionary principle. Ultimately, the obligation on the State to reduce its emissions was not established under international law. Rather, the District Court, the Court of Appeal and the Supreme Court all based their decisions on the "open standards" of Dutch tort law.[34]

There are many interesting facets to the case, but here we focus on how human rights offered a basis for obligations to prevent climate change.[35] Human rights law was not a central aspect

[34] This important aspect of the decision was acknowledged by the Procurator-General and Advocate-General, the most authoritative advisors of the Supreme Court, in an Advisory Opinion submitted in September 2019. Advisory Opinion (ECLI-number: ECLI:NL:PHR:2019:887) of 13 September 2019, point 2.1.

[35] See André Nollkaemper and Laura Burgers, "A New Classic in Climate Change Litigation: The Dutch Supreme Court Decision in the Urgenda Case" (6 January 2020), *Blog of the European Journal of International Law*, https://www.ejiltalk.org/a-new-classic-in-climate-change-litigation-the-dutch-supreme-court-decision-in-the-urgenda-case/ [Accessed 6 February 2020]; Joana Setzer and Dennis Van Berkel "Urgenda v State of the Netherlands: Lessons for International Law and Climate Change Litigants" (10 December 2019), *Commentary of the Grantham Research Institute on Climate Change and the Environment*, http://www.lse.ac.uk/GranthamInstitute/news/urgenda-v-state-of-the-netherlands-lessons-for-international-law-and-climate-change-litigants/ [Accessed 6 February 2020].

of the case from its inception. The first decision, given by the District Court of the Hague in 2015, did not ground its conclusion directly on human rights law, as it held that Urgenda could not invoke human rights provisions stemming from the ECHR. It was not until Urgenda filed a cross-appeal, arguing that it should be able to rely directly on the human rights provisions stemming from the ECHR, that this line of argument emerged.

At this point, the States' human rights obligations to mitigate climate change became central to the case. In its judgment of 9 October 2018, the Court of Appeal affirmed the District Court's order and also accepted Urgenda's cross-appeal. It based its judgment directly on Articles 2 and 8 of the ECHR, protecting respectively the rights to life and to private and family life. The argument put forward by the State was that Articles 2 and 8 do not oblige the government to offer protection from the genuine threat of dangerous climate change. The State asserted that this danger is global in nature and not specific enough to fall within the scope of protection afforded by Articles 1, 2 and 8. According to the State, climate change is a global issue in both cause and scope, and it relates to the environment, which should not be protected by the ECHR.

The Supreme Court decision rejected all the State's arguments. It rejected the line of argumentation used by the State, that that Dutch emissions are small – roughly around 0.4 percent of global emissions – and consequently that tightening its emissions reduction policies would only 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" (summary of the decision). Grounded in human rights law, it affirmed the judgment of the Court of Appeal, establishing that the risks of climate change fell within the scope of the ECHR: "This obligation of the State to do 'its part' is based on Articles 2 and 8 ECHR, because there is a grave risk that dangerous climate change will occur that will endanger the lives and welfare of many people in the Netherlands" (summary of the

decision). In doing so, the Court offered "a significant boost" to the argument that climate change is a human rights issue.[36]

It is particularly of interest to readers of this journal, that the Dutch Supreme Court stated that the risks caused by climate change are sufficiently real and immediate to bring them within the scope of Articles 2 and 8. In its decision, the Supreme Court engaged with existing jurisprudence from the European Court of Human Rights on States' positive obligations in cases of environmental disaster and serious environmental harm (such as *Öneryildiz v Turkey*, *Budayeva et al v Russia*, and *Kolyadenko et al v Russia*), as well as risks of harm posed by the acts of third parties.[37] The Supreme Court confirmed the Court of Appeal's conclusion that such jurisprudence is applicable to the obligations of the State to protect its population from long-term risks of harm attributable to climate change.

Drawing on analogous jurisprudence of the European Court of Human Rights, the Supreme Court also stated that, in order to enforce a State's positive obligations to protect its population from climate change, it is not necessary to identify "immediate" risks of harm to the general population if there is evidence of "long-term" risks (citing *Taşkin et al v Turkey*).[38] 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 Tătar v Romania*).[39]

This existent case law of the European Court of Human Rights, however, still did not provide a definitive answer to the precise scope of the State's positive obligations under the ECHR with regard to climate change. The Supreme Court confirmed that the absence of a definitive answer in the ECHR or in existing case law of the European Court of Human Rights was not an impeditive for the national court to provide an opinion on the matter. Conversely, the Supreme Court accepted that there was "common ground" to answer to such new questions

[36] Nollkaemper and Burgers, "A New Classic."
[37] *Öneryildiz v Turkey* (App. No.48939/99), judgment of 30 November 2004; *Budayeva and others v Russia* (App. No.15339/02 11673/02, 15343/02, 20058/02, 21166/02), judgment of 20 March 2008; *Kolyadenko and others v Russia* (App. No. 17423/05, 20534/05, 20678/05, 23263/05, 24283/05, 35673/05), judgment of 28 February 2012.
[38] *Taşkin and others v Turkey* (App. No. 46117/99), judgment of 10 November 2004.
[39] *Tătar v Romania* (App. No. 67021/01), judgment of 17 January 2009.

of law.[40] Taking into account the practice of the Contracting States, as well as international treaties, *soft law* sources and the precautionary principle, the Supreme Court noted that while there might be uncertainty around what climate risks will materialise and when, without an adequate climate policy the combined effect of such risks are likely to lead to hundreds of thousands of victims in Western Europe in the second half of this century alone (§2.1.8). The fact that these risks would only become apparent in the future, therefore, is not an obstacle for applying Articles 2 and 8 ECHR in the present (§5.6.2). Moreover, the Supreme Court confirmed (as outlined in the Advisory Opinion at §2.59) that, under the jurisprudence of the European Court of Human Rights, it is not necessary to identify prospective victims of climate change, but rather that the State owes obligations to the general population under Articles 2 and 8 ECHR (Supreme Court judgment §5.3.1 and §5.6.2).

A final relevant aspect of the decision is the effect that the Supreme Court provided to the principle of equity and common but differentiated responsibilities. This principle, as mentioned, lies at the heart of the international regime and States' understanding of their individual responsibility for emissions reductions. On the duty to mitigate climate change specifically, 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, which includes developed countries taking the lead in mitigating climate change. 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 UNFCCC and the 'no harm principle' of international law. On this basis, the Court rejected the State's arguments that its contribution to global emissions was negligible, emphasising the detrimental impact on global efforts to combat climate change if such a defence were accepted.

[40] "Common ground" is a method applied by the European Court of Human Rights to interpret human rights in areas where the ECHR does not provide a definitive answer to the precise content of the obligations incumbent on the Contracting States. It is based on the idea that the Convention is 'a living instrument which (...) must be interpreted in the light of present-day conditions'. Advisory Opinion (ECLI-number: ECLI:NL:PHR:2019:887), para. 2.70, citing European Court of Human Rights, 7 July 1989, no. 14038/88 (Soering/United Kingdom), para. 102.

With this sequence of successful court decisions, the *Urgenda* case already inspired other human rights-based cases against governments around the world, including in Europe (Germany, Ireland, France, Belgium, Switzerland, Sweden) Latin America and North America. The case also demonstrates how other types of climate litigation on diverse issues such as emissions and air pollution can be argued through a human rights framework. The Dutch Supreme Court's findings in relation to immediacy and the more global challenge of climate change is especially significant when juxtaposed against the decision of the Human Rights Committee in its first climate refugee case analysed next. Unlike *Urgenda*, the HRC provides a much narrower understanding of the right to life, specifically in relation to "immediacy" and to the need for "personal" impact. The reasoning in the Urgenda case is also an important contrast to the Ninth Circuit's decision in *Juliana* summarised further below.

IV. Climate Refugees and the Non-Refoulement Principle: *Teitiota* v New Zealand

The Human Rights Committee (HRC) can adjudicate individual communications under the International Covenant of Civil and Political Rights (ICCPR). The HRC through this adjudicative function has developed landmark case law on human rights in a broad range of matters, including for example the decriminalisation of homosexuality, sexual and reproductive rights and the death penalty.[41] The HRC also provides guidance to States with respect to their obligations under the ICCPR. In 2018, the HRC adopted general comment No. 36 on article 6, on the right to life. This general comment replaced its previous general comments and drew specific attention to environmental destruction and the impact on the right to life making it clear that: "Environmental degradation, 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." The general comment reminds States of the need to preserve the environment and protect it against harm, pollution and climate change caused by public and private actors (§62).[42]

[41] *Toonen v Australia*, No. 488.1992, UN Doc CPPR/C/50/D/488/1992 (1994), *Price v Jamaica*, No. 572/1994, UN Doc CPPR/C/58/D/572/1994 (1996); Whelan v Ireland, No. 2425/2014, UN Doc CCPR/C/119/D/2425/2014 (2017).

[42] Sarah Joseph, "General Comment No. 36 (2018) on Article 6 of the International Covenant on Civil and Political Rights, on the Right to Life (H.R. Comm.)" (2019) 58(4) *International Legal Materials* 849; *Portillo Caceres et al v Paraguay*, CCPR/C/126/D/275/2016; Inter-American Advisory Option OC-37/17 of 15 November 2017 on the

In the same year the Committee on the Elimination of Discrimination against Women (CEDAW Committee) adopted its general recommendation looking specifically at the gendered impacts of disasters and climate change.[43] This was followed by the adoption in July 2018 by the Human Rights Council of another important resolution on human rights and climate change.[44] The adoption of these soft law instruments forms part of the human rights journey, the "greening" of human rights as mentioned in the introduction, with the recognition by courts and treaty bodies of the right to a healthy environment.[45]

The *Teitota* case is the first case to tackle the issue of rising sea levels and the implications that this has for low-lying island, coasts and communities in the context of an asylum claim before an international treaty body. It is an important case on the scope of the right to life, climate migration and how the so-called "slow violence" of climate change is understood in that context.[46] Kate Cook has argued following an analysis of General Comment 36 and European Court of Human Rights case law that threats that are reasonably foreseeable and preventable fall within the scope of protection afforded by the right to life and that this includes the risks posed by environmental pollution and climate change.[47] When threats are foreseeable States have positive obligations to reduce the risks to human rights associated with climate change.[48]

environment and human rights series A, No. 23; *Kawas Fernandez v Honderas*, judgment of 3 April 2009, series C. No 196. General Comment no. 3 of the African Commission on Human and Peoples' Rights.

[43] UN Committee on the Elimination of Discrimination Against Women (CEDAW), *General Recommendation No. 37 on Gender-Related Dimensions of Disaster Risk Reduction in the Context of Climate Change* (2019), CEDAW/C/GC/37. Other UN treaty bodies refer to general recommendations as general comments. The Human Rights Council has adopted a number of resolutions on human rights and climate change. These include HRC resolutions 38/4 (2018); 35/20 (2017); 32/33 (2016); 29/15 (2015); 26/27 (2014); 18/22 (2011); 10/4 (2009); 7/23 (2008). See also Resolution E/CN.6/2011/L.1 adopted by the Economic and Social Council, 1 March 2011, *Mainstreaming Gender Equality and Empowerment of Women in Climate Change Policies and Strategies*.

[44] Resolution A/HRC/RES/38/4 (2018) *Human Rights and Climate Change* (United Nations General Assembly, Human Rights Council).

[45] Statement of the CEDAW Committee on Gender and Climate Change, adopted at the 44th session of CEDAW, 20th July to 7 August 2009.

[45] See Report A/73/188 (2018) *Report of the Special Rapporteur on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment* (United Nations General Assembly).

[46] Nicola George, "Promoting Women, Peace and Security in the Pacific Islands: Hot Conflict/Slow Violence" *Australian Journal of International Affairs* (2014) 68(3) 316.

[47] Cook, "A Mutually Informed."

[48] Wewerinke-Singh, *State Responsibility*, 109.

While countries in the Global North focus discussions on adaptation, mitigation and increasing sustainable consumption under the Sustainable Development Goals (SDGs) other States and peoples are being forced to grapple with habitability, mobility and human security.[49] In 1990, Intergovernmental Panel on Climate Change (IPCC) set out that the greatest single impact of climate could be on migration.[50] This is due to the impact that climate change has on food security, fresh water access and all aspects of people's lives, including to people's rights to live in a healthy and sustainable environment, their right to health and even their right to peace.[51]

The International Organisation for Migration (IOM) has stressed that the burden of providing climate migrants will be borne by the poorest countries - least responsible for emissions of greenhouse gases and that the people most to climate change are not necessarily the ones most likely to migrate due to a lack of financial and social resources.[52] The World Bank has put forward projections for internal climate migration amounting to 143 million people by 2050 in three regions of the world (Sub-Saharan Africa, South Asia and Latin America) if no climate action is taken.[53]

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[49] Ingrid Boas, *Climate Migration and Security: Securitisation as a Strategy in Climate Change Politics* (New York: Routledge, 2015); Benoît Mayer, *The Concept of Climate Migration* (Cheltenham: Edward Elgar Publishing, 2016).
[50] J.T. Houghton, G.J. Jenkins and J.J. Ephraums (ed.), *Climate Change: The IPCC Scientific Assessment* (Cambridge: Cambridge University Press, 1990), 298.
[51] See the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (2003), Article 10.
[52] Oli Brown, "Migration and Climate Change" *IOM Migration research series* No.31 (Geneva: IOM, 2008) https://www.iom.cz/files/Migration_and_Climate_Change_-_IOM_Migration_Research_Series_No_31.pdf [Accessed: 6 February 2020].
[53] Kumari Rigaud, Kanta, Alex de Sherbinin, Bryan Jones, Jonas Bergmann, Viviane Clement, Kayly Ober, Jacob Schewe, Susana Adamo, Brent McCusker, Silke Heuser, and Amelia Midgley, *Groundswell: Preparing for Internal Climate Migration*, (Washington, DC: The World Bank, 2018), https://openknowledge.worldbank.org/handle/10986/29461 [Accessed: 6 February 2020]. However, projections of climate migration need to be interrogated cautiously, as there is also considerable evidence that migration is not solely driven by climate change. Rather, it is influenced by a mix of climatic, socio-economic, cultural and political factors, and when climate change plays a role, it remains difficult to determine the extent of its influence. See I. Boas, C. Farbotko, H. Adams et al, "Climate Migration Myths" (2019) 9 *Nature Climate Change*, 901.

Yet, the vulnerabilities of climate migrants are currently not acknowledged and not addressed within the framework of human rights.[54] Likewise, the 1951 Geneva Convention relating to the Status of Refugees is unable to address the issue of environmental migration[55], and there has been limited progress on the issue of migration under the Paris Agreement. The Task Force on Displacement established in Paris[56] has seen some success in convening international organisations alongside experts to generate knowledge and recommendations on addressing displacement due to losses and damages[57], though not in ensuring context-specific and tailored information is available to individual countries.[58]

The links between climate change, migration and adaptation were addressed explicitly in the 2018 United Nations Global Compact for Safe, Orderly and Regular Migration[59], a non-binding international agreement that seeks to improve outcomes for migrants and displaced people, but these intentions are not being matched in practice.[60] Few nations show interest in giving legal recognition to people who move for climate-related reasons, or in providing greater opportunities for international mobility; there is little prospect of meeting the goals of the Compact or, for that matter, the SDGs or the UNFCCC.[61] The absence of international treaties and action to protect climate migrants makes the human rights jurisprudence and mechanisms especially important.

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[54] Melina Duarte, "A Human Right to Relocate: The Case for Climate Migrants," in Emilia Lana de Freitas Castro and Sergio Maria Tavares Marques (ed.), *Current Challenges in Migration Policy and Law* (London: Transnational Press, 2020), pp.51-64.

[55] Christel Cournil, "The Inadequacy of International Refugee Law in Response to Environmental Migration," in Benoît Mayer and François Crépeau (ed.), *Research Handbook on Climate Change, Migration and the Law* (Cheltenham: Edward Elgar, 2017), pp.85-107; Simon Behrman and Avidan Kent (ed.), *Climate Refugees: Beyond the Legal Impasse?* (London: Routledge, 2018).

[56] The Task Force on Displacement was established by the Decision 1/CP.21 https://unfccc.int/resource/docs/2015/cop21/eng/10a01.pdf#page=2 [Accessed: 24 February 2020].

[57] More information available on https://unfccc.int/wim-excom/sub-groups/TFD#eq-4 [Accessed: 24 February 2020].

[58] Rebecca Byrnes and Swenja Surminski, "Addressing the impacts of climate change through an effective Warsaw International Mechanism on Loss and Damage: Submission to the second review of the Warsaw International Mechanism on Loss and Damage under the UNFCCC". Grantham Research Institute on Climate Change and the Environment and Centre for Climate Change Economics and Policy, London School of Economics and Political Science.

[59] A/RES/73/195 (2018) United Nations Global Compact for Safe, Orderly and Regular Migration (United Nations General Assembly).

[60] The Compact emphasizes the need to reduce involuntary climate-related migration and displacement, increase the adaptive capacity and resilience of vulnerable populations through greater international cooperation, and develop strategies for managing climate-related migration in ways that respect human rights and address humanitarian needs. Robert McLeman "International Migration and Climate Adaptation in an Era of Hardening Borders" (2019) 9 *Nature Climate Change* 911.

[61] Ibid, p. 911.

The first climate migration case before the HRC concerns the effects of climate change and the sea level size on the island of Tarawa in the Republic Kiribati. Climate change is now recognised as one of the greatest environment threats to the livelihood of the peoples of the Pacific. Low lying atoll islands are considered most at risk and scientific evidence suggests that some islands will be rendered uninhabitable.[62] The HRC's views set out how the situation in Tarawa has become increasingly precarious due to the sea level rise caused by global warming and that inhabitants face water insecurity, a housing crisis and land disputes, resulting in internal tensions.[63] The factual background details how due to climate change, coastal erosion and flooding have diminished nutritious crops which in turn has affected the health of the population, which has consequently deteriorated. The decision explains that malnutrition, fish poisoning and other ailments have affected food insecurity.

The author of the communication is a national of the Republic of Kiribati born in the 1970s who claimed that by removing him to Kiribati that New Zealand violated his right to life under the Covenant. The author relied upon well-established principle in international law that States have an obligation not to extradite, deport, expel or otherwise remove a person from their territory when there are substantial grounds for believing that there is a real risk of irreparable harm. The author explains that he and his wife left Kiribati for New Zealand after they "had received information from news sources that there would be no future for life in their country."[64]

The case concerned the rejection of an application for refugee status in New Zealand, and his removal to Kiribati in September 2015. The rejection by the domestic courts of the application was based partly on the jurisprudence of the HRC and whether there was a sufficient degree of risk to life, or that of his family, at the relevant time.[65] The domestic tribunal cited *Aalsberg*

[62] Paul S. Kench, Murray R. Ford and Susan D. Owen "Patterns of island change and persistence offer alternate adaptation pathways for atoll nations" (2018) 9 *Nature Communications*, 605; Maria Tanyag and Jacqui True, *Gender Responsive Alternatives to Climate Change: A Country Report on Vanuatu* (Melbourne: Monash University, 2019).
[63] CCPR/C/127/D/2728/2016 (2020) *Ioane Teitiota v New Zealand (advance unedited version)* (United Nations Human Rights Committee), §2.1.
[64] Ibid, §2.5.
[65] Arbitrary deprivation of life has the same meaning under the Immigration Act 2009 as it does under the Covenant.

et al. v the Netherlands[66] in which the Committee held that the risk of a violation of the Covenant must be "imminent".[67] The domestic courts had found that the situation "fell well short of the threshold required to establish substantial grounds for believing that they would be in danger of arbitrary deprivation of life within the scope of article 6 covenant" and that the situation would not be so precarious that his life would be in danger.

The HRC found the claim to be admissible. The consideration of admissibility and the Committee's findings in this regard are significant as it affirms that "the author's claims relating to conditions on Tarawa at the time of his removal do not concern a hypothetical future harm, but a real predicament caused by a lack of potable water and employment possibilities, and a threat of serious violence caused by land disputes".[68] The Committee was satisfied that the impact of climate change and its effects on the security situation on the islands satisfied the admissibility threshold.

There are a number of important aspects of the judgment. The first is that the Committee emphasises that the right to life includes the right of individuals to enjoy a life with dignity. This echoes the standards in the African Commission of Human Rights,[69] and in the Inter-American system of human rights which have underscored the positive obligations on States to ensure access to basic and lifesaving services, such as food, health, water and sanitation that guarantee a dignified existence.[70] The Committee made it clear that State parties also have an obligation to respect and ensure the right to life extends to 'reasonably foreseeable' threats and life-threatening situations that result in a loss of life. The Committee makes it clear that severe environmental degradation can adversely affect an individual's well-being and lead to a violation of the right to life.[71] This can therefore trigger non-refoulement obligations.

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[66] CCPR/C/87/D/1140/2005 (1984).
[67] See also *Beydon et al v France*, CCPR/C/85/D/1400/2005.
[68] CCPR/C/127/D/2728/2016 (2020) *Ioane Teitiota v New Zealand (advance unedited version)* (United Nations Human Rights Committee), §8.5.
[69] General Comment No 3 on the Right to Life.
[70] Sawhoymaza Indigenous Community v Paraguay, 2006; Villagran Morales v Guatemala, 1999.
[71] CCPR/C/127/D/2728/2016 (2020) *Ioane Teitiota v New Zealand (advance unedited version)* (United Nations Human Rights Committee), §9.5.

As the Committee explains both sudden onset and slow onset events (such as sea level rise) could propel migration on the basis of climate change related harm and "without robust national and international efforts, the effects of climate change in receiving States may expose individuals to a violation of their rights under articles 6 or 7 of the Covenant thereby triggering the non-refoulement obligations of sending States."[72] The Committee expressly recognises that the right to life with dignity may be violated before extreme events such as the submerging of a whole island, thus leading to positive obligations upon States beforehand.

This finding is an important statement of principle which is further emphasised later in the decision when the Committee states that this decision has been made without prejudice to the continuing responsibility of the State party to take into account the situation of Kiribati and the updated data on the effects of climate change. In other words, throughout the decision the Committee is aware of the changing nature of the effects of climate change. In fact it facts the author's claims that the sea level rise is likely to render Kiribati uninhabitable in 10-15 years' time. This is enough time, the Committee notes for the State to take affirmative measures, including where necessary relocating its population.

Despite the recognition that "environmental degradation, climate change and unsustainable development constitute some of the most pressing and serious threats to the ability of the present and future generations to enjoy the right to life"[73] and that the Republic of Kiribati will be unhabitable in 10-15 years' time, the Committee found that New Zealand had not violated the right to life in this particular case. This was on the basis that while the author's evidence was credible in relation to violence and insecurity caused by the impacts of climate change, this evidence related to a general situation and not a risk of specific harm to the author. The Committee found that he did not demonstrate that he faced a real, *personal* and reasonably foreseeable risk of a threat to his right to life which resulted from violence related to overcrowding or land disputes in Kiribati.[74] The Committee's decision, therefore, contrasts

[72] Ibid, §9.11.
[73] CCPR/C/127/D/2728/2016 (2020) *Ioane Teitiota v New Zealand (advance unedited version)* (United Nations Human Rights Committee), §9.4.
[74] Ibid, §9.7, emphasis added.

with the Dutch Supreme Court decision in the Urgenda case, which concluded that, based on European Court of Human Rights jurisprudence, States may owe positive obligations to members of the general public in relation to risks of future harm, particularly in environmental cases where the harm will invariably affect the general population in an area, region or country (Supreme Court judgment §5.3.1 and §5.6.2).

The Committee also found that the high threshold of a real risk of a threat to his right to life had not been met in relation to water scarcity. While in principle a lack of access to fresh water could violate the right to life thus triggering non-refoulement obligations, the Committee found that there was insufficient "information indicating that the supply of fresh water is inaccessible, insufficient or unsafe".[75] Significantly, Ms Sancin penned a dissent on the specific issue of access to potable water, suggesting that the burden of proof should have been on the State party and not on the author to demonstrate that he and his family would in fact enjoy access to safe drinking water in Kiribati. Further the Committee found in relation to food insecurity that the author had not provide sufficient evidence that his removal and the destruction of the crops due to salt deposits would lead to a situation of indigence, deprivation of food or extreme precarity.

The decision comes at a time where pronouncements are awaited in cases lodged at the HRC and CRC alleging climate related violations of human rights. This includes in a matter before the HRC brought by a group from the Torres Strait Islanders against the Australian government over its inaction on climate change, and the case filed by 16 young people including Greta Thunberg against the States of Argentina, Brazil, France, Germany and Turkey.[76] The latter compliant sets out at length how climate change is triggering life threatening adverse impacts including threatening food and water security, causing mass migrations and destroying species and the environment.[77] The case filed before the Committee on the Rights of the Child forms part of the polyphony of cases which involve young people who are using the courts to hold governments and States to account for the

[75] Ibid, §9.8.
[76] Client Earth, "Climate Threatened Torres Strait Islanders Bring Human Rights Claim against Australia" (12 May 2019), *Client Earth Press Release,* https://www.clientearth.org/press/climate-threatened-torres-strait-islanders-bring-human-rights-claim-against-australia/ [Accessed 20 February 2020]
[77] See §78 of the complaint, available above at supra n. 8.

effects of climate change now and for future generations.[78] With this in mind, we provide a short overview of the most recent decision in the US context brought by a group of young people in the state of Oregon.

On the eve of destruction: *Juliana v United States*

The *Juliana* case concerned a constitutional claim by 21 children asserting that the federal US government had violated their constitutional rights by causing dangerous carbon dioxide concentrations.[79] The plaintiffs sought declaratory relief and an injunction ordering the government to implement a plan to phase out fossil fuel emissions and draw down excess atmospheric carbon dioxide. The plaintiffs set out a number of injuries relating to the climate crisis. For example, Jaime B claimed that she was forced to leave her home because of water scarcity, separating her from her relatives on the Navajo Reservation and another young plaintiff, Levi had to evacuate his coastal home multiple times because of flooding.[80]

On the 17 January 2020, the US Court of Appeals for the Ninth Circuit, by majority, dismissed the case. While all of the majority found that the federal government "has long promoted fossil fuel use despite knowing that it can cause catastrophic climate change, and that failure to change existing policy may hasten an environmental apocalypse" the court ultimately found against the plaintiffs on the basis of institutional competence and non-justiciability. The plaintiffs had claimed a constitutional right to a "climate system capable of sustaining human life". The question before the court was "whether, even assuming such a broad constitutional right exists, an Article III court can provide the plaintiffs with the redress they seek", which was an order for the government to phase out fossil fuel emissions. The court concluded that the relief was beyond their constitutional power, and that it was a matter for Parliament, since the plaintiffs had only sought remedial and injunctive relief and had not sought damages under the Federal Torts Claims Act. The court concluded that the remedial plan would "require a whole host of complex policy decisions, entrusted, for better or worse, to the wisdom and discretion of the executive branches" and that it would require the courts to

[78] There are currently cases involving young people suing governments in Alaska and Canada.
[79] *Juliana v the United States* (App. No. No. 18-36082), opinion of 17 January 2020. The plaintiffs were 21 young citizens, an environmental organisation and a "representative of future generations."
[80] See page 18 of the judgment.

make judgment on a broad range of policy-making rather than determining the legality of a statute or piece of legislation.

While the decision is disappointing for the plaintiffs, the case does importantly recognise that the "record leaves little basis for denying that climate change is occurring at an increasingly rapid pace…. The problem is approaching the "point of no return." Absent some action, the destabilizing climate will bury cities, spawn life-threatening natural disasters, and jeopardize critical food and water supplies." The court noted that the US government contributes to climate change not only through inaction but also affirmatively by promoting fossil fuel use "in a host of ways". The court found that the US accounted for over 25% of world emissions until 2012 and currently accounts for 12% of the world emissions. Importantly, the court upheld the district court's finding that the causation requirement was satisfied and that the plaintiff's injuries were caused by carbon emissions from fossils fuel production, extraction, and transportation.

The majority's decision was described in the dissenting judgment as the court throwing up its hands by concluding that the claims were non-justiciable. In a strong dissent Judge Staton opened with the words:

> In these proceedings, the government accepts as fact that the United States has reached a tipping point crying out for a concerted response – yet presses ahead toward calamity. It is as if an asteroid were barrelling toward Earth and the government decided to shut down our only defences… No case can singlehandedly prevent the catastrophic effects of climate change predicted by the government and scientists. But a federal court need not manage all the delicate foreign relations and regulatory minutiae implicated by climate change to offer real relief, and the mere fact that this suit cannot alone halt climate change does not mean that it presents no claim suitable for judicial resolution."

Many litigants – including the plaintiffs - and activists celebrated that the majority of the Court acknowledged that climate change caused by fossil fuel combustion is occurring "at an increasingly rapid pace", that the American federal government has long understood the risks

of fossil fuel use and increasing carbon dioxide emissions, and that the damages associated with climate change are being amplified by the actions (and inaction) of the federal government.[81] Although the chances of success can be considered low, Our Children's Trust has indicated that they intend to seek rehearing *en banc*, pursuing the dissenting judge's opinion that the Court could and should offer a remedy.

Conclusion

Comparing the three cases described in this article it is possible to generalize some commonalities and trends. First, the cases highlight the importance that human rights acquired in climate change litigation. Following the landmark ruling of the Supreme Court in Urgenda, litigants can continue relying on constitutional and/or human rights laws in their attempts to hold governments accountable for addressing climate change. In particular, litigants are likely to argue that climate change is covered by the rights to life and to respect for private and family life; that States have to take action in accordance with a due diligence obligation to take preventative measures and to reduce a "fair share" of emissions on the basis of the common but differentiated responsibilities, in line with the precautionary principle. The UN Human Rights Committee in the Teitiota case reinforce this view that national and international inaction on climate change threaten the right to life, making it unlawful for States receiving climate migrants to turn them away.

Second, while only Urgenda was ultimately successful, litigants have also been able to identify some victories in the defeats of the Teitiota and Juliana cases. In Juliana, it was the recognition of the consequences of climate change and the related impact on an individual's human rights. In Teitiota's claim, the Committee recognised the right for refugee claims on the grounds of climate change and emphasised that it is unlawful for governments to return people when their life will be at risk due to the climate risks in their home countries.

[81] See Our Children's Trust, Earth Guardians, "Decision of Divided Ninth Circuit Court of Appeals Finds Primarily for Juliana Plaintiffs, but Holds Federal Judiciary Can Do Nothing to Stop the U.S. Government in Causing Climate Change and Harming Children" (17 January 2020) *Our Children's Trust and Earth Guardians Press* Release, https://static1.squarespace.com/static/571d109b04426270152febe0/t/5e22508873d1bc4c30fad90d/1579307146820/Juliana+Press+Release+1-17-20.pdf [Accessed 20 February 2020].

Third, each one of the cases dealt with the issue of *time* in quite distinctive ways, with time becoming a determinant factor in the courts' decisions. In Urgenda, the Court determined that a significant effort will have to be made now (i.e. in the present) in order to reduce greater risks in the future. Both the State and Urgenda agreed that it is necessary to limit the concentration of greenhouse gases in the atmosphere in order to achieve either the 2C target or the 1,5C target. Their views differed, however, with regard to the *speed* to which greenhouse gases must be reduced. Based on the "broad consensus" about climate science in the international community, and that "the longer the reduction measures to achieve the envisaged final target are postponed, the more comprehensive and more expensive they will become", the Dutch Supreme Court recognised the urgency in addressing the problem and determined that the State acted immediately.

A very distinct approach was observed in the *Teitiota* case, with the UN Human Rights Committee deciding that it was not necessary for action to be taken in the present (as it will still take ten to fifteen years until the island becomes inhabitable) and in *Juliana*, with the court concluding that the plaintiffs' should make their case "to the political branches or to the electorate at large, the latter of which can change the composition of the political branches through the ballot box" (i.e. a change that will similarly require at least ten years to take place). These cases illustrate international human rights law's "complex and multitudinous connection to time" and the preference of a corporate connection of time over more subjective experiences of time from the perspective of the individuals involved.[82] Time, and legal definitions of immediacy and temporality, will continue to be an important challenge in this area of climate change litigation.

[82] Katheryn McNeilly "Are Rights Out of Time? International Human Rights Law, Temporality, and Radical Social Change" 2019 28(6) *Social & Legal Studies* 817.