

---

## FROM URGENDA TO SHELL: LITIGATING CLIMATE CHANGE THROUGH HUMAN RIGHTS

---

Advocate Shabih Fatima

### ABSTRACT

On November 12, 2024, the Hague Court of Appeal gave its highly anticipated judgment in the landmark case of appeal in *Milieudefensie et al. vs. Royal Dutch Shell*. The Court of Appeal in its judgment confirmed the conclusion of the District Court of Hague in respect of the nexus between human rights law and climate change. This comes off as a celebrated judgment, an inspiration for the courts worldwide, where the corporate is also held responsible for its duty towards protection of human rights from the adverse effects of climate change. Time and again, the courts around the world, in cases of *Urgenda v. The State of Netherlands*, *Verein KlimaSeniorinnen Schweiz and Others v Switzerland*, and *Leghari v. Federation of Pakistan*, have underlined the responsibility the state as well as the corporations hold in curbing the harmful effects of climate change. In pursuance of these new developments, this article explores the role of litigation in realizing the intersection between the human rights and climate change by analyzing how courts around the world have given remarkable judgments recognizing the violation of human rights of people as the direct cause of climate change.

## Introduction

Climate change is the new reality, an alarming danger to the fundamental human rights of the people. A threat to the right to health, clean environment and to life. According to the report of Office of the United Nations High Commissioner for Human Rights (OHCHR)'s on Impact of Adverse Effects of Climate Change on Human rights, 2024, loss and damage, referring to the adverse impacts of climate change can affect the enjoyment of fundamental human rights. Respecting, protecting and fulfilling human rights amid the climate crisis require taking effective action to address harm to human rights from loss and damage.<sup>1</sup>

In the international negotiations and litigation, recognizing human rights as one of the arguments in fighting against climate change is relatively a new development in the international community.<sup>2</sup> The nexus between human rights and climate change was for the first time recognized in 2008 by the United Nations Human Rights Council in its Resolution No. 7/23 which recognized that the violation of human rights is the direct threat from climate change to people around the world. A healthy environment is a precondition of enjoyment of fundamental human rights, however the most foundational human rights document, the Universal Declaration of Human Rights lacks the mention of environment in it. It was in 2015, that the Paris Agreement primarily being a climate agreement, marked the historic moment of referring to the human rights in its preamble.<sup>3</sup> The practical integration of human rights law and policy in climate change considerations still remains an underdeveloped area.<sup>4</sup> The gap between the implications of climate change leading to the violations of human rights needs to be urgently bridged.

The rights at risk are the right to life, right to health, right to food and water and the cultural rights of indigenous and vulnerable communities like, Small Island Developing States (SIDS). The effect on right to health where climate change causes rapid spreading of diseases and increased air pollution, effect on right to food and water as a direct cause of water pollution, all this in turn leading to the violation of right to enjoy the highest attainable physical and

---

<sup>1</sup> The impact of loss and damage from the adverse effects of climate change on human rights, OHCHR (Aug. 2024).

<sup>2</sup> Rose Mayembe et al., Integrating Climate Change in Environmental Impact Assessment: A Review of Requirements Across 19 EIA Regimes, 869 *Sci. Total Env't* 161850 (2023), <https://doi.org/10.1016/j.scitotenv.2023.161850>.

<sup>3</sup> Paris Agreement, Dec. 12, 2015, U.N. Framework Convention on Climate Change, available at <https://unfccc.int/process-and-meetings/the-paris-agreement/the-paris-agreement>.

<sup>4</sup> U.N. Comm. on the Rts. of the Child, Report of the 2016 Day of General Discussion: Children's Rights and the Environment 23 (2017), available at <https://www.ohchr.org/Documents/HRBodies/CRC/Discussions/2016/DGDoutcomereport-May2017.pdf>.

mental health.<sup>5</sup> Phenomenon like flooding, land degradation and sea-level rise leads to displacement, violating the right to housing, further also violating the rights of the indigenous people and vulnerable communities getting displaced from their homes. This leads to another discussion where climate change migration is also caused as the result of violation of human right. The rights related to the environment have not been protected in International Law. The right to clean, healthy and sustainable environment, despite being protected in many countries worldwide in their domestic laws, only received international recognition in 2021 by a UN Human Rights Council Resolution.<sup>6</sup> While these efforts might come as too little, however, it is not too late. The treaty bodies need to consistently focus on connecting the human rights with the climate law and policy.

Further, in response to the violation of human rights caused by climate change, courts around the globe have given judgments to bridge the human rights with climate change. Human rights are being incorporated into climate litigation thereby creating liabilities on the government and corporation for its violation.

### **Role of Climate Change Litigation**

Role of litigation in holding the government and corporations liable under national and international law has become an emerging tool in the face of climate action. This has held them answerable of their actions in harming the rights of the people and climate at large. It has also led the courts and the litigants to compel the parties, governments and corporations to adapt stronger climate policies and leverage human rights in them. The human rights and climate change nexus has become apparent in the turn to human rights law in litigating climate change.<sup>7</sup>

The very first climate change litigation which referred to the human rights was the *Urgenda v. The State of Netherlands*.<sup>8</sup> *Urgenda* decided by the District Court of Hague in 2015 and later upheld by the Supreme Court of Netherlands in 2019, was a landmark judgment which stated that the government inaction on climate change is a violation of human rights. It set a precedent for addressing climate change through a human rights framework. The plaintiff claimed that insufficient action by the government violated the rights of the people particularly the right to

---

<sup>5</sup> Theresa Watts & Sandra O. Brugger, The Intersection Between Climate Change, COVID-19, and Future Pandemics – Perspectives Among American Transportation Network Drivers, *J. Transp. & Health*, art. 101582 (2023), <https://doi.org/10.1016/j.jth.2023.101582>.

<sup>6</sup> U.N. Human Rights Council, The Human Right to a Clean, Healthy and Sustainable Environment, U.N. Doc. A/HRC/48/L.23/Rev.1 (2021).

<sup>7</sup> James Fraser & Laura Henderson, The Human Rights Turn in Climate Change Litigation and Responsibilities of Legal Professionals, *40 Neth. Q. Hum. Rts.* 3 (2022), <https://doi.org/10.1177/09240519221085342>.

<sup>8</sup> [2015] HAZA C/09/00456689.

life under Article 2 and right to respect for private and family life under Article 8 of the European Convention on Human Rights. The government's failure to frame policies to cut greenhouse gas emissions constituted inadequacy in protecting these rights. The Court held that the Dutch Government had a duty to act according to its commitment under the European Convention on Human Rights and also under international agreements like United Nations Framework Convention on Climate Change and ensure that its policies are in line with the requirements of the human rights obligations under the conventions.

Another globally recognized judgment came from a developing country in the case of *Leghari v. Federation of Pakistan*<sup>9</sup> where the intersection of human rights and climate change was discussed at length. The plaintiff Leghari claimed that the government's inaction in implementing National Climate Change Policy (2012) and Framework for Implementing Climate Change Policy (2014-2030) violated his livelihood and has put lives of other people at risk. The inaction constituted violation of fundamental rights of the people under the Constitution of Pakistan, namely, Article 9-right to life, Article 14-right to human dignity and Article 23-protection of property rights. The Court ruled that the government's inadequacy in implementing the climate change policy was a breach of its constitutional duty to protect the fundamental rights of the people under the Constitution of Pakistan. It also ordered for the constitution of a bench, Climate Change Commission to oversee the implementation of the policies related to climate change in the country. The case became an inspiration globally by demonstrating how courts can act as a catalyst for enforcing climate action especially in places where the legislative and executive fail to implement its policies.

In another remarkable milestone, India has become another highlighted developing jurisdiction which has drawn attention globally for its successful endeavors in climate change litigation. The Courts in India are often praised for being an 'activist' judiciary for their initiatives in climate litigation by the means of public interest litigations.<sup>10</sup> In a first, the Supreme Court of India has recently passed a judgment in *M.K. Ranjitsinh & others v. Union of India*<sup>11</sup> while examining the plight of the great Indian bustard and the threats that the species face identified the right to be free from adverse effects of climate change as a fundamental right to life under Article 21 and equality before the law under Article 14 of the constitution of India.<sup>12</sup> The court

---

<sup>9</sup> W.P. No. 25501/2015, Lahore High Court, Green Bench (2015).

<sup>10</sup> Jacqueline Peel & Jolene Lin, *Transnational Climate Litigation: The Contribution of the Global South*, 113 *Am. J. Int'l L.* 679 (2019).

<sup>11</sup> Writ Petition (Civil) No. 838 of 2019 (India).

<sup>12</sup> *M.K. Ranjitsinh & Ors. v. Union of India*, Writ Petition (Civil) No. 838 of 2019 (India).

noted that, “pollution, climate change, predators and competition with invasive species are among the many threats that exacerbate the challenges faced by these vulnerable species”. It further noted how important it is to analyze the present case at hand by not only through the lens of climate change but also through environmental concerns like pollution. The right to be free from the adverse effects of climate change as a right to life is another side of right to healthy and clean environment. The court marked that, “*without a clean environment which is unimpacted by climate change, the right to life cannot be fully realized*”.<sup>13</sup> This climate change litigation has brought about a new development in the country by connecting the fundamental rights of the people of India to climate change. This has been a landmark step where the court has called for an umbrella legislation in the country to address climate change.

In another endeavor, the European Court of Human Rights explored the intersection between the Convention’s rights and climate change. In the landmark case of, *Verein KlimaSeniorinnen Schweiz and Others v Switzerland*,<sup>14</sup> the court discussed Article 8, the right to private and family life and Article 2, the right to life. It enunciated the “foreseeable risk” standard in order to establish violation of right to life in cases of climate change. The plaintiffs complained about the health problems caused by heatwaves which affected their lives and living conditions. At the outset, the plaintiffs complained about the inefficiency of the Swiss government for climate action. The court did not grant standing to the plaintiffs as it held that the individuals have standing in climate change litigations only when there is a high intensity of exposure to the adverse effects of climate change and an immediate and grave need of individual’s protection.

The court noted that, “*complaints concerning the alleged failures of the State to combat climate change most appropriately fall into the category of cases concerning an activity which is, by its very nature, capable of putting an individual’s life at risk*”<sup>15</sup>. Although it did not give standing to the plaintiff and therefore did not assess the case in the context of Article 2, the right to life, however, it discussed the scope of Article 2 in the cases of climate change. It noted that,

*“in order for Article 2 to apply to complaints of State action and/or inaction in the context of climate change, it needs to be determined that there is a “real and imminent” risk to life. However, such risk to life in the climate-change context must be understood in the light of the*

---

<sup>13</sup> Arpitha Kodiveri, The Genre-Bending of Climate Litigation in India, VerfBlog (May 7, 2024), <https://verfassungsblog.de/the-genre-bending-of-climate-litigation-in-india/>, DOI: 10.59704/6ac2f232871d550a.

<sup>14</sup> ECHR, App. No. 53600/20, Case No. 304.

<sup>15</sup> ECHR, App. No. 53600/20, Para. 509, Judgment (2021), ECHR 304.

*fact that there is a grave risk of inevitability and irreversibility of the adverse effects of climate change, the occurrences of which are most likely to increase in frequency and gravity. Thus, the “real and imminent” test may be understood as referring to a serious, genuine and sufficiently ascertainable threat to life, containing an element of material and temporal proximity of the threat to the harm complained of by the applicant”<sup>16</sup>*

Thus, a shift from ‘real and imminent risk’ to a more ‘reasonable or foreseeable risk’ was observed in order to establish the violation of right to life in the context of climate change.

Subsequently, the United Nations Human Rights Committee believes that right to life cannot be interpreted in a restrictive manner, if done, then it cannot be understood within its true form. The protection of the rights requires the state parties to adopt protective measures in order to comply with their obligations towards human rights. It further observes that climate change constitutes one of the most serious threats to the ability of the people to enjoy the right to life.<sup>17</sup>

In *Billy v. Australia*<sup>18</sup>, the Islanders claimed that their fundamental right had been violated as the government failed to perform climate action by upgrading seawalls and cutting greenhouse gas emissions. It violated their rights under the International Covenant on Civil and Political Rights (ICCPR), Article 27- right to culture; Article 17- the right to be free from arbitrary interference with privacy, family and home; and Article 6- the right to life. The UN Human Rights Committee found that the failure of the Australian Government to protect the indigenous Torren Islanders from the adverse impacts of the climate change violated their right to enjoy their culture and their right to be free from arbitrary interference with privacy, family and home. The committee held the timely measures were required to protect the rights of the Islanders and an absence of national and international framework causes the effects of climate change to lead to violation of human rights of individuals under the covenant.

In another historic event in August 2024, the Constitutional Court of South Korea took a significant step in global climate litigation. The court ruled that the state’s failure in setting greenhouse gas reduction targets for 2031-2049 is in violation of the constitutional rights of its citizens, especially the future generations. This ruling comes after four rigorous years of

---

<sup>16</sup> ECHR, App. No. 53600/20, Para. 513, Judgment (2021), ECHR 304.

<sup>17</sup> Verein KlimaSeniorinnen Schweiz and Others v. Switzerland: The Intersection of Climate Change and the Human Right to Life, Cambridge Int’l L.J. (May 20, 2024), available at <https://cilj.co.uk/2024/05/20/verein-klimaseniorinnen-schweiz-and-others-v-switzerland-the-intersection-of-climate-change-and-the-human-right-to-life/>.

<sup>18</sup> Human Rights Comm., Views Adopted Under the Optional Protocol to the International Covenant on Civil and Political Rights, U.N. Doc. CCPR/C/135/D/3624/2019 (2019).

climate litigation lawsuits comprising 255 plaintiffs. The case was brought before the court by the group of young climate activists who argued that the target set for 2030 did not do well in protecting their right to a healthy environment and those of future generations. The court upheld the argument that South Korean government had a duty to protect the environment for the present as well as the future generations.<sup>19</sup> The *Woodpecker et al v. South Korea*<sup>20</sup> was the first time the court recognized that climate change corresponds to the matter of constitutional right, the rights of the future generations, and that state is liable for the violation of constitutional right as a result of climate change.

The liability of the violation of human rights by climate inaction has not necessarily been on the state actors. Courts around the world have also held corporations to be liable for their contributions to the climate change and inadequacy and inefficiency owing to their duty of care towards the protection of human rights of the people.

In *Milieudefensie v. Shell*, the plaintiffs brought a claim in 2019 that Shell has contributed in climate change by not reducing the carbon gas emissions which has violated its duty of care under the human rights law and Dutch law. One of the most important arguments in the case was the use of human rights arguments in constructing cases, it discussed the lack of recognition of the rights related to the environment in the laws and regulations which apply to the European Union.<sup>21</sup> In 2021, the District Court of Hague pronounced its judgment stating that under the Dutch Law, Shell had a duty to care to prevent the harmful effects of climate change by reducing its carbon emissions. The court concluded that being a corporate actor, Shell had a duty of care towards the people in order to protect their human rights under Section 162 of the Dutch Civil Code and this further involved obligations to limit the human rights violation caused by climate change. The Court ordered Shell to reduce carbon emissions by 45% by 2030.

Shell filed an appeal against the decision of the District Court before the Court of Appeal (CoA) citing that it is not up to the court to order for the reduction of carbon emissions by 45% by 2030, but, is up to the legislators to set the level.

---

<sup>19</sup> Billy Phillips, South Korean Constitutional Court Ruling: A Landmark Decision in Climate Litigation, Int'l IDEA News (Sept. 16, 2024), available at <https://www.idea.int/news/south-korean-constitutional-court-ruling-landmark-decision-climate-litigation>.

<sup>20</sup> 2022Hunma864, Sejong Youn (Plan 1.5), Constitutional Court of Korea (2022).

<sup>21</sup> Rose Mayembe et al., Integrating Climate Change in Environmental Impact Assessment: A Review of Requirements Across 19 EIA Regimes, 869 Sci. Total Env't 161850 (2023), <https://doi.org/10.1016/j.scitotenv.2023.161850>.

On November 12, 2024, The CoA pronounced its judgment by overturning the 2021 decision of the District Court regarding the reduction of emission levels. However, it upheld this conclusion that protection from the adverse effects of climate change is a human right. The court emphasized that primarily it is the duty of the legislators and the government to take climate action and protect the human rights but the corporations may also have a responsibility to take measures to curb the harmful effects of climate change.

In this judgment the court dealt with the intersection of human rights and the climate change in depth. It analyzed whether the application of human right in order to protect the citizens from the adverse impact of the climate change applies only to the relationship of the government and the citizen (the vertical relationship) or also to the relationship between the corporations and the citizens (the horizontal relationship). It considered the soft laws, the United Nations Guiding Principles on Business and Human Rights, the OECD Guidelines for Multinational Enterprises and the United Nations Global Compact to analyze whether the corporate responsibility of the corporations can be questioned in the light of the human rights violation caused by climate change. Based on these soft laws, the CoA held that these corporations owe a social standard of care in relation to climate. It further held that, “*companies like shell which contribute to the climate problem have well within their powers to also contribute in combating the climate problem*”, “*even if these regulations are not explicitly laid down in the public law of the country in which the corporation functions*”.<sup>22</sup>

Thus, the CoA confirmed the conclusion made in the 2021 judgment that large corporations like Shell have a responsibility in combating climate change.<sup>23</sup>

## Conclusion

Despite the violation of human rights as the cause of harmful effects of climate change, its adjudication under the human rights law faces adequate challenges. However, the jurisprudence on the intersection between climate change and human rights is emerging. Landmark rulings such as in the cases of *Urgenda*, *Billy* and *Ranjitsinh* have made it possible for the court to hold the government liable for the violation of human rights and understand the nexus between the human rights and climate change in depth. On the other hand, cases like *Shell* have also made

---

<sup>22</sup> Dutch Court of Appeal Upholds Appeal on Landmark Climate Litigation Case Against Shell, Herbert Smith Freehills (Nov. 12, 2024), <https://www.herbertsmithfreehills.com/insights/2024-11/dutch-court-of-appeal-upholds-appeal-on-landmark-climate-litigation-case-against-shell>.

<sup>23</sup> André Nollkaemper, Lessons of a Landmark Lost: The Judgment of the Hague Court of Appeal in Shell v. Milieudefensie, VerfBlog (Nov. 12, 2024), available at <https://verfassungsblog.de/shell-milieudefensie-climate-litigation/>, DOI: 10.59704/dd77504c9eae2abd.

it possible to hold the large corporations also liable for the violation of human rights as a cause of direct and adverse effects of climate change. This has improved people's trust in judiciary as being a tool in climate action. These cases have proven to be an inspiration to use a human rights based-approach in litigating climate change. Governments should work to integrate human rights in climate change policies and ensure that they meet the required standards of environmental and legal obligations. Litigants should focus more on arguments which draw the nexus between the human rights and climate change. By strengthening the interrelationship between the human rights and the climate change, governments, courts, activists and litigants can come together and work to better serve the global climate governance.