

HUMAN RIGHTS ARGUMENTS INCREASINGLY DEPLOYED IN CLIMATE CHANGE LITIGATION

30 July 2020 | Global

Legal Briefings - By **Antony Crockett, Oliver Elgie, Caitlin Eaton, Silke Goldberg, Heidi Asten and Ben Rubinstein**

There has been a significant rise over the past five years in the number of climate change claims that have been based (at least in part) on human rights principles, according to the latest [report](#) from the London School of Economics Grantham Research Institute on Climate Change and the Environment ("**Report**").

The Report highlighted the increasing number of climate change cases in general, the growing geographic spread of those cases and what it described as a "*continued and growing focus*" on human rights in climate change litigation. The Report also highlighted various examples from case law that indicate that courts are becoming increasingly receptive to human rights arguments in the context of climate change litigation.

As a result, climate change litigation is likely to continue to gather momentum and, driven also by the trend towards mandatory human rights due diligence and the introduction of the of the EU Taxonomy Regulation, climate change claims raising human rights issues against both states and companies are likely to continue to become more common.

LATEST STATISTICS

The Report, released on 3 July 2020 covers the period May 2019 to May 2020, and provides a snapshot of current trends, key developments and provides an update on the latest statistics for climate change litigation. It notes:

- A total of **1,587 cases** of climate litigation have been brought between 1986 and May

2020.

- Of these, the majority (1,213 cases) have been brought in the **US**, followed by **Australia** (98 cases), the **UK** (62) and before **EU bodies and courts** (57).
- Between 2015 and May 2020, litigants brought 36 cases against states and initiated three cases and one investigation against corporations for **human rights violations** related to climate change. Prior to 2015, only five human rights-based cases had been filed in the world.
- Of all non-US cases, **58%** of cases had outcomes considered **favourable** to climate change action (being an action where the judge ruled in favour of more effective climate regulation or ruled against an outcome that would have resulted in increased greenhouse gas emissions).

THE PREVALENCE OF HUMAN RIGHTS ARGUMENTS IN NEW CLIMATE CHANGE CASES

The Report identifies that the “*success of a small number of high-profile climate cases has led to an uptick in litigation relying on human rights arguments over the past 12 months*”.

A good example of this is the landmark *Urgenda* decision in December 2019 (see our previous [article](#)).

In *Urgenda*, the Dutch Supreme Court upheld the findings of the lower courts, and confirmed that the risks of climate change fell within the scope of the European Convention on Human Rights (“**ECHR**”), particularly Article 2 (right to life) and Article 8 (private and family life), such that climate change is a human rights issue. The Supreme Court recognised an obligation on each State bound by the ECHR to ‘do its part’ to prevent dangerous climate change, and affirmed an order directing the State of the Netherlands to reduce its greenhouse gas emissions by at least 25% by the end of 2020 (as compared to 1990 levels). In April 2020, the Dutch government announced its plan to comply with the ruling, including reducing the capacity of its remaining coal-fired power stations by 75%.

The Report highlights that, following the initial success of *Urgenda* in the Hague District Court in 2015, there has been a substantial increase in climate change litigation involving human rights issues. In particular, proceedings regarding states’ human rights obligations to mitigate climate change have been initiated around the world, including in Ireland, France, Belgium, Sweden, Switzerland, Germany, the US, Canada, Peru and South Korea, as well as Australia (see our previous [article](#)).

The Report notes that a variety of different human rights arguments are being deployed, including:

1. Arguments that **States' obligations of due diligence** under international human rights law require them to pursue emissions reduction policies with the highest level of ambition. The *Urgenda* case is an example of this.

2. Cases brought by **'climate refugees'** – individuals seeking refuge or asylum having fled their home for fear or the threat of climate change impacts to their livelihoods.

Teitiota v New Zealand is the first case to be presented to the UN Human Rights Committee on the issue of rising sea levels and its implications for low-lying islands and communities. Teitiota relied upon the duty of states 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 (which is contemplated by Article 6 (right to life) of the 1966 International Covenant on Civil and Political Rights (“**ICCPR**”)).

In its January 2020 decision, the UN Human Rights Committee accepted Teitiota's claims that rising sea levels are likely to render Kiribati uninhabitable in 10-15 years' time, but found that this is enough time for the Kiribati state to take avoidance measures, thus rendering New Zealand's decision to deport Teitiota not inconsistent with Article 6 of the ICCPR. Whilst Mr Teitiota was therefore unsuccessful, the decision of the UN Human Rights Committee makes clear that severe environmental degradation has the potential to lead to a violation of the right to life, albeit there is a high threshold to satisfy the test of 'imminence' of human rights harms in climate-vulnerable states.

3. Proceedings brought by **young people who represent current and future generations**.

In this regard, see also our previous [article](#) discussing the challenge brought by a group of young Queenslanders against the Galilee Coal Project in May 2020. Another example is the legal complaint filed before the UN Committee on the Rights of the Child in September 2019 by 16 young people, including youth climate activist Greta Thunberg, against the states of Argentina, Brazil, France, Germany and Turkey.

A further example is the *Juliana v United States* case (see our previous [article](#)). The action was brought by 21 young citizens (and others) who asserted that the US federal government had violated their constitutional rights to a “*climate system capable of sustaining human life*”. The US Federal Court accepted that federal policies promoting the use of fossil fuels had likely contributed to various climate change injuries, but ultimately found that the issue was non-justiciable by the courts, being a policy decision for the legislative and executive arms of government, and so it was beyond the court's power to order, design and supervise the remedial plan requested by the plaintiffs. In March 2020, the plaintiffs filed a rehearing petition.

HUMAN RIGHTS CLAIMS AGAINST ‘CARBON MAJORS’

Another major focus of the Report is the variety of strategies being used to bring claims against fossil fuel producers (the so-called ‘Carbon Majors’), and this includes allegations based on human rights obligations. Litigation against major fossil fuel companies has, until recently, focused on tort law, and has largely been restricted to the US. Now, plaintiffs have begun arguing that corporations hold specific human rights responsibilities, grounded in international “soft law” instruments, such as the UN Guiding Principles on Business and Human Rights.

Examples include the ‘Carbon Majors’ inquiry initiated by the Human Rights Commission of the Philippines in 2015, and cases initiated in France based on the 2017 French Law on the Corporate Duty of Vigilance which requires companies to produce a vigilance plan that identifies and seeks to mitigate risks and severe impacts on human rights and the environment. For more information on these cases, including one currently under appeal and connected to the Paris climate agreement’s goal, see our [previous review](#) of the current cases.

KEY CONTACTS

If you have any questions, or would like to know how this might affect your business, phone, or email these key contacts.



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