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The Right to a Healthy Environment and Climate Litigation: A Game Changer?

Pau de Vilchez and Annalisa Savaresi

I. INTRODUCTION

In October 2021, the United Nations (UN) Human Rights Council adopted a resolution recognizing 'the right to a clean, healthy and sustainable environment' as a 'human right that is important for the enjoyment of human rights.'[1] In July 2022, the UN General Assembly (UNGA) also adopted a resolution recognizing the same right (hereinafter referred to as a 'right to a healthy environment').[2] While formally not legally binding, these resolutions are the culmination of a lengthy diplomatic process, following three decades of debate on the comparative utility of the explicit recognition of the right to a healthy environment *vis-à-vis* the so-called 'greening' of existing human rights.[3]

To be sure, well before the adoption of these resolutions, the right to a healthy environment had already been enshrined, with various phraseologies, in the law of more than 150 states as well as in some human rights treaties[4] and treaties focusing on so-called procedural environmental rights.[5] At the time of writing, the Council of Europe is also

Pau de Vilchez, Lecturer in International Public Law, Deputy Director of the Interdisciplinary Lab on Climate Change, University of the Balearic Islands, Palma, Spain; Legal Analyst for the Climate Change Litigation Initiative. Email: pau.devilchez@uib.eu. This research has been conducted with the support of the research project PID2019-108253RB-C32, funded by the Spanish Ministry of Science and Innovation.
Annalisa Savaresi, Associate Professor, International Environmental Law, Centre for Energy, Environmental and Climate Change Law, University of Eastern Finland, Joensuu, Finland; Senior Research Associate, University of Stirling, United Kingdom. Email: Annalisa.savaresi@uef.fi.

[1] Human Rights Council Resolution 48/13, UN Doc A/HRC/RES/48/13 (2021) at 1.

[2] UN General Assembly Resolution on the Human Right to A Clean, Healthy and Sustainable Environment, Doc A/RES/76/300 (2022).

[3] See, eg, D Shelton, 'Human Rights, Environmental Rights, and the Right to Environment' (1991) 28 Stanford J Intl L 103; Alan Boyle and Michael R Anderson, *Human Rights Approaches to Environmental Protection* (1998); Alan Boyle, 'Human Rights or Environmental Rights? A Reassessment' (2007) 18 Fordham Envtl L Rev 471; Dinah Shelton, *Human Rights and the Environment* (2011); David R Boyd, 'The Constitutional Right to a Healthy Environment' (2012) 54 Environment: Science & Policy for Sustainable Development 3; John H Knox and Ramin Pejan (eds), *The Human Right to a Healthy Environment* (2018).

[4] See African Charter on Human and Peoples' Rights, 27 June 1981, 1520 UNTS 447, art 24; Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, 14 November 1988, 28 ILM 161, art 11; Convention on the Rights of the Child, 20 November 1989, 1577 UNTS 3, art 24.2.(c); Arab Charter on Human Rights (2004), art. 38; Association of Southeast Asian Nations Human Rights Declaration, 18 November 2012, art 28.

[5] Aarhus Convention on Access to Information and Public Participation in Decision-making and Access to Justice in Environmental Matter, 25 June 1998, 2161 UNTS 447, art 1; Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean Escazú, Doc LC/CNP10.9/5 (4 March 2018), arts 1, 4.

considering the adoption of an additional protocol to the 1950 European Convention on Human Rights[6] to anchor the right to a healthy environment in the European human rights system.[7]

The matter of the explicit recognition of the right to a healthy environment has gained international prominence with the creation of a UN special rapporteur (UNSR) on human rights and the environment.[8] Over the last decade, two mandate holders—John Knox and David Boyd—have studied the obligations associated with the right to a healthy environment and identified good practices.[9] Their reports suggest that the right to a healthy environment contributes to the improved implementation and enforcement of environmental laws.[10] They furthermore suggest that, when applied by the judiciary, this right helps to provide a safety net to protect against gaps in laws and creates opportunities for better access to justice. They conclude that, were the Universal Declaration of Human Rights to be drafted today, it would certainly include the right to a healthy environment.[11]

At this momentous time of renewed interest over the explicit recognition of the right to a healthy environment, this article examines the evidence emerging from the use of this right in climate change litigation. The aim is to assess whether climate litigation corroborates or disproves the UNSRs' findings concerning the use of the right to a healthy environment in litigation. We therefore look at climate litigation as a case study to ascertain the extent to which the right to a healthy environment contributes to improved implementation and enforcement of climate laws, protects against gaps in climate laws, and creates opportunities for better access to justice for climate litigants. First, we define the parameters of our case study, explaining how we selected the data we analysed, positioning our inquiry into the rapidly growing body of literature on human rights and climate change. Second, we provide a bird's eye perspective on rights-based climate litigation and on the use of the right to a healthy environment in this litigation. We identify the cases where this right has been invoked, by whom, where and when, and with what outcomes. We then take a closer look at how courts have interpreted and applied the right to a healthy environment in the climate judgments that have been issued to date. We conclude by drawing some general inferences on whether the right to a healthy environment has furthered the chances of success of climate litigants and on whether the recognition of this right is a significant determining factor in the outcome of climate litigation.

[6] Convention for the Protection of Human Rights and Fundamental Freedoms, 4 November 1950, 213 UNTS 221 (ECHR).

[7] Council of Europe, *Combating Inequalities in the Right to a Safe, Healthy and Clean Environment* (2021) <https://pace.coe.int/en/files/29523>.

[8] Between 2012 and 2015, the Human Rights Council established an independent expert on human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment. Human Rights Council, Resolution 19/10 on Human Rights and the Environment, UN Doc A/HRC/RES/19/10 (2012). It has subsequently appointed a UN special rapporteur on human rights and the environment starting in 2015. Human Rights Council, Resolution 28/11 on Human Rights and the Environment, UN Doc A/HRC/RES/28/11 (2015); Human Rights Council, Resolution 37/8 on Human Rights and the Environment, UN Doc A/HRC/RES/37/8 (2018); Human Rights Council, Resolution 46/7 on Human Rights and the Environment, UN Doc A/HRC/RES/46/7 (2021).

[9] See the practice collected in *Report of the Independent Expert on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment*, UN Doc A/HRC/25/53 (2013), and *Report of the Special Rapporteur on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment*, UN Doc A/HRC/31/52 (2016); *Report of the Special Rapporteur on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment*, Doc A/HRC/37/59 (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*, Doc A/73/188 (2018) (Doc A/73/188); *Report of the Special Rapporteur on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment*, Doc A/HRC/43/53 (2019).

[10] Doc A/73/188, *supra* note 9 at 57.

[11] Universal Declaration of Human Rights, GA Res 217A (III), UNGAOR, 3rd Sess, Supp no 13, UN Doc A/810 (1948); Doc A/73/188, *supra* note 9 at 37.

II. HUMAN RIGHTS AND CLIMATE LITIGATION

The preamble of the Paris Agreement recognizes the interplay between climate change and human rights law, saying that parties 'should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights.'[12] Similarly, international human rights bodies and UN special mandate holders have also acknowledged the complex relationship between climate change and human rights law.[13] Since 2009, the Human Rights Council (HRC) has adopted a series of resolutions on human rights and climate change.[14] These resolutions emphasize the relevance of human rights obligations to climate change law and policy and the need to systemically interpret states' obligations and corporate responsibilities in this connection, both at the national and international levels.[15] In 2022, these developments culminated with the appointment of a UNSR on the promotion and protection of human rights in the context of climate change. This new rapporteur is tasked, amongst other things, 'to promote and exchange views on lessons learned and best practices on human rights-based approaches ... to climate change adaptation and mitigation.'[16] As we have already argued elsewhere,[17] these activities may be viewed as part of a process, whereby UN human rights bodies and special mandate holders seek to engender systemic integration in the interpretation of state obligations on human rights and climate change.

This process is increasingly evident also in climate litigation. The term 'climate litigation' is commonly used as a shorthand to describe lawsuits filed before international or domestic judicial or quasi-judicial bodies, raising questions of law or fact regarding climate science, climate change mitigation, or adaptation.[18] This litigation increasingly relies on human rights, in whole or in part, and has attracted considerable scholarly attention in recent years.[19] This literature, however, does not consider in detail the specific role played by the right to a healthy environment in climate litigation. This article bridges this gap in knowledge by providing the first study of climate change litigation that relies, in whole or in part, on the right to a healthy environment.

We built on extant literature to identify the rights-based climate lawsuits that specifically invoke this right. Specifically, we relied on the global study of rights-based climate change

[12] Paris Agreement, 2015, 55 ILM 740 (2016), preamble.

[13] For a compendium, see CIEL, 'States' Human Rights Obligations in the Context of Climate Change: Guidance Provided by the UN Human Rights Treaty Bodies' (2022) <https://www.ciel.org/reports/states-human-rights-obligations-in-the-context-of-climate-change-guidance-provided-by-the-un-human-rights-treaty-bodies/>.

[14] The UN Human Rights Council has adopted a series of resolutions, all titled Human Rights and Climate Change, UN Docs A/HRC/RES/7/23 (2008); A/HRC/RES/10/4 (2009); A/HRC/RES/18/22 (2011); A/HRC/RES/26/27 (2014); A/HRC/29/15 (2015); A/HRC/RES/32/33 (2016); A/HRC/35/20 (2017); A/HRC/38/4 (2018); A/HRC/RES/41/21 (2019); A/HRC/RES/44/7 (2020); A/HRC/RES/47/24 (2021).

[15] Annalisa Savaresi, 'UN Human Rights Bodies and the UN Special Rapporteur on Human Rights and Climate Change: All Hands on Deck' in *Yearbook of International Disaster Law*, vol 4 (2021).

[16] Human Rights Council, Resolution 48/14 Mandate of the Special Rapporteur on the Promotion and Protection of Human Rights in the Context of Climate Change, UN Doc A/HRC/RES/48/14 (2021).

[17] See Annalisa Savaresi, 'Climate Change and Human Rights: Fragmentation, Interplay and Institutional Linkages' in Sébastien Duyck, Sébastien Jodoin and Alyssa Johl (eds), *Routledge Handbook of Human Rights and Climate Governance* (2018); Annalisa Savaresi and Joanne Scott, 'Implementing the Paris Agreement: Lessons from the Global Human Rights Regime' (2019) 9 Climate Law 159; Annalisa Savaresi, 'The UN HRC Recognizes the Right to a Healthy Environment and Appoints a New Special Rapporteur on Human Rights and Climate Change. What Does It All Mean?' *EJIL: Talk!* (12 October 2021) <http://www.ejiltalk.org/the-un-hrc-recognizes-the-right-to-a-healthy-environment-and-appoints-a-new-special-rapporteur-on-human-rights-and-climate-change-what-does-it-all-mean/>.

[18] This definition is adapted from David Markell and JB Ruhl, 'An Empirical Assessment of Climate Change in the Courts: A New Jurisprudence or Business As Usual?' (2012) 64 Florida Law Review 15.

[19] Jacqueline Peel and Hari M Osofsky, 'A Rights Turn in Climate Change Litigation?' (2018) 7 Transnational Envtl L 37; Annalisa Savaresi and Juan Auz, 'Climate Change Litigation and Human Rights: Pushing the Boundaries' (2019) 9 Climate Law 244; César Rodríguez-Garavito, 'Litigating the Climate Emergency: The Global Rise of Human Rights-Based Litigation for Climate Action,' *Social Science Research Network* (2021); Annalisa Savaresi and Joana Setzer, 'Rights-Based Litigation in the Climate Emergency: Mapping the Landscape and New Knowledge Frontiers' (2022) 13 J Human Rights & Envt 7; Pau de Vilchez Moragues, *Climate in Court. Defining State Obligations on Global Warming through Domestic Climate Litigation* (2022).

litigation carried out by Annalisa Savaresi and Joana Setzer.[20] These authors estimate that, by 31 May 2021, 112 out of the 1,841 climate litigation cases reported in the world's most established climate litigation databases,[21] relied in whole or in part on human rights.[22] Savaresi and Setzer analysed these 112 rights-based climate lawsuits with the aid of well-established categories in climate litigation literature. They identified who has brought these lawsuits, against whom and where, and the human rights most frequently invoked.[23] Savaresi and Setzer conclude that, by far and large, climate lawsuits presently rely on substantive human rights obligations to demand the adoption of legislation on climate change mitigation or the reform of said legislation. They also predict that future rights-based climate litigation is likely to focus more on climate change adaptation and to rely also on procedural rights.[24]

We looked at the 112 right-based climate cases analysed by Savaresi and Setzer and identified forty-two climate cases that invoke the right to a healthy environment (listed in Annex 1). We considered who has brought these cases, against whom and where, and compared trends in these forty-two cases *vis-à-vis* the trends in rights-based climate litigation identified by Savaresi and Setzer. The objective of this exercise was to understand if there are any significant differences between trends in rights-based cases that invoke the right to a healthy environment and those that do not. Then, we considered only the climate cases that have been decided, analysing the way in which the courts approached arguments based on the right to a healthy environment. We developed a typology of cases, distinguishing between the different ways in which the courts treat this right in their decisions. The objective of this exercise was to ascertain whether and how courts rely on the right to a healthy environment in the decision of climate lawsuits. Sections 3 and 4 of the article summarize the results of these exercises.

III. THE USE OF THE RIGHT TO A HEALTHY ENVIRONMENT IN CLIMATE LITIGATION: A BIRD'S EYE PERSPECTIVE

Savaresi and Setzer's study reveals that, so far, right-based climate lawsuits preponderantly target states and only rarely non-state actors, such as corporations.[25] Most of these cases list human rights arguments amongst other legal grounds in support of the applicants' demand for greater state and corporate efforts to reduce greenhouse gas emissions—so-called climate change mitigation.[26] Comparatively few rights-based cases concern climate change adaptation.[27] The vast majority of rights-based climate cases were filed after the adoption of the Paris Agreement in 2015, overwhelmingly in the global North, especially Europe (thirty-four cases), with only a few cases (fourteen out of 112) lodged before international judicial or

[20] Savaresi and Setzer, *supra* note 19.

[21] The databases curated by the Sabin Centre for Climate Change Law at Colombia Law School <http://climatecasechart.com/> and by the Grantham Research Institute on Climate Change and the Environment at the London School of Economics <http://www.climate-laws.org>.

[22] Savaresi and Setzer, *supra* note 19, Annex.

[23] *Ibid* at 10–16.

[24] *Ibid* at 13.

[25] *Ibid* at 13–14. *See, eg, Friends of the Earth Netherlands v Shell* (The Hague 2019); *Petition Requesting Investigation of the Responsibility of the Carbon Majors for Human Rights Violations or Threats of Violations Resulting from the Impacts of Climate Change*, Case no CHR-NI-2016-0001 (Quezon City 2016).

[26] Savaresi and Setzer, *supra* note 19 at 14–15. *See, eg, Urgenda Foundation v State of the Netherlands*, Case no C/09/456689 / HA ZA 13-1396 (2015); *Armando Ferrão Carvalho and Others v European Parliament and the Council*, Case no T-330/18 (2018).

[27] *Ibid. See, eg, UN Human Rights Committee Views Adopted on Teitiota Communication*, UN Doc CCPR/C/127/D/2728/2016 (2020); *Petition of Torres Strait Islanders to the United Nations Human Rights Committee Alleging Violations Stemming from Australia's Inaction on Climate Change*, unreported (2019).

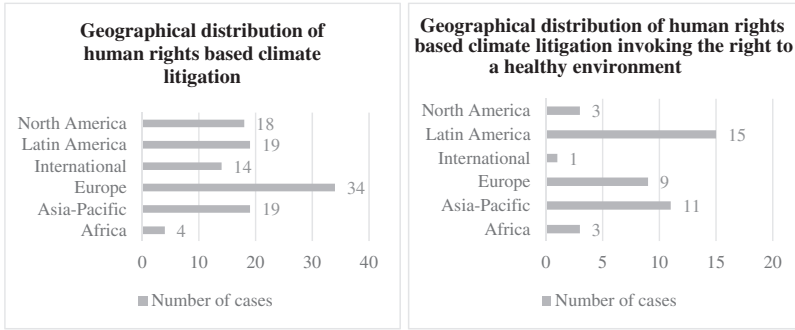

Figure 1: Geographical distribution of climate cases

non-judicial bodies. At the time when Savaresi and Setzer wrote, most right-based cases remained pending.[28]

Climate lawsuits invoking the right to a healthy environment broadly align with the trends above, with some notable specificities. These lawsuits also preponderantly target states (thirty-nine out of forty-two cases) and focus on climate change mitigation (thirty-two out of forty-two cases). However, all but one were filed with national judicial or quasi-judicial bodies, as opposed to international or regional ones. Furthermore, lawsuits invoking the right to a healthy environment tend to be concentrated in the global South, with the majority occurring in Latin America (fifteen) (see Figure 1). This distribution of cases invoking the right to a healthy environment seems to corroborate the findings of David Boyd's study, which suggests that applicants and courts in the global South are comparatively more likely to rely on the right to a healthy environment.[29]

Assessing the outcomes of right-based climate litigation is challenging, as most cases remain pending at the time of writing.[30] Following Savaresi and Setzer, we considered only the 'direct outcome' of cases and categorized as successful those where the applicants' requests have been granted in whole or in part, regardless of whether this decision was taken on the basis of human rights.[31] We then compared the outcome of cases invoking the right to a healthy environment with the outcome of those rights-based cases that do not. Of the fifty-seven rights-based climate cases that have been decided to date without further appeal, twenty-five were successful, thirty-two were unsuccessful, while there are still fifty-five human rights-based climate cases pending. In regard to cases particularly invoking the right to a healthy environment, only nineteen of them have been decided without further appeal at the domestic level. Of these, fifteen were successful, and four were unsuccessful. Our data therefore seems to suggest that the success rate improves whenever the right to a healthy environment is invoked (see Figure 2). This increased success rate seems to corroborate Jacqueline Peel and Jolene Lin's prediction that the widespread recognition of environmental rights in the global South might lead to more favourable climate litigation outcomes in that region.[32]

[28] Savaresi and Setzer, *supra* note 19 at 11.
[29] Boyd, *supra* note 3 at 4.
[30] Savaresi and Setzer, *supra* note 19 at 18.
[31] *Ibid* at 17, following Joana Setzer and Catherine Higham, *Global Trends in Climate Litigation: 2021 Snapshot* (2021) <http://www.lse.ac.uk/granthaminstitute/wp-content/uploads/2021/07/Global-trends-in-climate-change-litigation_2021-snapshot.pdf>.
[32] Jacqueline Peel and Jolene Lin, 'Transnational Climate Litigation: The Contribution of the Global South' (2019) 113 Am J Intl L 679.

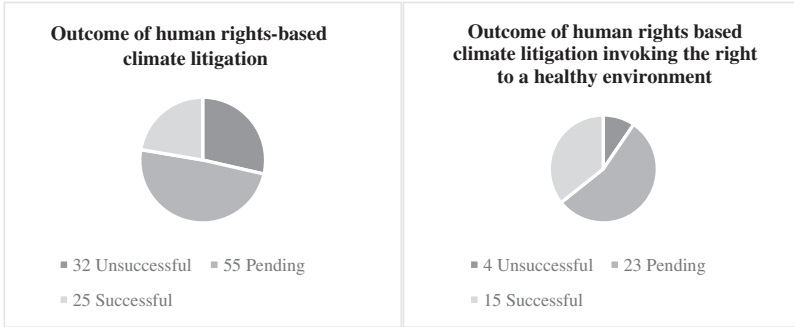

Figure 2: Outcome of climate cases invoking human rights

IV. THE HUMAN RIGHT TO A HEALTHY ENVIRONMENT IN CLIMATE LITIGATION: A CLOSER LOOK

In order to appreciate the role played by the right to a healthy environment in climate litigation, we analysed the nineteen cases listed in Annex I that have resulted in court decisions. We identified five main scenarios. In Scenario 1, the court's judgment relies on the right to a healthy environment, which is explicitly recognized in domestic law and has been expressly invoked by the applicants. In Scenario 2, the court's judgment does not rely on the right to a healthy environment, despite it being recognized in domestic law and invoked by the applicants. In Scenario 3, the court's judgment relies on the right to a healthy environment, even though it is not explicitly recognized by domestic law. In Scenario 4, the court's judgment acknowledges the implicit existence of the right to a healthy environment but does not rely on it. Finally, in Scenario 5, the court's judgment denies the existence of the right to a healthy environment in national law and therefore does not rely on it, even though the applicants based their arguments on that right, in whole or in part (see Figure 3).

We furthermore relied on the categorization operated by Savaresi and Setzer to determine how courts articulate states' obligations in the specific context of climate litigation, distinguishing between states' substantive and procedural obligations as well as between positive duties—to adopt and enforce legislation respectively—and negative duties—to refrain from harmful activities.[33] This section reviews these scenarios in turn.

Scenario 1: The Court's Decision Relies on the Right to a Healthy Environment, Which Is Explicitly Recognized in Domestic Law and Has Been Expressly Invoked by the Applicants

We found six cases where the applicants successfully relied on the right to a healthy environment, as recognized in national law. All were decided in the global South. Two prominent examples are discussed here in order to illustrate the courts' reasoning in this group of cases. In *Earthlife Africa v Minister of Environmental Affairs*, a South African non-governmental organization (NGO) filed a judicial review request challenging the government's decision to issue a license to build a coal power station. The applicants alleged that the power station would significantly contribute to climate change and affect the enjoyment of human rights. They

[33] Savaresi and Setzer, *supra* note 19 at 20, building on Doc A/HRC/31/52, *supra* note 9 at 16–18.

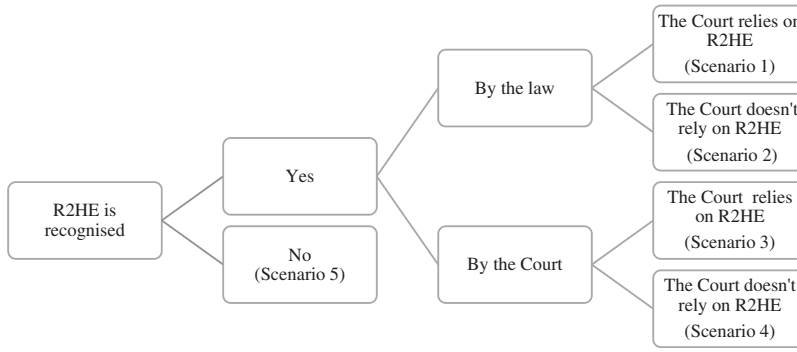

Figure 3: Scenarios concerning courts' treatment of the right to a healthy environment (R2HE) in climate litigation

specifically invoked the right to a healthy environment, which Article 24 of South Africa's Constitution formulates as follows:

> Everyone has the right—
>
> a) to an environment that is not harmful to their health or well-being; and
> b) to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that—
>
> i) prevent pollution and ecological degradation;
> ii) promote conservation; and
> iii) secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development.[34]

The applicants alleged that climate change 'presents a serious and imminent threat to this right'[35] and linked this right, amongst others, to the state's obligation to pre-emptively assess the environmental impacts of projects, such as the one under dispute.[36] The High Court of South Africa upheld the applicants' request, ordering the minister of environmental affairs to reconsider the license after a proper impact assessment had been conducted.[37] The court justified its decision, amongst others, by making reference to the right to a healthy environment.[38] The court recalled that this is a 'fundamental justiciable environmental right' and specifically noted its duty 'to promote the purport, spirit and objects' of the rights enshrined in the Constitution,[39] highlighting the 'substantial risk' posed by climate change to sustainable development in South Africa and to future generations.[40]

In *Salamanca Mancera v Presidencia de la República de Colombia*, a group of twenty-five young applicants used a special procedure for the protection of fundamental rights in Colombia—known as 'acción de tutela'—to complain that deforestation in the Amazon breached their rights to a healthy environment, to life, health, food, and water, which are all

[34] Constitution of the Republic of South Africa, 1996, Chapter 2: Bill of Rights at para 24.
[35] *Earthlife Africa v Minister of Environmental Affairs et al*, Founding Affidavit, filed before the High Court of South Africa Gauteng Division (22 August 2016).
[36] National Environmental Management Act (1998), art 240(1).
[37] *Earthlife Africa v Minister of Environmental Affairs et al*, High Court of South Africa Gauteng Division, Pretoria, Judgment (6 March 2017).
[38] *Ibid* at para 80.
[39] *Earthlife Africa* (2017), *supra* note 37 at para 81.
[40] *Ibid* at para 82.

protected by the Colombian Constitution.[41] The Colombian Constitution formulates the right to a healthy environment as follows:

> Every individual has the right to enjoy a healthy environment. The law will guarantee the community's participation in the decisions that may affect it. It is the duty of the State to protect the diversity and integrity of the environment, to conserve the areas of special ecological importance, and to foster education for the achievement of these ends.[42]

The Supreme Court upheld the applicants' complaint,[43] ordering the government to stop deforestation of the Colombian Amazon by 2020 and to launch a public process to develop a plan on how to halt deforestation.[44] In delivering its findings, the court noted that the judiciary should intervene to ensure the effectiveness of the rights recognized in the Constitution, especially in the context of the climate emergency.[45] It asserted that fundamental rights, such as the right to life, health, freedom, and dignity, are entirely dependent on a healthy ecosystem.[46] The court noted that the right to a healthy environment is included in the Colombian Constitution since the early 1990s[47] and linked said right to those of future generations[48] and to the rights of nature.[49] The court recognized the Colombian Amazon as a 'rights bearer' that the state must protect, conserve, maintain, and restore.[50] This is one of a handful of climate cases where the court not only relied on the right to a healthy environment but also seized the opportunity to articulate distinct rights of nature in the context of climate litigation.[51] These cases may be regarded as symptomatic of the progressive attitude of courts in the global South *vis-à-vis* the enforcement of environmental rights. More generally, these judgments are exemplary of how courts may rely on the right to a healthy environment to order public authorities to halt practices that cause climate change. These judgments hinge on the state's duty to prevent human rights violations associated with a lack of adequate legislation and/or a lack of enforcement of existing laws[52] and to refrain from authorizing activities that negatively affect the enjoyment of human rights.[53]

Scenario 2: The Court's Decision Does Not Rely on the Right to a Healthy Environment, Despite It Being Recognized in Domestic Law and Being Invoked by the Applicants

[41] *Salamanca Mancera et al v Presidencia de la República de Colombia et al*, Tribunal Superior de Bogotá, Acción de Tutela (29 January 2018) at para 5.2–5.6.
[42] Colombian Constitution, 1991, art 79.
[43] *Salamanca Mancera et al v Presidencia de la República de Colombia et al*, Corte Suprema de Justicia de Colombia, Case no 110012203 000 2018 00319 01 (5 April 2018) at 26–27.
[44] *Ibid* at 48–9.
[45] *Ibid* at 17.
[46] *Ibid* at 13.
[47] *Ibid* at 27–9.
[48] *Ibid* at 19–20.
[49] *Ibid* at 34–45.
[50] *Ibid* at 45.
[51] See *Khan Cement Company v Government of Punjab*, Supreme Court, Doc C.P.1290-L/2019, Judgment (15 April 2021); *Asociación Civil por la Justicia Ambiental, et al v Province of Entre Ríos, et al*, Supreme Court (2 July 2020); *Álvarez et al v Perú*, Corte Superior de Justicia de Lima (16 December 2019).
[52] *Salamanca Mancera v Presidencia de la República de Colombia; Shrestha v Office of the Prime Minister et al; Advocate Padam Bahadur Shrestha v Office of the Prime Minister and Council of Ministers et al*, Supreme Court, Division Bench, Case no 10210, NKP, Part 61, vol 3 (25 December 2018).
[53] *Earthlife Africa v Minister of Environmental Affairs; Ruling on Modification to Ethanol Fuel Rule*, Suprema Corte de Justicia de la Nación, Amparo en Revisión 610/2019, Segunda Sala (15 January 2020); *Philippi Horticultural Area Food & Farming Campaign et al v MEC for Local Government, Environmental Affairs and Development Planning: Western Cape et al*, High Court of South Africa, Western Cape Division, Case no 16779/17 (17 February 2020); *Greenpeace Mexico v Ministerio de Energía et al*, Juzgado Segundo de Distrito en Materia Administrativa, Especializado en Competencia Económica, Radiodifusión y Telecomunicaciones, Juicio de Amparo 104/2020 (17 November 2020).

We identified three climate cases where applicants unsuccessfully tried to rely on the right to a healthy environment, as enshrined in national law. In *Notre Affaire à Tous v France*, even though the applicants were successful, the court did not specifically rely on the right to justify its decision.[54] In *Environment Jeunesse v Canada*, the court rejected the case on procedural grounds and did not elaborate on the right to a healthy environment.[55] Both cases concerned the state's obligation to prevent human rights violations associated with a lack of adequate legislation and/or a lack of enforcement of existing laws.[56] However, given that neither court decision has elaborated on the right to a healthy environment, we are not in a position to comment further on the role played by this right in these decisions.

Only in *Nature and Youth and Greenpeace Nordic v Government of Norway*, can we find a detailed analysis of the right to a healthy environment.[57] In this case, a group of NGOs filed a request for judicial review, challenging the validity of the public authorities' decision to authorize new oil and gas production licenses in the Arctic.

The applicants lamented the climate impacts of the licenses as well as threats to the Artic ecosystem. They specifically argued that the licensing decision breached the right to a healthy environment, as recognized by Article 112 of the Norwegian Constitution:

> Every person has the right to an environment that is conducive to health and to a natural environment whose productivity and diversity are maintained. Natural resources shall be managed on the basis of comprehensive long-term considerations which will safeguard this right for future generations as well. In order to safeguard their right in accordance with the foregoing paragraph, citizens are entitled to information on the State of the natural environment and on the effects of any encroachment on nature that is planned or carried out. The authorities of the State shall take measures for the implementation of these principles.[58]

The applicants argued that Article 112 of the Constitution sets 'an absolute limitation against administrative decisions which impair the environment in such a way that they lead to serious harm to human health.'[59] The applicants also highlighted the impact of climate change on the enjoyment of several other human rights that are typically invoked in environmental litigation, including the right to life, health, and private and family life.[60] Finally, the applicants complained about the extraterritorial impacts of said licenses since the use and combustion of the oil extracted in Norway mostly take place abroad.

The Oslo District Court held that it was not possible for the state to control how fossil fuels extracted in Norway are used overseas. According to the court, the right to a healthy environment can only be violated whenever the state does not take the necessary measures to protect the environment. The court found that, since the bulk of emissions would take place abroad, the Norwegian authorities had no powers to address such emissions and therefore protect the environment.[61] Moreover, pursuant to a rather narrow interpretation of the

[54] *Notre Affaire à Tous et al v France*, Tribunal Administratif de Paris, Case no 1904967, 1904968, 1904972, 1904976/4-1 (3 February 2021 and 14 October 2021).

[55] *Environnement Jeunesse c Procureur Général du Canada*, Cour Supérieure, Province de Québec, Case no 500-06-000955-183 (11 July 2021).

[56] *Notre Affaire à Tous et al*, *supra* note 54; *Environnement Jeunesse*, *supra* note 55.

[57] *Nature and Youth and Greenpeace Nordic v Government of Norway*, Oslo District Court, Writ of Summons (18 October 2016). All documents of the case can be found at <https://www.klimasøksmål.no/en/2019/10/31/legal-documents-in-english/>.

[58] Constitution of the Kingdom of Norway (1814), art 112.

[59] *Ibid*, Writ of Summons at 35–6.

[60] Based upon the ECHR, *supra* note 6; International Covenant on Economic, Social and Cultural Rights, 1966, 993 UNTS 3; Convention on the Rights of the Child, 1989, 1577 UNTS 3; Constitution of the Kingdom of Norway, *supra* note 58 at 38–9.

[61] *Nature and Youth and Greenpeace Nordic v Government of Norway*, Oslo District Court (4 January 2018) at 18–19.

doctrine of the separation of powers, the court deemed that the Parliament's involvement in the decision-making process was enough to discharge the state's duties in so far as domestic emissions are concerned.[62] As a result, the court concluded that the licensing decision was not contrary to Article 112 of the Constitution.[63]

The Bogarting Court of Appeal partially revisited the interpretation of the state's duties provided by the Oslo District Court. It affirmed that Article 112 of the Norwegian Constitution provides a right and imposes a duty on the state to protect this right, which is enforceable by courts.[64] The court noted that the judiciary 'must be able to set a limit' to the exercise of state powers when protecting constitutionally established rights, such as the right to a healthy environment.[65] The Court of Appeal reasoned that this right has an intergenerational dimension[66] and that overseas greenhouse gas emissions derived from activities or decisions taken in Norway need to be taken into account when assessing the lawfulness of governmental decisions.[67] Even so, the Court of Appeal rejected the applicants' request, finding that Article 112 had not been breached because the state had laid down several measures that would eventually compensate for the increase in emissions deriving from the new licences.[68]

The decision was appealed before Norway's Supreme Court. The UNSR on human rights and the UNSR on toxics and human rights submitted a joint *amicus curiae* briefing in support of the applicants.[69] They argued that the state's margin of discretion only applies to measures to reduce greenhouse gas emissions that comply with human rights and environmental law obligations laid down in the Constitution and not to measures that increase emissions and therefore breach said obligations. Similarly, Norway's National Human Rights Institution submitted an *amicus curiae* briefing, arguing that judicial scrutiny of measures that might affect the enjoyment of the right to a healthy climate should be particularly 'intensive.'[70]

The Supreme Court dismissed the points raised in both briefings[71] and rejected the applicants' appeal. It found that, although Article 112 can be read as establishing an obligation for the state, it does not recognize a corresponding fundamental right. The absence of an internationally recognized human right to a healthy environment, according to the court, reaffirmed this interpretation.[72] Moreover, the Supreme Court cited the doctrine of the separation of powers, observing that the threshold for the judiciary to invalidate a decision taken by the executive or the legislature is considerably high, requiring a 'gross breach' of obligations enshrined in the Constitution.[73] In the court's words, 'decisions in matters of fundamental environmental issues often involve political considerations and broader priorities. Democracy views therefore speak in favour of such decisions being made by an elected body, and not by the Courts.'[74] The Supreme Court found that the impact of emissions associated with the use of oil and the resulting climate change were not significant or serious enough to justify the judicial review of decisions taken by the executive and the legislature. The court reached a similar conclusion on the

[62] *Ibid* at 27.
[63] *Ibid* at 28.
[64] *Nature and Youth and Greenpeace Nordic v Government of Norway*, Bogarting Court of Appeal (23 January 2020) at 17–20.
[65] *Ibid* at 17.
[66] *Ibid* at 17–18.
[67] *Ibid* at para 21.
[68] *Ibid* at paras 20–1, 28–31.
[69] *Amicus curiae* brief of the UN special rapporteur on human rights and the environment and the UN special rapporteur on toxics and human rights in Case no 20-051052SIV-HRET (31 August 2020).
[70] Norges institusjon menneskerettigheter, *Written Submission from the Norwegian National Human Rights Institution to Shed Light on Public Interests in Case no 20-051052SIV- HRET* (25 September 2020) at 40.
[71] *Nature and Youth et al v Norway*, Case no 20-051052SIV-HRET (22 December 2020) at para 175.
[72] *Ibid* at 92.
[73] *Ibid* at 157.
[74] *Ibid* at 141.

alleged violation of rights enshrined in the European Convention on Human Rights. In this regard, the court held that 'climate change is not a real and immediate risk to the lives of the people of Norway'[75] and that there was not a 'direct and timely connection' between oil licenses, the emissions resulting thereof, and the privacy, family life, or home of the applicants.[76]

In this case, the applicants tried to rely on the right to a healthy environment to order to have the public authorities halt practices that are harmful to the climate. Their application hinged, respectively, on the state's duty to refrain from authorizing activities that negatively affect the enjoyment of human rights. The decisions taken by the Norwegian courts demonstrate that, even when the right to a healthy environment is explicitly recognized in national law, judges may be reluctant to rely on it.[77] In this connection, the judgments in *Nature and Youth* and *Greenpeace Nordic v Government of Norway* are emblematic of the conservative approach of some courts in the global North to the interpretation of environmental rights, even when these are explicitly recognized in domestic law.

Scenario 3: The Court's Decision Relies on the Right to a Healthy Environment, Even Though It Is Not Explicitly Recognized by Domestic Law

We found five climate cases where courts relied on an unwritten right to a healthy environment, notwithstanding the fact that this right is not explicitly recognized, neither in domestic law nor in the constitution. In *Ashgar Leghari v Federation of Pakistan et al.*, a farmer claimed that lack of enforcement of existing national policies concerning climate change adaptation had breached the right to life. The court relied on established case law that recognizes the right to a healthy environment as implicit in the right to life, which is enshrined in the Constitution of Pakistan.[78] On this basis, the court ordered the creation of a Climate Change Commission, tasked to monitor the implementation of the National Climate Change Policy.[79] Therefore, in this case, the judges relied on an established doctrine in Pakistani jurisprudence and simply applied it in the context of a climate change lawsuit. The Pakistani courts took a similar approach in *Sheikh Asim Farooq v Federation of Pakistan*,[80] which concerned a complaint over lack of enforcement of measures to halt deforestation and the related climate impacts.

Equally, in *Association for Protection of Democratic Rights v State of West Bengal and Others*, the Indian Supreme Court derived the right to a healthy environment from the right to life and liberty as well as from the duty to protect the environment enshrined in the Indian Constitution.[81] The Supreme Court ordered the creation of a special committee tasked to provide guidance on the felling of ancient trees. *In re Court on Its Own Motion v State of Himachal Pradesh and Others*, India's National Green Tribunal ordered public authorities to protect a glacier from black carbon pollution. The tribunal relied on established case law that recognizes the right to a healthy environment as implicit in the right to life as well as on the polluter pays, sustainable development, and precautionary principles.[82]

Finally, in *Foster v Washington Department of Ecology*, a group of young plaintiffs asked the Superior Court of Washington to order the Department of Ecology to adopt regulations limiting greenhouse gas emissions. The court initially decided not to issue an order because the

[75] *Ibid* at 167–8.
[76] *Ibid* at 170–1.
[77] Savaresi and Setzer, *supra* note 19 at 23.
[78] *Ashgar Leghari v Federation of Pakistan et al*, Lahore High Court, WP no 25501/2015 (4 September 2015) at para 7.
[79] *Ibid* at para 11.
[80] *Sheikh Asim Farooq v Federation of Pakistan et al*, Lahore High Court, Case no W.P. 192069 of 2018, (30 August 2019).
[81] *Association for Protection of Democratic Rights v State of West Bengal and Others*, Supreme Court, Special Leave Petition no 25047 of 2018 (25 March 2021).
[82] *In re Court on Its Own Motion v State of Himachal Pradesh and Others*, National Green Tribunal, Application no 237 (THC)/2013 (CWPIL no 15 of 2010) (6 February 2014).

department had started to develop the required regulation. It nevertheless affirmed that the applicants' claims were well founded on the Clean Air Act, the public trust doctrine, and the unenumerated 'right to preservation of a healthful and pleasant atmosphere'. The court reasoned that the latter right could be derived from Article 1, section 30, of the Washington State Constitution, which states that '[t]he enumeration of certain rights shall not be construed to deny others.'[83] The court affirmed the department's 'responsibility to protect fundamental and inalienable rights' protected by the Constitution.[84] Subsequently, as the department halted the rule-making procedure, the applicants went again before the court and obtained the requested order.[85]

All the cases falling in this scenario hinge on the state's duty to prevent human rights violations associated with a lack of adequate legislation or a lack of enforcement of existing laws. These cases demonstrate that courts may rely on their powers to interpret the law to recognize the right to a healthy environment and to rely on this right specifically in the context of decisions of climate lawsuits. This practice is not new in environmental litigation,[86] especially in the global South, and has now started to surface also in climate change litigation.[87] It is therefore not a coincidence that the majority of cases falling within this category were decided in the Asia Pacific region, which has a long history of making a rather progressive use of the court's interpretative powers over environmental matters.[88]

Scenario 4: The Court's Judgment Acknowledges the Implicit Existence of the Right to a Healthy Environment As Invoked by the Claimants but Does Not Rely on It

We found three climate cases where courts have recognized the existence of an unwritten right to a healthy environment but have nevertheless dismissed the applicants' lawsuits. In *Juliana et al. v United States et al.*, twenty-one young plaintiffs filed a complaint for declaratory and injunctive relief before the District Court of Oregon against the United States. They argued that the federal administration had known for decades that greenhouse gas emissions caused climate change and associated harms but had nevertheless promoted and created the regulatory conditions for the continued exploitation of fossil fuels. The plaintiffs therefore requested the court to order the US government to stop promoting activities producing emissions and to devise a plan to reduce atmospheric concentration of greenhouse gas to a level that is consistent with scientific knowledge. In assessing whether the plaintiffs' complaint could proceed to the trial stage, the District Court of Oregon asserted that there are some rights that are so fundamental that they do not need to be expressly formulated in law.[89] The court reasoned that the judiciary has a duty to identify and protect such 'unenumerated' rights through the interpretation of the US Constitution.[90] In particular, the court found that there exists a previously unenumerated 'right to a climate system capable of sustaining human life' that 'is fundamental to a free and ordered society.'[91] Although the Court of Appeals for the Ninth Circuit dismissed the case on procedural grounds, it did

[83] *Foster v Washington Department of Ecology*, Case no 14-2-25295-1 SEA, Order affirming the Department of Ecology's denial of petition for rule making (19 November 2015) at 9.
[84] *Ibid* at 8.
[85] *Foster v Washington Department of Ecology*, Case no 14-2-25295-1, Order on petitioners' motion for relief under CR 60(b) (16 May 2016).
[86] See eg Dinah L Shelton, 'Developing Substantive Environmental Rights' (2010) 1(1) J Human Rights and the Envt 89.
[87] Ahmad Mir Waqqas, 'From Shehla Zia to Asghar Leghari: Pronouncing Unwritten Rights Is More Complex Than a Celebratory Tale' in Jolene Lin and Douglas A Kysar (eds), *Climate Change Litigation in the Asia Pacific* (2020) 261.
[88] Lavanya Rajamani, 'The Right to Environmental Protection in India: Many a Slip between the Cup and the Lip?' (2007) 16 RECIEL 274; Daniel Hornung, Douglas A Kysar and Jolene Lin, 'Introduction' in Douglas A Kysar and Jolene Lin (eds), *Climate Change Litigation in the Asia Pacific* (2020) 1.
[89] See *Juliana et al v United States of America et al*, District Court of Oregon no 6:15-cv-01517- TC, Opinion and Order (10 November 2016) at 30, 50.
[90] *Ibid* at 31.
[91] *Ibid* at 32–3.

not challenge the District Court's finding on the existence of the right to a stable climate.[92] Notwithstanding the protracted proceedings in this case and its unfathomable final outcome, *Juliana et al.* has inspired a plethora of youth-led cases around the world, thus driving an increase in climate change litigation.[93]

In *Friends of the Irish Environment v Fingal County Council*, the applicants asked for judicial review of a decision to extend the duration of a planning permission to construct a new runway at Dublin airport.[94] They based their request, *inter alia*, on an unwritten right to environmental protection.[95] The High Court of Ireland devoted a sizeable portion of its judgment to assessing whether Irish law recognizes such an unwritten right. The court acknowledged the existence of said right, observing that it is an essential condition for the fulfilment of all human rights.[96] Justice Max Barrett noted:

> [I]f the rule of law, in the form contemplated and tolerated by the people, is not to descend to the arbitrary rule of whoever comprises the current representative majority from time to time, then the only agency available to put rights, including unenumerated constitutional rights, between the claims of the executive or legislative and those of so-called 'ordinary' people, is the judicial branch of the tripartite government that the people have established directly.[97]

However, the court dismissed the case on procedural grounds, finding that the decision to extend the planning permission could not be challenged as the applicants had failed to object to said permission in the context of the original planning process.

Finally, in *Pandey v India*, a nine-year-old girl filed an application before India's National Green Tribunal against the government, contending that its actions and omissions had created, and are still contributing to, a climate crisis to which India is especially vulnerable.[98] The applicant complained about a lack of adequate implementation of extant legislation. The applicant also contended that the right to a healthy environment derives from the principle of intergenerational equity as well as the right to life, established in Article 21 of the Indian Constitution, as interpreted in previous case law of the Indian Supreme Court.[99] The court rejected the application, without considering whether the right to a healthy environment was affected, mainly arguing that there was no evidence that the government was violating its obligations regarding climate change.[100] An appeal has been filed before the Supreme Court, which is currently pending.

In these cases, the applicants tried to rely on the state's duty to prevent human rights violations associated with a lack of adequate climate legislation—*Juliana et al.*—and of adequate enforcement of said legislation—*Pandey*—and to refrain from authorizing activities that negatively affect the enjoyment of human rights—*Friends of the Irish Environment v Fingal County Council*. In the case of Ireland at least, the Supreme Court has revisited the reasoning

[92] *Juliana et al v United States et al*, United States Court of Appeals for the Ninth Circuit, Case no 18-36082 D.C. No. 6:15-cv-01517- AA Opinion (17 January 2020).
[93] Larissa Parker et al, 'When the Kids Put Climate Change on Trial: Youth-Focused Rights-Based Climate Litigation around the World' (2022) 13(1) J Human Rights and the Environment 64.
[94] *Friends of the Irish Environment et al v Fingal County Council et al*, High Court of Ireland, Case no 201 JR (21 November 2017) at paras 246, 256.
[95] *Ibid* at para 196.
[96] *Ibid* at para 264.
[97] *Ibid* at para 257.
[98] *Ridhima Pandey v Union of India*, Secretary Ministry of Environment, Forest and Climate Change, and Central Pollution Control Board, Application before the National Green Tribunal at Principal Bench, New Delhi (25 March 2017).
[99] *Ibid* at 25, 41.
[100] *Ridhima Pandey v Union of India*, National Green Tribunal, Original Application, Case no 187/2017 (15 January 2019).

of *Friends of the Irish Environment v Fingal County Council*, holding that there is no right to a healthy environment in Irish law.[101]

Scenario 5: The Courts Deny the Existence of the Right to a Healthy Environment

We found two climate cases where courts denied the existence of the right to a healthy environment and, consequently, did not rely on it in the decision of climate cases. In *Friends of the Irish Environment v Government of Ireland*, the Irish Supreme Court revisited *Friends of the Irish Environment v Fingal County Council*, taking a dim view over the existence of the right to a healthy environment in Irish law. In what may be regarded as a bittersweet victory for climate litigants, the Supreme Court quashed the government's climate change plans as inadequate. However, the court also rejected the High Court of Ireland's finding concerning the existence of the right to a healthy environment that was made in *Friends of the Irish Environment v Fingal County Council*. In this connection, the court affirmed that there is no right to a healthy environment in Irish law, either because such a right is not distinct from other human rights or because, even if it were, its contents are not clear or precise enough.[102] The Supreme Court also refused to recognize the standing of the applicant NGO to allege human rights violations.[103]

The Supreme Court quashed the government's climate plan just because it was not detailed enough and not because it was inadequate to protect human rights.[104] So, while *Friends of the Irish Environment v Government of Ireland* provides a welcome enforcement of Ireland's Climate Change Act, it also represents a setback in terms of standing rights for environmental NGOs and of the recognition of the right to a healthy environment. The court, however, has left open the possibility for individuals—as opposed to organizations/legal persons—to make human rights-based complaints regarding the government's climate action.[105]

In *Neubauer et al. v Germany*, the applicants argued that inadequate climate legislation meant that the German authorities had violated, among others, their rights 'to environmental protection, to an ecological minimum standard of living and to a future consistent with human dignity.' The Federal Constitutional Court found that no right to environmental protection exists in the German Constitution.[106] The court reasoned that the German Constitution provides the state's obligation to protect 'the natural foundations of life' but that the latter cannot be construed as a self-standing substantive right.[107] The court did not deem it necessary to delve into the question of whether the German Constitution recognizes a right to an ecological minimum standard of living or to a future consistent with human dignity. The court reasoned that, even if such rights existed, the German authorities would not have violated them as Germany has ratified the Paris Agreement and adopted legislation to tackle climate change.[108] However, the court noted that other fundamental rights already require the state to maintain minimum ecological standards, thereby making it obligatory to afford protection against environmental degradation 'of catastrophic or even apocalyptic proportions.'[109] The court concluded that the lack of more ambitious climate action poses an

[101] *Friends of the Irish Environment v Government of Ireland, Supreme Court*, Appeal no 205/19 (31 July 2020) at para 8.10–8.14.
[102] *Ibid* at para 8.10–8.14.
[103] *Ibid* at para. 7.2–7.22.
[104] *Ibid* at paras 6.27, 6.37–6.38.
[105] *Ibid* at para. 8.14–8.17; see also O Kelleher, 'A Critical Appraisal of *Friends of the Irish Environment v Government of Ireland*' (2021) 30(1) RECIEL 138 at 145.
[106] *Neubauer et al v Germany*, BVerfG, Order of the First Senate, Case no 1 BvR 2656/18 (24 March 2021).
[107] *Ibid* at para 112.
[108] *Ibid* at para 113.
[109] *Ibid* at para 114.

intolerable burden upon generations living in 2030, who would have to undertake emission reductions of such an intensity that they would affect their fundamental rights.[110]

In these cases, the applicants tried to rely on the state's duty to prevent human rights violations associated with a lack of adequate climate legislation—*Neubauer et al.*—and to enforce climate legislation—*Friends of the Irish Environment v Government of Ireland*. In both cases, the domestic courts reached decisions that were favourable to the applicants without however relying on the right to a healthy environment.

V. CONCLUSION

This article has taken stock of the role of the right to a healthy environment in climate litigation, with a view to ascertaining the extent to which the right to a healthy environment contributes to improved implementation and enforcement of climate laws, addresses gaps in climate laws, and creates opportunities for better access to justice for climate litigants. It has provided a bird's eye perspective on the use of this right in the growing body of human rights-based climate litigation as well as an in-depth analysis of how courts have used this right to adjudicate questions concerning climate change.

At the time of writing, the data available to carry out this exercise is limited. Most human rights-based climate lawsuits remain pending, rendering any conclusions merely tentative. Even with these caveats in mind, the available evidence suggests that the right to a healthy environment has been invoked in an increasingly large number of climate cases and not only by applicants but also by the courts themselves. By and large, the right to a healthy environment has so far been invoked to improve the implementation and enforcement of extant laws and to ask for the adoption of climate measures. When faced with cases invoking the right to a healthy environment, the courts tend to find in favour of the applicants more often than not. It seems therefore possible to affirm that, so far at least, the recognition of the human right to a healthy environment seems to have contributed to the success of human rights-based climate litigation.

In the right set of circumstances, therefore, the right to a healthy environment may be a game-changer. However, the data we gathered is insufficient to determine what these circumstances might be. Our findings seem to align with those of earlier literature, suggesting that courts in the global South are generally more comfortable in adopting bold decisions based on the right to a healthy environment, which is often explicitly recognized in national constitutions or developed by means of judicial interpretation.[111] The case law that we analysed also shows that some courts are uneasy about the judicialization of climate decision-making and are therefore reluctant to rely on the right to a healthy environment to order public authorities to review extant laws or decisions. In this connection, concerns over the judicialization of environmental decision-making have surfaced also in relation to climate change, and a fine balance has to be struck between judicial activism and the physiological development of climate change law by the legislature.[112]

The judgments we have analysed in this article are part of the process that is slowly but steadily determining the shape and form of climate change law and the role of human rights within it. Some of these judgments might even become stepping stones towards the recognition of the right to a healthy environment in countries that do not yet recognize it. Others, however, provide an important reminder of the fact that not all courts may be ready to

[110] *Ibid* at para 182.
[111] Boyd, *supra* note 3; Peel and Lin, *supra* note 32.
[112] See eg Teresa Kramarz, David Cosolo and Alejandro Rossi, 'Judicialization of Environmental Policy and the Crisis of Democratic Accountability' (2017) 34 Rev Policy Research 31.

liberally interpret this right. Recent UN resolutions and Council of Europe initiatives might still embolden national judges to rely more confidently on this right.[113]

Time will tell whether the positive trend recorded in this article will continue and what the impacts it will produce on climate law practice will be. As we have already noted elsewhere, human rights are no silver bullet, and neither is the right to a healthy environment.[114] Human rights obligations are no replacement for effective climate legislation, and human rights remedies are no replacement for effective preventative and remedial measures against harm caused by climate change.[115] Nevertheless, the evidence presented in this article suggests that, where it is recognized, the right to a healthy environment might provide precious ammunition to bridge the accountability and enforcement gaps plaguing climate law. And, in time, the international recognition of the right to a healthy environment might provide even more solid legal grounds for applicants to hold state and corporate actors accountable to tackle the climate emergency.

ANNEX: LIST OF CASES ANALYSED IN THIS ARTICLE

Ali v Federation of Pakistan (Pakistan)	No JD
Alvarez v Peru (Peru)	No JD
Asociación Civil por la Justicia Ambiental v Province of Entre Ríos, et al. (Argentina)	No JD
Association for Protection of Democratic Rights v State of West Bengal and Others (India)	3
Carballo et al. v MSU S.A., UGEN S.A., & General Electric (Argentina)	No JD
Carbon Majors inquiry (Philippines)	No JD
Citizens' Committee on the Kobe Coal-Fired Power Plant v Kobe Steel Ltd., et al. (Japan)	No JD
EarthLife Africa Johannesburg v Minister of Environmental Affairs (South Africa)	1
Environnement Jeunesse v Canada (Canada)	2
FOMEA v MSU S.A., Rio Energy S.A., & General Electric (Argentina)	No JD
Foster v Ecology (United States)	3
Friends of the Earth Germany v Germany (Germany)	No JD
Friends of the Irish Environment v Fingal County Council (Ireland)*	4
Friends of the Irish Environment v Ireland (Ireland)	5
Salamanca Mancera et al. v Colombia (Colombia)	1
Greenpeace et al v Spain (Spain)	No JD
Greenpeace Mexico v Ministry of Energy and Others (Mexico)	1
Nature and Youth and Greenpeace Nordic v Government of Norway (Norway)*	2
Hahn et al. v APR Energy S.R.L (Argentina)	No JD
In re Court on Its Own Motion v. State of Himachal Pradesh and Others (India)	3
Institute of Amazonian Studies v Brazil (Brazil)	No JD
Instituto Socioambiental, Abrampa & Greenpeace Brasil v Ibama and the Federal Union (Brazil)	No JD
Klimatická žaloba ČR v Czech Republic (Czech Republic)	No JD
Jóvenes v Gobierno de Mexico (Mexico)	No JD
Juliana v United States (United States)	4

(continued)

[113] Annalisa Savaresi, 'The UN HRC Recognizes the Right to a Healthy Environment and Appoints a New Special Rapporteur on Human Rights and Climate Change. What Does It All Mean?' *EJIL: Talk!* (12 October 2021) <https://www.ejiltalk.org/the-un-hrc-recognizes-the-right-to-a-healthy-environment-and-appoints-a-new-special-rapporteur-on-human-rights-and-climate-change-what-does-it-all-mean/>.

[114] Annalisa Savaresi, 'Human Rights and the Impacts of Climate Change: Revisiting the Assumptions' (2021) 11 Oñati Socio-Legal Series 231 at 245.

[115] *Ibid* at 246.

Korean Biomass Plaintiffs v South Korea (South Korea)	No JD
Leghari v Federation of Pakistan (Pakistan)	3
Maria Khan et al. v Federation of Pakistan et al. (Pakistan)	No JD
Mbabazi and Others v Attorney General and National Environmental Management Authority (Uganda)	No JD
Neubauer v Germany (Germany)	5
Notre Affaire à Tous and Others v France (France)	2
Notre Affaire à Tous and Others v Total (France)	No JD
OAAA v Araucaria Energy SA. (Argentina)	No JD
Pandey v India (India)	4
Partido Socialismo e Liberdade (PSOL) v Federal Union [*AmazonFund Case*] (Brazil)	No JD
Partido Socialista Brasileiro (PSB) v Federal Union [*Climate Fund Case*] (Brazil)	No JD
Philippi Horticultural Area Food & Farming Campaign, et al. v MEC for Local Government, Environmental Affairs and Development Planning: Western Cape, et al. (South Africa)	1
Rights of Indigenous People in Addressing Climate-Forced Displacement (United States)	No JD
Ruling on Modification to Ethanol Fuel Rule (Mexico)	1
Sheikh Asim Farooq v Federation of Pakistan (Pakistan)	3
Shrestha v Office of the Prime Minister et al. (Nepal)	1
Six Youths v Minister of Environment and Others (Brazil)	No JD

Notes: No JD means that no judicial decision had been made on the case as of 31 May 2021. Unsuccessful cases, which are not subject to further appeal, are marked with *.