

Urgenda Case:
The Impact of Climate Change in Human Rights

By Miriam Rosales García

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UNIVERSIDAD REY JUAN CARLOS
FACULTY OF GRADUATE STUDIES

The undersigned certify that they have read and recommend to the Faculty of Graduate Studies at UPEI and URJC acceptance, a thesis entitled “URGENDA CASE: THE IMPACT of CLIMATE CHANGE in HUMAN RIGHTS” submitted by Miriam Rosales García in partial fulfillment of the requirements of the degree of MASTER IN GLOBAL AFFAIRS.

Supervisor: CHRISTIAN E. RIECK
MASTER IN GLOBAL AFFAIRS
(UNIVERSITY OF POTSDAM)

Grade: 

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ABSTRACT

Climate change is the challenge of the 21st century. It has been analyzed from several perspectives, with the scientific and economical approaches being the most common. However, there is increasing attention to the link between climate change and human rights in recent years. One of the most powerful tools to enforce countries' climate commitments and combat climate change, is environmental litigation. Although there are no specific laws to protect human rights from the impact of climate change, new cases arise in which judicial activism uses existing law and other evidence, such as Oslo Principles, to apply human rights-based arguments. So, this study analyzes how the case Urgenda vs. The State of Netherlands has been a significant step towards for the consideration of the human rights perspective in climate change litigation.

Keywords: Climate Change, Human Rights, Urgenda, Judicial Activism, Global Litigation, Oslo Principles.

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DEDICATION

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I. INTRODUCTION

Climate change is one of the global challenges of the 21st century. The COP 24, celebrated at the end of December 2018 in Katowice (Poland), has shown that countries are far from achieving the goals set by the Paris Agreement. According to the IPCC, governments have to be more involved to reach a global temperature below 2°. Countries need to be further transparent and share the information they have about the climate results obtained in recent years (Koeppel & Ochoa, 2018).

The European Union have adopted a leading position in the fight against climate change, as demonstrated in the negotiation process of the Paris Agreement and the successive international conferences. The results of the 2019 European Union elections on May 26th have shown the citizens concern for climate change. As such, parties with electoral programs focused on the fight against the climate emergency and the development of sustainable economies have increased their power. For instance, the Greens/EFA Group has grown from having 52 seats to 70 seats in the EU Parliament.

Although the EU, and its member states, is demonstrating a strong commitment to mainstream climate change, the approach from which it is being carried out is purely economic and scientific. Not only happens in the EU but the entire international community. Historically, these have been the approaches from which the problem of climate change has been analyzed. But climate change impacts human rights. The climate crisis is intensifying inequality, poverty, forced displacement. It is affecting the most vulnerable populations worldwide. According to the 2018 report of the Lancet Countdown of the EU, mortality increases by 4% of

total population for each degree that the temperature increases, which means 30,000 deaths per year worldwide (Watts et al., 2018).

Therefore, it is essential to include the human rights perspective in the fight against climate change. It means understanding climate change as a human rights problem and using the legal framework to address it. The human rights approach emerges as a conceptual framework developed by the United Nations to guarantee the protection and promotion of fundamental rights¹.

In the context of this research, the human rights approach proposes to conceive climate change not only as an environmental problem but also as a violation of human rights (Adelman & Lewis, 2018). In recent years, the interest in this approach has increased considerably both in academia² and in the practical legal area³. One of the most relevant principles concerning the application of environmental law in international human rights tribunals is the principle of "thresholds." It means the consideration of a minimum and maximum limits of implementation of the Environmental law concerning enjoyment and protection from

1 According to the United Nations, human rights are those that every person possesses inherently without discrimination based on sex, race, religion, or another status. These rights are reflected in the Universal Declaration of Human Rights adopted by the General Assembly of the United Nations in 1948. This declaration has promoted the creation of an international human rights framework that forces states to promote and protect human rights and fundamental freedoms.

2 One of the most prominent forums in this area is the Georgia Journal of International and Comparative Law, in which international experts meet to discuss academic issues, including climate change and human rights.

3 One of the most prominent examples is the claim that in 2005, the Inuits filed against the United States before the Inter-American Commission on Human Rights. In it, they claim that they had been victims of violations of the rights to life, health, culture, and subsistence, a consequence of the omissions of action against global warming by the state.

human rights. Hence, states only have the legal obligation to apply environmental law progressively. But there is a minimum threshold to which people are entitled, and states must guarantee that level of protection (Bodansky, 2009).

The application of the human rights approach to climate change entails advantages and disadvantages.

One of the main reasons why the human rights approach is not applied usually is the difficulty in enforcing laws of this nature. According to Humphreys (2010, p.4):

“Climate change generally (if not exclusively) affects categories of human rights that have notoriously weak enforcement mechanisms under international law: social and economic rights; the rights of migrants; rights protections during conflicts. Even those rights that have strong protections, such as rights to life and property, are not subject to their normal enforcement procedures, because the harms caused by climate change can be attributed only indirectly.”

The most problematic legal argument is the attribution of human rights violations. There must be an identifiable subject to which it can be attributed the breach. The main problem of climate change is the difficulty in demonstrating the link, and prove the duty holder responsible for breaking his responsibility (Bodansky, 2009).

However, it also has several advantages that make the application of this approach attractive in the fight against climate change. Human rights allow legal arguments about what states should do when committing violations of these rights. There are more tribunals of human rights than alternatives to resolve disputes of

international environmental law cases (Gromilova, 2014). Besides, the human rights approach makes more visible real victims, which is a strong tool to argue the impact of climate change and provide it with greater credibility. As the International Council on Human Rights Policy states (Bodansky, 2009, p.517):

“Lawsuits draw attention to harmful effects that might otherwise remain below the public radar, put a name and face to the otherwise abstract suffering of individuals and provide impetus and expression to those most affected by the harms of climate change. They can thus mobilise public opinion in support of policy change.”

This thesis studies what is the impact of climate change in human rights in Europe. Specifically, it aims to analyze the political and legal context, and the human-rights-based arguments, of the Urgenda case. Additionally, this essay seeks to establish the effects of this case in the global climate litigation field.

This thesis has four sections. The first section provides the research question, delimits the object of study, and defines the objectives. The second is a review of the existing literature to understand the theoretical framework that helps to contextualize the research. The third section is the analysis of the case study, Urgenda vs. the State of Netherlands. The last part is the thesis conclusions.

II. OBJECT OF STUDY

The main problem that aims to address this research is defined in the following research question:

“What is the impact of the Urgenda case on the protection of human rights from the effects of climate change in the European context?”

In general, this research aims to know the impact of this case in climate litigation and the protection of human rights from the effects of climate change. As such, the object of study of this research is focused on the political-legal context of the case. Specially, the human rights- based arguments presented by the Court.

III. OBJECTIVES

The main goal of this research is to answer the research question previously established, that is, to determine the impact of the Urgenda case on the protection of human rights from the effects of climate change in the European context. As such, it is necessary to establish several subsidiary goals as the analysis of the political and legal framework of the Urgenda case to understand the background, the study of the fundamental legal arguments of this case and the analysis of the impact of the Urgenda case in climate litigation.

IV. METHODOLOGY

The proposed research will follow a qualitative approach. This type of study consists of understanding a complex social phenomenon that, beyond measuring the variables involved, seeks to explain it (Sampieri, 2007). So, this study will be developed according to two different phases.

The first phase will be the exploratory stage. It will be documentation and bibliographic analysis of the main categories of research. This stage aims to establish a theoretical framework that contributes to the understanding of the research problem. Several concepts will be analyzed at this stage. The human rights approach applied to climate change, to understand the impact of this phenomenon on fundamental rights and how it has addressed this problem from this approach. Judicial activism, the principle of separation of powers, and its role in global climate litigation, will also be analyzed to understand the influence of this legal tool to enforce climate obligations. Further, the Oslo principles and their impact on the attribution of legal responsibilities with climate change by States will be studied. Finally, the ECHR will be analyzed to understand the argument of the Court of Appeal of the Urgenda Case, based on articles 2 and 8 of this convention. Therefore, as the function and requirements of admissibility of claims of the ECtHR will be briefly described, to understand why this case was not brought before this court.

The second phase will be the analytical stage. It will be used the concepts previously studied to analyze and understand the Urgenda case, and to draw direct conclusions from the object of study. Special attention will be given to the application of a human rights approach, explicitly analyzing the human rights-based arguments of the case.

V. LITERATURE REVIEW

1. Climate Change and Human Rights

According to the UNFCCC (1992, p. 7), climate change “means a change of climate which is attributed directly or indirectly to human activity that alters the composition of the global atmosphere and which is in addition to natural climate variability observed over comparable periods.” The effects of this phenomenon are dramatic and can be observed, for example, in sea level rises, floods and the weakening of food production.

There is no doubt that climate change has a brutal impact on human rights. However, there is no direct translation of that into a more efficient legal framework to protect fundamental rights from climate violations. The law does not contemplate a specific dimension of how climate change affects human rights (Peel & Osofsky, 2018, p.46):

“Although the implications of climate change for the realization of human rights are increasingly obvious, the more difficult issue that arises is whether the effects of climate change on human rights provide evidence of an actionable rights violation.”

The Office of the High Commissioner of Human Rights (OHCHR, 2009) states that there are several obstacles faced by claimants of climate litigation with arguments based on human rights. As such, the establishment of causal relationships between climate change and the impact on human rights. Further, the accurate attribution of the effects of climate change to human rights, considering that it also causes damage to other dimensions, such as political, social, or economic.

Additionally, the prediction of potential human rights violations, which are generally established once the violation has already been perpetuated.

Governments have an obligation under international human rights law, to fulfill three functions⁴: the respect of human rights, the protection of violations by third parties, and the ensure of enjoyment of all members of society. The obligation to respect means that States must not restrict or interfere with the enjoyment of human rights. Protection means that the State adopts an active role in the protection of rights violations by third parties. The obligation to comply implies that States promote actions that facilitate the enjoyment of these human rights. (OHCHR, 2019).

States has a moral and legal obligation to guarantee these premises also in the case of climate change. These fundamental rights, such as the right to life, food, property and others, are mainly found in the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR).

⁴ States undertake to fulfill their obligations concerning human rights through the signing of international treaties. There are nine international human rights instruments. Additional protocols that add specific considerations complement some of these treaties. Additionally, each of these instruments has created a committee of experts to monitor and ensure the correct involvement of them. These instruments are: the International Convention on the Elimination of All Forms of racial Discrimination (1965), the International Covenant on Civil and Political Rights (1966), the International Covenant on Economic, Social and Culture Rights (1966), the Convention on the Elimination of All Forms of Discrimination Against Women (1979), the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (1984), the Convention of the Rights of Child (1989), the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990), the International Convention for the Protection of All Persons from Enforced Disappearance (2006), and the Convention on the Rights of Persons with Disabilities (2006). All the treaties are available here: <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CoreInstruments.aspx>

Although there is sufficient scientific evidence to demonstrate the impact of climate change on human rights⁵, it has not been a consensus to address this issue in the international community until the last decade. Even if there is not adequate recognition of the obligations of the states yet, there are several principles established in the different agreements developed internationally.

1.1. International Recognition of Human Rights Obligations Relating to Climate Change

International community has collaborated to create several treaties to face climate change. There are three major global agreements of climate change: The United Nations Framework Convention on Climate Change (UNFCCC, 1992), the Kyoto Protocol (1997) and the Paris Agreement (2015).

Although all those agreements showed the need and commitment of the States parties to mitigate and adapt to the effects of climate change, it was the Paris Agreement (2015, p. 2), the first to mention human rights in an international agreement on climate change:

“Acknowledging that climate change is a common concern of humankind, Parties should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights, the right to health, the rights of indigenous peoples, local communities, migrants, children, persons with disabilities and people in vulnerable situations

⁵ The IPCC special report of October 2018 presents scientific evidence of the impact of climate change on human rights. For example, it demonstrates how it violates the human right to life (the summer heatwave in Europe in 2003 caused the death of 35,000 people), or the right to health (increased risk of malnutrition as a result of the decrease in food production in poor regions). Available: <https://www.ipcc.ch/sr15/>

and the right to development, as well as gender equality, empowerment of women and intergenerational equity.”

The international community recognizes the threat that climate change poses to the full enjoyment of human rights, and the demand that measures adopted to face this threat comply with human rights obligations (Calzadilla, 2018).

1.1.1. The process to the Paris Agreement

The global conversation on the impact of climate change on human rights was level up by two key events.

In December 2005, the President of the Inuit Circumpolar Council (ICC) presented a petition to the Inter-American Commission on Human Rights (IACHR) in which he argued the human rights violations resulting from the uncontrolled emissions of greenhouse gases by the United States, which would have violated the human rights of the Inuit by not adopting adequate control measures. Although the IACHR never issued a decision, the petition captured the attention of the international community and sparked a dialogue on the severe effects of climate change on human rights. Mainly, it focused on the impact on the most vulnerable groups, such as indigenous peoples (Osofsky, 2006).

Second, the Small Island Developing States adopted the Male' Declaration on the Human Dimension of Global Climate Change (SIDS, 2007). This statement is the first in which it is explicitly recognized that climate change has a clear and immediate impact on human rights. The Male' Declaration promoted the international collaboration of the Conference of the Parties (COP) and the different UN agencies

to assess the climate impact. As a result, the Bali Conference (COP 13, 2007) recognizes that climate change has a drastic effect on both, present and future generations. Also, it was argued for the first time that governments have an ethical and legal obligation to promote and protect fundamental human rights from the impact of global warming.

In response to the Male' Declaration, the UN Human Rights launched in 2009 a report analyzing the impact of climate change on the enjoyment and protection of human rights, as well as the obligations of states under international human rights law (Calzadilla, 2018). The report pointed to specific cases in which there were effects on human rights, such as the right to life, food, water, and health. Moreover, the impact on specific groups, such as women, children, and indigenous peoples, was listed.

After this report, the OHCHR promulgated five resolutions between 2008 and 2015 that recognized the link between climate change and human rights, which greatly influenced the subsequent Paris Agreement (UNEP, 2015, p.14):

“Resolution 10/4 (2009), which recognized that international cooperation would be necessary to enable implementation of the UNFCCC. Resolution 18/22 (2011), which affirmed that “human rights obligations, standards and principles have the potential to inform and strengthen international and national policymaking in the area of climate change, promoting policy coherence, legitimacy, and sustainable outcomes” and that “in no case may a people be deprived of its own means of subsistence” as a result of climate change.” Resolution 18/22 also called for additional dialogue on how to address the

adverse impacts of climate change on the full enjoyment of human rights. Resolution 26/27 (2014), which explicitly noted the urgent importance of continuing to address, as they relate to States' human rights obligations, the adverse consequences of climate change for all, particularly in developing countries and its people whose situation is most vulnerable to climate change, especially those in a situation of extreme poverty, and deteriorating livelihood conditions. Resolution 29/15 (2015), which contained effectively the same language on "States' human rights obligations" as Resolution 26/27 and called for new study on the relationship between climate change and the human right to the highest attainable standard of physical and mental health."

Finally, the Paris Agreement was created in 2015. Probably, the most significant international agreement on climate change for its ability to legally bind most countries in the world. This agreement is especially important because the impact of climate change on human rights is mentioned for the first time in a global and binding treaty.

1.1.1. Human Rights in the Paris Agreement

The Paris Agreement mentions in the preamble the importance of consider human rights⁶ when taking climate actions (UNFCCC, 2015).

⁶ "Acknowledging that climate change is a common concern of humankind, parties should, when taking action to address climate change, respect, promote and consider their respective rights on the human rights, the right to health, the rights of indigenous peoples, local communities, migrants , children, persons with disabilities and people in vulnerable situations and the right to development, as well as gender equality, empowerment of women and intergenerational equity. "

The Paris Agreement not only defends the commitment of states to respect fundamental rights but also includes a positive obligation to promote and consider human rights in climate measures and actions. As such, it is discernible a link between the progress of climate actions and human rights. It is observed, for example, in the inclusion of the gender perspective⁷ or the eradication of poverty⁸ in climate efforts.

Although the Paris Agreement emphasizes the obligation to consider human rights, the preamble does not constitute any right or obligation for the signatory parties. However, it serves to guide and interpret the text as a whole. For this reason, the mention of human rights supposes a declaration of intentions and a symbolic act to demonstrate the applicability of the human rights approach in the fight against climate change (Mayer, 2016).

1.2. Judicial Activism

The term judicial activism presents connotations as diverse as the description of the phenomenon itself. In different regions of the world, the interpretation of this concept is different. In Europe, it is usually understood with negative connotations as impartiality or politicization of the law. On the contrary, in the Latin American region, and North America, it has positive connotations, and an activist court is valued as an

⁷ Article 7 of the Paris Agreement: “Parties acknowledge that adaptation action should follow a country-driven, gender-responsive, participatory and fully transparent approach, taking into consideration vulnerable groups, communities and ecosystems, and should be based on and guided by the best available science and, as appropriate, traditional knowledge, knowledge of indigenous peoples and local knowledge systems, with a view to integrating adaptation into relevant socioeconomic and environmental policies and actions, where appropriate.”

⁸ Article 2 of the Paris Agreement: “This Agreement, in enhancing the implementation of the Convention, including its objective, aims to strengthen the global response to the threat of climate change, in the context of sustainable development and efforts to eradicate poverty.”

effective instrument for the protection and promotion of fundamental rights that seeks solutions according to social needs (Artienza, 2001).

This concept was first introduced by historian and sociologist Arthur Schlesinger Jr. in 1947, in an article in Fortune magazine (Spitzer, 2019).. Schlesinger described in this article the profiles of nine judges of the United States Supreme Court whom he classified into two opposing groups. In the group that he called judicial activists were those judges who used the power of the courts to promote liberal social causes. In the opposite group, there were those named by the author as judicial self-restraint. The judges who practice judicial moderation are those who limit themselves to what is stated in the Constitution and do not try to find another alternative unless the norm seems to be unquestionably unconstitutional. Schlesinger did not assess the positive or negative value of the term. It merely states that judicial activists understand the law as manageable, to achieve social change (Spitzer, 2019).

Since then, the term judicial activism has been open to broad interpretations, given its lack of legal meaning. It has a mostly social or political use, whose function is correct political market failures (Petersen, 2017). The main problem that this approach poses is the questioning of the impartiality of professionals called activists. Thus, this concept presents judges as creators of law, going beyond mere interpretation. It is understood that judicial activism is a practice that allows the limitation of state power, through the use of the Constitution and Fundamental Rights, to create jurisprudence, establish the unconstitutionality of a rule and promote a change in legislation adapted to the social change (Bolick, 2007).

Therefore, it is essential to know the difference with a close concept, procedural activism, to understand the concept of judicial activism. According to Spitzer (2019):

“Procedural activism refers to a scenario in which a judge's ruling addresses a legal question beyond the scope of the legal matters at hand. One of the most famous examples of procedural activism is *Scott v. Sandford*. The plaintiff, Dred Scott, was a slave in Missouri who sued his master for freedom. Scott based his claim to freedom on the fact that he had spent 10 years in a non-slave state, Illinois. Justice Roger Taney delivered the opinion on behalf of the court. Taney wrote that the court did not have jurisdiction over Scott's case under Article III of the U.S. Constitution. Scott's status as a slave meant that he was not formally a citizen of the United States and could not sue in federal court.”

Given the breadth of definitions of the concept itself, it is complicated to establish a static criterion to define what actions are and what decisions are not or cannot be considered judicial activists (Atienza, 2001). It depends remarkably on each case. Consequently, the best way to illustrate what is considered judicial activism is through concrete examples.

One of the most prominent courts for being considered an activist is that of Judge Earl Warren⁹, who presided over the Court from 1953 to 1969 (Zietlow, 2008). Its decisions had a crucial impact on the culture of the United States, as major

⁹ Earl Warren (1891-1974) was an American politician and jurist who served as the 14th President of the United States Supreme Court (1953-1969) and previously as the 30th Governor of California (1943-1953). The Warren Court presided over a significant change in constitutional jurisprudence.

decisions were made related to sensitive political issues, such as the rights of criminals, social inequality, or the separation of Church-State power.

There are several famous cases of the Court of Warren, such as *Brown v. Board of Education* (1954), in which Judge Warren's sentence eliminated racial segregation in schools. Warren ruled that segregation was a violation of the Equality of Protection Clause of the Fourteenth Amendment, which created an unequal learning environment. This case was considered an activist because Warren's action resulted in the annulment of other sentences, such as *Plessy v. Ferguson* in which the Court had reasoned that schools could be segregated provided they were equal. Another notable case was *Gideon v. Wainwright* (1963), in which Warren ruled that all defendants were entitled to the defense of a lawyer regardless of the seriousness of the crime. Additionally, the case of *Engel v. Vitale* (1962), in which he ruled that the obligatory prayer of the schools was a violation of the Church-State separation based on the first amendment of the Constitution.

The decisions of the Warren court promoted the advance of liberal political causes in the United States between the 1950s and 1960s and had a positive impact on the progress of social causes of human and civil rights throughout the country (Zietlow, 2008).

The main criticism attributable to judicial activism is the risk of increasing the power of judges to the rule of law. So, the most critical sector considers that if the judges do not feel subjected to legislative power and consider that they must act following the constitutional principles, it could be the risk of having a lack of legal

confidence. The actions of the authorities would not be foreseeable, and the rule of law would be uncertain (Atienza, 2011).

1.3. Global Climate Change Litigation

Environmental litigation concerning climate change is not new. However, it is not usual to find cases in which the violation of human rights, in the climate context, is judged (Peel & Osofsky, 2018):

"In September 2015, Judge Syed Mansoor Ali Shah of the Lahore High Court in Pakistan made history with his finding that the national government's delay in implementing the country's climate policy framework violated citizens' fundamental rights (Ashgar Leghari v. Federation of Pakistan), (...) A few months earlier, the Hague District Court in the Netherlands had handed down its decision in Urgenda v. The State of the Netherlands."

There is an increase in a global phenomenon in which climatic litigious based on human rights arguments are more frequents. Cases like Leghari and Urgenda¹⁰ constitute a step ahead of jurisprudence in these contexts. Those cases also inspire the emergence of new cases and motivate the receptivity of judges to assess the implications that climate change have for fundamental rights (Peel & Osofsky, 2018).

¹⁰ Those cases in 2005 (Leghari vs. Pakistan, and Urgenda vs. The Netherlands) took national governments to court, arguing that the national state was not taking mitigation and adaptation measures to protect the fundamental rights of citizens from climate change. The main difference between these two cases is that, in the Leghari case, the court directly used human rights-based arguments in its judgment, specifically the right to life. However, in the Urgenda case, it was the Hague Court of Appeal that issued a ruling appealing to human rights, once there was a final ruling from the district court.

According to the United Nations Environmental Program (UNEP, 2017), there are five trends in global climate change litigation. The first is the litigation that tries to make the government fulfill its legislative and political commitments. Second, the cases that attempt to link the resource of extraction with climate change and resilience. Further, litigation to establish the link between the relationship of particular emissions as the immediate cause of a specific adverse climate change. Fourth, establish responsibility for lack of efforts to adapt to climate change. Finally, apply the doctrine of public trust to climate change.

The rise of human rights-based climate cases is showing the necessity for alternative approaches. Lawyers are demonstrating their creative ability to create legal arguments based on existing national and international law, emerging the need for judges to be willing to interpret these cases (Clarke et al., 2018).

1.4. The Oslo Principles

When talking about the obligations of governments in the face of climate change, it seems that their responsibilities are limited to binding international treaties. However, all states have legal obligations even if they are not part of these agreements. As such, in March 2015, a group of legal experts¹¹ from different parts of the world launched the Oslo Principles on Global Climate Change Obligations (Kings College London, 2015).

¹¹ Thomas Pogge and Jaap Spier led the project supported by various legal experts from around the world. Among them, the independent expert of the UN, John Knox of the United States. The working group met three times during the development of the project in The Hague, New York, and London. The work has been mostly funded by organizations such as the Heinrich Böll Foundation.

The Oslo principles arise from the imminent need to take measures to combat climate change. The strong scientific evidence that demonstrates the need to keep the global temperature below 2° urgently, and the absence of a political commitment to match the necessary actions, are the incentive and reason for these principles. Legal experts from around the world have created these principles as an alternative tool to combat the challenge of climate change and establish in the most concrete way possible the legal obligations of states and companies (Benjamin et al., 2019, p. 3):

“As things stand right now, there is not much reason to believe that politicians will be able to strike compromises to the extent needed in time. This regrettable state of affairs serves as an incentive, if not imperative, to explore potentially promising avenues to stem the tide.”

There is an important debate about whether climate change is a matter of international law, human rights, national environmental law, or tort law. As such, the main goal of the Oslo Principles is the establishment of the respective legal obligations that States and companies have to reduce greenhouse gas emissions. The approach from which they work is fundamentally preventive. As such, The Precautionary Principle requires that the necessary measures reduce GHG emissions be guaranteed regardless of the cost of these actions.

According to those experts, the ideal solution would be the development of binding international agreements that establish these specific responsibilities. But given that there is no specific legal framework to deal with climate change, this group of experts uses the existing law to respond to what who should do and why. Thus,

the Oslo Principles are not binding, but serves to provide a reliable and independent defining basis on the legal obligations of decision-makers (Benjami et al., 2019, p. 6):

“The same goes for our Principles. If “decision-makers” (political leaders, governmental agencies and business leaders) fail to comply with their obligations as described, they could serve as a basis for legal enforcement by means of injunctive relief. Furthermore, these principles are intended to also serve as guidance to investors, supervisory institutions and auditors about steps that must be taken by enterprises.”

The Oslo principles establish an individual criteria in the distribution of responsibilities. First, it creates a distribution method the concept of "per capita emissions." Assigning a percentage of liability to each person aims to establish an equitable and fair distribution. The countries with the highest emissions are precisely those with the highest population. Thus, those experts use a practical and straightforward method without entering into considerations that would hinder the adoption of solutions. Therefore, this group of experts understands that the distribution of current responsibility should not be based on the historical emissions of the countries, although this should be taken into account for other aspects. Therefore, it establishes a criterion of differentiation between rich or developed and developing countries. According to these principles, the wealthiest countries are those that have historically emitted the highest volumes of emissions. Therefore, they must contribute to the cost of mitigation and adaptation activities of the poorest countries as compensation.

The Human Rights Dimension

The human rights approach is a fundamental part of the Oslo Principles. Its approach is based on the "Principle of Human Dignity," according to which States have a strict duty to adopt the necessary measures to protect, respect, and promote human dignity. Specifically, states have the legal responsibility to face the impact of climate change to ensure the compliance of fundamental rights, such as the right to life, health, property, and others.

The Oslo principles pay special attention to the groups most vulnerable to this impact, such as the indigenous population (The Oslo Principles, 2015, p.2):

"International law entails cooperation to protect and advance fundamental human rights, including in the context of climate change and its effects on people's ability to exercise such rights. Threatened human rights include, but are not limited to, the right to life, the rights to health, water, food, to clean environment, and other social, economic and cultural rights, and the rights of children, women, minorities and indigenous peoples."

2. The European Convention on Human Rights

After the painful experience of the Second World War, the protection of human rights adopted a central position on the international agenda.

On December 10th of 1948, the Universal Declaration of Human Rights was adopted. That same year, the International Committee for European Unity organized the "European Congress" in The Hague. As a result, the basis for the creation and signing of the Treaty of London on May 5th, 1949, was established. The Council of Europe was officially created (Van Dijk et al., 1998). The end of the creation of this

international organization, based in Strasbourg, was the projection of a unified project of European states, based on the principles of democracy, human rights and the rule of law. The aim was not only to guarantee that a new world war would not happen but also to take the initiative to promote and protect the fundamental rights of all citizens.

As such, on November 4th of 1950, twelve European states¹² drafting and signed the European Convention on Human Rights, that included the protection of civil and human rights considered fundamental. The Convention has been followed to the creation of several protocols (Cameron, 2014).

Additionally, the Council of Europe has gone from having ten founding members to forty-seven at present, with Belarus, Kazakhstan, and the Vatican the only non-member states. There are also five countries with observer status: Mexico, the United States, Canada, Japan, and the Holy See. Moreover, the Council of Europe is made up of several institutions: The General Secretariat, the Committee of Ministers, the Parliamentary Assembly, the Congress of Local and Regional Authorities, the European Court of Human Rights and the Human Rights Commissariat (Cameron, 2014).

2.1. ECHR: content and protocols

The convention is fundamentally inspired by the Universal Declaration and includes mostly civil and political rights. Some exceptions include additional rights

¹² Belgium, Denmark, France, Germany, Iceland, Ireland, Italy, Luxembourg, Netherlands, Norway, Turkey, and the United Kingdom.

and freedoms, as well as provisions on processes, which have been introduced through different protocols. Although the Convention has been ratified by the 47 member states, it is not the same case with the additional protocols. Usually, there are provisions related to controversial issues, such as migration, that are not ratified by all states (Rainey, 2014).

There are two primary types of protocols: the additional and the procedural.

The first ones are those that add the protection of rights that were not previously collected and are only binding for those states that ratify them. Some of the most important protocols are Protocol No. 1 (1952), adding the rights to property, education, and the holding of free elections. Also, the Protocol nº4 (1963) that added the prohibition of prison for debts regulated the freedom of movement and prohibited the collective expulsion of foreigners. Further, Protocol nº2 (2000), which incorporates the general prohibition of discrimination in the application of any right. Finally, Protocol No. 13 (2002): extends the abolition of the death penalty (Protocol No. 6) to any circumstance, including wartime.

The second, the procedural protocols, are those that modify how it proceeds to guarantee the protection of these rights (Harris et al., 2014). The ratification of all member states is necessary for these to take effect. Probably, the most noteworthy is Protocol No. 11 of November 1998, which constituted a profound modification of the procedural system. It suppressed the European Commission of Human Rights and added extraordinary value to the Court: the possibility that individuals can present demands directly.

2.2. European Court of Human Rights

Before the entry into force of Protocol No. 11, cases had to go through the European Commission Human Rights to be filtered before to go to the Court. The modification of this procedure has made the European Court of Human Rights, a unique institution throughout the international judicial system. The citizens of the 47 member states of the Council of Europe have direct access to demand violations of human rights. However, this new system has also led to a notable increase in the workload of the court, in which the number of requests increased by approximately 12% each year (Harris et al., 2014).

The ECtHR is made up of 47 judges, who are elected for a single term of nine years by the Parliamentary Assembly of the Council of Europe, with no renewal. These judges elect a president and two vice-presidents for a time of three years, with the possibility of re-election (Ruiloba, 2006). Since 2012, the president of the European Court of Human Rights is Guido Raimondi.

2.2.1. *The admissibility of a claim: requirements and process*

The European Court rejects approximately 90% of the requests for not complying with the admissibility criteria (Aletras et al., 2016). There are several requirements that the formulation of the demand must fulfill to be accepted.

In the first place, the demand form must be completed appropriately. It is an obligation to provide the identification of the plaintiff. Also, all internal remedies must be applied, at the national level, and the claim must be made within six months of the final internal decision. Moreover, the plaintiff must be a victim, direct, indirect, or potential, for the application to be admitted. Finally, the claim can be declared

inadmissible if the Court considers it abusive, or if it has previously been submitted to the Court or another international body (Aletras et al., 2016).

2.2.2. *ECtHR: Environmental litigation and human rights*

The ECtHR has judged several cases related to the environment to which the human rights approach applies. Although there is no specific article to protect the right to live in a safe and healthy environment, the European Court has created jurisprudence that allows for the prosecution of human rights violations related to the environment.

The interpretation of articles 2 "Right to life," article 6 "Right to a fair trial" and article 8 "Right to respect for private and family life," have been of particular importance at the time of creating arguments by the ECtHR (Fechete, 2012). These articles have allowed the court to conclude that states have violated fundamental rights by not fulfilling their obligation to protect and prevent citizens from the climate impact.

ECtHR has built a substantial jurisdiction around environmental impact and human rights. One of the cases in which the Strasbourg court made a notable interpretation of Article 8.1 of the convention, as a right to a healthy environment, was the case *López-Ostra v. Spain* in 1994 (Fechete, 2012, p. 1074):

“In this case the plaintiff lived with her family in a house nearby a water and toxic waste treatment plant and complained that the plant released smells, noises and gas fumes which caused serious health problems to her family and the people living in her district. The Court concluded that in this case the state did not maintain a reasonable balance between the welfare of the community

that needs a water treatment plant and the interests of the persons concerning their right to inviolability of the home and private life. The court made a distinction between the impact that the quality of the environment had upon health and the effect over the quality of life and defined the notion of life as demanding a certain comfort, it demands a well-being without which it protection of the right to private and family life, only fictional and therefore the right guaranteed in article 8.1 from the Convention contains the right to a healthy environment.”

VI. URGENDA CASE

The Urgenda Foundation is a Dutch organization created in 2007, to find solutions to mitigate climate change and promote sustainable societies. It is a citizen platform formed by non-governmental organizations, companies, media, and academic institutions, among others. The circular economy and the energy transition are some of the solutions Urgenda defends to guarantee a sustainable present and future for all generations (Urgenda, 2019).

This organization earned international attention in 2012 when it initiated a lawsuit against the Government of the Netherlands, which soon became a relevant case in global climate litigation.

In this section, the Urgenda case is contextualized, and a study is made of the main elements of the judgment of the District Court of The Hague (2015) and the ruling of the Court of Appeal (2018). As such, the complaint of the Urgenda organization, the arguments of the parties, the treaties and international agreements involved, and the argumentation based on human rights as the main element of the object of study, have been analyzed. Additionally, the impact of this case on global climate litigation have been briefly explained.

1. Context

On November 20th of 2013, the Urgenda organization, on behalf of 886 individuals and on its own, filed a complaint with the Court of the District of The Hague against the Dutch Government, in which it demanded compliance with the

reduction of greenhouse gas emissions between 25% and 40%, compared to 1990, by 2020¹³.

On June 24th of 2015, the District Court of The Hague ruled in favor of Urgenda and sentenced the Dutch Government to reduce gas emissions and ensure compliance with at least a 25% reduction in emissions by the end of 2020. Additionally, it orders the state to pay the costs of the process incurred by Urgenda¹⁴.

The Dutch government presents its appeal to the ruling on April 9th of 2016 before the Court of Appeal of The Hague¹⁵. On October 9th of 2018, The Hague Court decided to uphold the 2015 court decision¹⁶. The Urgenda Foundation wins again.

In January 2019, the State filed the appeal, and on May 24th of 2019, the hearing before the Supreme Court took place. The case is pending the decision of the Supreme Court.

¹³ An official translation of the summons of the Urgenda case is available in: <https://www.urgenda.nl/wp-content/uploads/Translation-Summons-in-case-Urgenda-v-Dutch-State-v.25.06.10.pdf>

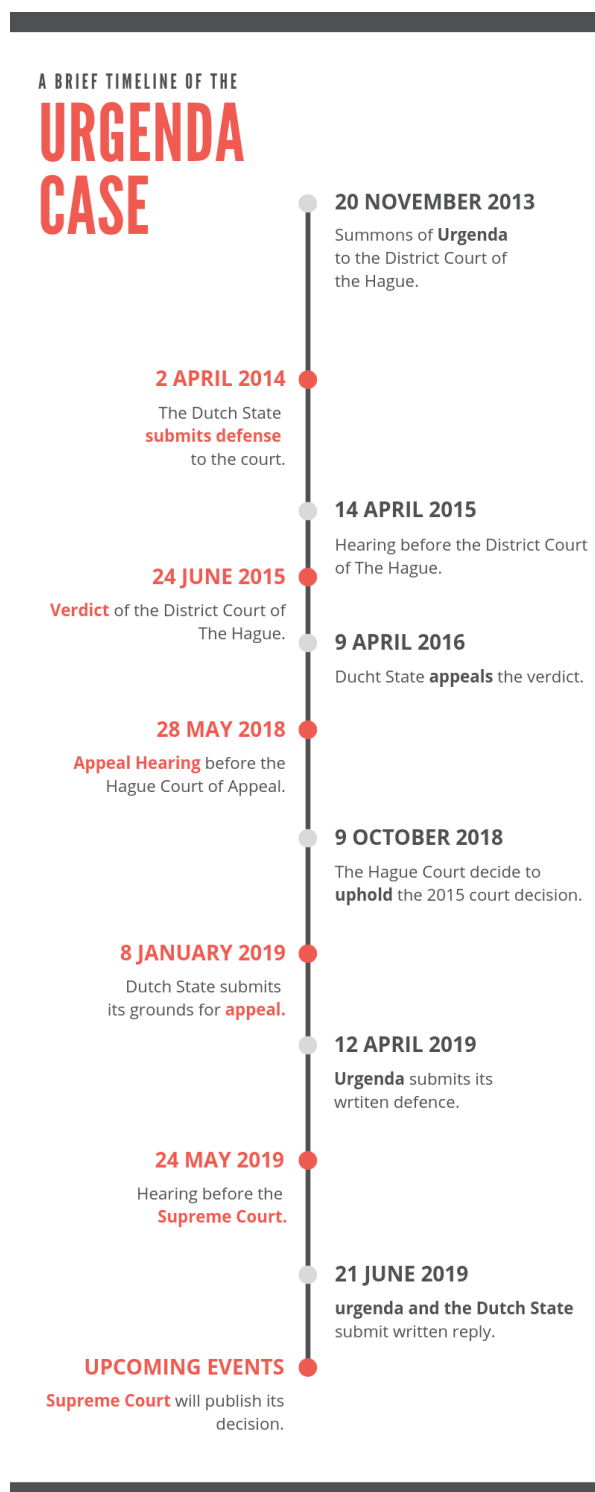
¹⁴ Verdict of the District Court of The Hague available in: <https://www.urgenda.nl/wp-content/uploads/VerdictDistrictCourt-UrgendavStaat-24.06.2015.pdf>

¹⁵ Urgenda notice on appeal available in: <https://www.urgenda.nl/wp-content/uploads/Urgenda-notice-on-appeal-21112017.pdf>

¹⁶ Judgement of the Hague Court of Appeal available in: https://www.urgenda.nl/wp-content/uploads/ECLI_NL_GHDHA_2018_2610.pdf

1.2. Chronology of the case

Image 1. Urgenda Case Timeline



Source: Miriam Rosales García

2. Urgenda's Claim

The Urgenda Foundation demanded on the Government of the Netherlands to reduce greenhouse gas emissions by 25% to 40% compared to 1990, by the end of 2020. This amount was set based on international agreements, such as the Paris Agreement, and the policies set by the European Union, to which the Dutch State is legally bound.

It is significant to point out that the parties do not discuss the danger of the impact of climate change and the need for urgent measures to mitigate its effects. The information presented was scientific reports, from institutions such as the IPPC and UNEP, which shows the impact of greenhouse gas emissions, the increase in global and national temperatures, and other evidence that make neither party question the risk of climate change.

Both parties were agreed on the imminent hazard posed by climate change, allows the court to argue that "given the high risk of climate change, the State has a serious duty of care to take measures to prevent it."¹⁷

3. Treaties, international agreements and policy proposals

The Hague District Court and the Court of Appeal offered an evaluation of the current political-legal framework of treaties, international agreements, and policies at the global level.

¹⁷ Verdict of the Hague District Court, 4.65 (Page 45).

At the international level, the Court referred to the UNFCCC, several Climate Conferences (COPs), different reports on the Intergovernmental Panel on Climate Change (IPCC), and the UN Environment Program (UNEP).

Concerning the UNFCCC (1992), the Court points out article 3, which refers to the principles of equity, the precautionary principle and the principle of sustainability, which indicates the commitment of the signatories to take the necessary measures to combat and prevent climate change. Especially in the most vulnerable countries, and the impact on present and future generations. It also points out article 4, in which developed countries, such as the Netherlands, commit themselves to lead the reduction of gas emissions and the fight against climate change.

Furthermore, the court alludes to the commitments adopted by the State since 1997, at COP 3 in Kyoto, until 2017 at COP 23 in Bonn. Among the most mattering obligations are the Bali Action Plan, from COP 13 in Bali, which agreed on the basic plan to mitigate, adapt, use technological cooperation and financial aid between countries. Also, the COP 16 of Cancun in 2010, in which for the first time the urgency of reducing gas emissions based on the scientific evidence of the IPCC reports was claimed. Lastly, the COP 21 of Paris in 2015, where the Paris Agreement was created, and the impact of climate change on human rights was mentioned for the first time.

In the context of the Urgenda case, the Court notes two IPCC reports were particularly relevant: the AR 4 or IPCC Fourth Assessment Report of 2007¹⁸, and the

¹⁸ Full AR 4 Report available in: <https://www.ipcc.ch/assessment-report/ar4/>

AR5 or IPCC Fifth Assessment Report for 2013-2014¹⁹. In those releases, it is concluded that countries must guarantee a reduction between 25-40% of gas emissions concerning 1990 by 2020 to ensure the global temperature will be below 2°.

Finally, the Court used several UNEP reports to formulate its arguments. Expressly, it referred to the annual reports for the years 2010, 2013, and 2017. The Court paid particular attention to the "emissions gap", the difference between the reduction commitment acquired and the actual results obtained by the countries.

4. Key arguments

Among the main arguments of the Urgenda case can be highlighted: the duty of care and the existence of legal obligation, the causal link, and the controversy over the separation of powers.

The Duty of Care and the existence of a legal obligation

Urgenda claimed that there is a legal obligation on the part of the State to act to ensure that gas emissions are reduced. This argument is based on article 21 of the Constitution of the Netherlands²⁰; articles 2, 8 and 13 of the European Convention on Human Rights²¹; and on the law of the European Union. Urgenda also

¹⁹ Full AR 5 Report available in: <https://www.ipcc.ch/assessment-report/ar5/>

²⁰ The Constitution of the Kingdom of the Netherlands available in: <https://www.government.nl/documents/regulations/2012/10/18/the-constitution-of-the-kingdom-of-the-netherlands-2008>

²¹ European Convention on Human Rights available in: https://www.echr.coe.int/Documents/Convention_ENG.pdf

wanted to prove that the State had the extracontractual civil liability of article 6: 162 of the Dutch Civil Code²².

One of the key principles followed by the Court in interpreting this issue was the principle of consistent interpretation. According to this principle, it is assumed that the State acts with the will to fulfill its international commitments, which implies that international law can be applied with an "indirect effect." As such, the Court built its argument based on article 6: 162 of the Dutch Civil Code, on Constitution, and the international conventions mentioned (ECHR and EU law).

Urgenda argued that, according to Article 21 of the Constitution of the Netherlands, public authorities must ensure "the habitability of the country and the protection and improvement of the environment." Although the Court is not specified in what way this premise must be fulfilled, the Court interpreted that the duty of general care on the part of the State is derived²³.

To solve the issue of the duty of care, the Court relies on "the Kerderluik doctrine," which offers a series of criteria to the judge to be able to decide on this matter. Specifically, in the Urgenda case, these criteria were the nature of the damage, its predictability, the likelihood of its happening, the nature of the acts of the State, the onerousness of the required measures, and state discretion. (4.63).

²² Dutch Civil Law available in: <http://www.dutchcivillaw.com>

²³ Verdict of the Hague District Court, 4.36 (page 38)

To determine if the State is taking sufficient measures to mitigate the effects of the climate impact, the court focused on analyzing whether it has acted negligently. As such, the court focused on determining the margin of appreciation that the government has to comply with its obligations. The court made it clear that its intention was not to influence the political dimension but to establish the necessary legal limits. That margin is limited to a percentage of between 25-40%, determined by the scientific evidence and the binding agreements to which the state has committed. The forecast of the reduction of greenhouse gases for 2020 is set at 17% for the Dutch government so that the State would exceed this margin. The court states that the state is acting negligently.

Causal link and the argument of "a drop in the ocean"

The State argued that it was not possible to prove that the Government of the Netherlands is the cause of the damages attributed. The State argued that the contribution of the Netherlands to climate change was insignificant, just "a drop in the ocean."

The Court relied on the established Doctrine *mutatis mutandis* in the Potash mines ruling of the Dutch Supreme Court (HR 23 September 1988, NJ 1989,743). It was also supported by the UNEP reports and the commitments made at the Cancun convention.

So, the Court argued that when the damage is the result of several joint actions, each party is responsible for the equal part that corresponds to it. It also established that no matter how insignificant the Dutch government's emissions are

taking into account the global scenario, that does not exempt the state from its responsibility. Finally, it declared that the per capita emissions of the Netherlands are one of the highest in the world according to the scientific evidence presented²⁴.

Additionally, the state argued that there is no scientific evidence linking human actions to global warming. The court rejected this argument and relied on the precautionary principle of international agreements on climate change, which establish the obligation to take preventive measures in any of the cases²⁵.

Separation of powers

The State argues that the acceptance of Urgenda's claims would constitute interference by the Court in the government's legitimate task of establishing public policies. However, both judgments and both courts considered that this argument is not always valid.

There is a limit to the discretion of the state of an act because the Court found that "the State violates human rights, which calls for the provision of measures, while at the same time the order to reduce emissions to the States sufficient room to decide how it can comply with the order²⁶."

5. Human Rights- Based Arguments

Urgenda argues that the Dutch Government has acted outside the law, specifically articles 2, right to life, and article 8, right to family life that also protects

²⁴ Verdict of the Hague District Court, 4.79 (page 47)

²⁵ Verdict of the Hague District Court,, 4.67 & 4.76 (pages 45, 47)

²⁶ Verdict of the Hague Court of Appeal, 67 (page 18)

the right to protection from harmful environmental influences, of the European Convention on Human Rights.

In the absence of a specific article that explicitly guarantees the right to environmental protection or climate change, Urgenda seeks indirect interpretation through these two articles.

However, article 34 of the ECHR, individual applications, to which the State refers in its defense, and which the District Court interprets in the same way, limits the argument presented by Urgenda:

“The Court may receive applications from any person, nongovernmental organization or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights outlined in the Convention or the Protocols to it. The High Contracting Parties undertake the effective exercise of this right.”

Article 34 establishes that the claimant must be a direct or indirect victim of the violation of the rights included in the ECHR. So, the Urgenda Foundation could not initiate a claim process on behalf of the jointly represented claimants²⁷. Moreover, for a claim to be accepted by the ECtHR, it must have to be previously exhausted all national legal processes.

The Hague District Court bases its argument on legal and other legally non-binding sources, to establish the duty of the Dutch State to protect its citizens.

²⁷ Verdict of the Hague District Court, 4.45 (page 40).

However, the most important innovation of this case is that the Court of Appeal based all its reasoning on articles 2 and 8 of the ECHR, consolidating its resolution in a profoundly human rights approach:

“In short, the State has a positive obligation to protect the lives of citizens within its jurisdiction under Article 2 ECHR, while Article 8 ECHR creates the obligation to protect the rights to home and private life. This obligation applies to all activities, public and non-public, which could endanger the rights protected in these articles, and certainly in the face of industrial activities which by their very nature are dangerous. If the government knows that there is a real and imminent threat, the State must take precautionary measures to prevent infringement as far as possible. In light of this, the Court shall assess the asserted (imminent) climate dangers²⁸.”

The reasoning that the court follows to build its argument concerning Articles 2 and 8 of the ECHR, in matters related to the environment, include a positive obligation to take preventive measures to ensure that human rights violations (duty of care) do not occur. When there is sufficient evidence of the existence of a serious and imminent risk, this duty applies. It is what happens in this case:

“As is evident from the above, the Court believes that it is appropriate to speak of a real threat of dangerous climate change, resulting in the serious risk that the current generation of citizens will be confronted with loss of life

²⁸ Verdict of the Hague Court of Appeal, 43 (page12)

and/or a disruption of family life. As has been considered from Articles 2 and 8 ECHR that the State has a duty to protect against this real threat²⁹."

Consequently, the Court of Appeal concluded that the Dutch state did not guarantee the protection of Articles 2 and 8 of the ECHR by failing to achieve emission reductions by 25% by 2020, according to the scientific data presented in the case. This ruling makes the Urgenda case go from being tried under the Dutch civil code, and becomes a case of human rights:

"(...) The State is acting unlawfully (because in contravention of the duty of care under Articles 2 and 8 ECHR) by failing to pursue a more ambitious reduction as of end-2020, and that the State should reduce emissions by at least 25% by end-2020. The State's grounds of appeal pertaining to the district court's opinion about the hazardous negligence doctrine need no discussion under these state of affairs. The judgment is hereby upheld³⁰."

6. The impact of the Urgenda case

The success of Urgenda has not only been successful at national or European level. Urgenda has initiated the Climate Litigation Network, a platform for support climate cases around the world. Since 2015, Urgenda is collaborating with cases in the United States, Canada, Pakistan, Germany, Brussels, Colombia, France, UK, Belgium, Ireland, New Zealand, India, and other countries.

²⁹ Verdict of the Hague Court of Appeal, 45 (page 13)

³⁰ Verdict of the Hague Court of Appeal, 76 (page 19)

One of those cases is the Youth vs. Trump. Twenty-one young people filed a lawsuit against the government of the United States before the Oregon District Court in 2016. They argued that for decades the US had contributed to global warming, violating their fundamental rights to life, liberty, and property. The court admitted the lawsuit and ruling in favor of the youth, stating that "the right to a climate system capable of sustaining human life is fundamental to a free and ordered society." Although the government tried to dismiss the lawsuit, the Court of Appeal and the Supreme Court upheld the decision. This verdict has been followed by a request to stop the construction of new fossil fuel infrastructures pending for a resolution³¹.

Furthermore, the arguments provided by Urgenda and the interpretation of the Courts have inspired the creation of the Oslo Principles of 2015. Leading legal professionals from around the world have creatively and rigorously established these principles based on international human rights law, environmental law, and tort law, which will help in future climate litigation.

Finally, it is significant to remark the impact of the decision of both courts as an example of judicial activism. If the interpretation of the arguments presented had been carried out rigidly, without understanding the need to adapt the interpretation of the Constitution and treaties to the case context, both courts could not maybe use its state-limiting function. The involvement of the court in the fight to curb climate change was fundamental.

³¹More information available here: <https://www.ourchildrenstrust.org/federal-proceedings>

VII. CONCLUSION

Once analyzed the theoretical framework related to climate change and the protection of human rights, as well as the Urgenda case, it is established the following conclusions and possible lines of action.

The in-depth development of the human rights approach concerning the impact of climate change is fundamental. Although the international agreements, treaties, and reports of experts have demonstrated the link between both, there is not a sufficiently detailed political and legal framework on this human rights approach. It is essential that global governance promotes the formulation of public policies and legally binding agreements that allow a simple understanding the degree of obligation of each country, the effects and what specific measures States must take to protect human rights from the impact of climate change. However, it is necessary to go a step further and create specific climate laws, which include the protection of fundamental rights.

The urgency to give a proper response to the impact of climate change has caused that several legal professionals must to use creatively legal and non-legal resources to respond to the emerging need for protection and prevention. Litigation has become a vital tool to fight against climate change. The Court is the only way to enforce States to comply with their legal commitments. However, it is a measure that depends enormously on the judges activism, since there is no solid jurisprudence. Having a growing body of jurisprudence can lead to changes in policies, as it facilitates the availability of data that can be used as an argument to claim protection

from climate effects and exposes public and private institutions to a more significant commitment.

The importance of climate litigation goes beyond than legal effects. They have a very significant impact on the awareness of the society. Also, it is a potent reputational mechanism that influences the perception of the states. It is remarkable to differentiate between those states incapable of taking specific measures, and those that may not be doing all they can. The cause of climate change is known, as well as the solution. There are the necessary technological and financial resources to combat it. It is a matter of political will. That is why courts play a fundamental role in the enforcement of public commitments. As such, it is interesting to understand the climate-conflict as a possible tool of public diplomacy, which can be used at a global and regional level of collaboration, to improve the quality of life of citizens around the world.

In this context, the Urgenda case has had a very significant impact on climate litigation. In the first place, it is important to point out the predisposition and the capacity of both courts to judge the case. Both tribunals have proven to be an effective and necessary tool for the fight against climate change. The rigor and the legal creativity of judges to interpret and use national, international and other non-legal sources to offer a solid argument is especially noteworthy.

The Urgenda case highlights the importance of resilient legal professionals. They have to be trained to tackle the new and complex challenges of the 21st century. However, it also exposes the need for adequate legal frameworks for these

challenges. One of the outstanding points of the case is the existence of specific protection in the Dutch Constitution. Although it is something punctual of this case of study, it is essential to point out the importance of considering the inclusion of the protection of the fundamental rights from the climatic impact at a national level through this legal instrument, making legal resources such as the Oslo Principles binding for instance. In climate litigation, it can make a huge difference.

Further, it is remarkable the decision of the court to state the legal obligation of the states to take all possible actions to protect the citizens. Besides, the limitation of the discretion of the state actions is another of the most significant effects of the case. This question exposes the difficulty of the separation of powers in this sort of litigation. The court gives a critical lesson on the balance of powers, and the crucial role of the court in limiting political power in the face of human rights violations. The arguments presented in this regard have opened the debate on the need to harmonize climate litigation and this principle. Therefore, although the Urgenda case has initiated this controversial issue, it is the responsibility of future judgments to make it a structural change or remains an exception.

The most revealing point for this study is the contribution of the Urgenda case to the integration of arguments based on human rights. Climate change poses an imminent risk to global society. Climate change is one of the prominent violations of fundamental rights: it causes deaths, natural disasters, forced displacements, diseases. The climate crisis is a violation of the right of people to live with dignity. Governments have to guarantee the protection of these fundamental rights. The court of appeal makes a declaration of intentions and a route to understanding

climate litigation as a necessary tool for the protection of the fundamental rights. There are concrete measures that can mitigate and prevent the impact of this phenomenon, such as the reduction of greenhouse gas emissions. As both courts affirm, it is not a matter of capacity, it is a matter of political will.

Undoubtedly, the Urgenda case has meant a significant change in global climate litigation. It has created a roadmap at all levels: national, regional, and international. Proof of this is the growing number of cases around the world, and the creation of the Climate Litigation Network platform. It has served as inspiration not only for activists or human rights advocates, but also for legal professionals who claim the need to create a legal framework according to the needs of the present time. The Oslo Principles are a reflection of a booming area of action, a way to combat climate change and protect human rights. Urgenda has highlighted the need for vision and political will to find solutions according to current challenges.

Climate litigation is necessary, even losing cases. It is essential that this phenomenon monopolizes the attention of the media, to create social awareness and demand for transformative actions. The use of the human rights approach is imperative to demonstrate that climate change has a real and imminent effect on people's lives.

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