

Lessons from strategic human rights litigation: From climate change to adequate housing

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Introduction

In recent years, there has been a multiplication of cases against government authorities for their inaction in combating global warming. The rising number of judicial cases has been accompanied by a growing academic interest in the use of courts as an advocacy tool to protect the environment. The turning point in the academic engagement with this issue was the first *Urgenda* case,¹ from 2015, when a first instance court in The Hague ruled that The Netherlands ought to cut greenhouse emissions by at least 25 percent by 2020, as agreed upon in international fora. Since then, the academic articles, books and special issues on climate change litigation have grown exponentially.²

There has also been a human rights-turn in climate change litigation. According to data from the Sabin Centre for Climate Change Law at Columbia Law School, by May 2021, 112 of the 1,841 cases compiled in their database relied wholly or partly on human rights law. While most of the 1,841 cases concerned North America, human rights-based climate change litigation was spread evenly among regions around the world. Most of these examples of human rights-based climate change litigation were filed after the Paris Agreement of 2015, including *Urgenda*: litigants relied both on substantive obligations – such as the adoption of adequate climate change legislation and impact assessments – and procedural human rights obligations – for example, access to information and access to justice.³ The trend suggests that countries in the global south with a strong case-law on economic and social rights (like South Africa, Colombia and Pakistan) may, in the coming years, become a fertile ground for strategic litigation on climate change from a human rights perspective.⁴

1. Final ruling by the Dutch Supreme Court dates from 20 December 2019.

2. Setzer, J., Vanhala, L. (2019) Climate change litigation: A review of research on courts and litigants in climate governance. *WIREs Clim Change*, 10:e580.

3. Savaresi, A., Setzer, J. (2022) Rights-based litigation in the climate emergency: mapping the landscape and new knowledge frontiers. *Journal of Human Rights and the Environment*, 13(1), 7-34.

4. Guruparan, Kumaravadeivel, Moynihan, H. (2021) *Climate change and human rights-based strategic litigation*. Chatham House.

However, academic literature thus far has focused excessively on the global north, with 76 percent of articles published in English language between 2015 and 2019 examining cases from North America (Setzer & Vanhala, 2019). Given the wide regional distribution of human rights-informed strategic litigation on climate change, lessons should be sought not only from better known cases in Europe and North America, but also from Africa, Latin America⁵ and Australia⁶, as well as from lesser known and “invisible” cases in all regions that may contribute to the evolution of jurisprudence incrementally.⁷

The objective of this chapter is less ambitious than that. The chapter intends to reflect on the meaning of climate change for strategic human rights litigation, understood as litigation that pursues goals or concerns interests that are broader than those of the parties, thereby reaching beyond the victims or applicants involved in a certain case.⁸ It uses climate change litigation as a source of inspiration for the judicial enforceability and implementation of another fundamental human right, the right to adequate housing. Indeed, we believe it is also essential to learn from strategic litigation horizontally, meaning, between different rights.

The right to adequate housing is contained in several international human rights treaties, including particularly Article 11 of the 1966 International Covenant on Economic, Social and Cultural Rights (ICESCR), ratified by more than 170 countries.⁹ One key element of the adequacy of the right to housing is habitability, a situation threatened by climate change in many countries today, particularly in the context of flooding. In July 2022, the United Nations General Assembly formally declared access to a clean and healthy environment as a human right.¹⁰ Both the right to a healthy environment and the right to adequate housing have experienced steady progress in their recognition as constitutional rights. In 2016, environmental rights were included in 68 percent of constitutions and were judicially enforceable in 42 percent of them, while housing rights were included in 42 percent of national constitutions.¹¹

This paper begins with an analysis of the differences between climate change and housing. It then explores the commonalities and areas of convergence between strategic litigation in relation to both rights, and ends with concluding remarks about the replicability of housing standards for the environment, the need to pay attention to material inequalities, and the empowering effect of the affirmation of identities through court cases.

5. Bouwer, K. (2022) The influence of human rights on climate litigation in Africa. *Journal of Human Rights and the Environment*, 13(1), 157-177.

6. Auz, J. (2022). Human rights-based climate litigation: a Latin American cartography. *Journal of Human Rights and the Environment*, 13(1), 114-136.

7. Bouwer, K. (2018) The Unsexy Future of Climate Change Litigation. *Journal of Environmental Law*, 30(3), 483-506.

8. Duffy, H. (2018) *Strategic Human Rights Litigation: Understanding and Maximising Impact*. Hart, p. 3.

9. <https://indicators.ohchr.org/>

10. UN General Assembly, Resolution 76/300, The human right to a clean, healthy and sustainable environment (28 July 2022).

11. Rosevear, E., Hirschl, R., Jung, C. (2019) Justiciable and Aspirational Economic and Social Rights in National Constitutions, in *The Future of Economic and Social Rights* (ed. Katharine Young, CUP), p. 40.

Differences

Legal proceedings or lawsuits before domestic courts in relation to the right to housing are often brought against private parties – which own the bulk of real estate – and not against the state or companies.¹² In contrast, plaintiffs in climate litigation – both nationally and internationally – sue public authorities accused of not doing enough to prevent global warming, or large polluting private enterprises, or even a sui generis international organization like the European Union¹³.¹⁴ Companies are also private actors, but it is individuals who are most often targeted by housing rights disputes. It is also true that the latter mostly concern very concrete and daily issues (leases, evictions, etc.), whereas climate disputes involve fundamental rights and general principles. Many disputes concerning housing rights fall within the scope of private law, whereas climate-related disputes tend to fall within the scope of public law. These distinctions may explain the public tropism of climate litigation. However, it is instructive to observe that plaintiffs in a housing case rarely consider placing the case on the ground of human rights and invoking state responsibility, preferring to pragmatically direct their action against a private landlord on the basis of a specific positive law, rather than against a public authority or a company, and on the basis of broader, and less certain, legal principles. The reason for this might be that housing problems are felt more acutely by the population than the more abstract and distant issue of climate change; they therefore call for precise responses as quickly as possible, whereas climate change litigation is a long-term process and seeks less to respond to immediate problems than to be a *significant cause*.

Ending global warming presents unique challenges from the perspective of collective action and causality. The environment is, by definition, a global collective good with extraterritorial effects and shared but diffuse interests. The judicialization of climate change raises “*questions of the shared responsibility of multiple states and of attributing responsibility to individual states*”.¹⁵ Identifying the causal link between a certain damage, on the one hand, and state action or inaction, on the other, is extremely difficult. Hence, science becomes essential to provide evidence and to articulate state responsibilities in relation to precaution, due diligence and the principle of doing no harm. As observed by Vanhala (2020), “*in the case of climate change, the way in which climate science interacts with the legal opportunity structure matters*.”¹⁶

This is why internationally agreed targets are so important in order to evaluate individual states’ action to stop global warming. International diplomatic agreements have resulted in scientific

12. It is certainly the other way around in international human rights litigation, since only states, and not private actors, can be challenged in front of the UN Committee on Economic, Social and Cultural Rights or the regional human rights courts and committees. In fact, 71 of the 88 cases brought to the attention of the UN Committee on Economic, Social and Cultural Rights in application of the Optional Protocol to ICESCR by 2021 concerned the right to housing, and 70 of those 71 had Spain as the responding state (GI-ESCR, 2021 *Yearbook The Committee on Economic, Social and Cultural Rights*, 2022, p. 20).

13. Brosset, E., Trulihé, E. (2020) Les People’s Climate Case c. Union européenne (2019). *Les grandes affaires climatiques*, C. Cournil (Ed.), Confluence des droits.

14. In *Carvalho and Others v Parliament and Council* (T-330/18), individuals from several European countries sought to have three EU acts (Directive 2018/410 and Regulations 2018/842 and 2018/841) annulled before the General Court and then the Court of Justice of the European Union, which they claimed prevented the EU’s target of reducing greenhouse gas emissions by at least 40% by 2030 compared to 1990 levels, thereby contradicting the Paris Agreement. However, both courts found the action inadmissible (the General Court on 8 May 2019 and the Court on 21 March 2021), as the applicants had not demonstrated that they were directly and individually concerned by these acts, as required by Article 263(4) of the Treaty on the Functioning of the European Union.

15. Keller, H., Heri, C. (2022) The Future is Now: Climate Cases Before the ECtHR. *Nordic Journal of Human Rights*, 40(1), 153-174, p. 166.

16. Vanhala, L. (2020) *Why ideas and identity matter in climate change litigation*. Open Global Rights.

cally informed benchmarks that set explicit and measurable goals, such as limiting temperature rise by 1.5 degrees compared to pre-industrial levels, or reducing greenhouse gas emissions by a certain percentage by a certain point in time. This sort of unequivocal and clarity of objective, moreover, is what may partly explain some of the fortunes of climate litigation in the courts, for it can become relatively easy for a court to assess a state's actions against such numerical commitments. For example, in a recent case concerning Australia, the UN Human Rights Committee dismissed the idea that the failure to address climate change impact cannot be attributed to one state in particular. The Committee observed that, in light of the large amount of pollution emitted from the country (cause), and its high levels of economic development (ability to act), the alleged actions and omissions fell under the state's jurisdiction for the purposes of its international human rights obligations (effect).¹⁷

As regards housing, the principle of progressive realization means that states are required to make use of the maximum of available resources to advance progressively towards the full realization of economic, social and cultural rights.¹⁸ Judges could use indicators and benchmarks to track progress against this general principle, and when the right to housing is justiciable judges and courts may assess the extent to which governmental policies are reasonably and proportionately heading towards the full realization of the right.¹⁹

However, both policies and the targets in relation to housing are less specific than those concerning climate, and this ambiguity makes judicial enforceability more challenging for housing advocates. It is possible to believe, for example, that the housing crisis will be resolved the day that enough social housing is built, just as one can choose a different tack, such as getting rents to come down, fighting against housing unfit for habitation, fighting discrimination in housing, or even facilitating home ownership for the middle class. This multiplicity of possible actions makes identifying a specific failure of the state more difficult,²⁰ especially given that the state will always try to offset a possible failure to act in one subarea (social housing, for example) by a measure taken in another subarea (like homeownership).

One of the consequences of the mentioned principle of progressive realization is that the state often has an obligation of conduct when it comes to the right to housing, both because the targets cannot always be given as precise figures, and because government authorities are expected to make good on the right to housing somewhat gradually. In contrast, while state's obligation to mitigate climate change is to might generally considered an obligation of conduct,²¹ given the urgency of the matter, the commitments made by government bodies in favor of the climate usually take the form of an obligation of result:²² “*The best time for climate action was yesterday*”²³. The idea of the fault of the government authorities, which is a cornerstone of climate litigation, is

17. UN Human Rights Committee, Daniel Billy and *al v Australia*, Views of 21 July 2022, UN doc. CCPR/C/135/D/3624/2019, para 7.8.

18. Article 2(1) ICESCR.

19. Boyle, K. (2020) *Economic and Social Rights Law: Incorporation, Justiciability and Principles of Adjudication*. Routledge.

20. Unless, of course, the legislator was careful to assign each of these routes a numerical target, which is far from being the case.

21. Mayer, B. (2022) The judicial assessment of states' action on climate change mitigation. *Leiden Journal of International Law*, 35(4), 801-824, p. 803.

22. Torre-Schaub, M., d'Ambrosio, L., Lormeteau, B. (2019) *Les dynamiques du contentieux climatique. Usages et mobilisations du droit pour la cause climatique*, Rapport de recherche, CNRS, p. 70.

23. Torre-Schaub, M. (2022) Le contentieux climatique : du passé vers l'avenir, *RFDA*, p. 75.

more complicated to establish in housing cases. As a result, the very responsibility of the state is difficult to establish, whereas it is frequently at issue in climate litigation.

There is one important conceptual difference between climate change and adequate housing. While the right to housing belongs to individuals under the jurisdiction of the state, in the case of the environment there is a profound division between anthropocentric and ecocentric approaches to the environment, the former focusing on the human's right to a healthy environment, the latter focusing on the rights of nature. Attempts to embrace a healthy environment as a human right have adopted a predominantly anthropocentric perspective. This is observable, for example, in the expansive interpretation of the right to life in UN Human Rights Committee's General Comment No. 36, which talks of "*the right to life with dignity*," which would include a healthy environment.²⁴ However, international human rights bodies may adopt a more explicitly ecocentric approach in the years to come. In a way, in fact, they have already started doing so.²⁵ For example, in its advisory opinion on environment and human rights, the Inter-American Court of Human Rights said that "*the right to a healthy environment, unlike other rights, protects the components of the environment, such as forests, rivers and seas, as legal interests in themselves, even in the absence of the certainty or evidence of a risk to individuals.*"²⁶

Environmental lawyers have been relatively successful in court in recent years. In contrast, calls to take housing disputes out of the courts are becoming more and more pressing. This is so for a number of reasons. The courts are saturated, so justice is slow. Going to court is expensive for the most underprivileged and, what is more important, the outcome is uncertain. Impoverished households are often wary of the justice system, for experience may have taught them that justice is not always on their side. For example, tenants instigate only 7 percent of the renting-related requests put to justices of the peace in Belgium, and fail to show up in 50% of the cases which are brought by landlords.²⁷ Instead, people are promoting out-of-court mediation schemes in which solutions are developed jointly by the parties themselves rather than being forced on them by a judge. In Brussels, for example, a joint committee on rentals, composed of equal numbers of landlords' and tenants' representatives, was set up in 2021 and tasked with giving opinions, free of charge, on the fairness of rents.²⁸

Convergences

When thinking of commonalities between human rights, one must start from the idea that they are and must be interdependent and indivisible. Human rights effectively form a compact, mutually supportive whole. The indivisibility of and interdependence between civil and political rights, on the one hand, and economic, social, and cultural rights, on the other hand, have been solidly affirmed in international human rights law. "*There is no water-tight division separating*" the two categories of rights, as observed by the European Court of Human Rights more than four decades

24. UN Human Rights Committee, General comment No. 36: Article 6 (Right to Life), 3 September 2019, UN doc. CCPR/C/GC/35, para 26 and 62.

25. Knox, J. (2020) Constructing the Human Right to a Healthy Environment. *Annual Review of Law and Social Science*, 16, 79-95, p. 92.

26. Inter-American Court HR, Advisory Opinion 23/17 on Environment and Human Rights (15 November 2017), para. 62.

27. Rassemblement bruxellois pour le droit à l'habitat. (2020) *Justice de paix : bailleurs welcome ! Locataires welcome ? Quand la justice peine à sanctionner l'insalubrité*.

28. Ordinance of 28 October 2021.

ago.²⁹ This reasoning can be transposed *mutatis mutandis* to the relationship between socio-economic and environmental rights.

Regarding the simple obligation of means incumbent upon the state in the area of the right to housing, sometimes lawmakers place a true obligation of result on the state. For example, France's 2007 law making the right to housing justiciable³⁰ obliges the relevant government bodies as a matter of law to provide applicants with social housing upon pain of being convicted by the courts.³¹

The judicial route remains highly useful in enforcing the right to housing especially when it is a matter of rendering effective a constitutional fundamental right that would otherwise remain theoretical or a nice principle without effect. Judges have indeed sometimes been considered to be the “*guarantor[s] of the right to housing*” with the role of putting meat on the bones of this human right proclaimed in constitutions and international treaties.³²

A potential shared characteristic between climate and housing is the acuteness of the imminence of the predicted catastrophe, which calls most forcefully for the adoption of immediate regulatory measures. The status quo is no more tenable in the area of housing than in that of the climate crisis, given the rising water levels and steady rise in global temperatures. The current rises in gas and electricity prices, to take just one example, are putting an unprecedented squeeze on household finances, to the point of endangering their continued occupancy. The continuous growth of prices (housing, rents, charges) massively threatens the accessibility and maintenance of decent housing. In the current climate, it will be more peremptory than ever the need to adopt effective measures to protect the security of tenure and ensure evictions are really the last resort.³³ Already problematic in themselves individually, the two phenomena can feed each other: climatic disturbances materially affect housing (deterioration, destruction, floods), and spatial segregation leads to problems of health, education and overexposure to climatic hazards.

If climate issues are known to be intertwined with the right to a healthy environment, the same goes for housing. The European Court of Human Rights has developed a very stimulating strain of environmental case law connected to housing. It has found human right violations in states for having tolerated the presence of a factory engaged in “*dangerous activity*” 30 metres from a dwelling,³⁴ for the prolonged exposure of a person to industrial emissions having harmful consequences for the quality of life at her home,³⁵ for the development around residential buildings of an area of activities in which night-time noise was “*undeniable*,” so that the perimeter of this

29. European Court of Human Rights, *Airey v Ireland* (application No. 6289/73), Judgment of 9 October 1979, para. 26.

30. Law No. 2007-290 of 5 March 2007 establishing the enforceable right to housing.

31. Bernard, N., Derdek, N. (2016). Le DALO, un droit au logement vraiment “opposable”? *Revue trimestrielle des droits de l'homme*, 107, 713-732.

32. “*Since the judge is the guarantor of the fundamental right to housing and can only award in case of default those claims which he considers to be just and well-founded, the legitimacy of the increase should be reviewed. The legitimacy of the increase [of the rent of a social housing unit] should be checked*” (free translation). Grâce-Hollogne, Justice de paix – civil court. (1st of October 2000). *Revue de jurisprudence de Liège, Mons et Bruxelles*, 2000, 21, p. 900.

33. Casla, K. (2022) Unpredictable and damaging? A human rights case for the proportionality assessment of evictions in the private rental sector. *European Human Rights Law Review*, 2022(3), 253-272.

34. European Court of Human Rights, *Gaiacomelli v Italy* (application No. 59909/00), Judgment of 2 November 2006, para. 96.

35. European Court of Human Rights, *Fadeyeva v Russia* (application No. 55723/00), Judgment of 9 June 2005, para. 88.

area was “*acoustically saturated*,”³⁶ and for the detrimental effect of the expansion of a cemetery without the establishment of a sanitary protection zone.³⁷ Moreover, the granting of compensation (such as the authorities’ paying the rent of a flat in a protected area for one year) is not always considered sufficient to repair the injury sustained.³⁸ All these cases draw upon the right to private and family life and respect for the home, contained in Article 8 of the European Convention on Human Rights (ECHR). In other words, it is not possible to enjoy one’s home serenely or to have any private or family life in it if one is at risk of being evicted from it at any time (for environmental reasons in particular), if it is subjected to toxic industrial discharges, if it is under constant threat of flooding, and so on.³⁹ Article 8 ECHR provides a relatively useful legal resort, for neither the right to a healthy environment, the right to housing, or the right to a healthy climate are recognized as such in ECHR. A healthy environment affects the location and habitability of housing, which are essential requirements of the right to adequate housing, as recognized by both the European Committee of Social Rights and the UN Committee on Economic, Social and Cultural Rights.⁴⁰

Climate change is also closely associated with the right to health. Climate phenomena (droughts, water shortages, changes in the fauna and flora, etc.) truly put health, including public health, to the test, to the point of endangering individuals’ physical integrity, even their lives. At the same time, the state of a dwelling has decisive influence over its inhabitants’ physical and mental health: damp walls can cause asthma, lead pipes carry the risk of lead poisoning, a defective water heater exposes people to carbon monoxide poisoning, extremely cramped conditions can induce a feeling of oppression, a spell out in the streets can lead to the onset (or exacerbation) of neuropsychiatric disorders, and so on.⁴¹

Both climate and housing are witness of the key role played by activists and national and international organizations. Without the NGOs that are energetically working for the environment, climate litigation would never have been brought, much less won. In the same way, the groups that defend the right to housing play a key role in implementing it, both nationally and internationally, in front of the European Committee of Social Rights and the UN Committee on Economic, Social and Cultural Rights, for example. Associations are given the task of giving concrete expression to the right to housing in domestic law too. Belgian law, for example, has given them the powers to denounce housing that is unfit for habitation, to manage vacant dwellings (even against the landlord’s will!), and even to go to court against all landlords of vacant properties (for the purpose of forcing them in one way or the other to put an end to the vacancy).⁴²

36. European Court of Human Rights, *Moreno Gómez v Spain* (application No. 4143/02), Judgment of 16 November 2004, para. 58-59.

37. European Court of Human Rights, *Solyanik v Russia* (application No. 47987/15), Judgment of 10 May 2022, para. 51.

38. European Court of Human Rights, *López Ostra v Spain* (application No. 16798/90), Judgment of 9 December 1994.

39. de Fontbressin, P. (2006) De l’effectivité du droit à l’environnement sain à l’effectivité du droit à un logement décent, *Revue trimestrielle des droits de l’homme*, 65, 87-98.

40. European Committee of Social Rights, Complaint No. 110/2014, Decision on the Merits of 12 May 2017; UN Committee on Economic, Social and Cultural Rights, General Comment No. 4: The Right to Adequate Housing, 13 December 1991, UN doc. E/1992/23.

41. Bernard, N. (2010) Le logement et la santé mentale au prisme de la loi [Housing and Mental Health under the Law]. *Les échos du logement*, 114(2), 14-26. Bernard, N. (2017) Entre droit au logement et droit à la santé, des influences multiples et croisées [Between the right to housing and the right to health, multiple and intersecting influences]. *Les échos du logement*, 121, 4-8.

42. Art. 7, §2, Indent 1, 2°, of the Brussels Housing Code.

Climate litigation has been brought by associations that have become emblematic, such as the Urgenda Foundation in the Netherlands, Klimaatzaak association in Belgium, and Notre Affaire à Tous, Fondation pour la Nature et l'Homme, Greenpeace and Oxfam in France, whose grounds for going to court were recognized by the various domestic courts. In a similar vein, concerning housing, a Belgian law adopted in 2018 instituted the possibility of class action suits, traditionally defined as suits lodged by a group set up to defend the ends being sought in the case.⁴³ Since then, a lawsuit lodged by a moral person (non-governmental organisation/NGO) with a view to protecting human rights or fundamental freedoms is recognized and will be declared admissible in court when a collective interest alone is being sought by the moral person (NGO), amongst other conditions. On 19 January 2022, the chamber of the Brussels French-speaking Court of First Instance that rules on applications for interim relief (*Chambre des référés*) required the state “to take all necessary measures to put an end to the current impossibility for an indeterminate number of applicants for international protection to present and submit their applications for international protection,” and ordered the Federal Agency for Asylum Seekers “to give the benefits of material assistance [housing] to all applicants for international protection as of the presentation of their applications, without conditions or deadlines,” on pain of being fined in both cases. The suit was brought not by individuals (the persons requesting international protection, for example), but by several associations, including the Bar Association of Belgium.

Climate and housing issues have become so acute that everyone’s contribution, of private individuals and the state alike, is indispensable. This is true when it comes to energy and the environment, where the state must issue general prohibitions and grant financial incentives, but where private individuals must also make very concrete efforts on their side, such as cutting down on flying or renovating their dwellings. This is no less true when it comes to housing, where private landlords must upgrade their housing to meet current standards and avoid discriminating against tenants, at the same time as the public authorities must build more social housing and pass rent control laws, for example.

Last but not least, climate - and housing - related problems affect the same type of public, i.e., the poorest members of society, first and foremost. This is unquestionable when it comes to housing, since the poor live in buildings that are in the worst state, spend what is often more than fifty percent of their income on rent, are the most susceptible to eviction, and so on. The same findings hold true with regard to the climate, since the households that are impacted by the full force of floods, high water, and storms are often those without the means to live elsewhere, that is to say, in places other than those that are notoriously overexposed to the ups and downs of climate, and which for this reason are cheaper. In this same vein, dwellings that are put up hastily and/or built with cheap materials unsurprisingly withstand the aforementioned climate phenomena less well. In any case, this overexposure of precarious populations only reinforces the need to appeal to the state and to engage its responsibility, since it is the state which must take regulatory measures and implement change.

43. Art. 137 of the Law of 21 December 2018 on various provisions relating to justice.

Concluding remarks

In *FEANTSA v France*, the European Committee of Social Rights established that, for the right to adequate housing to be “*practical and effective, rather than purely theoretical*” states must:

- a. Adopt the necessary legal, financial and operational means of ensuring steady progress towards achieving the goals laid down by the Charter;*
- b. Maintain meaningful statistics on needs, resources and results;*
- c. Undertake regular reviews of the impact of the strategies adopted;*
- d. Establish a timetable and not defer indefinitely the deadline for achieving the objectives of each stage;*
- e. Pay close attention to the impact of the policies adopted on each of the categories of persons concerned, particularly the most vulnerable.”*⁴⁴

Mutatis mutandis, these standards are equally applicable for the environment and climate change. States must ensure that they make use of the full extent of their available resources to advance progressively towards the full realization of social and environmental rights. Time matters, both for housing and for climate change. Science-informed impact assessments are of the essence, as well as transparency in the collection and use of data and statistics, making sure that people with lived experience of human rights abuses are actively involved in the decisions that affect them.

Indeed, “[A] progressive socioeconomic agenda for the Anthropocene needs to be concerned as much with economic equity as with decarbonization and a livable Earth system”.⁴⁵ This requires going beyond minimum standards of reasonableness and minimum core obligations to make sure that material inequalities are part of the assessment of the situation. This applies both to climate and to adequate housing. As observed by the Inter-American Court of Human Rights, the right to equality has “*a material or substantial dimension that requires the adoption of positive measures of promotion in favor of groups that have historically been discriminated against or marginalized [...]. This means that the right to equality entails the obligation to adopt measures that ensure that the equality is real and effective; [...] States must actively combat situations of exclusion and marginalization*”.⁴⁶

Finally, the identities of the champions of environmental rights do matter. As observed by Vanhala (2020), “*the affirmation or denial of identities through court cases and related campaigning activity can have profound impacts on whether litigation is a tool of empowerment or oppression for litigants and grassroots communities*.”⁴⁷ Children all over the world are bringing cases to court and holding governments to account for the general failure of one generation to bequeath a habitable home to the next. The better-known case may be the one lodged by children in 33 countries against Portugal at the European Court of Human Rights.⁴⁸ However, as of May 2021, the Sabin

44. European Committee of Social Rights, Complaint No. 39/2006, Decision on the Merits of 5 December 2007, para. 53-54.

45. Rodríguez-Garavito, C. (2022) *Climatizing Human Rights: Economic and Social Rights for the Anthropocene*. NYU Law and Economic Research Paper No. 21-20, p. 5.

46. Inter-American Court of Human Rights, *Workers of the Fireworks Factory in Santo Antonio de Jesus and Their Families v Brazil*, Judgment of 15 July 2020, para. 199.

47. Vanhala, L. (2020) *Why ideas and identity matter in climate change litigation*. Open Global Rights.

48. European Court of Human Rights, *Duarte Agostinho and Others v Portugal and 32 other States* (application No. 39371/20), submitted on 7 September 2020.

Centre for Climate Change Law's database of climate litigation had tracked of 32 youth-focused cases in 14 countries.⁴⁹ There was also the case brought by 16 young people from 12 different countries against Argentina, Brazil, France, Germany and Turkey in front of the UN Committee on the Rights of the Child.⁵⁰ Children all over the world are fighting for their future and pushing the conceptual and practical boundaries of extraterritorial obligations and intergenerational justice.

49. Parker, L., Mestre, J., Jodoin, S., Wewerinke-Singh, M. (2022) When the kids put climate change on trial: youth-focused rights-based climate litigation around the world. *Journal of Human Rights and the Environment*, 13(1), 64-89.

50. UN Committee on the Rights of the Child, *Chiara Sacchi et al v Turkey et al*, Decision of 22 September 2021, UN doc. CRC/C/88/D/108/2019.