

Climate Justice Through The Courts

Will Courts Prevent (And Redress) Human Rights Harm From Climate Change?

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Climate change - context

- World has already warmed by **1.1°C**
- Paris Agreement: aim to keep warming ‘well below’ 2°C and ‘pursuing efforts’ to keep it below 1.5°C
- IPCC Special Report on 1.5°C & AR6 WGI
 - Difference between 1.5°C and 2°C critical for millions of people’s lives and livelihoods
 - <1.5°C requires rapid and drastic changes
- Paris NDCs (voluntary) put world on track for **>2.7°C** warming.







Climate change as a human rights issue

– UN Human Rights Council

- Eleven resolutions on climate change and HRs; reports and panel discussions
- UPR: 100+ recommendations explicitly addressing climate change
- Dozens of Special Procedure reports and statements on climate change and HRs

– Paris Agreement preamble

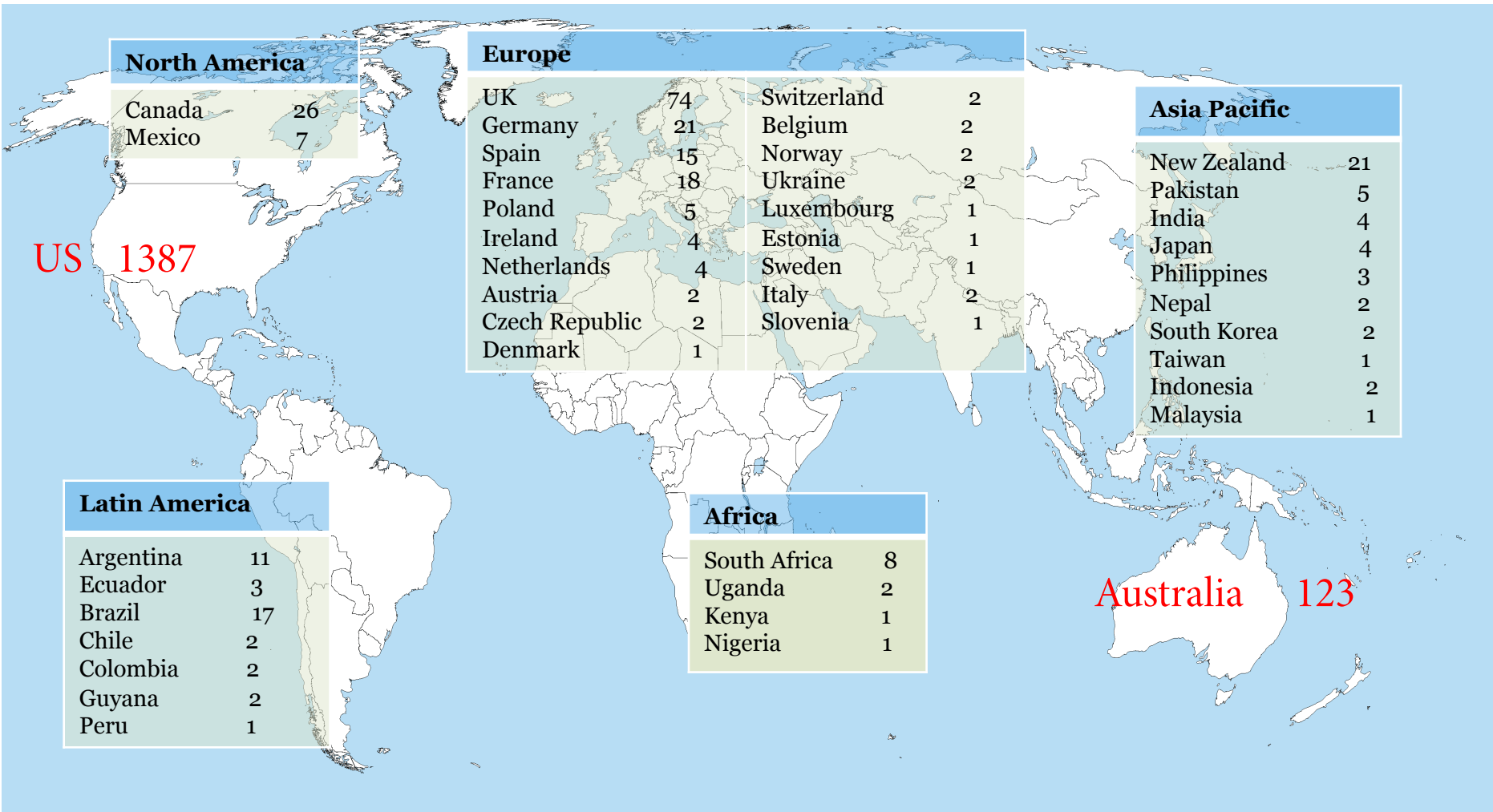
- ‘Parties should, when taking action to address climate change, respect, promote and consider their respective obligations on HRs’



Courts as new frontlines of climate action

- Climate litigation plays increasingly important role in plugging accountability gap
 - 1,800+ climate cases filed in at least 39 countries, plus around 100 regional and international cases
 - Increasing role for HRs as a basis for claims.

World map of climate cases



The Netherlands v Urgenda [SC '19]

- State violated arts 2 & 8 ECHR by failing to do its 'fair share' of global emission reductions necessary to meet internationally agreed climate targets
- Non-binding outcomes of int'l climate negotiations gained legal force through 'common ground' method
- Lower courts' order for emission reductions of at least 25% by end-2020 upheld.



The Netherlands v Urgenda (cont'd)

- ECtHR President Sicilianos:

‘By relying directly on the [ECHR], the Dutch judges highlighted that ... this instrument can provide genuine responses to the problems of our time.’

- UN HCHR, Michelle Bachelet:

‘I cannot underline too much the importance of today’s decision, and the even greater importance of it being swiftly replicated in other countries.’

‘Rights turn’ in climate litigation

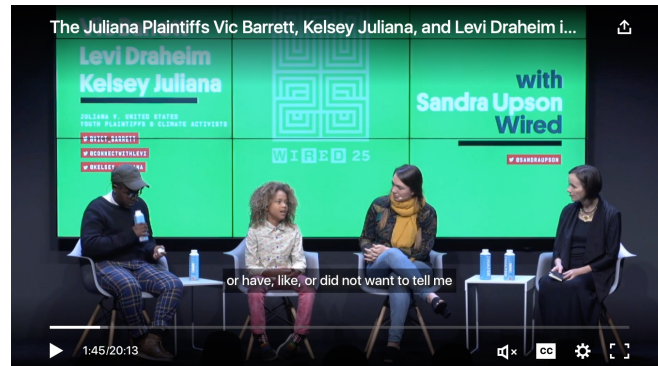


Beyond headlines (and judgements)

- Empirical research into transnational legal processes associated with initiation & development of rights-based climate cases
- Practice-tracing:
 - Learning
 - Collaboration
 - Framing
 - Legal dialogue

Learning

- Process whereby actors learn about using litigation as a tool to influence discourse, policy & practice on climate change
- Findings:
 - Diffusion through ‘sparks’ of inspiration
 - Cognitive and emotional dimensions
 - Two-way process



Collaboration

- Multiplicity of informal and formal ways through which actors work with one another to support litigation across jurisdictions
- Findings:
 - Role of transnational networks and org's
 - Snowball effect
 - Ideological 'schools'

Framing

- Process of ‘meaning-making’ in which actors develop and promote shared understandings regarding definitions of problems, their salience and solutions required
- Findings:
 - Catalysing effect of framing
 - Key role of 4 cases
 - Importance of ‘human face’



Legal dialogue

- Process by which lawyers and judges from different legal systems develop, interpret, translate and apply legal norms and arguments
- Findings:
 - Largely affirming
 - From devilish details to gold dust
 - Criticism (‘foolish’ and ‘too ambitious’)

Will courts prevent (and redress)?

Practices of rights-based climate litigation have contributed to normative consensus that climate change affects HRs

- Widely different conceptions of implications
- Risk of inconsistent judicial practices undermining norm-settlement
- Redress neither sought nor granted

Thank you



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