

# Human rights and Climate Change

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Climate change has a significant impact on the enjoyment of human right, and increasingly this aspect of climate change has been recognized by nations and international organizations. In Brazil, the Supreme Federal Court has found that there is an "undeniable relationship between environmental protection and the effective enjoyment" of human rights.[1]

In fact, one of the main arguments used in climate-related litigation is the violation of human rights. Although most climate litigation involves governments, some cases seek to hold companies liable based on human rights obligations.

In Milieudefensie et al. v. Royal Dutch Shell plc. (2019), a private company was sued on the grounds that it had violated its human rights obligations by failing to take adequate action to curb its contribution to climate change. The Hague District Court held the company in violation of the standard of care established by Dutch law and ordered the company to reduce its emissions by 45% by 2030.[2]

In another case, Notre Affaire a Tous and Others v. Total (2019), an NGO made use of French legislation, which requires companies to adopt measures to protect human rights and the environment, to ask the court to order an oil and gas company to recognize the risks generated by its business activities and take steps to ensure that its conduct is aligned with the goal of limiting global warming to 1.5°C.

The consequences of climate-related litigation such as these cases go beyond the courts, as they bring into the public debate the issue of corporate social responsibility, a topic that has been growing in importance in the eyes of investors and consumers.

Currently, corporate social responsibility guides[3] are voluntary in nature, but in light of the growing demand for responsible corporate conduct, an intergovernmental working group under the aegis of the UN Human Rights Council is in the process of drafting a binding legal instrument to regulate business activities with respect to human rights.

The third draft of the document, which was released in August 2021, defines human rights abuse as "any direct or indirect harm in the context of business activities, through acts or omissions, against any person or group of persons, that impedes the full enjoyment of internationally recognized human rights and fundamental freedoms, **including the right to a safe, clean, healthy and sustainable environment.**"[4]

The document also recognizes that environment remediation and ecological restoration are part of the rights held by victims of human rights abuses, along with the duty of States to adopt a legal framework under which businesses can be required to conduct human rights due diligence measures, including undertaking and publishing regular assessments of the

impacts of their operations on human rights, labour rights, and environmental and climate change.

The human rights consequences of the climate crisis looks to be one of the most urgent themes debated at COP26, especially national and international recognition of a fundamental right to healthy and stable climate system. Rising temperatures and the increase in the intensity and frequency of extreme climatic events threatens the civil, political, economic, social and cultural rights of current and future generations. Unless nations and businesses adopt more rigorous measures to combat climate change, the scope of liability for their failure to act will expand to encompass consequences from the perspective of human rights violations.

#### **NOTES:**

[1] Constitutional Challenge ADC 42/DF.

[2] In relation to 2019 emissions levels.

[3] For example, the UN Guiding Principles on Business and Human Rights, and the OECD Guidelines for Multinational Enterprises.

[4] Legally Binding Instrument to Regulate, in International Human Rights Law, the Activities of Transnational Corporations and Other Business Enterprises.

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