

The concept of climate rights

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DAILY COMMENT

THE RIGHT TO A STABLE CLIMATE IS THE CONSTITUTIONAL QUESTION OF THE TWENTY-FIRST CENTURY

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Climate rights evolution in our project - 2022

Reflecting the increasing global dynamics of climate change agenda, a new kind of phenomenon has emerged: **climate law and climate rights**, i.e. the use of the law to protect the climate system.

This new notion highlights that climate change is not only a technological issue, but it also has a legal, and a broader societal dimension.

Law can be used for multiple purposes within climate change such as: to limit the greenhouse gas emissions, to force large polluters to change their operations, to prepare society and its institutions for the adaptation to the impacts of climate change and also, upon citizen initiatives, to force the states to act responsibly and reliably when addressing the root causes of climate change.

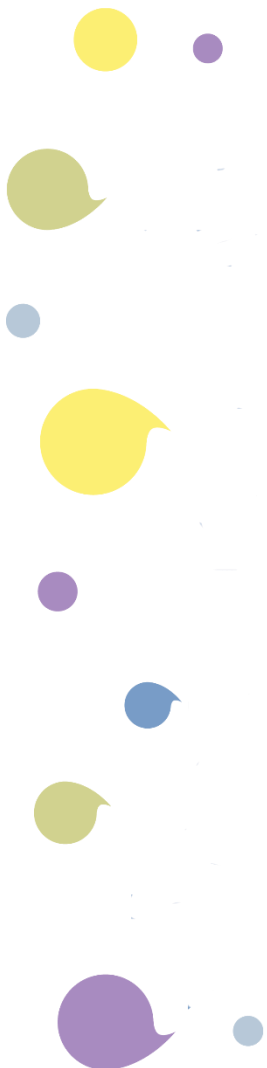
Climate rights evolution in our project – 2023, 2024

THE CONCEPT OF “CLIMATE RIGHTS”

ASSESSMENT FRAMEWORK,
CLASSIFICATION AND
COUNTRY EXAMPLES



Legal Study
Justice and Environment 2024



Defining “climate rights”

The concept of “climate rights” emerged as a key concept in the DACE project to capture the variety of rights, i.e., existing and nascent categories of rights at international, EU and national level with relevance to climate change, defined as follows: **“all substantive and procedural rights related to or affected by climate change”**. As an operational definition its main purpose is to **guide and inform our study of climate rights as vehicles for just and engaging society in which the climate justice and the protection against the consequences of climate change** are high on the agenda of the governments, businesses and of the society as a whole.

Assessment frameworks for climate rights

1. The climate rights and their relevance to climate change

What does a given legal norm or standard actually aim to protect? How does this scope of protection interact with climate change? How are the protected interests affected by climate change, how can they impact climate change policies, actions and behaviour?

2. Climate rights as individual or collective rights and as substantive or procedural rights

The first dichotomy of rights is important to help us identify the societal effect of the climate-related rights considering the rights-holders. The second one relates to the function of the rights to defend values, conditions and interests important for the individuals (life, health, property, food, water and sanitation) or to ensure due process or administrative procedures that enable defending substantive rights.

3. Climate rights in the climate litigation before international, regional and national courts.

Classification of climate rights

Climate rights as **category of climate cases/litigation** which includes actions asserting that insufficient climate mitigation or adaptation violates plaintiffs' rights, including the rights to life, health, food, water, liberty, family life, a healthy environment, a safe climate.

Climate rights emerge from existing **constitutional and fundamental rights** under domestic law, and often relate to **international obligations** under the Paris Agreement. ⁽¹⁾

The global expansion of environmental public interest litigation evidences an increased **reliance on the judiciary to compensate for regulatory gaps** where governments and corporations have failed to address climate change.

The **court cases, academic and political debates and legislative reforms** surrounding climate rights should reflect the social and legal context and decisive features of the respective legal ideologies. ⁽²⁾

1. United Nations Environment Programme and Sabin Center for Climate Change Law at Columbia University (2023). Global Climate Litigation Report: 2023 Status Review. Nairobi

2. Campbell N. Individual rights and the environmental public interest: A comparison of German and Chinese approaches to environmental litigation. RECIEL. 2023

Classification of climate rights

1. Fundamental human rights
2. Social rights and just transition
3. Domestic enforcement of climate goals
4. Corporate liability and responsibility (tort law-based claims; unjust enrichment; consumer protection; shareholder litigation)
5. Right to proper climate adaptation
6. Procedural rights of access to environmental information, participation in environmental decision-making and access to justice in the context of climate change
7. Procedural rights in the context of EIA and SEA

Fundamental human rights

According to a report by the UN Office of the High Commissioner for Human Rights, the rights mostly affected by climate change - the right to life, the right to self-determination, the right to development, the right to food, the right to water and sanitation, the right to health, the right to housing, the right to education, the right to meaningful and informed participation, the rights of those most affected by climate change, the rights of future generations as human rights. ⁽¹⁾

Before the ECtHR, usually Article 2 (right to life), Article 8 (right to respect for private and family life) of the European Convention on Human Rights (ECHR) and Article 1 of the 1st additional protocol to the ECHR (right to property) are invoked in environmental cases. Climate complaints feature claims based on Article 2, 6, 8 and some of them refer to Article 14 (right to non-discrimination).

1. OHCHR. 2015. Submission of the Office of the High Commissioner for Human Rights to the 21st Conference of the Parties to the United Nations Framework Convention on Climate Change

Social rights and just transition

“Just transition” as a three-fold concept that encompasses the dimensions of a clean environment, decent jobs, and affordable access to essential goods and services for the enjoyment of human rights.

The cases ⁽²⁾ could relate to the categories of labour rights, environmental rights, indigenous rights, right to a healthy environment and other human rights.

Tigre M.A., et.al, Just Transition Litigation in Latin America: An Initial Categorization of Climate Litigation Cases Amid the Energy Transition (Sabin Center for Climate Change Law, January 2023)

Country examples: Spain

The Spanish Climate Change Law includes specific legal provisions linking climate change with the protection of other relevant rights:

Consideration of climate change in public health (Article 23)

Consideration of climate change in food security and diet (Article 22)

Just transition and employment rights (Arts. 27-29)

Climate change education and training (Article 35)

Public participation rights on climate action (Article 39)

Trends in climate rights cases

Post-disaster cases: Legal disputes are emerging over recovery efforts following climate disasters, e.g. a case in Puerto Rico challenging the reconstruction of fossil fuel-based infrastructure.

Ecocide and criminal law: The concept of ecocide with new legislation in Belgium and proposed EU directives addressing environmental crimes.

Environmental and climate litigation synergies: Climate litigation strategies are increasingly applied to environmental cases, such as plastic pollution, air pollution. Rights-based environmental cases are also incorporating climate arguments.

Setzer J and Higham C (2024) Global Trends in Climate Change Litigation: 2024 Snapshot. London: Grantham Research Institute on Climate Change and the Environment, London School of Economics and Political Science

Thank you for your attention!

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