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BUSINESS, CLIMATE LITIGATION AND HUMAN RIGHTS IN A CHANGING GLOBAL POLITICAL CLIMATE

Climate litigation is increasingly framed not only as an environmental issue, but as a struggle over human rights in a changing global political climate. At the same time, business and human rights frameworks in Europe—especially mandatory due diligence and sustainability reporting—are expanding and are often presented as tools to strengthen corporate accountability. This paper argues that, despite the expansion of legal and regulatory mechanisms, corporate actors continue to rely on ESG narratives as a form of corporate legitimization, while affected communities face structural barriers to accessing justice. Drawing on developments in Europe and the Global South, the paper highlights a persistent gap between corporate contribution to climate harm and legal accountability. It concludes that without stronger attention to power asymmetries and access to justice, climate litigation and Business and Human Rights (BHR) regulation may reinforce existing inequalities rather than deliver climate justice.

Keywords: climate litigation, business and human rights, ESG, greenwashing, access to justice.

1. INTRODUCTION: FROM CLIMATE PROTECTION TO CLIMATE JUSTICE

1.1. Research questions

In 2021, the District Court of The Hague ordered Royal Dutch Shell to reduce its global carbon emissions, marking a historic moment in climate litigation and corporate accountability (*Milieudefensie et al. v Royal Dutch Shell plc*, 2021). For the first time, a multinational corporation was required not only to align its own operations but also its value chain, with global climate targets. The decision was widely celebrated as a breakthrough, signalling that courts could play a central role in addressing corporate contributions to climate change (Setzer & Higham, 2022, p. 12). More recently, the European Court of Human Rights has confirmed that inadequate climate action may constitute a violation of human rights, further strengthening the normative link between climate governance and fundamental rights (*Verein*

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KlimaSeniorinnen Schweiz and Others v Switzerland, 2024). Yet, beyond these developments, a deeper structural question remains: can such legal victories meaningfully deliver justice to those most affected by climate harm? This question becomes particularly pressing when viewed against the global distribution of climate impacts. Many countries in the Global South have contributed far less to historical greenhouse gas emissions, yet they face some of the most severe climate impacts, including livelihood losses, displacement risks, and ecosystem degradation (IPCC, 2022; UNEP, 2024; GCEurope, 2024).

In parallel with the rise of climate litigation, regulatory frameworks addressing business and human rights have expanded significantly, particularly in the European Union, including mandatory sustainability reporting under the Corporate Sustainability Reporting Directive (European Parliament and Council, 2022). and mandatory due diligence under the Corporate Sustainability Due Diligence Directive (European Commission, 2024). In principle, these frameworks provide new tools for litigants, offering standards of conduct and evidentiary material that can be used to challenge corporate behaviour. However, they also introduce new risks. Corporate reliance on ESG narratives and disclosure practices may create an appearance of responsibility without necessarily leading to substantive changes in behaviour, raising concerns about greenwashing and formalistic compliance (Delmas & Burbano, 2011, pp. 64–67).

This paper examines the intersection of business, climate litigation, and human rights in this changing global political climate. It addresses three interrelated questions. First, how do courts and quasi-judicial bodies frame state duties to regulate corporate greenhouse gas emissions through a human rights lens? Second, how do business and human rights instruments, such as due diligence and sustainability reporting, enable and constrain claims about corporate climate harm? Third, how does the global political climate, including shrinking civic space, affect access to justice and the distribution of legal protection?

1.2. Methodology and scope

This paper adopts a doctrinal comparative approach. It examines legal reasoning on State duties, standing/victim status, causation, and (where relevant) Scope 3/value-chain responsibility through four key European cases: *Urgenda v The Netherlands* (2019), *Milieudefensie v Shell* (2021), *KlimaSeniorinnen v Switzerland* (2024), and *Duarte Agostinho v Portugal and 32 Others* (2024). Knox explains that environmental human rights case-law is largely procedural, which helps clarify why access to information, participation, and remedies matter in climate cases (Knox, 2009, pp. 26–29).

The doctrinal analysis is combined with a critical governance perspective to assess whether EU accountability tools encourage meaningful conduct change or minimalist compliance. The paper therefore analyses the CSRD and CSDDD as regulatory frameworks that shape corporate duties and evidence production.

2. CORPORATE CLIMATE HARM AND THE PROBLEM OF ACCOUNTABILITY

2.1. Corporate emissions and diffused responsibility

According to the Carbon Majors database, global fossil fuel and cement emissions are increasingly concentrated among a small group of producers. In 2023, just 36 companies were linked to around half of global fossil CO_2 emissions, underscoring the central role of major corporate actors in the emissions landscape (InfluenceMap, 2026). However, attributing responsibility for climate harm to individual corporations remains legally challenging. Unlike traditional environmental damage, climate change is cumulative, global, and temporally dispersed, making it difficult to establish a direct causal link between a specific corporate activity and a particular harm suffered by individuals or communities (Peel & Osofsky, 2015, p. 67).

This challenge is further compounded by the significance of so-called "Scope 3" emissions, which arise from a company's value chain rather than its direct operations. In many companies, value chain (Scope 3) emissions represent the largest share of their total greenhouse gas footprint (GHG Protocol, 2022). Yet, legal frameworks have historically focused on direct emissions, thereby allowing corporations to externalize responsibility across suppliers, consumers, and jurisdictions. As a result, corporate accountability is often diluted, even where the overall contribution to climate change is substantial.

2.2. Landmark climate litigation reasoning

Climate litigation has emerged as a key mechanism for addressing corporate contributions to climate change. Recent cases have demonstrated a growing willingness among courts to engage with complex questions of corporate responsibility and human rights. However, despite these developments, significant legal and practical limitations remain.

One of the central challenges lies in establishing causation. Courts are often reluctant to attribute liability where harm results from the cumulative emissions of multiple actors over time. Even where scientific evidence demonstrates that corporate emissions contribute to climate change, translating this into legal causation remains difficult (Bouwer, 2018, pp. 504-506). This creates a high evidentiary threshold for claimants, particularly those lacking access to technical expertise and financial resources.

2.2.1. Milieudefensie v Shell (2021)

In Milieudefensie v Shell, the Hague District Court treated climate change as a foreseeable and serious risk, and assessed Shell's responsibility through a duty of care under Dutch tort law. The court did not require claimants to prove that Shell alone "caused" a specific climate harm. Instead, it focused on Shell's contribution to a global risk and on whether Shell's corporate policy adequately reduced that contribution. This approach is important for climate litigation because it shifts the debate from strict "but-for" causation to a risk-based and contribution-based logic, where a major emitter may have duties even when many actors contribute to the problem (*Milieudefensie et al. v Royal Dutch Shell plc*, 2021, para. 4.3.6–4.3.7).

A key innovation was the court's treatment of Scope 3 emissions. The judgment recognised that, for an energy company, most climate impact may occur outside its direct operations, in its value chain and through the use of its products. The court therefore ordered Shell to reduce the CO_2 emissions of the Shell group, including value-chain emissions, by a net 45% by 2030 compared to 2019 levels, through corporate policy (*Milieudefensie et al. v Royal Dutch Shell plc*, para. 4.1.1–4.1.4). At the same time, the judgment distinguished between (i) a stronger obligation regarding emissions from Shell's own activities and (ii) a "best efforts" obligation regarding third-party emissions in the value chain, while leaving Shell flexibility on how to allocate reductions across Scopes (*Milieudefensie et al. v Royal Dutch Shell plc*, para. 4.4.20–4.4.22).

2.2.2. KlimaSeniorinnen v Switzerland (2024)

In Verein KlimaSeniorinnen Schweiz and Others v Switzerland, the Grand Chamber confirmed that climate change can engage human rights protection, especially under Article 8 ECHR (private and family life). Building on its environmental case-law, the Court held that Article 8 must be understood as including a right to effective protection by State authorities from the serious adverse effects of climate change on individuals' life, health, well-being and quality of life (*Verein KlimaSeniorinnen Schweiz and Others v Switzerland*, 2024, para. 519).

The Court also clarified that climate harms can create serious and foreseeable risks, and that States therefore have positive obligations to provide effective protection against those risks (*Verein KlimaSeniorinnen Schweiz and Others v Switzerland*, para. 439–440). On that basis, the Court stated that the State's primary duty under Article 8 is to adopt and effectively apply in practice regulations and measures capable of mitigating the existing and potentially irreversible future effects of climate change (*Verein KlimaSeniorinnen Schweiz and Others v Switzerland* , para. 545).

The judgment is central for standing (victim status). Because climate change affects the population broadly, the Court rejected an approach that would turn climate claims into *actio popularis*. Instead, it set strict criteria for individual victim status: applicants must show (a) high intensity exposure to adverse climate effects and (b) a pressing need for individual protection, with an especially high threshold (*Verein KlimaSeniorinnen Schweiz and Others v Switzerland*, para. 487–488).

Applying these criteria, the Court accepted that older women are a group particularly susceptible to heat impacts, but still found that the individual applicants did not meet the high threshold for victim status in their individual circumstances (ibid, para. 530–533). At the same time, the Court accepted the *locus standi* of the applicant association as a vehicle of collective recourse. It held that the association was lawfully established, genuinely representative, and qualified to act on behalf of members who may arguably face specific climate-related threats to their Convention rights (*Verein KlimaSeniorinnen Schweiz and Others v Switzerland*, para. 524).

2.2.3. Duarte Agostinho v Portugal and 32 Others (2024)

Duarte Agostinho (*Duarte Agostinho and Others v Portugal and 32 Others*, 2024) is the key counterpoint which shows the limits of climate litigation when applicants try to reach multiple States through one human-rights procedure. The Grand Chamber stressed that the Convention system is built on primarily territorial jurisdiction, with only exceptional bases for extraterritorial jurisdiction (*Duarte Agostinho and Others v Portugal and 32 Others*, para. 168–171). In this case, the Court accepted that the applicants were within the territorial jurisdiction of Portugal, but it held that no jurisdiction could be established over the other respondent States. It rejected the idea that climate change, as a global phenomenon, automatically creates human-rights jurisdiction across multiple States. In particular, the Court found that the applicants' complaints did not fall within any recognised category of extraterritorial jurisdiction (no effective control over an area; no State-agent authority and control; no jurisdictional link through domestic proceedings) (*Duarte Agostinho and Others v Portugal and 32 Others*, para. 178–183).

This decision matters for "who can bring claims" because it highlights the gatekeeping role of admissibility and jurisdiction doctrines (*Duarte Agostinho and Others v Portugal and 32 Others*, para. 205–208; 213–214).

2.2.4. Urgenda v The Netherlands (2019)

Urgenda (Urgenda Foundation v The State of the Netherlands, 2019) remains the baseline for State obligations in European climate-rights reasoning because it translates climate risk into positive obligations under Articles 2 and 8 ECHR. The Dutch Supreme Court rejected the State's cassation appeal and let stand the order requiring the Netherlands to reduce greenhouse gas emissions by at least 25% by the end of 2020 compared to 1990 (Urgenda Foundation v The State of the Netherlands, paras. 8.1-8.3.5). The Court grounded this in the "genuine threat" of dangerous climate change and the corresponding duty to take suitable protective measures where lives and welfare are at risk (Urgenda Foundation v The State of the Netherlands, paras. 4.1–4.8; 5.2.1–5.3.4). It also emphasised that when giving substance to these positive obligations, courts may rely on broadly supported scientific insights and internationally accepted standards, including IPCC pathways and the widely endorsed Annex I reduction range of 25–40% by 2020 (Urgenda Foundation v The State of the Netherlands, paras. 6.1–7.3.6).

3. BUSINESS AND HUMAN RIGHTS: BETWEEN ACCOUNTABILITY AND COMPLIANCE

3.1. The promise of due diligence and ESG frameworks

In response to growing concerns over corporate impacts on human rights and the environment, regulatory frameworks governing business conduct have expanded significantly in recent years. At the international level, the UN Guiding Principles on Business and Human Rights established a baseline expectation that corporations should respect human rights and that states should regulate and adjudicate corporate conduct (UN, 2011). Building on these principles, regional initiatives, particularly within the European Union, have introduced more concrete obligations through mandatory human rights and environmental due diligence, as well as enhanced sustainability reporting requirements.

Due diligence regimes can reduce 'diffused responsibility' by requiring companies to map risks across their operations and value chains and to take preventive measures with suppliers and business partners. For example, under the EU Corporate Sustainability Due Diligence Directive, in-scope companies must identify and address actual and potential adverse impacts in their chain of activities (European Commission, 2024). Sustainability reporting obligations can also generate litigation-relevant evidence, because companies must disclose material sustainability risks, policies, and governance arrangements under the CSRD framework (European Parliament and Council, 2022). Moreover, sustainability disclosures may provide new forms of evidence, enabling claimants to rely on corporate reports, risk assessments, and transition plans in legal proceedings.

Business and human rights frameworks complement climate litigation in concrete ways by creating both harder standards of conduct and usable evidence. For example, the EU Corporate Sustainability Due Diligence Directive requires in-scope companies to identify and address actual and potential adverse human rights and environmental impacts in their own operations and across their chain of activities, including prevention, mitigation, and remedial measures (European Commission, 2024). In parallel, the Corporate Sustainability Reporting Directive requires companies to disclose material sustainability risks, policies, targets, and governance arrangements in a standardised way (European Parliament and Council, 2022).

3.2. ESG as legitimation

Despite their promise, these frameworks also give rise to significant concerns regarding their practical effectiveness. In particular, the increasing reliance on ESG metrics and sustainability reporting may facilitate a form of "greenwashing", whereby corporations project an image of environmental responsibility without implementing meaningful changes to their underlying practices (Delmas & Burbano, 2011, pp. 64-67). Reliance on ESG metrics and sustainability reporting can facilitate greenwashing when disclosures rely on vague "sustainability" language, selective indicators, or long-term targets without clear implementation pathways (such as interim milestones, capex shifts, and limits on offsets). In that setting, reporting may function more as a reputation tool than an accountability tool, shaping investor and public perceptions while leaving high-emitting business models largely unchanged. This risk is higher where claims are not verifiable because methodologies and key assumptions are unclear or assurance is weak; ESMA highlights that greenwashing often involves sustainability claims that are unclear, unsubstantiated, or difficult to verify (ESMA, 2024). A concrete illustration is *Fossiel Vrij NL v. KLM* (2024), where the Amsterdam District Court found several KLM sustainability advertisements misleading, showing how sustainability messaging can overstate environmental performance when not supported by concrete evidence.

3.3. Counter-arguments and limited achievements

A balanced assessment should acknowledge that ESG frameworks and climate litigation have produced some measurable improvements, even if they do not automatically deliver climate justice. First, litigation and regulation have increased corporate transparency. Mandatory reporting regimes and disclosure pressure can make climate risks and transition plans more visible to investors and the public, which may reduce information asymmetry and support market discipline (Setzer & Higham, 2022, pp. 10–13). Second, climate litigation can influence corporate behaviour even without final judgments. The risk of reputational damage, legal costs, and judicial scrutiny may encourage firms to adjust internal governance, adopt clearer targets, or improve risk management (Setzer & Higham, 2022, pp. 10–13). Third, ESG-driven investor engagement and shareholder activism can also produce change, especially where investors demand credible transition planning and react to weak strategies. In short, these tools can raise the cost of inaction and sometimes trigger incremental reforms in corporate governance and disclosure (Setzer & Higham, 2022, p. 12).

However, these achievements remain limited and uneven. Improvements in disclosure do not necessarily translate into real-world emissions reductions, especially when reporting allows vague claims, selective indicators, or long-term targets without concrete implementation pathways. Moreover, shareholder pressure tends to be stronger in large, listed firms and in jurisdictions with active capital markets, while many high-impact activities occur in complex value chains where accountability is harder to enforce (Peel & Osofsky, 2015, p. 67). Litigation outcomes are also structurally constrained: causation doctrines, standing rules, resource inequality, and political context can prevent affected communities from bringing cases or sustaining them (Amnesty International, 2022). Even when claimants succeed, remedies often focus on procedures and plans rather than enforceable outcomes, and implementation can depend on regulatory capacity and political will (Setzer & Higham, 2022, pp. 18–20).

Furthermore, Walker-Crawford shows that fossil fuel defendants in climate litigation no longer rely mainly on outright climate denial. Instead, they accept the broad scientific consensus but contest the use of climate science to establish legal responsibility. Based on a qualitative analysis of defendants' arguments in major lawsuits, he identifies three recurring strategies: (i) counter-narratives that shift blame to society and demand, (ii) challenges to the substantive quality of plaintiffs' evidence by emphasising uncertainty, and (iii) attacks on the integrity of compromising evidence by questioning the neutrality of scientists and experts. This suggests that the future impact of corporate climate litigation will hinge on how courts evaluate climate research as legal evidence and whether defendants succeed in reframing and discrediting it (Walker-Crawford, 2026, pp. 142–145).

4. ACCESS TO JUSTICE IN A SHRINKING CIVIC SPACE

4.1. Structural barriers to climate justice

Access to justice remains a central challenge in climate litigation, particularly for individuals and communities most affected by climate change. While legal frameworks and procedural mechanisms have expanded, the ability to utilise them effectively is unevenly distributed. Claimants often face significant financial, technical, and institutional barriers, including the high cost of litigation, limited access to legal expertise, and the complexity of scientific evidence required to establish climate-related harm (Peel & Osofsky, 2015, p. 73).

Mayer cautions that identifying individual "victims" of a failure to mitigate climate change is legally problematic because the causal link between a defendant's mitigation failure and an individual's harm is too diffuse and remote. He argues that establishing victimhood would require a long causal chain—from individual harm to a physical event, from that event to climate change, and from climate change to the defendant's climate wrong, where each link is uncertain and mediated by exposure, vulnerability and resilience (Mayer, 2025, pp. 813–816). This critique helps explain why courts often tighten victim-status requirements, and why climate litigation may be more effective when it relies on public law and public interest standing rather than individualised victim narratives (Mayer, 2025, pp. 833–836).

4.2. Political context: authoritarianism and silenced claims

The challenges of access to justice are further intensified by broader political developments, including the rise of authoritarian tendencies and the shrinking of civic space in many jurisdictions. In such contexts, legal systems may lack independence, civil society organisations may face restrictions, and environmental defenders may be subject to legal harassment or intimidation (Amnesty International, 2022).

4.2.1 Hungary: the "Lex NGO" model and legal pressure on foreign-funded civil society

A clear European example is Hungary's 2017 NGO "transparency" law (often called "Lex NGO"), which imposed registration and disclosure duties on organisations receiving foreign support. The European Commission challenged this framework, and the Court of Justice of the EU held that Hungary's restrictions on foreign donations to civil society organisations were incompatible with EU law (Commission v Hungary, 2020). For climate litigation, the relevance is practical: when NGOs are burdened with "foreign agent"-style labels and disclosure duties, they become easier targets for political delegitimation, which weakens their capacity to mobilise claimants, fund litigation, and act as stable litigation platforms (European Commission, 2017; Commission v Hungary, 2020).

4.2.2. India: FCRA restrictions and funding as a litigation barrier

In the Global South, funding controls can be even more decisive. India's Foreign Contribution (Regulation) Act (FCRA) creates strict rules for NGOs receiving foreign donations, and its tightening has been widely discussed as a structural constraint on civil society capacity (ICNL, 2020). For climate justice, the link is direct: many community cases depend on civil society support for lawyers, experts, field documentation, and litigation costs. When funding is restricted or registrations are threatened, climate litigation becomes harder to initiate and sustain, especially for rural or vulnerable communities that cannot self-finance complex proceedings (ICNL, 2020; Amnesty International, 2022).

4.2.3. Philippines: anti-terror framing, "red-tagging", and intimidation of defenders

Another pathway is the security framing of dissent. In the Philippines, "red-tagging" and the use of vague security narratives have been documented as tools that can intimidate activists, including environmental defenders, creating fear, surveillance risks, and practical obstacles to organising (Amnesty International, 2024). When environmental and climate advocacy is associated with extremism, potential claimants may withdraw, witnesses may refuse to cooperate, and NGOs may divert resources to self-protection rather than litigation. This directly affects "who can sue" and "what evidence can be produced", making rights protection uneven even before courts consider the merits (Amnesty International, 2024).

5. WHOSE RIGHTS COUNT? POWER AND CLIMATE INJUSTICE

Climate litigation is often presented as a neutral legal mechanism for enforcing environmental standards and protecting human rights. However, this framing can hide how access to courts, the recognition of harm, and the attribution of responsibility are shaped by unequal power relations. Human rights-based environmental jurisprudence is strongly procedural: it relies on access to information, participation, and remedies as the main pathways to protect rights (Knox, 2009, pp. 26–29). When those procedural conditions are weak because claimants lack resources, civic space is restricted, or courts filter cases through strict admissibility rules, litigation does not operate on an equal playing field but reproduces broader structural inequalities.

A key dimension of this inequality lies in the asymmetric relationship between the Global North and the Global South. While major corporate emitters are often headquartered, financed, or regulated in developed jurisdictions, severe climate impacts are frequently experienced elsewhere. Climate litigation therefore becomes, in practice, a tool that depends on who can access effective fora and how international law shapes arguments, obligations, and remedies (Prévost *et al.*, 2025, pp. 291–293). As Prévost et al. note, although most climate cases are filed domestically, international law increasingly structures climate responsibility claims and pushes doctrinal developments on responsibility and causation (Prévost *et al.*, 2025, pp. 292–293).

Moreover, Petersmann argues that climate litigation activates different "grammars of climate justice" that shape which harms and whose rights become legally visible. A traditional grammar focuses on actual harms to human victims within territorial jurisdiction, while a progressive grammar stretches legal concepts towards potential harms, extra-territorial obligations, and future generations. However, she argues that climate harms are often better understood as "entangled harms" across subjects, space, and time, and that this complexity is frequently weaponised by powerful actors as a tactic of de-responsibilisation (Petersmann, 2026, pp. 74–76; 78).

These dynamics raise a fundamental normative question: whose rights are effectively protected in climate litigation? Courts may increasingly recognise the human rights implications of climate change, but the benefits of this recognition are not evenly distributed. Without the procedural conditions that Knox identifies meaningful participation, access to information, and effective remedies—rights language risks remaining formal rather than protective in practice (Knox, 2009, pp. 26–29). Consequently, climate litigation and BHR regulation can drift towards a form of selective justice, where legal protection is more accessible to claimants with resources and favourable fora, while those most vulnerable remain excluded or underrepresented. The challenge, therefore, is not only to expand legal mechanisms, but to strengthen the political and procedural conditions especially civic space and access to expertise, under which climate litigation can deliver substantive climate justice (Prévost *et al.*, 2025, pp. 297–298). In this light, the challenge is not merely to expand legal mechanisms, but to critically reassess the conditions under which they operate.

6. CONCLUSION

Climate litigation and business and human rights (BHR) regulation have reshaped climate governance. Courts now engage more directly with questions of climate responsibility, while due diligence and sustainability reporting seek to embed accountability within corporate structures by setting standards and generating evidence for scrutiny.

However, this paper shows that stronger legal tools do not automatically deliver climate justice. Accountability remains uneven because climate harm is cumulative and transboundary, corporate emissions are embedded in complex value chains, and doctrines on causation, standing, and jurisdiction continue to filter claims. ESG-based disclosure can also encourage formalistic compliance, allowing companies to maintain legitimacy through narratives and selective reporting while high-emitting business models persist.

These limits are amplified by a changing global political climate. Where civic space is shrinking, affected communities and civil society face greater barriers to organizing, producing evidence, and sustaining litigation, reinforcing a pattern of selective justice. For climate litigation and BHR regulation to be genuinely transformative, they must strengthen practical access to justice and enforceable remedies, protect civic participation, and support accountability pathways that can address collective and diffuse harms. Otherwise, climate litigation risks reinforcing existing inequalities rather than redistributing protection towards those most vulnerable to climate change.

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