

# **A human rights-based approach to environmental protection**

The role of human rights in protecting the environment  
and addressing climate change

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Cultural Change*

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## **ABSTRACT**

The successful protection and promotion of human rights depend on a healthy environment. Environmental degradation and climate change adversely affect the enjoyment of virtually all human rights. While ecological concerns were not previously considered human rights issues, the human rights dimensions of anthropogenic environmental change have been recently recognized in human rights literature and increasingly utilized in international litigation. However, while a human rights-based approach has long been applied in the development discourse to address issues such as poverty and discrimination, the implications of its implementation in achieving environmental and climate goals remains largely unexplored. This thesis proposes the application of a human rights-based approach in the pursuit of environmental protection and urgently needed climate action. The study explores the role of human rights in achieving environmental protection and climate mitigation and adaptation. The goal is to examine the benefits and limitations of the application of a human rights-based approach to environmental issues and climate change, and to further determine its legal and practical impacts. The study focuses on the development of human rights arguments through global environmental litigation. It also analyses the impacts of the application of a human rights-based approach in a legal dispute between Czechia and Poland regarding the Turov coal mine.

**Keywords:** human rights, human rights law, environment, climate change, human rights-based approach, environmental degradation, environmental protection, climate action, climate law, coal mining, environmental litigation, transboundary harm, water depletion, Czechia, Poland

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## CHAPTER 1: INTRODUCTION

*The destruction of the Earth's environment is the human rights challenge of our time.*

– Desmond Tutu

Human rights and the environment are inextricably linked. The far-reaching consequences of accelerating climate change and environmental degradation carry immense consequences for the humankind. Environmental issues such as air pollution, droughts, rising sea levels, and soil degradation carry direct implications for the enjoyment of a wide range of human rights. These include civil and political rights such as the right to life and property. Economic, social, and cultural rights such as right to health, education, and work and finally collective rights such as the right to development, self-determination, peace, and minority rights (Toussaint, 2020). The human impacts of climate change are anticipated to further worsen in the foreseeable future, eminently affecting the most vulnerable populations whose resources to address loss and damage inflicted by climate change are already the most restricted (UNEP, 2015). Geographically, the poorest populations of the Global South find themselves on the frontline in respect to the adverse impacts of a changing climate, while simultaneously facing financial constraints that limit their mitigation and adaptation options (Brock, 2012). Further, regardless of the geographical location, elderly populations, and minorities such as people with disabilities are at an increased risk of death from extreme weather events and increasing temperatures (USGCRP, 2016).

Inasmuch as human rights cannot be fully achieved without healthy ecosystems capable of providing sustenance for humankind, the call for a more rights-based perspective of understanding and addressing the global environmental challenges has been raised repeatedly since the 1980s (Toussaint, 2020). Thus, when addressing environmental degradation and climate change, applying a human rights-based approach (hereafter HRBA) has a potential to inform and improve national and international efforts to increase environmental protection standards and enhance climate action (OHCHR, 2021).

From a legal perspective, there is an interdependent relationship between international human rights obligations and environmental protection. A healthy environment is an indispensable precondition for the full enjoyment of virtually all universally recognized human rights. Thus, human rights law is relevant in addressing environmental issues because environmental degradation directly generates human rights violations. Simultaneously, the legal framework protecting fundamental rights carries the potential to be utilized as powerful means of environmental protection, especially in the area of international environmental and climate law characterized by otherwise problematic enforcement (Knox, 2018). Moreover, applying a human rights lens entails that the actions taken to address climate change and environmental issues do not push those most vulnerable deeper into insecurity and poverty (ICHR, 2008).

Environmental and climate change issues were not historically considered a traditional human rights concern. Environmental rights were originally classified as so-called third generation rights, meaning that they were rather aspirational, and without a well-defined content in terms of the rights and obligations of the concerned rights-holders and duty-bearers. And while the existence of the right to a healthy environment as such is still a subject to debates, the relationship between the state of the environment and the enjoyment of human rights is not only indisputable, but also increasingly at the forefront of interest of international human rights law (Schellongova, 2019).

This thesis is based on the idea that since environmental degradation and climate change generate negative implications on human rights, the human rights framework should be actively utilized to address these issues more effectively. By placing human rights at the heart of environmental protection and climate action measures such as decarbonisation, forest conservation, or strengthening environmental regulation, states can make these processes more inclusive and sensitive to the needs of individuals and groups that are being directly affected by them (OHCHR, 2021). However, while the overwhelming majority of experience with human rights-based approaches comes from its application in the context of the Global South, this thesis extends the application of the human rights-based approach to the context of Global North by demonstrating the development of human rights arguments through global environmental litigation. Further, it includes a case study concerning transboundary harm to determine whether the human rights-based approach can be utilized to achieve environmental protection, raise awareness of environmental issues, and push governments in the direction of sustainability.

Human-induced environmental degradation and climate change undeniably jeopardise not only all human life, but also all non-human life on this planet. Thus, in my research I aim to explore how can the implementation of human rights perspective promote not only the protection of human rights but also protection of the environment itself.

### **1.1. The aim and the scope of the thesis**

This thesis explores the complexity of the human rights and development convergence and focuses on the added value and challenges of the application of a human rights-based approach to development with a particular focus on environmental protection and climate action. It analyses the human rights impacts of climate change on the one hand and the role of human rights law in holding states accountable for their human rights obligations concerning environmental protection and climate action on the other. Subsequently, the thesis illustrates how human rights perspectives were utilized in selected global cases concerning environmental harm and climate change. Finally, the thesis analyses the application of the human rights-based approach to environmental litigation on a transboundary legal dispute between Czechia and Poland concerning the environmental impacts of the Turov coal mine.

#### Problem statement

This study examines the added value of the application of the human rights-based approach to development on environmental issues and climate change.

#### Main research question

- How and to what extent does the application of a human rights-based approach to development (HRBA) impact environmental protection and climate action?

### Sub-questions

- What has been the impact of environmentally catalyzed human rights litigation worldwide?
- How and to what extent does the HRBA enable stakeholders to hold governments and businesses to account for environmental degradation and inaction on the climate crisis?

### The objectives of the research

- To analyse the impacts of human rights-based approaches to decision-making regarding environmental protection
- To analyse the impacts of human rights-based approaches to decision-making regarding climate action
- To identify the human rights impacts of environmental degradation
- To identify the human rights impacts of climate change and climate action
- To identify the human rights obligations of states regarding climate change
- To identify the human rights obligations of businesses regarding climate change
- To identify the challenges in the application of human-rights based approaches
- To determine the implications of human rights dimensions of international climate agreements on states as duty-bearers and citizens as rights-holders
- To analyse the role of the human rights-based approach in international environmental litigation regarding environmental harm
- To exemplify the role of human rights in international litigation concerning environmental damage
- To exemplify the role of human rights in climate litigation
- To exemplify the role of human rights in international litigation concerning energy production
- To explore how is the application of human rights-based approaches influenced by contextual factors

## **1.2. Methodology and data collection**

My research is based on a combination of qualitative research methods and approaches, namely document analysis, doctrinal legal research, empirical critical legal research, and a case study approach.

The sources collected for the theoretical part of my research consist of academic articles in the field of sustainable development and human rights-based approaches to development, international human rights instruments, international climate law, soft-law instruments, and other documents issued predominantly by the United Nations, the United Nations High Commissioner for Human Rights, the United Nations Environment Programme, and the United Nations Development Programme.

For the purposes of the analysis and discussion the research utilizes secondary sources used in the theoretical part and further accompanies them firstly by an analysis of selected international litigation cases concerning environmental protection and human rights claims. Secondly, the sources utilized during the Túrow case study include among others, news articles, legal submissions to the Czech government, legal submissions to the Court of Justice of the EU, documents issued by the Czech and Polish authorities, documents issued by the Court of Justice of the EU, publicly accessible internal documents issued by the company operating the Túrow coal mine, observation videos from the mine location and surroundings and other media coverage of the dispute, interviews with people living nearby the mine, interviews with the employees of the mine, interviews with Czech and Polish activists, interviews with Czech and Polish journalists, interviews with Czech and Polish politicians. In the final stages of my data collection, I conducted semi-structured interviews with a Czech lawyer who has been working directly on the case.

This thesis combines legal research approaches, litigation review, and a case study approach to find a shared language between human rights and the development discourse and to further shed a light on the human rights and development convergence and the potential conflicts.

The majority of this research was conducted during the COVID-19 pandemic, which significantly influenced the choice of methods. The initial plan was to perform fieldwork in Czechia and Poland in order to follow the development of the dispute concerning environmental damage in Czechia caused by mining activity in the Túrow coal mine in

Poland. However, the strict travel restrictions did not allow me to travel to the site. Therefore, I adapted my methods to the limitations posed by the pandemic, and I focused more on the analysis of media coverage, news reports, and interviews regarding the dispute available online.

### **1.2.1. Document analysis**

The overwhelming majority of the thesis is grounded in document analysis as a general methodology. The document analysis in my thesis entailed research, evaluation, and interpretation of peer-reviewed academic articles, miscellaneous documents issued by international organizations such as reports and factsheets, news articles regarding the Túrow coal mine, press releases of the Czech and Polish authorities, and statements of private companies connected to the Túrow coal mine.

When undertaking the document analysis for the purpose of my research I began my search more broadly by focusing on peer-reviewed academic literature containing the general theory on human rights-based approaches in order to map its history, development, principles, and core characteristics. Next, I begin searching for academic articles and documents issued by international organizations such as the United Nations that focused more narrowly on the application of human rights-based approaches to environmental issues and climate action. Further, the documents collected and analysed for the purpose of my case study were obtained predominantly from media reports and documentation issued directly by courts and government authorities.

### **1.2.2. Doctrinal legal research**

Doctrinal legal research has been utilized mainly through descriptive analysis of statutory provisions of existing human rights instruments such as the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and various regional human rights instruments. Next, the doctrinal legal research also works with international climate law agreements and conventions, related soft-law instruments such as declarations, recommendations, and principles.

Further in the litigation review the thesis uses doctrinal legal research to briefly analyse selected international litigation case law in order to exemplify how the decision-making bodies utilized national and international human rights law to protect environmental and other rights of claimants and also to achieve environmental protection and climate action. During the litigation overview I made sure to work directly with the orders and decision as issued by the courts.

While this thesis utilizes descriptive analysis of legal instruments, it also acknowledges the gap between what the wording of the law states and how the practice and enforcement of legally binding obligations are often problematic. Thus, in the analytical section the thesis aims to accompany the descriptive analysis by pointing out the often-problematic implementation, enforcement and the uncertain real-world implications of law principles and norms in practice.

### **1.2.3. Empirical critical legal research**

Non-doctrinal or empirical legal research was carried out in the Túrow case study by gathering, observing, and analysing directly obtained documentation from the Czech regional authorities regarding environmental harm and human rights violations caused by the mining activity, national regulation of water resources management issued by the Czech government, legal submissions of Czechia and Poland to the Court of Justice of the EU, interim decisions and adjacent documents issued by the Court of Justice of the EU, the intergovernmental agreement between Czechia and Poland, and the following citizen lawsuit against the Czech government to the Czech Constitutional Court.

Further in the analysis, the thesis critically evaluates the applicable legal framework in relation to case law findings and suggested implementation of the obligations arising from human rights and climate law.

### **1.2.4. Case study approach: Túrow coal mine**

My research utilizes a case study approach to demonstrate the practical implications of some of the theoretical concepts outlined in the thesis. Thus, I exemplify my findings on a case study of a legal dispute concerning transnational environmental harm and

human rights violations inflicted by mining and coal energy production on the Czech-Polish border.

While the doctrinal method attempts to highlight certain issues inherent to the implementation of human rights and climate law such as the application of universal principles, the pitfalls of human rights-based approaches, the adverse human rights impacts of climate change, and the cruciality of accountability of states for environmental harm and human rights violations, the case study allows for a clearer identification of the practical implications of those issues.

The main reason for the choice of this particular case is the fact that it demonstrates just how distinctly human rights concerns can influence an ongoing dialogue between states regarding transnational environmental harm and promote political action in environmental matters, but it also touches upon the shortcoming and limitation of the application of human rights-based approaches. Furthermore, the case choice allowed this thesis to demonstrate the application of the human rights-based approach on an ongoing dispute in European context with a particular focus on environmental litigation, while most of the existing experience of the application of human rights-based approaches come from developing countries. The following text briefly introduces the factual background of the case study, a detailed description of the case study is included in chapter 4.

The Turov case study is a transboundary dispute between Czech and Poland concerning a transnational environmental harm on Czech territory caused by the operation of a Polish coal mine. In 2017 an impact assessment study found a direct causal link between the expansion of the mining activity in Turov and the diminishing supplies of drinking water in a Czech border region Liberec (Frank Bold, 2020). Furthermore, the obligatory permit for the mining activity ran out in 2020 and the Polish government extended the permit without conducting sufficient prior environmental impact assessment. This was met with a negative reaction by the public and the officials in both neighbouring states, especially in Czech, where several independent groundwater studies established that any further expansion of the mine will lead to irreversible water-supply depletion in parts of Czech territory (EPP, 2020). Thus, in February 2021 (after two years of unsuccessful negotiations between the two countries and countless petitions submitted by the local population) the Czech Ministry of Environment has filed a lawsuit against Poland to the Court of Justice of the EU. This



was in fact a first case of its kind, where an EU member state sues another over transnational environmental damage (Frank Bold, 2021).

The research followed the development of the dispute from its initiation in February 2021 until the final settlement reached through an intergovernmental agreement between the Czech and Polish government in March 2022.

### **1.2.5. Primary data collection during a pandemic: use of digital tools**

Due to the pandemic-induced travel restrictions in Europe and the strict lockdown measures in Czechia fieldwork at the case site was not possible in the time frame set out for the completion of the project. Thus, the research has widely utilized digital tools and news reports of the Túrów dispute while performing the case study. Another argument for the use of digital tools and media coverage was the excellent availability of sources regarding the Túrów case study.

In the beginning of the legal proceedings in February 2021 the dispute did not attract much media attention and was only covered by regional news media. My initial plan was thus to visit the site in order to undertake observation and conduct interviews with the locals. However, the dispute shortly gained unprecedented media coverage which considerably improved the coverage of its development, including interviews with various stakeholders on both Czech and Polish side of the border. Since the Túrów legal dispute has been so closely covered by the media until its final settlement in March 2022 I decided to utilize secondary sources and digital tools more than I originally anticipated. The data for the purpose of the research have been sourced predominantly from both Czech and Polish media coverage of the dispute including news articles, video coverage from the site, interviews with local population, civil society actors, scholars, and journalists following the case.

In order to ensure objectivity of the information used to describe the development and the outcomes of the dispute, I made sure to include the perspectives and experiences coming from both the Czech and the Polish side of the border. However, obtaining, and analysing media coverage from the Polish perspective on the dispute was more challenging compared to the Czech media sources as an overwhelming majority of the Polish sources did not include neither Czech nor English translations.

Lastly, in order to focus more closely on the legal arguments utilized in the proceedings, the research also included expert interviews with lawyer that has been involved in the case while legally representing the Liberec region that was affected by the water loss since the initiation of the proceedings and has been in close dialogue with the residents of both the Liberec and the Bogatynia region. The semi-structured interviews were conducted virtually in the final stage of my data collection, and the contents focused prevalingly on filling the remaining gaps in my data collection and addressing specific legal issues arising from the dispute that have not been covered by secondary sources.

#### **1.2.6. Secondary data collection and analysis**

In line with the methods of evaluative research, the thesis undertakes a document analysis of relevant academic literature and doctrinal legal analysis of the United Nations human rights covenants and international and climate treaties, reports, and miscellaneous documents issued by the United Nations, the United Nations Development Programme, the United Nations Environment Programme, and other relevant international organizations.

In the secondary data analysis, the research identifies human rights impacts of climate change, explicit references to human rights law in the United Nations climate regime and the 2030 Agenda for Sustainable Development and subsequently undertakes a legal analysis to determine how those references relate to the obligations of states as duty-bearers in achieving sustainable development. Next, utilizing critical legal research chapter 3 undertakes a brief review of existing case law regarding climate change and environmental rights and further elaborates on the findings by demonstrating the suggested theoretical approach on the Túrow case study.

The objectives of the data collection were to explore whether human rights concerns can provide leverage for environmental protection in states with weak environmental law enforcement and to what extent human rights concerns can spark bottom-up decarbonisation processes and enhance climate mitigation in states with a prevalingly negative approach to energy transition on the government level. Further, the research aimed to analyse the role of the human rights-based approach in international

environmental litigation regarding transnational harm and exemplify how the human rights-based approach can serve to bring together the environmental and social dimension of sustainable development.

### **1.3. Thesis outline**

This thesis is divided into 5 chapters. The first chapter provides the background and the rationale of the thesis, further introduces the aim and the scope of the thesis and outlines the research questions and objectives. The first chapter also includes the methodology utilized in the research, justifies the choice of case study, and reflects on the collection of primary and secondary data.

The second chapter of the thesis provides the theoretical approaches and the legal framework employed in the research. It begins by defining the HRBA and introduces the emergence and the development of the approach in international practice. Next, it describes the typology of HRBAs, lists human rights principles applied in the approach, and suggests some of the limitations of the HRBA. Subsequently, it reviews some of the recent applications of the HRBA and its relevance to the 2030 Agenda for Sustainable Development. Further, it connects the HRBA and the climate change regime by describing how climate change affects human rights and what are the corresponding obligations of states to protect those rights. It follows by proposing the HRBA to climate change and the recognition of the human right to a healthy environment. Finally, the chapter concludes by operationalizing the theoretical approaches utilized in the research.

The third chapter focuses primarily on providing an overview of environmentally catalysed human rights litigation around the world. It includes eight cases on which it exemplifies the development of the HRBA in environmental litigation and how does the application of the HRBA in the specific cases impacted environmental regulation and practice. The chapter concludes by drawing a link between the cases included in the overview and the Túrow case study and further emphasizes the most notable similarities and differences between the cases.

Chapter four focuses solely on the analysis of the Túrow case study, a dispute concerning transboundary environmental harm and water depletion inflicted in Czech territory by a coal mine located in Poland. The study firstly provides the factual

background of the case with emphasis on the environmental impacts, the escalation of the conflict, the proceedings at the Court of Justice of the European Union, and the final settlement of the dispute between the Czech and Polish government. Subsequently, the chapter analyses the impacts of the mining and the dispute on Czech and Polish citizens and scrutinizes some of the major legal steps taken in the dispute. Further the analysis emphasises the human rights implications of the dispute, establishes the relevant human rights obligations of Czech and Poland, and connects the case study to global environmental protection and climate action efforts. Finally, the chapter determines the impacts of the application of the HRBA in the context of the case and compares them to other factors influencing the outcome of the case.

Lastly, chapter five contains a conclusion of the main findings of the research and describes how those findings answer the research questions outlined in chapter one. Further, it highlights the relevance of the HRBA to environmental issues and suggests the way forward.

## **CHAPTER 2: THEORETICAL PERSPECTIVES**

### **Introduction**

This chapter introduces the theoretical framework of the thesis. Firstly, it provides a definition and emergence of the human rights-based approach to sustainable development, elaborates on its principles, impacts and limitations and touches upon its potential on recent development debates. Secondly, the chapter lays down the legal framework connecting the human rights law, international climate regime and sustainable development by identifying the human rights impacts of climate change and the responding human rights obligations of states and businesses. It further introduces the existing research on a human rights sensitive approach to climate change and explores the added value of the recognition of the human right to a healthy environment in realizing environmental protection and addressing climate change. Thirdly, the chapter summarizes the selection of theoretical approaches and outlines how is the theoretical framework subsequently applied in the litigation overview in chapter 3 and the case study analysis in chapter 4 of the thesis.

### **2.1. Defining the human rights-based approach to development**

While a universal definition has never been established in the development literature, the concept a human rights-based approach to development be defined by its underlying principles. According to the UN High Commissioner for Human Rights, the HRBA builds on international human rights standards and aims to promote and protect human rights above all. Its core elements are the demands of individuals as rights-holders and the responding obligations of authorities as duty-bearers that are obligated by human rights instruments to fulfil its obligations. Further, the HRBA emphasizes the central role of inequalities, discrimination, and power imbalances in society as an impelling cause of the majority of development issues (Sano, 2017). Another two-part definition has been suggested by Theis who firstly describes the HRBA as a set of political objectives aiming to promote equality, freedom, and justice while tackling issues of power that are again considered as the root of poverty and exploitation. To complete this definition, the HRBA

is further characterized by utilizing principles, standards and methods of human rights, development, and social activism (Theis, 2003). Additionally, this thesis further utilizes the definition suggested by Gauri and Gloppen, that understands the HRBA as principles justifying claims against privileged actors made by disadvantaged rights-holders or their advocates using both national and international human rights instruments in order to protect their human interests. It is important to mention that this definition does not limit the responsibility for human rights claims only to states. In relevant cases other powerful private actors such as corporations may be considered as duty-bearers (Gauri & Gloppen, 2012).

This understanding suggests that the HRBA does not aim merely to adopt human “rights-talk” into the development discourse, which by itself does not construct a human rights-based approach (Nelson, 2018). On the contrary, the HRBA aims to achieve more specific goals in the area of protection and promotion of fundamental rights of individuals. Realizing effective human rights protection means that the fundamental rights of individuals and groups must not be infringed and in cases when an infringement of rights does occur, the victims of human rights violations are entitled to legal remedy. On the other hand, human rights promotion refers more to the bolstering of both the national and the global human right regime that assures monitoring of human rights obligations of the states arising from the UN human rights instruments. In practice, the promotion of human rights is performed by courts and other state institutions on the national level and by the Human Rights Council on the international level (Sano, 2017). The legal remedies available to rights-holders are not limited solely to justiciable legal remedies, but rather include other accountability instruments such as administrative mechanisms, discussions, and social forms of counter-power (Uvin, 2007).

Jointly developed by the United Nations bodies, the HRBA influenced the development discourse at the turn of the millennium by suggesting a novel way to approach development and policymaking (OHCHR, 2006). By presenting human rights as a cross-cutting issue in the context of achieving development goals, it provides a more holistic understanding of development challenges by emphasizing the interconnectedness of its economic, social, and environmental dimensions (UNEP, 2015). The approach further aims to promote a greater participation of citizens as rights-holders and to underline the human rights-related responsibilities of states as duty-bearers in order to realize more balanced power relations between the two (Uvin, 2007).

To underline the cruciality of the HRBA when addressing the human rights obligations of states, the approach first and foremost emphasizes the obligations of states arising from international human rights documents (Toussaint, 2020). Thus, the HRBA calls for the application of international human rights law in the process of creating development programmes and policies (including climate change mitigation and adaptation) in order to assure that the projects based on those policies will respect, protect, and fulfil human rights (Rajamani, 2010).

Underscoring its preventative character, the HRBA called for an in-depth evaluation of the human rights implications of the design and implementation of development policies, accompanied by an increased engagement of courts and human rights institutions ensuring the legal enforcement of human rights affected by those policies (De Schutter, 2012). However, while human rights-based approaches underline the significance of legal guarantees and the application of international human rights standards and methods in realizing social change, they do not require development practitioners to rely exclusively on law and litigation (Wing, 2012). Instead, the human rights framework is employed in order to tackle development issues in the most inclusive and all-encompassing manner possible by targeting their root causes. The application of the HRBA can be exemplified on development efforts aimed at improving access to food and the corresponding right to food. As explained by Nelson, under the HRBA the state as a duty-bearer cannot focus simply on raising the percentage of population with an access to adequate nutrition. By insisting on the respect and promotion of the human right to food, the government is further duty-bound to promote the ability of its people to grow food and to prevent any actors from compromising this right. Moreover, the state must also guarantee that no groups of population are experiencing systematic disadvantages in their access to food (Nelson, 2018).

Despite its transformative potential, the HRBA does not represent a silver bullet to development issues and the approach itself is subject to several limitations. It follows a rather strict anthropocentric understanding of the relationship between humans and nature and therefore fails to enter into a debate with the non-human-centred conceptions (Toussaint, 2020). In addition, the application of the HRBA per se does not automatically guarantee a successful enforcement of the human rights-standards it sets, especially in regions or subject areas where the political will or enforcement capacity to adhere to those standards remain low, as exemplified on a case study further in this thesis (Broberg

& Sano, 2018). Those and other shortcomings of the HRBA are addressed further in this chapter.

## **2.2. A brief historical overview of the impact of HRBA**

The HRBA emerged in the development discourse in the late 1990s, offering an innovative alternative to the traditional needs-based approach to development and significantly influenced the development discourse at the turn of the millennium. However, there was an apparent lack of a common conceptualization and operationalization and the fragmented adoption and inconsistent application of the approach across international organizations provoked criticism (Noh, 2021).

The HRBA was then strategically introduced by the United Nations in 2003 with the purpose to centralize engagement with human rights across the United Nations bodies in the area of global development.

The United Nations recognized the HRBA as “pursuing human rights realisation by empowering right holders and duty bearers and by integrating the standards and principles derived from the international human rights system into development programmes and process” (OHCHR, 2006:15). In line with this perception, HRBAs were introduced for different subject areas within international development aiming to legitimise interventions by connecting them to human rights instruments and holding states and other international players accountable as duty-bearers while paying increased attention to equality, social justice, power politics and inclusive processes (Carella & Ackerly, 2017). Thus, development was no longer understood merely in terms of human needs, but rather as a societal tool to achieve greater respect, protection, and fulfilment of individual human rights (Filmer-Winson, 2005). Essentially, human rights were no longer regarded as distinct from development but part and parcel of the same idea serving as a foundation to all development programmes and policies (UNDP, 2015).

With a particular focus on developing countries, individuals were recognised as key actors in their own development, rather than passive recipients of services and subjects to development policies. Under the HRBA, it was therefore the human person that was understood as the central subject of development and international cooperation (Knur, 2014). Furthermore, highlighting that human rights and development are inextricably



linked and mutually reinforcing, the approach redefined human rights not only as a subset of development but also set the realization of human rights as an objective of development (Uvin, 2007).

In addition, the utilization of the HRBA called for the application of human rights standards and international human rights law (such as the Universal Declaration of Human Rights and other international human rights instruments) in the process of creating development programmes and policies (Banik, 2010). Human rights thus offered to complement development programs by targeting patterns of discrimination and inequality and by building capabilities of vulnerable communities to demand that states fulfil their human rights commitments (Gready and Vandenhole, 2014).

### **2.3. Human rights-based approaches and their application**

The typology outlined by Gauri and Gloppen distinguishes four different types of HRBAs: (a) global compliance approaches; (b) programming approaches; (c) right talks approaches; and (d) legal mobilization approaches (Gauri & Gloppen, 2012). Following section provides a brief overview of the key characteristics of those approaches and a brief evaluation of their relevance and applicability for the purposes of this thesis.

#### **2.3.1. Global compliance approaches**

The basis of global compliance approaches is rooted in the compliance of duty-bearers with international and regional human rights treaties, most notably the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, and the adjacent Optional Protocols. This approach is reliant on the ratification of relevant treaties by member states which are then used to hold states accountable for delivering their human rights obligations as established by the treaties. Surprisingly enough, effects of this approach are visible more on the national levels, rather than the regional or global levels. Arguably, this is caused by the fact that compliance with international human rights instruments entails a pressure on government coming from civil society actors on behalf of the treaty objectives. This

implies that the real impacts of the treaties are dependent on the relative strength of national political actors (namely political parties and civil society actors) and their support to treaty objectives (Moravcsik, 1997). Thus, treaty-based approaches are more likely to achieve compliance at the state level through political mechanisms and domestic litigation rather than through international juridical enforcement at the regional or UN level (Gauri & Gloppen, 2012).

This thesis partly utilizes a global compliance approach when drawing on the connections between the UN climate regime and the UN human rights regime and the human rights obligations of states and businesses related to climate action.

### **2.3.2. Programming approaches**

Programming approaches have been prevalingly employed by development agencies in the context of promoting access to healthcare and education in the context of the Global South. Here, the notion of rights in delivering development se rather implicit and more attention is paid to neighbouring development interventions such as social audits, creation of redress mechanisms, and establishment of new government agencies. The human rights dimension of programming approaches is realized by the promotion and policies and programmes that build up public sector, monitoring bodies, transform administrative processes and thus promote the accountability of state actors (Banisar, 2010). An example of a programming approach was a media initiative in Uganda providing detailed information to the citizens about the management of education transfers by local authorities that achieved a more efficient spending of public funds and increased school enrolment (Reinikka and Svenson, 2005).

Since programming approaches have been employed mainly in the countries of Global South, they may not seem particularly fitting for the purposes of this research that aims to set the HRBA in the European context. However, the case study analysis of the thesis aims to analyse the role of media coverage of legal disputes in mobilizing civil society and creating bottom-up pressure on governments.

### **2.3.3. Rights talk approaches**

Rights talk approaches represent a type of HRBA in which formal human rights institutions and mechanisms are not utilized. Instead, rights talk approaches emphasize bottom-up social change driven by social accountability of duty-bearers often used by activists and NGOs. Considering that rights consciousness serves a stable driver of societal change, human rights norms serve mainly as an inspiration for the formation of active civil society and encourage citizens to demand more from their government in the area of human rights guarantees (Peruzzotti and Smulovitz, 2006). The rights talk approach has promoted the role of transnational activism that has boosted global discussions between international activists and local actors and led to a rise in human rights-based campaigns and litigation efforts (Gauri & Gloppen, 2012). However, the disparity between universal human rights norms promoted by the Global North and the socially rooted practices prevailing in many countries in the Global South continue to represent a major challenge for global cooperation. Particularly in the context of African countries with strong emphasis on traditional culture, accounts of human rights are not as widely accepted and are often perceived as being imposed by the foreign elites. For instance, Banik describes the challenges of the implementation of the HRBA in Malawi, where the insistence on preserving traditional cultures is often valued over universal human rights considerations by the locals (Banik, 2010).

This thesis is based on the argument that human rights permeate all areas of development. Thus, the rights talk approach is utilized throughout the analysis of both secondary sources and the case study in chapter 4, focusing on the impacts of human rights rhetoric in addressing environmental disputes in European context.

### **2.3.4. Legal mobilization approaches**

According to this approach, legal mobilization is mainly understood as litigation before courts aimed to protect social and economic rights of citizens. This approach is relevant especially in countries that have adopted rights-rich constitutions and generously equipped their judicial systems to provide legal remedies for human rights violations. In similar scenarios, litigation represents an alternative tool to hold duty-bearers

accountable for failing to deliver on their human rights obligations in legislation, administrative processes, and policymaking (Gauri & Gloppen, 2012). Arguably, seeking protection of human rights may be an inclusive form allowing vulnerable citizens to make claims against powerful actors both in the public and private sector, especially from a democratic perspective. Nonetheless, the applicability of HRBA litigation relies on factors such as the accessibility of courts and legal assistance, the receptiveness of courts, the patterns of judicial processes and the capacity of the litigant to react to the court rulings. Furthermore, human rights litigation brings up a dilemma for democracy, when a non-elected judges have the ability to overrule settings created by a democratically elected majority (Gauri & Gloppen, 2012). In those cases, the court ruling often determines a breach of human rights obligations and the subsequent human right violation and orders the duty-bearer to rectify the situation without providing any detailed instructions. To exemplify, in the *Grootboom* case, the South African Constitutional Court ruled that the state must develop housing policies providing for those in desperate need without instructing the government on how it should be achieved.

In the case study concerning the Túrow coal mine dispute, I look at litigation as a part of a broader social mobilization process, where various rights-holders (namely individuals, local groups, and NGOs) use litigation to create leverage in pressuring the government to address human rights violations caused by mining activity regardless of the official judicial outcome of the dispute. As argued by McCann, under the legal mobilization approach the phenomena of “winning while losing” is quite common, meaning that the most important impact of the litigation process is often not winning in court but rather realizing out-of-court mobilization such as raising awareness, gaining media coverage, sparking political action, and achieving a better negotiation position for the rights-holders (McCann, 2006). Strategic litigation may also be utilized when addressing state’s failure to provide basic services such as water, food, and healthcare both in the countries in Global North and Global South that have significant state capacity but are characterized by inequalities in access to those services. Moreover, Gauri and Gloppen further emphasize the role of litigation in tackling collective action problems and human rights violations caused by transboundary issues such as pollution or water depletion (Gauri & Gloppen, 2012). The Túrow case study can be characterized as a legal dispute concerning violations of collective rights caused by a transboundary environmental harm. The government initially failed to protect the human rights of its citizens due to its inaction and the litigation process itself has been utilized to realize out-

of-court mobilization methods. Thus, the legal mobilization approach is employed systematically in the analysis of the case study in the third chapter of the thesis.

I do, however, realize that litigation does not always represent an effective tool to address human rights violations of vulnerable and disadvantaged groups due to the poor judicial systems in many countries and problematic access to justice for poorer populations in cases where rights-holders must rely on their own resources to initiate and follow up proceedings (Ferazz, 2011).

Finally, it is important to emphasize that the above described four types of HRBAs can be simultaneously applicable and are seldom find in isolation (Gauri & Gloppen, 2012). Thus, this thesis aims to underline the interesting interactions between the approaches that arise in the analysis in chapter 4.

#### **2.4. Human rights principles and their value added in practice**

Applying human rights considerations to the policymaking extends the scope of issues taken into consideration to tougher and more controversial matters such as unequal power politics, discrimination, social exclusion, and state accountability (Banik, 2010). Such questions may often be overlooked by conventional development approaches and thus risk being ignored in policymaking.

Further, application of human rights doctrine under the HRBA equipped development with human rights standards and key normative principles, which subsequently guide development programming processes (Filmer-Wilson, 2005).

Back in 2003, the UN outlined six human rights principles to guide development policies: (a) universality and inalienability, (b) indivisibility and (c) interdependence and interrelatedness of human rights; (d) equality and non-discrimination; (e) participation and inclusion; and (f) accountability and the rule of law (HRBA Portal, n.d.). The following text elaborates on those core principles and the implications of their implementation into the development discourse.

#### **2.4.1. Universality, inalienability, and indivisibility of human rights**

Firstly, the principle of universality is anchored in the Article 1 of the Universal Declaration of Human Rights that states that “*all human beings are born free and equal in dignity and rights*” (UN, 1948). The principle emphasizes that human rights are inherent to all human beings without discrimination and individuals are entitled to equal enjoyment of their rights simply by the virtue of being human. Universality also distinguishes human rights from other types of rights such as rights arising from contracts or citizenship rights.

Secondly, human rights are also inalienable, which means that they cannot be taken away from their holders or even voluntarily given up (HRBA Portal, n.d.).

Thirdly, indivisibility of human rights requires practitioners to view all human rights, whether civil, political, economic, social, or cultural as equal and thus not to rank them in hierarchical order. With regard to policymaking, it means treating all rights with the same priority, rather than focusing development policies and programmes on realizing one particular right. However, the principle of indivisibility still allows for priority setting in situations in which institutional limits or scarcity of resources requires so. For example, development policies might be aimed primarily on providing food, healthcare and covering basic human needs before focusing on promoting cultural rights (UNDP, 2015).

#### **2.4.2. The interdependence and interrelatedness of human rights**

The realization of human rights is understood as a whole, and the full realization of each individual right depends on the realization of other rights (UNDP, 2015). For instance, violations of the right to water and sanitation lead to violations of other rights, such as the right to health, the right to adequate standards of living and even the right to education. A study performed in 2017 in Brazil concluded that the lack of access to water and sanitation led to discrimination of individuals in public spaces and further limited their access to health and education services (Neves-Silva, 2019).

In the context of the 2030 Agenda for Sustainable Development, the interdependence of human rights can help us better recognize the interdependence and the interrelationship

of the seventeen seemingly independent sustainable development goals. Thus, the interdependence of the right to water and sanitation and other rights highlights the importance of ensuring availability of water and sanitation for all in order to reduce inequalities and to improve access to healthcare and education for all.

### **2.4.3. Equality and non-discrimination**

The principles of equality and non-discrimination are set out in Article 2 of the Universal Declaration of Human Rights that declares that “*everyone is entitled to all the rights and freedoms set forth in the Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional, or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty*” (UN, 1948). Further, equality demands that goods and services vital to cover basic human needs are provided to all person in a society, not leaving behind those living in poverty and social isolation. Thus, integrating equality and non-discrimination principles into development calls for a greater involvement of vulnerable groups in projects that have the potential to directly affect their lives and ensuring that rights of those persons are particularly considered in policymaking and planning (UNDP, 2015).

Moreover, the principle of equality becomes increasingly important in the context of climate mitigation and adaptation because while climate change affects people globally, the rights of those who have contributed the least to greenhouse gas emissions become the most adversely affected by its impacts (OHCHR, 2021).

### **2.4.4. Participation and inclusion**

Fundamental to the human rights framework, principles of participation and inclusion ensure that all persons are entitled to actively participate in and contribute to the full realization of their human rights and fundamental freedoms. An integral part of achieving

the principles of participation and inclusion is also the obligation of states to provide access to decision-making, legal remedy, and the exercise of power in general to guarantee that an environment that enables people to participate in society to the maximum (UNDP, 2015).

The human rights doctrine requires free and meaningful participation of all stakeholders in development activities. Greater engagement of individuals, NGOs, civil society organizations and the private sector can profoundly influence the design and implementation of development policies (Filmer-Wilson, 2005). Thus, meaningful participation ensures that policies are adapted to local circumstances and open to suggestions from the public, rather than being simply imposed from the top down.

#### **2.4.5. State accountability and the rule of law**

According to the principle of accountability, the state as a main duty-bearer is obliged to comply with the human rights obligation set by international instruments and answers for the observance of human rights of its citizens. The state is thus responsible for ensuring that all development policies respect and promote human rights (UNDP, 2015). Should the state fail to fulfil this obligation, the individuals whose human rights have been compromised are entitled to institute proceedings and seek rectification. Furthermore, in situations in which the state does not provide its citizens access to justice in those matters, the individuals whose rights have been violated can seek justice at the international human rights bodies such as the United Nations Human Rights Committee (Knur, 2014).

The rule of law entails that all human rights are protected by state law and requires legal resolution of conflicts through impartial and independent processes, equal access to justice for all, and rectification of human rights violations. The existence of a clear and specific legal framework that protects human rights and establishes rectification procedures is essential to assure that the benefits and burdens of development policies are justly distributed (UNDP, 2015).

From a legal point of view, the non-binding character of the SDGs as soft goals leads to a situation in which their achievement depends predominantly on the political will of state actors and the voluntary commitments of states. This could make us undervalue the



importance of law in the development agenda. In this case, assessing state's obligation in development through the obligations set out in international human rights instruments could potentially serve as the missing link between the soft development goals and the international legal regime. It is precisely the fact that human rights arguments are supported by a law arising from obligations of states owed to their citizens, that provides the HRBA with the transformative potential to give legitimacy to individual demands and to strengthen the international justice system (UNDP, 2015).

Acknowledging that the 2030 Agenda is indeed a human rights-based one, it is vital to pursue synergies between the two with the intention to achieve the SDGs while simultaneously realising human rights. Development initiatives based on policies that disregard the above listed human rights principles have been shown to commonly intensify inequalities and accelerate environmental loss and damage. Such outcomes then push already vulnerable groups further into the poverty trap. The principle of participation is especially important in development policymaking as policies based on processes with flawed inclusion and participation seldom generate anticipated results (Feiring & König-Reis, 2020).

To achieve the overarching goal of *realising human rights of all* in practice, the HRBA requires development processes guided by the 2030 Agenda to apply human rights principles and standards and include human rights monitoring mechanisms to ensure compliance. Further, policymakers must analyse structural causes of inequality and discrimination, and counteract discriminatory practices that lead to marginalization and exclusion of vulnerable groups. Finally, particular attention should be paid to developing the capacity of duty-bearers to be held accountable for the protection of human rights and to enabling and empowering rights-holders to seek remedy for violations (Feiring & König-Reis, 2020).

## **2.5. Challenges and limitations of the HRBA**

Despite its potential to bring about substantial changes to development policies and the benefits on the lives of affected individuals and communities, it is critical to mention the challenges to the effectiveness of the HRBA. Diverging application across

UN agencies, the lack of shared language and implementation struggles, issues arising from conflicting rights and interests, the accelerating constrictions between universal and culture-specific values and its failure to enter into debate with ecocentric perspectives represent some of the drawbacks often attributed to its reliance on the conventional human rights system (Lewis, 2018). This section also briefly elaborates on the argued politicization of development debates that is perceived both as a positive and a negative effect of the HRBA.

### **2.5.1. The lack of shared language and implementation issues**

While the overwhelming majority of human rights experts and advocates come from legal background, development practitioners are often social scientists, economist, or even technical specialists. Thus, the regulatory basis and retrospectivity of the legal language finds it difficult to sustain a smooth flow of idea exchange with the more progressive, evidence-based, and practically oriented development discourse (Gready, 2009).

In the area of implementation, human rights language tends to be rather prescriptive and sets out general principles and standards that are unfortunately not operational enough to clearly guide development programming (Jonsson, 2005). This is attributed to the fact that human rights-based approaches do not focus primarily on service delivery but rather on increasing the general ability of duty-bearers to respond to claims of rights-holders to deliver on core human needs. For example, the implementation of the HRBA is argued to be far less successful in rural areas due to lower literacy levels and scarcity of state institutions. Therefore, human rights-based approaches are not suitable for mainstreaming in all aid interventions but must be applied strategically to suitable types of recipient communities which entails adapting implementation strategies to the sector and region in question (Broberg & Sano, 2018).

### **2.5.2. Conflicting rights and interests**

When rights or interests of stakeholders come into conflict, the question of which and whose rights prevail not only makes the situation more complicated but can lead to further divisions within communities. For instance, studies of informal settlements analysing policies discouraging the growth of slums highlight conflicting interest between the informal settlers and their right not to be evicted and the property rights of land restitution claimants. In similar situations, the HRBA advises to prioritize the rights of the most marginalized based on the principle of non-discrimination (Noh, 2021).

Further, the inherent conflict of interests between achieving the enforcement of rights on one hand and maintaining a decent relationship with states against whom are rights enforced often leads to trade-offs in the implementation of the HRBA (Broberg & Sano, 2018).

### **2.5.3. Tensions between universal and culture-specific values**

In many countries in the Global South community and traditional values such as spirituality and collective rights significantly shape local policies that may not fully correspond to the universal human rights values and principles promoted by the HRBA. Thus, tensions arising from the incompatibility of universal and culture-specific values can often lead to distrust and a dismissive attitude on the side of locals and authorities in recipient countries which further complicates the implementation of human rights standards. The HRBA confrontational strategies suggest to side with the most marginalized groups, which again may not be compatible with more community-centred approaches prevailing in many African cultures (Hickey & Mitlin, 2009). Furthermore, many communities in the Global South remain sceptical to human rights-talk as they perceive it as an attack on their traditional values made by the Western culture (Banik, 2010).

### **2.5.4. Addressing ecocentric approaches**

By its very nature, the HRBA takes a clearly anthropocentric stance when addressing the relationship between human needs and environmental conservation.

Protecting human rights and realizing human needs are the main concerns of the HRBA, while the intrinsic value of nature itself remains overlooked. The core argument is based on the protection of human-centred values and a healthy environment is depicted merely as a precondition for the realization of human rights and human survival. While the protection of human rights requires certain adherence to environmental standards, the HRBA fails to engage with broader understandings of the rights of nature (Toussaint, 2020).

However, the limits of human rights-based approaches based solely on the rights and needs of human beings have been increasingly challenged through environmental litigation over the past years. In 2018, the Supreme Court in Colombia placed humans on a par with the environmental ecosystem when it upheld a lawsuit against the Colombian government regarding unsustainable deforestation (OHCHR, 2021). Furthermore, the rights of nature have been recently recognized in a landmark decision of the High Court of Ecuador. The case concerned mining activity in a protected area of the Ecuadorian forest that did not directly cause any human rights impacts on the local population but adversely affected the local ecosystem. The court ordered a revocation of the mining permit in the area and emphasized that the risk caused by the mining activity does not have to be related to human rights violations if it entails a destruction of ecosystems (Weisbrod, 2021).

#### **2.5.5. Enforcement difficulties**

According to Gready, truly delivering on its promise of bringing accountability into development obligations will be one of the most urgent challenges of the HRBA and of the human rights system in general. The HRBA aims to improve accountability by identifying remedy capacity gaps in order to target areas of possible improvement to build capacities of rights-holders to claim rights and duty-bearers to meet their responsibilities (Gready, 2009). This means that the HRBA presumes that rights-holders (individuals and groups) already have the ability to effectively enforce their rights against duty-bearers (states). Unfortunately, in regions where the state apparatus is very weak or non-existent, attempting to enforce human rights obligations against the state might simply not be feasible. Further, duty-bearers with limited capacity to fulfil and enforce

their human rights obligations may simply not consider those to be a top priority, particularly in situations in which national and local governments face multiple crises and civil society actors lack the agency to create pressure on governments.

In contrast, even in countries with a relatively weak state apparatus, the application of the HRBA can still bring positive impacts in a local context. For instance, a study of donor programmes in Somalia concluded that donors achieved better results by mobilising local groups and organisations rather than working with the central government. However, in those cases it becomes increasingly difficult to identify a single duty-bearer as those can be represented by many groups and organizations such as religious or traditional authorities (Broberg & Sano, 2018).

With regard to international enforcement of human rights obligations, seeking remedy against states at international courts remains out of reach for most individuals coming from resource-scarce contexts, precisely those that are likely to struggle with successful implementation of HRBA programmes the most (Broberg & Sano, 2018).

#### **2.5.6. Politization of development debates and action**

As argued by Hickey and Mitlin, the application of the HRBA makes development debates and action more political, which causes both positive and negative effects.

By demanding that development actions should be informed by more universal political values, the HRBA seeks that development processes of power allocation and use are guided by human rights (O'Brien, 2005). Firstly, illustrating development cooperation as rights-based rather than needs-based action is not a politically neutral act. For instance, the application of the HRBA explains poverty as something that has been done to people and emphasizes that duty-bearers bear the responsibility to alleviate people from poverty (Mander, 2005). Secondly, the HRBA entails a number of not politically neutral initiatives such as rights-based participation, inclusion of civil society into policymaking, and political activism (Gready, 2009).

When it comes to the real-world implications of the application of the HRBA, the politization of development leads to improved availability of ideological and legal resources which can be utilized by rights-holders to counteract discrimination and exclusion. At the same time, in certain cases the application of the HRBA also led to

favouring of certain groups at the expense of others, which caused an increase of inequalities and conflicts over natural resources (Hickey and Mitlin, 2009).

## **2.6. Rationale for the renaissance of the HRBA**

*"You cannot protect the environment unless you empower people, you inform them, and you help them understand that these resources are their own, that they must protect them."*

– Wangari Maathai

In the words of Broberg and Sano, the HRBA is not just a matter of “*old wine in new bottles*”. The years of experience with the application of the HRBA to development assistance has shown that the use of human rights law and adjacent legal mechanisms, the implementation of core human right principles such as non-discrimination, and the appeal for state accountability for violations motivated individuals and groups in developing countries to stand up for their rights (Broberg & Sano, 2018).

The HRBA and its value added by calling for state accountability for respecting and promoting human rights of their citizens as right-holders has been experiencing a renaissance in the form of bottom-up driven environmental and climate litigation based on human rights concerns and supported by human rights obligations of states in the Global North.

In the ground-breaking ruling *Urgenda v. State of Netherlands* case, the Supreme Court found the government of Netherlands liable for insufficient climate action based on a lawsuit filed by Dutch citizens against the state. Notably, the court established that the failure of the state to undertake adequate climate action directly violates fundamental human rights of its citizens protected under international human rights law. The unprecedented application of human rights law by the court was in fact crucial for the outcome of the proceedings as the court found that the state’s insufficient decarbonization efforts constituted a breach of the directly enforceable human rights provisions rather than a breach of its soft climate goals. *Urgenda v. State of Netherlands* represents a first successful case in which a court orders a state

to limit its greenhouse emissions and the judgment itself went as far as suggesting measures to achieve the decarbonization of the Dutch economy (Climate Case Chart, 2015). Following this case, the human rights rhetoric has been increasingly utilized in climate justice litigation in other countries including Germany, France, the United Kingdom, and Norway.

It is worth pointing out that a similar pattern is observable in majority of the cases - the undeniable vigour of the human rights argument when addressing the reluctance of governments to take measures necessary to mitigate climate change, especially in terms of dependence on fossil fuels.

In May 2021, another landmark judgement based on human rights law was issued in the *Friends of the Earth v. Shell* case in which the court in The Hague ordered the multinational corporation Shell to reduce its greenhouse emissions by 45%. The verdict was the first of its kind climate ruling against a corporation and the court found Shell in violation of the Article 8 of the European Convention on Human Rights which guarantees the right to life and the Dutch domestic law. It is expected that the ruling might set a precedence for future climate litigation against corporations with a large carbon footprint that have failed to undertake necessary steps to achieve emission reduction in line with the Paris Agreement (Climate Case Chart, 2021).

Additionally, the HRBA could have democratizing effects on policymaking processes by ensuring active participation of groups with insufficient agency whose lives become directly affected by development actions (Toussaint, 2019). The HRBA has the potential to serve as a unique tool to improve the inherent power imbalance between the right-holders and duty-bearers by empowering marginalized communities and bringing their voices into the development debate and policy design, particularly in the Global South. It does so by emphasizing the principles of participation and inclusion of the most vulnerable groups and requiring meaningful participation of the most directly affected populations in the creation and implementation of concrete policies (UNHRC, 2017). After all, it is the poor and marginalized, whose livelihoods are being disproportionately affected by environmental degradation and the impacts of climate change on one side and climate mitigation and adaptation measures on the other (Cameron, Shine & Bevins, 2013).

Human rights law can serve as an effective tool in achieving climate action and addressing environmental degradation. Albeit not all-encompassing, the international human rights regime provides a judicial recourse in situations in which environmental

law regime lacks the tools to provide compensation and the HRBA can thus serve as the missing link between the soft goals set in the area of environmental law and the hard law norms rooted in the human rights regime (Toussaint, 2020). A human rights-based perspective also calls for an in-depth analysis of the factors causing any form of discrimination, social exclusion, and marginalization in order to make policymakers fully understand how certain social norms, traditions, institutional practices, and laws affect local populations (UNDP, 2015). Thus, a successful implementation of the human rights perspective into the sustainable development goals focused on climate action and clean energy has the potential to motivate governments to pay greater attention to achieving those goals through inclusive processes and to hold them accountable in case they fail to deliver results (McInerney-Lankford, 2016).

## **2.7. Recent impacts of the HRBA**

Albeit not always explicitly mentioned, activity and impacts of the HRBA in recent years have been increasing. Nelson argues that the activity at the nexus of development and human rights can be observed in the emergence of new rights, the creation of new campaigns and organizations and the evolution of international environmental litigation.

The emergence of the right to water and the right to free, prior, and informed consent is a milestone in the area of rights-based social and economic development policy. The right to water is one of the tools often used by HRBA advocates in protecting rights-holders against transnational corporations based on the argument of state and corporation accountability for water depletion on one hand and the argument for water as a fundamental human right on the other hand. HRBA further offered political resources and gained international support for the official recognition of the right that was closely followed by the recognition of the right in many state constitutions (Nelson, 2018).

The right to a free, prior, and informed consent has been utilized by human rights agencies working with indigenous populations. Thanks to this long-term cooperation, the original right to participation has gained new dimensions by introducing the



requirement of effective, free, and meaningful participation necessary to obtain free, prior, and informed consent regarding development projects. Even though the right to a free, prior, and informed consent is used predominantly in development projects affecting indigenous land the application of this right could be extended to non-indigenous populations even in the Global North, especially in policymaking and decision-making with regard to natural environment and access to water (GI-ESCR, 2014).

Issues at the intersection of human rights, development and environmental resources have been increasingly recognised by international advocacy work. While this advocacy work is not as closely tied to human rights principles and standards, it utilizes human rights strategies and litigation and case analysis based on environmental advocacy. Examples of those are Geneva Environment Network, Global Witness, and Earthjustice (Hilson, 2012).

## **2.8. Human rights in the 2030 Agenda for Sustainable Development**

While its predecessors the Millennium Development Goals diverted rights-based work among development donors, human rights organization extensively participated in the creation of the 2030 Agenda for Sustainable Development and continue active in its monitoring and application (Nelson, 2018).

In its preamble, the 2030 Agenda for Sustainable Development sets out to “*realize the human rights of all*” and further considers human rights as „*integrated and indivisible and balance the three dimensions of sustainable development: the economic, social and environmental*“(United Nations, 2015).

The Agenda further explicitly references the Universal Declaration of Human Rights and international human rights treaties. Moreover, all the 17 goals and many of the individual targets are quite firmly anchored in human rights, repeatedly emphasizing fundamental human rights principles such as inclusion, meaningful participation, transparency, and accountability. What is more, the overarching pledges to *leave no one behind* and *reach the furthest behind first* can be directly linked to the principles of equality and non-discrimination (Feiring & König-Reis, 2020). According to the Danish Institute for Human Rights more than 90% of the 169 targets of the SDGs have a direct

connection to human rights instruments and key environmental agreements (DIHR, 2020).

It becomes evident that human rights principles permeate the entire Agenda and each of the goals can be connected to multiple human rights that are universally recognized by the United Nations human rights instruments. The Office of the United Nations High Commissioner for Human Rights lists human rights relevant to the individual goals. For instance, a direct link is drawn between SDG 7 (Affordable and clean energy) and the right to an adequate standard of living and the right to enjoy the benefits of scientific progress. SDG 13 (Climate action) is then linked to the right to health, food, safe drinking water and the right of all peoples to freely dispose of their natural wealth and resources (OHCHR, 2021).

Despite the strong connection of human rights and the sustainable development goals, the existing international response to climate change lacks a human rights dimension, and the current policies thus fail to adequately protect communities most vulnerable to the impacts of climate change (Climate Action Network, 2015). The suggested application of the human rights-based approach to climate change entails the implementation of the HRBA to policy design, implementation and decision-making under the climate regime and anticipates bringing about a stronger international response to human rights violations caused by climate loss and damage (Toussaint, 2019).

When seeking ways to improve the implementation of the 2030 Agenda, the synergies between the human rights regime and the sustainable development goals should be explored further, considering that an informed application of the HRBA to the sustainable development policy design can significantly advance these processes. The institutionalized mechanisms operating under the human rights system can provide an element of accountability that the architecture of the sustainable development goals lacks. Lastly, the established human rights instruments can provide valuable experience on how to promote more inclusive and transparent policymaking in the arena of sustainable development (Feiring & König-Reis, 2020).

## **2.9. Connecting human rights and the international climate regime**

Many human rights advocates argue that when addressing climate change, the adoption of an environmental rights-based approach incorporating socio-economic agendas may be crucial to achieve a successful realization of climate change mitigation and adaptation (Wynberg, 2013). Moreover, both climate change mitigation and adaptation policies can adversely affect human rights. For instance, infringements of land rights under energy transitions projects or relocations of populations from flood-prone areas. Therefore, the transition to a low-emission global economy and more climate resilient communities must guarantee respect and protection of human rights (CAN, 2015).

The following section summarizes the relationship between the human rights law and international climate regime. Firstly, it exemplifies how climate change impacts the enjoyment of human rights including the rights of future generations and what are the corresponding obligations of states to address climate change in order to uphold human rights. Next, it identifies the direct legal references made to human rights obligations of member states to the Paris Agreement. Subsequently, the section aims to capture the essence of the HRBA to climate change and outline the arguments for the full recognition of the human right to a healthy environment as suggested by the existing literature.

### **2.9.1. The human rights impacts of climate change**

In a Resolution adopted in 2019, the Human Rights Council stresses the detrimental effects of climate change on the rights to life, the right to health, the right to food, the right to adequate housing, the right to water and sanitation, the right to development, and a range of cultural rights (UN, 2019). The section below exemplifies how the impacts of climate change influence enjoyment of rights on a selection of rights most relevant to the focus of my research – the right to life, the right to health, the right to adequate housing, the right to water and sanitation, the right to development, and the rights of future generations.

(a) The right to life

The right to life is anchored both in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, that establishes the right to life as non-derogable and inherent to every human being (UN, 1966). The Declaration of the United Nations Conference on the Human Environment emphasizes that “*both aspects of man’s environment, the natural and the man-made, are essential to his well-being and to the enjoyment of basic human rights – even the right to life itself*” (UN, 1972). Thus, the Declaration establishes that a full realization of the right to life is directly dependent on adequate conditions of the environment. Moreover, in its general comment on the right to life, the Human Rights Committee has explicitly stated that climate change and its impacts constitute one of the most serious threats to the right to life of both present and future generations.

The Intergovernmental Panel on Climate Change indicated that the death toll caused by heatwaves, floods, storms, fires, and droughts will increase considerably due to climate change (IPCC, 2007). To specify, the World Health Organisation expects that 250 000 additional deaths will be caused just between 2030 and 2050 by diseases and injuries inflicted by climate change (WHO, 2018).

According to the Human Rights Council, all states have the obligation to take measures to prevent any foreseeable loss of life, which in this case include deaths caused by environmental degradation and impacts of climate change (OHCHR, 2015). Therefore, to fulfil its obligation to protect the right to life states must take appropriate measures to mitigate and adapt to climate change.

(b) The right to health

In the Article 12, the International Covenant on Economic, Social and Cultural Rights recognizes the right of all human beings to the highest attainable standard of physical and mental health (UN, 1966). In an analytical study on the relationship between climate change and the right to health, the Human Rights Council warns against the widespread negative consequences of climate change on the enjoyment of the right to health and access to healthcare. Determinants such as unexpected weather events, air pollution, decrease in water supplies, and undernutrition will gravely affect the health of

the global population (UN, 2016). Further, environmental changes and loss of biodiversity caused by human activities create favourable conditions for an increase in viral epidemics (OHCHR, 2020). Moreover, catastrophic weather events will likely undermine the capacity of health-related services to accommodate the growing need for healthcare assistance. All those factors are also expected to exacerbate existing health inequalities between and within populations (WHO, n. d.).

According to the Special Rapporteur on the right to health, the global community must not overlook the health dimension of global warming as this would jeopardize the health of millions of people. Therefore, to uphold the right to life, states have an obligation to protect biodiversity and pursue climate mitigation and adaptation (OHCHR, 2020).

(c) The right to adequate housing

The right to adequate housing is guaranteed by the Article 11 of the International Covenant on Economic, Social and Cultural Rights that recognizes “*the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions*” (UN, 1966). To this right then correspond the obligation of states to take measures aimed at the progressive realization of the right to housing for all. According to the general comment on the right to adequate housing, the full realization of this rights entails legal security of tenure, habitability, accessibility, availability, and affordability (OHCHR, 1991).

In its report from 2014, the Intergovernmental Panel on Climate Change describes the adverse effects of climate change on the right to adequate housing. Homes get destroyed by extreme weather events, erosion and floods which leads to displacements on a massive scale, sea-level rise threatens lowland areas in coastal cities, and poor air quality and temperature rise poses a serious risk in urban areas. Low-income groups and communities located in countries with limited capacity to protect their citizens will be impacted most severely (IPCC, 2014). Thus, states have a positive obligation to take all possible measures to integrate climate mitigation and adaptation into their housing strategies. In particular, states should prioritize adaptation measures that aim to preserve vulnerable communities, such as coastal populations. In doing so, states should promote

an active participation of those affected communities to ensure the highest possible realization of their rights.

The right to adequate housing can be directly connected to the Sustainable Development Goals, particularly goal 11 to make human settlements inclusive, safe, resilient, and sustainable. Especially in countries of Global South, achieving this goal and progressively realizing the right to adequate housing will require financially demanding construction of new settlements and adaptation of existing settlements to inevitable environmental changes (OHCHR, 2021).

(d) The right to water and sanitation

As stated by the Committee on Economic, Social and Cultural Rights “*the human right to water entitles everyone to sufficient, safe, acceptable, physically accessible, and affordable water for personal and domestic uses. An adequate amount of safe water is necessary to prevent death from dehydration, to reduce the risk of water-related disease and to provide for consumption, cooking, personal and domestic hygienic requirements.*” (UN, 2002).

Water as a resource becomes adversely affected, as climate change causes decreased availability of drinking water but also increased likelihood of flooding and contamination of water sources. The World Bank reported that global warming of 2°C can result in up to 2 billion people having limited or no access to water (World Bank, 2010). Furthermore, intensifying water shortages are expected to exacerbate conflicts and violence in areas prone to water scarcity (UN, 2017).

(e) The right to development

The Declaration on the Right to Development characterizes development as “*an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized*” (UN, 1986). In this wording, the UN General Assembly emphasizes the interdependence

of the right to development and all other human rights and illustrates development as an essential precondition for the full realization of human rights.

The United Nations High Commissioner for Human Rights emphasizes that climate change creates obstacles to achieving sustainable development in all countries, and in particular undermines sustainable development in developing countries that contributed the least to global warming. Further, the 2030 Agenda for Sustainable Development underscores that addressing climate change is vital to eradicate poverty and to secure sustainable and equitable development for all. Thus, to promote the right to development, states are obliged to limit the impacts of climate change to the greatest extent possible (OHCHR, 2021).

(f) The rights of future generations

While the Convention on the Rights of the Child protects the rights of children, none of the human rights instruments explicitly recognize the rights of future generations. However, the Article 3 of the UNFCCC requires states to “*protect the climate system for the benefit of present and future generations of humankind, on the basis of equity and in accordance with their common but differentiated responsibilities and respective capabilities*”. By explicitly mentioning the protection of the climate system for the benefit of both present and future generations, the UNFCCC emphasizes the principle of intergenerational justice demanding that present generations protect the environment and mitigate climate change in order to protect the rights of future generations.

The Committee on Economic, Social and Cultural Rights further highlights the importance of protecting the right to water of future generations by ensuring sufficient and safe water sources through sustainable water management and adequate climate action (UN, 2002).

With regard to sustainable development, its very definition as “*development that meets the needs of the present without compromising the ability of future generations to meet their own needs (Brundtland, 1987)*” established in the Brundtland Report implies that developmental and environmental needs of present and future generations should be met equitably. This entails the obligation of present generations to mitigate and adapt to climate change while there is still time to act and a responsible

use of natural resources that does not threaten the survival of the generations to come (OHCHR, 2021).

Nonetheless, the question of the actual scope of rights of future generations and who can claim them is yet to be answered.

### **2.9.2. Human rights obligations of states in the international climate regime**

The Paris Agreement is a legally binding international treaty on climate change adopted by 196 state parties in 2015 that aims to limit global warming to 2°C. In relationship to human rights its Preamble states following:

*“Acknowledging that climate change is a common concern of humankind, Parties should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights, the right to health, the rights of indigenous peoples, local communities, migrants, children, persons with disabilities and people in vulnerable situations and the right to development, as well as gender equality, empowerment of women and intergenerational equity.”*

Firstly, by placing a human rights provision into its Preamble, the parties to the Paris Agreement explicitly acknowledge the interplay between climate change, climate action and human rights. Further, human rights are presented as a cross-cutting issue in the implementation of the Agreement, which requires their integration into all level of climate actions. Most notably, the inclusion of the human rights obligation of parties into the Preamble of the Agreement emphasizes its overarching nature and applicability to all following provisions (Climate Action Network, 2015).

The expression “taking action to address climate change” entails both climate change mitigation, climate change adaptation and any further cooperation regarding climate issues between the parties. With respect to mitigation, human rights norms should guide the formulation of the nationally determined contributions that determine the mitigation ambitions of individual states. Those should first and foremost avoid placing additional burdens on the populations most vulnerable to the impacts of changing climate. Moreover, human-rights based policies should be used to direct mitigation policies in



order to maximise their social benefits and promote effective and meaningful participations of individuals and groups whose rights those policies directly affect (OHCHR, 2016).

Naturally, protection of human right must be also incorporated into adaptation policies with the objective to strengthen the climate resilience of affected communities and to further guarantee the fulfilment of needs of the most vulnerable groups (Climate Action Network, 2015).

Regarding other climate cooperation between states, the Human Rights Council advocates for the application of a human rights-based approach to climate finance to ensure legal security for project developers and the highest level of benefits for the individuals and communities affected by climate change and climate action. Furthermore, similar approach is recommended in the area of climate technology transfers between states with the objective to realize solutions with the highest possible social and environmental integrity (Climate Action Network, 2015).

It is important to mention that the inclusion of a reference to human rights under the Paris Agreement does not impose additional human rights obligations on the parties. Instead, it aims to enhance climate policies with local and traditional knowledge and to offer guidance on how to effectively implement the existing human rights obligation of states in the context of climate action, thus improving policy coherence.

The obligations of states established by the Paris Agreement and by the International Covenant on Economic, Social and Cultural Rights can be described as mutually reinforcing. While both instruments underline the respect and promotion of social and economic rights, the rights set out in the Covenant are aimed at rights-holders within the jurisdiction of individual states. The obligations arising from the Paris Agreement also include the obligation of states to cooperate and assist one another financially and by sharing environmental sound technologies. Combined, the two instruments create a powerful framework of rights and obligations between individuals, groups, states, and the international community (ICHR, 2008).

Human rights instruments clearly state that all actors should be held responsible for the detrimental effects of their activities on human rights, and in the case of climate change, responsible actors include not only states but also businesses (OHCHR, 2021).

According to the UN Office of the High Commissioner for Human Rights a non-exhaustive list of human rights obligation of states related to climate change includes following obligations.

(a) Mitigate climate change and its negative human rights impacts

According to the Intergovernmental Panel on Climate Change, the adverse effects of global warming will increase exponentially with the level of global temperature raise that will take place. Thus, the obligation to mitigate climate change is aimed at the reduction of anthropogenic emissions to prevent the effects of climate change that are still avoidable (OHCHR, 2016).

(b) Ensure that all persons have the necessary capacity to adapt to climate change

The second obligation is aimed primarily at adaptation measures to protect populations living at areas most vulnerable to climate change impacts, such as small islands and low-lying coastal zones. States are required to utilize all available resources to improve adaptive capacities of those areas and to ensure realization of economic, social, and cultural rights of persons adversely affected by climate change (OHCHR, 2016).

(c) Ensure accountability and effective remedy for human rights harms caused by climate change

State accountability and access to remedy are indispensable preconditions to guarantee effective protection against human rights violations. Effective remedies include both judicial and other redress mechanisms that allow rights-holders to hold states accountable for their contribution to climate change and also their failure to regulate emissions caused by businesses under their jurisdiction. Furthermore, the responsibility of states for climate change or environmental damage includes harm caused inside and outside their territories (OHCHR, 2021). Thus, the obligation of states

to ensure accountability and effective remedy serves as a basis for climate lawsuits against states and businesses both on national and international level.

(d) Mobilize maximum available resources for sustainable, human rights-based development

Human rights covenants require states to mobilize and allocate an adequate number of available resources for the advancement of civil and political rights, the right to development and the progressive realization of economic, social, and cultural rights. In the context of climate change, this obligation is aimed predominantly at mitigation and adaptation measures, especially in the area of mobilizing and allocating climate finance, for example by collecting carbon taxes. However, those measures must include safeguards to minimize their negative effects on vulnerable and marginalized groups (OHCHR, 2016).

(e) International cooperation

Climate change is a global threat crossing state borders that can only be addressed through global cooperation ensuring international solidarity. Thus, human rights instruments and the international legal framework require states to share resources, technology, and knowledge in climate action cooperation. Pursuant to human rights principles, international climate assistance has to be carried out through participatory, inclusive, transparent, and accountable processes targeted at reaching the most vulnerable populations first. Further, in accordance with the principle of common but differentiated responsibilities anchored in the Paris agreement, climate assistance between developed and developing countries should be additional to existing development assistance commitments (OHCHR, 2016).

(f) Ensure equity in climate action

In Article 3, the UNFCCC declares that states “*should protect the climate system for the benefit of present and future generations of humankind, on the basis of equity and in accordance with their common but differentiated responsibilities and respective capabilities. Accordingly, the developed country Parties should take the lead in combating climate change and the adverse effects thereof*”.

Climate change affects different groups disproportionately, in particular those who have contributed the least to greenhouse gas emissions, such as populations in developing countries with low carbon footprint, children, and future generations. Therefore, realizing equitable climate action means ensuring that mitigation and adaptation activities will benefit developing countries, regions most vulnerable to environmental changes and future generations (OHCHR, 2016).

(g) Guarantee that everyone enjoys the benefits of science and its application

The right of everyone to enjoy the benefits of science and its application is established by Article 15 of the International Covenant on Economic, Social and Cultural rights. In the context of climate change, the existence of this right is mirrored in the obligation of states to develop and disseminate technologies for sustainable production and consumption and climate mitigation and adaptation, such as renewable energy infrastructure, carbon capture and storage, water conservation technologies, and early warning systems in disaster management.

Additionally, climate technologies should be accessible and affordably priced so their benefits can be shared between developed and developing countries. Furthermore, technology transfers of climate technologies should take place in a manner that allows effective and immediate international response to climate effects in regions that become most adversely affected. In the area of technology transfers, states are also responsible for ensuring that intellectual property regulations do not create unnecessary obstacles for the dissemination of climate technologies (OHCHR, 2021).

(h) Protect human rights from business harms

The Guiding Principles on Business and Human Rights firstly affirm the obligation of states to protect human rights from violations caused by business activity under their jurisdiction and the obligation to provide effective remedy if human rights violations are caused by business activities. Secondly, it underscores that businesses are also duty-bearers and therefore must ensure their activities respect human rights, in particular they are accountable for their climate impacts, and they are expected to actively participate in climate mitigation and adaptation (OHCHR, 2016).

The document also explicitly includes the responsibility of states for activities conducted in partnership with the private sector, which is critical in regulating activities such as raw material extraction and energy production. In activities undertaken in cooperation with businesses, states are expected to raise standards for business environmental performance. Collaboration between states and the private sector and potentially other multi-stakeholder initiatives can serve as a constructive way of addressing environmental challenges (OHCHR, 2021).

(i) Guarantee equality and non-discrimination

Principles of equality and non-discrimination are established both through human rights instruments and the international climate framework. Thus, climate action efforts should not intensify existing inequalities between and within states. On the contrary, climate action strategies should aim to alleviate economic, social, and environmental inequalities between countries, regions, and groups of people (OHCHR, 2016).

(j) Ensure informed and effective participation

Free, informed, and effective participation of all stakeholders is essential for rights-based climate action. Thus, human rights instruments and the international climate framework emphasize the importance of transparent and participatory processes and institutions, and the availability and accessibility of information on greenhouse gas

emissions. In particular, states should provide early-warning information regarding the dangerous impacts of climate change and natural disasters to prevent loss of life.

To ensure that climate action efforts of states do not have overwhelmingly negative impacts on those they aim to protect it is critical to develop mitigation and adaptation strategies in cooperation with affected groups including a human rights impact assessment. Further, in the context of climate change, the monitoring of human rights impacts is crucial. The Office of the High Commissioner on Human Rights suggests developing relevant human rights indicators and track the different impacts of global warming across demographic groups in order to achieve a targeted human rights compliant climate action (OHCHR, 2016).

### **2.9.3. The responsibilities of businesses with regard to human rights and climate change**

Responsibilities of businesses with regard to climate change and human rights exist independently of the climate obligations of governments. According to the Guiding Principles on Business and Human Rights issued by the United Nations, businesses should be held reliable for climate impacts caused by their activities and should actively contribute to mitigation and adaptation efforts alongside states. Especially in situations, in which states pursue market-based measures or incorporate private financing in climate action, it is vital to ensure that businesses comply with their climate obligations. Regardless of the size or structure of a company, corporate responsibility to respect human rights entails that businesses are not involved in activities causing infringement of human rights.

In the context of climate change, the Guiding Principles suggest that in order to respect human rights businesses must address their activities contributing to climate change and environmental degradation such as greenhouse gas emissions, waste and contamination of water, air, and soil. This responsibility extends to all business operations and the entire related value chain. Besides that, companies are required to have in place a policy concerning their climate commitments including specific measures they are taking to promote human rights.

Businesses should also set in place a due diligence process and carry out regular social and environmental impact assessments to identify and assess the human rights impacts of their activities and how those can be effectively addressed. Pursuant to the principle of participation, impact assessments should involve meaningful consultation with potentially affected groups. Lastly, where adverse human rights impacts have been caused, businesses should provide remediation through legitimate processes (United Nations, 2011).

#### **2.9.4. A human rights-based approach to climate change**

During its application in the early 2000s, the HRBA provided the development discourse with an abundance of experience on how the international legal system can be utilized to address issues such as poverty and marginalization (Broberg & Sano, 2018). However, in the context of environmental development goals, a human-rights based approach is still a largely unexplored territory, especially in relation to decarbonization processes and renewable energy production (Knur, 2014). As explained in the two following sections more in-detail, if applied to the environmental dimension of development, the HRBA could serve as a strategic tool to improve international response to climate change mitigation and adaptation needs (Toussaint, 2019).

According to Toussaint, the uniqueness of the HRBA lies in its ability to include the hitherto overlooked perspectives of populations most affected by climate change and climate action into climate policymaking. Here, the human rights principles of participation and inclusion are of paramount importance because their application to the context of climate change demands effective participation of those directly affected by the implementation of climate policies. Under the HRBA the victims of human rights violations caused by climate change are empowered as active participants in decisions concerning their future (Broberg & Sano, 2018).

In practice, the HRBA to climate action would require monitoring and evaluation of the outcomes of climate actions of duty-bearers from the human rights perspective, ensuring a full compliance with human rights standards and principles. Subsequently, individuals and groups affected by climate policies would be recognized as rights-holders and active participants in the decision-making processes. This cooperation promises to

enhance learning and capacity-building, increasing the transparency of climate processes, ensuring better access to information and finally, guaranteeing that all climate actions are instructed by the recommendations of human rights bodies (OHCHR, 2021).

The key human rights principles of universality, indivisibility, non-discrimination, participation, and accountability apply equally when addressing climate change. Climate mitigation and adaptation measures in which the HRBA could be integrated include promotion of low-carbon energy sources, natural conservation, or resettlement projects. The central requirement of the HRBA is that rights-holders affected by those projects can effectively participate in their creation and implementation.

In the context of climate change, the application of HRBA demands not only respect to universal human rights, but also promotion of climate justice and international solidarity. Individuals or groups affected by climate change or climate action are increasingly exposed to human rights violations. Thus, they must be provided with the access to measures of adaptation and resilience and based on the obligations established by the Paris Agreement they should also receive support from the international community (OHCHR, 2021).

In relation to climate change, the requirement of states to respect, protect, promote, and fulfil human rights means preventing the human rights harms caused by climate change that are already taking place but also in relation to future generations and state as duty-bearers are obliged to mobilize their maximum available resources to fulfil this obligation. That entails international financial and technological climate cooperation with the objective of decarbonizing the economy on one hand and achieving greater climate resilience on the other. The integration of human rights into those measures empowers citizens and allows them to participate in the ongoing processes in a truly effective manner (OHCHR, 2021).

Supporters of the HRBA to climate change also further suggest that it could be utilized in achieving Sustainable Development Goals related to the environment, in particular goal 7 (ensuring access to affordable, reliable, sustainable, and modern energy for all) and goal 13 (urgent action to combat climate change and its impacts). Especially in the arena of international environmental efforts governed predominantly by soft law and voluntary commitments, the enforceability of human rights obligations of states could serve as a unique tool to approach situations, in which human rights violations have been inflicted by the failure of states to fulfil their environmental and climate obligations (UNEP, 2015).



Further, a rights-sensitive approach to carrying out development projects is particularly crucial in building renewable energy infrastructure. Rights of vulnerable and marginalized populations have been violated by unpremeditated development projects countless times in the past. Thus, considering the increasing renewable energy construction in developing countries, implementing human rights principles such as participation, social inclusion, non-discrimination, and accountability into policymaking becomes all-important. For this very reason, the HRBA requires both governments and multilateral institutions to assess the potential human rights impacts of all their development policies (Filmer-Wilson, 2005).

Human rights law has the potential to fill in gaps in the existing international environmental cooperation based on governance through goals. Here, the enforceability of human rights obligations of states could serve as a unique tool to approach situations, in which human rights violations have been inflicted by the failure of states to fulfil their environmental and climate obligations. Utilizing human rights perspective, the environmental efforts of states can be put to a test both at the state level through domestic law at the national courts and on the international level through the United Nations human rights institutions (UNEP, 2015).

#### **2.9.5. Global recognition of the right to a healthy environment in the context of climate change**

The Stockholm Declaration from 1972 stipulates that “*man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being, and he bears a solemn responsibility to protect and improve the environment for present and future generations*” (United Nations, 1972).

A clear, safe, and healthy environment is vital for the enjoyment of virtually all existing human rights recognized under international law (United Nations, 2018). Furthermore, over eighty per cent of member states of the United Nations presently recognize the right to a healthy environment in their national law or through ratification of regional treaties (OHCHR, 2021). The fact that the right to a healthy environment was missing in the human right documents that entered into force in the middle of the 20<sup>th</sup>

century would be more than understandable, as at the time humankind was still largely unaware of the burning urgency of environmental issues and the threats they pose on human rights (Boyd, 2012). Since then, human rights treaty bodies have repeatedly brought up the interlinkages between a healthy environment and the enjoyment of human rights. Yet, the human right to a healthy environment remains completely absent in the present-day international human right instruments, even more than fifty years after the emergence of the global environmental movement.

The United Nations report A/73/188 states that the full realization of the human right to a healthy environment on the international level would not only bring numerous benefits in the area of environmental protection but would also significantly strengthen the legal standing of persons claiming human rights violations caused by environmental harms, and thereby promote climate justice (United Nations, 2018). Based on the experience of states that have fully implemented the human right to a healthy environment into their legal systems, it can be argued that the presence of this right has a great potential both in terms of effectively protecting the rights of the people and protecting the environment itself (Boyd, 2012).

The report advocates for the full recognition of the human right to a healthy environment by the United Nations. The argument is supported by a long-term study that aimed to map out human rights obligations with regard to the environment. It firstly briefly summarizes the so-called "greening of human rights" process, where existing human rights are approached from an environmental perspective and are enriched by the consideration of their environmental dimension (United Nations, 2018). The report subsequently builds on this development by reflecting on the emergence of the human right to a healthy environment by stating that over the past 50 years a prevailing number of states and regional organization have become to operate with this right, either by implementing it into legal documents or through judicial interpretation (United Nations, 2018).

The document further argues for the many benefits of the recognition such as stronger environmental policies, greater citizen participation, increased access to justice in cases of human rights violations caused by environmental harms and the global decrease of environmental injustices. According to the report, all these would together promote greater respect to human rights and would also accelerate the practice of key environmental law principles, such as precautionary principle, polluter-pays principle, and intergenerational equity principle. The study concluded that the national recognition

of the human right to a healthy environment led to reduced greenhouse emissions and cleaner air in the observed countries. The evidence provided to support this claim are ecological footprint measurements and ranking of comprehensive environmental indicators (United Nations, 2018).

Another study of national constitutions in selected countries identifies how the recognition of the human right to a healthy environment affects environmental policies, citizen participation, diminishing environmental injustices and the overall environmental performance of states that are formally recognizing the right and concludes remarkable successes of the majority of states where such right has been implemented (Boyd, 2012). It also emphasizes the far-reaching practical consequences of the full recognition of this right and its ability to serve as a catalyst to encourage progress in a more sustainable direction. It further underscores how the human right to a healthy environment accelerates better, more effective, and more successfully enforceable environmental laws because any proposed laws and regulations have to be screened in order to ensure their compliance with the existing human right standards. Moreover, the screening simultaneously actively prevents any weakening or rollbacks of the existing environmental laws and policies. Lastly, simply using the term right to a healthy environment led to raising awareness of the importance of environmental protection in promotion of human rights and equality (Boyd, 2012).

In the international arena, many international judicial institutions, such as the Inter-American Commission on human rights have been developing their own thread of case-law for decades, carefully constructing and operating with the human right to a healthy environment (Marguerat, 2019). The Inter-American Commission has now established a practice of applying the criteria of the human right to a healthy environment in cases where the violations of rights such as right to life, health, housing, and adequate living standard were claimed (American Society of International Law, 2020).

The added value of the human right to a healthy environment lies in its potential to enforce state accountability, promote stricter environmental regulation, improve access to justice and access to information regarding environmental and climate issues, and ensure enhanced participation of groups most affected by environmental changes and climate change (United Nations, 2018).

## **2.10. Summary and operationalization of theoretical approaches utilized in the research**

This chapter attempted to firstly provide an outline of the existing literature on the HRBA, with particular focus on its definition and history and also describe the impacts of the HRBA on the development discourse at the turn of the 20<sup>th</sup> century in order to provide an insight into the core arguments standing behind the emergence of the approach.

Secondly, the section 2.3 identified and characterized the four main approaches within the HRBA, namely (1) global compliance approaches; (2) programming approaches; (3) right talks approaches; and (4) legal mobilization approaches, all of which are applied to a certain extent in the analysis in chapter 4. To specify, in the case study concerning Tůrow coal mine, the global compliance approach will be applied to highlight the human rights obligations of Czechia and Poland and the state-owned company operating the coal mine in question. The global compliance approach focuses on the obligations arising from the membership of states in the core human rights instruments and how have those obligation been used by civil society actors in Czech, Poland and internationally to create pressure on the governments and to further hold them accountable for protecting the environment and the human rights of the local population affected by the mining activity. The programming approach is partly used to demonstrate the role of the Czech, Polish and international media in raising awareness of the dispute and to describe how the increased media attention affected the steps taken by the governments of both countries and the Court of Justice of the EU. Since most experience with programming approaches come from the Global South, my research purposely utilizes the programming approach in order to expand its application to the context of a European transboundary dispute. The rights talk approach is employed in the analysis mainly to emphasize the importance of human rights rhetoric used by activists and NGOs on both Czech and Polish sides of the dispute and to depict how human rights-based activism influenced the evolution, the outcome, and the aftermath of the case. Finally, the legal mobilization approach is used extensively throughout the entire analysis with the aim to illustrate the role of national and international litigation in achieving both protection of environmental human rights and protection of the environment itself. In the Tůrow dispute, the litigation process was used strategically as a part of a broader social

mobilization process with a clear aim to create leverage for environmental protection and climate action irrespective of the actual outcome of the proceedings. Furthermore, the legal mobilization approach is the most relevant approach to create societal pressure in European countries considering their rights-rich constitutions and relatively effective judicial apparatuses.

Thirdly, the human rights principles and the challenges identified in the sections 2.4 and 2.5 of this chapter are taken into consideration when analysing the actions taken by the stakeholders in the selection of cases included in the litigation review in chapter 3 as well as in the Túrow case study in chapter 4. With regard to the core human rights principles, the research intends to demonstrate how their application impacts decision making in environmental matters. In relation to the challenges outlined in this chapter, the litigation overview and the Túrow case study focus in particular on addressing the implementation difficulties of the HRBA, the issue of how to approach conflicting rights and the problematic enforcement of human rights standards, and the politization of development efforts as all of those controversies become unmissable when following the progression of the case.

Fourthly, the elaboration on the role of human rights in the 2030 Agenda on Sustainable Development in section 2.8 is further developed in the Túrow case study in order to indicate some of the practical implications of balancing the economic, social, and environmental dimensions of sustainable development in the context of a specific case, in this situation an international dispute regarding transboundary environmental harm caused by mining activity.

Fifthly, the litigation overview and the case study explicitly identify both the human rights impacts and the corresponding obligations of states as they are outlined in sections 2.9.1 and 2.9.2 of this chapter. The aim of the impact analysis is to establish a clear chain of causation between the environmental damage caused by the mining activity in Túrow and the human rights violations (including the violation of the right to a healthy environment) felt by the local population. Following, the analysis determines the relevant obligations of the Czech and Polish governments owed to their citizens and clarifies which obligations were fulfilled and which were not and what were the real-world ramifications of the state actions on the local population.

Lastly, the analysis utilizes a human rights-sensitive perspective suggested in this chapter to analyse the initiation of the Túrow dispute, the development of the proceedings at the Court of Justice of the EU, and the final settlement of agreed between the

governments of Czechia and Poland. Particular emphasis is put on the impacts of the approach in those stages of the dispute in which the HRBA was utilized and also the stages of the case where a human rights perspective was abandoned and how this affected the outcome and the aftermath of the case.

## **CHAPTER 3: ENVIRONMENTALLY CATALYZED HUMAN RIGHTS LITIGATION**

### **Introduction**

The litigation overview in this chapter aims to demonstrate the implications of applying human rights perspectives to cases and disputes concerning the environment, especially in situations in which human rights violations were related to environmental issues such as pollution, deforestation, and climate change. I begin with a discussion of how the application of human rights law and the HRBA in general evolved in environmental and climate litigation across countries and regions, how it addressed particular environmental issues, and what were the most notable impacts and challenges in respect to promoting environmental protection and climate action. This litigation review further aims to demonstrate some of the concepts outlined in the theory chapter of this thesis in the context of specific cases, including the application of human rights principles, the links between individual human rights and corresponding state obligations, the impacts of human rights arguments utilized in environmental litigation, and the shortcomings of the HRBA.

Additionally, this chapter scrutinizes the overall role of litigation in achieving environmental protection and climate action and how is the effectiveness of human rights and climate litigation dependent on other factors such as regional contexts, economic interests of governments, the presence of civil society actors, and the relationship between the government and the private sector.

The following text contains an overview of selected cases concerning the protection of environment, climate change, human rights, and their interrelationship. Each case begins with a brief introduction of the factual background and the ruling followed by an evaluation focused on identifying the characteristics of the HRBA present in the case and its implications. The focus of the analysis varies based on the context of each case, but the analysis concentrates primarily on the identification of violated rights and the corresponding obligations and its relationship to the environmental dimension of each case and the legal and practical impacts of the application of human rights perspectives. In the last section of this chapter, I further establish the most notable similarities and differences when compared to the Túrow case study.

The main criteria for the selection of cases included focus on environmental protection or climate action, the presence of human rights arguments, and the fact that human rights were utilized with the objective to address environmental issues.

### **3.1. Minors Oposa v. Philippines (1994): setting a legal basis for intergenerational equity and the responsibility of states to preserve their natural environment**

In the *Minors Oposa v. Philippines* case a group of children brought a lawsuit against the Department of Environmental and Natural Resources with the objective to stop the destruction of the country's rainforest. By the year 1990 Philippines had already lost most of its rainforest areas to commercial logging and according to the timber licences issued by the government the remaining area would be cut down by the end of the decade. The plaintiffs contested the legitimacy of the timber licences and argued that the large-scale deforestation activities have far-reaching detrimental impacts on the local ecosystems and the rich biodiversity of the rainforest, exacerbate global warming, and further lead to water shortages, erosion, and extinction of species in the area.

The plaintiff children grounded their legal arguments in the Constitution of Philippines that recognises the right to balanced and healthful ecology, the right to self-preservation, and the right to self-perpetuation. Further, they raised the issue of intergenerational equity, claiming that the ongoing deforestation is violating not only their rights but also the rights of the generations to come, as the unprecedented rate at which the environmental changes were occurring in Philippines was in conflict with an equitable accessibility of natural resources of current and future generations, who would not be able to exercise their right to explore and utilize those resources.

In the ruling, the court highlighted the crucial role of the country's rainforests in maintaining environmental balance and upheld the lawsuit. The court further established the right to a clean environment and the right of current and future generations to exist from the land. In relation to this right, the court explicitly stated the intergenerational responsibility of current generations to preserve a clean environment for future generations. Additionally, the court emphasized the relationship between adequate natural environment and the right to health and affirmed the obligation of the government



to ensure environmental standards in order to protect and promote the right health of the citizens.

Human rights perspectives have been applied in this case especially in the form of the human rights talk approach and the legal mobilization approach. Firstly, the plaintiffs used human rights arguments to create pressure on the government with the objective to raise awareness of the deforestation issues taking place in Philippines. Namely, they argued based on the implications on the right to a clean environment, the right to exist from the land, the right to health and the rights of future generations that were directly affected by the deforestation. As established by the court, the main obligation of the state in order to protect those rights was to preserve the environment and natural resources of Philippines and therefore protect the country's remaining rainforest.

In reaction to the ruling, the government has modified its forestry policies, limited logging activities and restricted logging areas. While the lawsuit did not manage to stop deforestation in the country completely, it has significantly improved the protection of the country's rainforests and influenced the development of environmental law by linking environmental issues to fundamental human rights, establishing the obligations of the states in respect to environmental rights, and laying grounds for the principle of intergenerational equity (Hassan, 2017). Thus, the application of human rights arguments in the context of this case had both legal and real-world impacts on realizing environmental protection and addressing climate change.

### **3.2. The Inter-American Commission on Human Rights on the human rights situation in Ecuador (1997): environmental degradation as an infringement of the right to life and human rights limits to development**

In its Report on the Situation of Human Rights in Ecuador, the Inter-American Commission on Human Rights addresses the alleged human rights violations connected to water and soil contamination cause by oil exploitation activities. The inhabitants of the Oriente region filed a petition to the Commission and claimed they were exposed to toxic wastes from oil exploitation in their drinking water, which led to a dramatic increase

of serious illnesses and poisoned the wildlife in the region. The rights particularly considered in the context of this case were the right to life and the right to health threatened by economic development activities.

The Commission concluded that the realization of the right to life and physical security is necessarily related and dependent upon the physical environment of individuals and thus the adverse environmental degradation and contamination that occurred represent a serious breach of the right to life and to physical security. It adds that in similar situations when severe environmental pollution takes place states are required to take positive measures in order to protect the right to life and physical integrity and if person suffered an injury the states are obliged to rectify the situation.

Further, the Commission also addressed the relationship between the right to economic development and the violation of other human rights. It emphasized, that while the right to development of states entails exploitation of its natural resources, it must be achieved in a manner that respects human rights of individuals and highlighted the importance of environmental regulation and supervision in preventing environmental damage that translates into human rights violations.

With regard to the legal effects of the case, the Commission called on the government to strengthen environmental legislation regulating pollution caused by corporate activities and to remedy the existing damage. It also recommended improving the accessibility and transparency of information regarding environmental issues and to enable greater public participation in development policymaking.

This case demonstrates several central characteristics of human rights sensitive approaches, in particular of the global compliance approach. The Commission addressed the breach of Ecuador's international human rights obligations anchored in the American Convention on Human Rights and its implementation into national laws and policies. The Commission further utilized several human rights principles in the context of environmental harm, such as the principle of indivisibility of human rights, the principle state accountability, and the principle of participation and inclusion. Applying human rights principles and human rights law, the Commission established how the violation of the right to life and physical integrity was directly connected to the environmental contamination and established the corresponding obligation of the state to rectify the situation and prevent its reoccurrence. This led to an improved performance of the state both in the area of environmental protection and human rights.

### **3.3. Gbemre v. Shell (2005): gas flaring as a gross violation of the right to life and human dignity**

As a country rich in oil and gas reserves, Nigeria suffered severe environmental degradation caused predominantly by gas flaring and oil spills. The negative environmental effects of gas flaring performed by Shell included destruction of forests and farmland and contamination of water. The increased scarcity of natural resources subsequently led to health issues, increased conflicts over resources, and further exacerbated poverty in the region.

A group of members of the local community led by Jonah Gbemre brought an action in the Federal Court of Nigeria and claimed that the practice of gas flaring violated their human right to life and dignity recognized in the Nigerian Constitution and the African Charter on Human and Peoples' Rights. Further, the claimants asked the court to assess whether the rights to life and dignity also included the right to poison-free and pollution-free environment.

The court ruled in favor of the claimants and affirmed that gas flaring represents a violation of constitutional rights to life and dignity, which include the right to a healthy environment. Moreover, the ruling also established gas flaring practice as a criminal act and granted a restraining order on Shell.

The *Gbemre v. Shell* is another example of a dispute, in which the global compliance approach was applied by utilizing constitutionally and internationally protected human rights to address environmental degradation. Additionally, the legal mobilization approach was present in the case, as the claimants used litigation before the national court to claim their constitutional rights and to raise awareness of the gas flaring practices and its adverse impacts on the environment. However, while the ruling was considered a major success in the courtroom, the Nigerian government never actually enforced the judgement against the Shell corporation that ignored the court order and did not stop gas flaring. The government argued that an immediate suspension of gas flaring would require to completely shut down oil production which would not be in Nigeria's economic interests. This brings up the conflicting interests between the economic dimension of development, which was prioritized by the government and the social and environmental dimensions of development represented by environmental degradation and human rights violations suffered by the local population (Morocco-Clarke, 2021).

The case demonstrates the enforcement difficulties characteristic for human rights approaches in states with a lack of political will to strengthen environmental protection and weak state apparatus. In the context of this case, the power imbalance between Nigeria as a developing country and Shell as a major multinational corporation plays a crucial role.

### **3.4. The La Oroya case (2009): determining the relationship between environmental contamination and human rights violations**

The petition of the La Oroya inhabitants to the Inter-American Commission on Human Rights concerned a pollution caused by a metallurgical facility in La Oroya in Peru. The petitioners argued that the government failed to take measures to mitigate the pollution. The inhabitants of the region were constantly exposed to lead, arsenic, and sulfur dioxide pollution which led to a drastic increase of cancer, respiratory system damage and cardiovascular diseases. Thus, the petitioners claimed the violation of the rights to health and the right to humane treatment protected by the American Convention on Human Rights caused by the physical harm and psychological harm due to the severe environmental contamination. Furthermore, the petitioners also argued the violation of the right to freedom of thought and expression because the state failed to adequately inform the affected community about the health risks and even manipulated information to cover the seriousness of the contamination.

The Commission upheld the petition and based on factual evidence concluded that the government breached its obligations to protect and promote human rights of its citizens as the deaths and diseases caused by the contamination violated the right to health, the right to humane treatment, and the right to freedom of thought and expression.

Applying the global compliance approach to assess the obligations set out in the American Convention on Human Rights, the Commission highlighted that the Peruvian government failed to regulate and supervise the activities of companies under its jurisdiction and thus failed to fulfil its duty to protect the fundamental rights of the citizens.

In this case, the protection of environmental rights and the environment itself was pursued through other human rights that are explicitly protected by international human

rights law. Since the right to a healthy environment has not been officially recognized by most human rights instruments, other human rights had to be utilized to demonstrate the negative impacts of environmental contamination on the well-being of humans (Spieler, 2010).

### **3.5. Leghari v. The Federation of Pakistan (2015): state accountability for human rights violations caused by inaction to address climate change**

In the Pakistani case, a law student from a rural area of Pakistan appealed to the Lahore High Court with a lawsuit against the government of Pakistan. The claim was based on the fact that the government was failing to meet the goals set by its National Climate Change Policy and the plaintiff demanded the court to order the government to adequately implement the Policy. The claimant further argued that the insufficient climate action threatened water, food, and energy security of the Pakistani citizens which caused a direct violation of the fundamental constitutional rights to life and dignity.

The High Court determined that the inaction, delay, and lack of seriousness of the government to implement the National Climate Change Policy indeed had negative impacts on the right to life and dignity of Pakistani citizens. Further, the court emphasized the vulnerability of Pakistan to the impacts of climate change and ordered the government to enforce the National Climate Change Policy and even included some more specific requirements such as the establishment of expert advisory bodies and instructed the government to regularly report to the court regarding its progress.

With reference to the obligations of states in the international climate regime as listed by the UN Office of the High Commissioner for Human Rights, the insufficient implementation of national climate policies breached the government's climate obligations, especially to mitigate the negative human rights impacts of climate change, ensure that its citizens have the necessary capacity to adapt to climate change, and to mobilize maximum available resources for sustainable human-rights based development.

This case is a fitting example of how the legal mobilization approach enables individuals and disadvantaged groups to utilize their constitutionally protected human rights to hold governments accountable for their failures to sufficiently address climate change.

### **3.6. Future Generations v. Colombia (2018): affirming the obligation of the state to tackle deforestation to protect human rights of future generations**

A group of young plaintiffs sued several bodies within the Colombian national and regional government system with the objective to enforce their human rights to a healthy environment, life, health, water, and food. The claim was based on the fact that the Colombian government failed to address the ongoing extensive deforestation activities which constituted a breach of the obligations set out in the Paris Agreement, according to which the country committed to a target of a zero-net deforestation in the Colombian Amazon by 2020. The claimants argued that the failure of the government to deliver on its climate commitments inflicts violations of the rights in question.

The Colombian Supreme Court recognized that the fundamental rights are linked to and determined by the state of the environment and the natural ecosystems. Even more, the court further recognized the Colombian Amazon as a subject of rights and declared that the rainforest itself is entitled to protection, maintenance, and conservation due to its intrinsic value as a vital ecosystem for Colombia and humanity. Subsequently, the court ordered the government to issue action plans to address the deforestation in the Amazon through a formulation and implementation of short-, medium-, and long-term action plans.

The application of human rights principles of participation, solidarity, and intergenerational equity was of a particular importance in arguing for urgent action. The court concluded, that in accordance with the principle of intergenerational equity, the current generations are responsible for an equitable exploration and exploitation of natural resources that does not deprive future generations of essential life resources. Further, the court highlighted that the human rights of future generations are legally enforceable and create an obligation of states to combat climate change.

The case represents an employment of the global compliance approach where the conduct of the government was evaluated based on its compliance with international climate law rather than human rights instruments, but the breach of climate obligations was subsequently linked to human rights violations.

The ruling brings legal impacts both on the national and international level. Nationally, it recognized future generations and the Amazon rainforest as subjects of

rights and thus legally grounded the obligation of the government to take urgent climate action. Internationally, the decision set a legal precedent for future climate lawsuits.

Unfortunately, with regard to the practical effects on the situation in the Amazon itself, the decision has not been adequately implemented by the government which is still enabling large-scale deforestation without proper reforestation plans which directly breaches its obligations arising from the Paris Agreement.

### **3.7. Urgenda Foundation v. The State of Netherlands (2019): establishing state's responsibility to limit greenhouse gas emissions in order to protect human rights of its citizens**

The landmark decision of the Supreme Court of the Netherlands was initiated by a climate activist group against the Dutch government and concerned the efforts of the state to limit its carbon emissions. The group first contacted the government itself and urged it to change its emission reduction commitment from 30% to 40% to which the government replied that the 40% goal was simply too aggressive and not attainable. Thus, Urgenda filed a lawsuit and further stressed the human rights dimension of climate change as the insufficient climate action efforts of the government violate the right to life and family and private life.

In the ruling, the court affirmed that the Dutch government was responsible to curtail its carbon dioxide emissions in order to protect human rights from the adverse effects of climate change. The court further argued that the gravity of the threat to ecosystems and the livability of Earth that climate change represents poses a serious risk to the right to life and family and private life. To construct its argument, the court cited several legal instruments including the Dutch Constitution, emission reduction plans of the European Union, the UNFCCC and also highlighted the application of human rights principles outlined in the European Convention on Human Rights (OHCHR, 2021).

In the aftermath of the decision the Dutch government advanced its climate efforts by phasing out coal earlier than originally anticipated and even shut down coal power plants ahead of the appointed time. Further, in the reaction to the decision the government introduced a new more ambitious climate action plan with a target of cutting down its emission by 49% by 2030. The new plan also explicitly mentions specific measures such

as posing carbon taxes on corporations and transition from gas to electric power (Schwartz, 2019). Regarding the international impacts of the case, the success of the case inspired similar lawsuits based on the argument of climate justice in other countries including Germany, Great Britain, New Zealand, and Norway.

### **3.8. Milieudefensie v. Royal Dutch Shell (2021): recognizing the accountability of non-state actors for their contribution to climate change**

The most recent case in my selection represents a milestone in addressing climate and human rights obligations of corporations. The dispute was based on a lawsuit filed at the Hague District court which demanded the Shell group to raise its ambitions to limit greenhouse gas emissions of its activities including emissions of their suppliers and customers to 45% by 2030 compared to the 2019 levels.

During the negotiations of the Paris Agreement, Shell declared that the targets in the Agreement were not achievable, and that the corporation does not intend to adapt its business model to comply with the emission targets set out in the Agreement. Following the adoption of the agreement, Shell issued an action plan to reduce its emission and committed to a reduction of 30% by the year 2035, as compared to the 2016 levels. A group of environmental organizations and individuals brought a lawsuit against Shell claiming that its reduction commitments do not meet the targets of the Paris Agreement and considering the considerable contribution of the corporation to global greenhouse gas emissions, Shell's failure to adapt its climate policy constitutes a breach of the standard of care set out in the Dutch Civil Code and further violates the rights to life and private and family life established in the European Convention on Human Rights.

The court's decision affirmed the claim, stating that Shell has an obligation to reduce its emissions by 45% by 2030. To support its decision the court firstly argued that the emissions released under the operation of Shell as a major producer of fossil fuels exceed emissions of many countries. Thus, Shell's contribution to global warming leads to the violation of human rights to life and private and family life.

Similar to the wording of the Guiding Principles on Business and Human Rights, the court emphasized the obligation of corporations to respect human rights and their



reliability for their contributions to climate change that exists independently of the climate obligations of states. Further, corporations have a duty to actively promote climate change mitigation and adaptation efforts in order to counteract its negative climate impacts.

With regard to the responsibility of corporations to have in place a climate policy that considers the human rights impacts of their activities including measures to address those impacts, the court found that the policy of Shell's group was insufficiently concrete and therefore, the corporation failed to comply with its climate and human rights obligations. Subsequently, the court ordered the Shell group to reduce its emissions, including the emissions of its suppliers and customers by net 45% by the year 2030, as compared to the 2019 levels.

This case was particularly significant, as it represents a landmark ruling in which a corporation was held responsible for its failure to comply with the emission reduction targets of the Paris Agreement. The decision is in its effect an extension of the principles established in the Urgenda case to private sector actors as it affirms the obligations of corporations to sufficiently address climate change in their internal policies and further emphasizes how is human rights law relevant to emission reduction obligations.

A global compliance approach was utilized to assess the performance of the corporation with regard to the international human rights and climate obligations and the decision set an important precedent for future climate lawsuits against corporations failing to address their contributions to climate change.

### **3.9. Main findings of the litigation overview and their relevance to the Túrow dispute**

The overview of the eight selected cases in this section aimed to demonstrate some of the legal and practical impacts of applying human rights perspectives to environmental and climate issues. Many of the cases set novel precedents that subsequently influenced future environmental litigation nationally, regionally, and even globally.

In relation to the legal impacts, the implementation of human rights approaches achieved a recognition of the intergenerational justice principle, affirmed the

responsibility of governments to protect natural resources, enabled individuals and groups to hold their governments accountable for their misconduct in the area of environmental protection, climate mitigation and adaptation efforts, and determined the duty of states and private sector actors to reduce their greenhouse gas emissions.

With regard to the practical impacts, the application of human rights-based approaches often led to improved environmental protection and a creation of more ambitious emission reduction commitments of states. However, the cases simultaneously demonstrated the enforcement difficulties of human rights law and climate mitigation and adaptation commitments and uncovered the importance of other factors in realizing environmental and climate protection, such as the role of economic interests, the willingness of governments and corporations to obey the decisions of courts, and the power struggles between the public and private sector in many countries.

The overview of environmentally catalysed human rights litigation is included in the thesis to describe the development of the application of the HRBA through legal action, to comment on the common patterns present in a majority of the cases, to further highlight the added value of utilizing human rights in environmental protection and climate action, and to determine some of its core legal and practical impacts. Next, the cases also uncovered some of the shortcomings of pursuing environmental and climate goals through human rights arguments.

The main reason the litigation overview was to highlight some of the impacts of the HRBA as they have been observed on past cases. The Túrow dispute was still unfolding during the duration of my research and its outcomes were therefore uncertain. Thus, this chapter underscored some of the milestones in the implementation of the HRBA in environmental litigation demonstrated on notable global cases in different geographic and political contexts before the thesis proceeds to analyse the specific impacts of the HRBA on a regional dispute between two democratic countries in Central Europe.

When compared to the Túrow dispute, there are many similarities that can be observed across the cases. The Túrow case study and all the cases in the litigation overview targeted a specific environmental issue, for instance deforestation, pollution, climate change or water loss in the case of Túrow. Subsequently, the claimants of those cases argued an infringement of human rights, linked those rights to the environmental issue in question, and demanded the state to rectify the situation in order to fulfil its obligation to uphold human rights.

Another similarity among the cases is based on the human rights principle of state accountability established in the theory chapter of the thesis. Irrespective of whether the environmental damage was being caused by the state activities or by another entity under its jurisdiction, the lawsuits were directed against the state. According to the human rights law, it is precisely the state, as a main duty-bearer, who is responsible for any human rights violations that occur or are caused in its territory. Nevertheless, it should be distinguished, that while in the past cases the human rights violations were taking place within national borders, in the Túrow dispute the ecological harm was transboundary and the majority of human rights impacts was felt by citizens of another country. Thus, in the Túrow dispute accountability exists on both sides of the border. Poland is responsible for the environmental harm that is caused by activities undertaken in its territory and Czechia is responsible for protecting rights of its citizens affected by the environmental harm triggered by the mining activity on the Polish side of the border. However, in the landmark case of *Milieudefensie v. Royal Dutch Shell* the court recognized a private company as a duty-bearer in a situation in which its contribution to climate change causes human rights violations. The main difference between this case and the Túrow dispute is the fact, that the company *Polska Grupa Energetyczna* that operates the mine is majority state-owned. Hypothetically, if *Polska Grupa Energetyczna* was a privately owned company, a lawsuit filed directly against the company regarding the environmental harm in Czechia could be considered. Further, as a major contributor to climate change in the central European region, a lawsuit similar to the one in Netherlands regarding the compliance of the company with climate goals could also be considered.

The accountability of states also includes certain active obligations, such as the obligation to ensure meaningful participation of their citizen in decision-making regarding environmental matters and providing adequate information regarding the safety of the environment to the public. Issues with a lack of transparency and inclusion in environmental issues were observed in several cases in the review. Similarly, both the Czech and the Polish government failed to provide transparent information to the public and to ensure public participation in the Túrow dispute.

Similar to the case concerning water contamination in Ecuador, the Túrow dispute brings up the inherent conflict between pursuing economic development on one hand and preserving the environment and protecting environmental human rights on the other. While in the Ecuadorian case the court emphasized human rights limits to development, the court in Túrow dispute does not explicitly address the issue.

Further, the challenging enforcement of court decisions has appeared both in the Túrow case and some of the cases described in this chapter, for example in the cases concerning gas flaring in Nigeria or deforestation in Columbia. The cases demonstrated the problematic enforcement in situations in which environmental protection does not align with the state's short-term economic interests or when the private sector actors exercise a lot of influence on the government.

Finally, constitutionally protected rights were utilized by citizens when approaching national courts to hold their governments liable for their lack of action both in the final stages of the Túrow case and the Pakistani climate lawsuit.

## **CHAPTER 4: THE TÚROW CASE STUDY: APPLYING A HUMAN RIGHTS LENS TO AN ENVIRONMENTAL DISPUTE IN A EUROPEAN CONTEXT**

### **Introduction**

This chapter utilizes a human rights-based approach to assess the development, the outcome, and the aftermath of the Túrow case with the objective to identify the real-world implications of environmental disputes with a human rights dimension in a regional context of central Europe. Further, the case study intends to determine how human rights arguments affected the ability of the civil society while addressing the environmental harm that occurred and the corresponding liability for the environmental harm of state and the mining company involved. Next, the analysis of the case underscores the implementation of human rights principles and the contextual limitations of the HRBA outlined in chapter 2 of the thesis as they were observed under the case study. On top of that, this chapter aims to analyse the role of litigation in realizing environmental and climate goals to determine the impacts of rights-based approaches on environmental litigation, and to what extent are the outcomes of these processes influenced by other factors such as regional contexts, political will, economic interests and priorities of governments, the efforts of civil society actors, diplomacy, and the type of governance in a country.

The following sections first introduce the factual background of the dispute and the practical impacts of the mining activity in Túrow. Next, the chapter touches upon the legal perspective of the case before proceeding to illustrate the human rights dimensions of the dispute, followed by the analysis of the rights affected by the dispute and the corresponding obligations of states. Further, the chapter considers the global perspectives on the dispute and discusses the impacts of the application of the HRBA in the case measured against the influence of other factors.

The data utilized in this chapter is based mainly on news and media reports, government communications, interviews with local groups and individuals, activists, lawyers, and hydrological analyses.

## 4.1. The factual background of the Túrow dispute

### 4.1.1. The environmental impacts of the Túrow energy complex

The Túrow coal mine supplies a nearby coal power plant situated at the Czech, German, and Polish border. The lignite-fired power plant has been in operation since 1962 and generates somewhere between 5% to 8% of Polish national electric supply (NS Energy, 2020). The Túrow coal energy complex is operated by Polska Grupa Energetyczna, a majority state-owned company and the largest Polish energy producer. Both the power plant and the coal mine have adversely impacted the environment in the region and caused environmental degradation in the territory of all the free neighbouring states. What makes the situation in Túrow particularly unique is the geographical location of the mine. The mine and the power plant (see Map 1, Location of the Túrow coal mine) are both located within Polish national borders, but the small piece of Polish land is otherwise surrounded by Czech territory on the east side and by German territory on the West side (Water or Coal, 2020). To specify, the east side of the mine currently lies only about 300 metres away from the Czech national border and Poland plans to expand the mine even closer to the border (E15, 2021). The specific geography plays a vital role in the case because while the devastating environmental impacts of the power plant and the adjacent coal mine are borne overwhelmingly by the neighbouring states, the economic and social benefits are exclusive to Poland.



Map 1, Location of the Túrow coal mine  
(BBC, 2021)

The negative environmental impacts of the mining activity and the coal power production claimed by the locals include air pollution, drought, noise, dust, and flash floods. The detrimental effects of the mining activity and the coal power production on both the environment and the health of the local populations were brought up by environmentalists and activists from all three neighbouring countries repeatedly for decades (Water or Coal, 2020). However, any efforts to limit the expansion of the Turow mine have been hitherto unsuccessful. This is mainly because, from a legal standpoint, the impacts were not considered sufficient to establish transnational harm under international law. However, this situation changed dramatically, when an impact assessment study officially confirmed a direct causal link between the ever-expanding mining activity in Turow and the drastically decreasing drinking water supplies in a Czech region Liberec that borders the mine (Frank Bold, 2020).

I include some key findings from a Summary of current and potential future negative impacts on surface and groundwater conditions in the Czech Republic prepared by the Research Water Management Institute. Regarding the current impacts of the mining activity, the groundwater levels in the affected region dropped by up to 64 meters from 1981 to 2019 according to the study, which equals to an average decrease of almost 2 meters per year. The study further adds that the groundwater in the region has not been noticeably affected by weather conditions and climate change or by pumping water for drinking purposes. Thus, the decline in groundwater levels is caused solely by the drainage of the Turów mine. The study concludes, that even though without the impacts of the mine the region would still be affected by the ongoing dry season, the groundwater levels would be considerably higher than they are today. And currently, the groundwater levels are continuing to decrease by approximately 2 meters per year due to the Turow mine (Datel and Hrabankova, 2020).

#### **4.1.2. The emergence of the dispute**

The obligatory permit for the mining activity in Turow coal mine ran out in April 2020 and without a valid permit, the mining activity should have been suspended as was originally planned. However, Polska Grupa Energetyczna stated that they expect to continue mining until the year 2044 and applied for an extension of the permit by 6 years,

including a potential expansion of the mine. In response, the Czech government issued dissenting opinions regarding the extension and the expansion of the permit, which was not considered by the Polish side (Euractiv, 2020). According to Nikol Krejcova from the Czech Greenpeace branch, the company submitted a request to extend mining for only 6 years as its “plan B”, because the standard environmental impact assessment raised a controversy, and the Czech government issued a dissenting opinion on the plan. Therefore, in addition to the originally required 24 years, the company applied for another shorter permit that could be approved in an abbreviated procedure without public participation (Euractiv, 2020).

Despite the objections of the Czech government, the Polish Ministry of Climate and Environment decided that mining at the Turów lignite mine can continue for at least another 6 years and extended the permit, which also included deepening and widening the mine towards the Czech border after conducting environmental impact assessment. However, the assessment proceedings were closed to the public and the Ministry refused to provide technical documentation on the basis of which a positive decision has been made on the environmental impacts of the mine. None of the concerned stakeholders, including the Liberec region that is experiencing the most severe impacts of the mine, were consulted despite the fact that the mining in Turov generates negative impacts on drinking water supplies and excessively pollutes the local air. This was met with a negative reaction by the public and the officials in both of the neighbouring states, especially in Czech, where it became evident that any further expansion of the mine will lead to irreversible water-supply depletion in parts of Czech territory that will directly affect the access to water of the locals, who already struggled due to the increased water scarcity caused by the mine (EPP, 2020).

In regard to the potential future negative impacts of the expansion of the mine on the groundwater conditions in the region, the continuation of mining activity in Turov is expected to severely exacerbate the water emergency in the Liberec region. The mining expansion entails both enlarging the mining pit, which will approach immediately to the Czech borders and simultaneously significantly deepening the mining pit with the deepest part of the mine located immediately by the Czech border. Thus, the current negative impacts on Czech groundwater levels will only intensify.

Any further decline in groundwater levels as compared to the situation today will make it significantly more difficult or even impossible to use wells as a source of drinking water for the population in the region. In terms of drinking water supply, the current



situation is critical and many wells in the area are no longer usable because they have completely dried up. Furthermore, many of the wells that still have water remaining are no longer usable because the ongoing decline of water levels initiates chemical processes that affect the quality of the water and make it unsafe to drink. In total, up to 10 thousand people living in the area are expected to lose access to drinking water. The impact study further emphasizes that the expansion of the mine is very likely to affect surface water in the area and related ecosystems in a Czech natural reserve located only a few kilometres away (Datel and Hrabankova, 2020).

Following the permit extension and in response to countless demonstrations and appeals of the Liberec region residents, the Czech government has repeatedly attempted to initiate a constructive dialogue with their Polish counterparts regarding the possible solutions of the situation. The Polish government again and again refused to accept any responsibility for the environmental harm caused by the mining, in particular with regard to the disappearance of water. Furthermore, the Polish side refused to provide technical and hydrological information that would allow to assess the impacts of the mine expansion from the Polish territory and did not allow a hydrological inspection on the Polish side of the border (Ekolist, 2022).

The case quickly gained a lot of media attention, especially thanks to a series of protests organized nearby the Tůrow facility by environmental organizations and local residents. They argued, that from a legal perspective, granting the extension of the permit is not only breaching international environmental law, but further conflicts with the Polish climate obligations and is clearly not aligned with their commitments in achieving the sustainable development goals (Frank Bold, 2020). The campaign further emphasized the issue of water depletion and utilized a human rights perspective to illustrate how the mining activity threatens water resources which leads to violations of the right to water, right to adequate standards of living, and property rights.

During the two years of unsuccessful intergovernmental negotiations, the local population and several environmental organizations involved in the case submitted several petitions in which they demanded that the Czech government pursues a lawsuit against Poland at the Court of Justice of the EU. The Czech government was initially hesitant to do so, because the two countries otherwise maintained very good diplomatic and business relationships, but the pressure generated by the civil society and increasing international media attention played a pivotal role (Ministerstvo Zahranicnich Veci, 2021).

### **4.1.3. The proceedings at the Court of Justice of the European Union**

Thus, in February 2021 the Czech Ministry of Environment filed a lawsuit against Poland to the Court of Justice of the EU. When justifying the lawsuit, the then Czech Minister of the Environment argued that the extension of the mining permit violates rights of Czech citizens, as the lignite mine and the power plant damage the environment on Czech territory, diminish water supplies and pollute the air (iRozhlas, 2021). The case was in fact a first case of its kind, where an EU member state sued another over transnational environmental damage (Frank Bold, 2021).

During the proceedings, the Court of Justice of the EU issued an injunction and ordered an immediate suspension of the mining activity in Turov that was anticipated to last until the final court decision would be reached. In the injunction order, the court argued that the impacts of the mining activity generate irreversible environmental harm and human rights violations and thus must be suspended without any further delay (Industry & Health, 2021).

However, Poland refused to adhere to the interim order and continued the activity in the mine. The Polish government argued that an immediate suspension of the mining activity would jeopardize the energy security of the country and further violate social rights of Polish citizens.

In reaction to the decision of the Polish government to ignore the suspension order, the court imposed a fine of EUR 500 000 for each day Poland fails to obey the courts interim decision. Poland once again decided to ignore the court's decision, continued the mining activity, and stated it does not intend to pay the imposed fine as it cannot be enforced (Frank Bold, 2021).

While the enforceability of the law of the European Union is generally considered problematic, in the case of Turov, the European Commission announced that the EU will deduct the amount of the unpaid fine imposed by the court from the funding that the EU provides to Poland. At the time of the announcement, at the end of January 2022, the unpaid fine amounted to EUR 15 million. This considerably increased the willingness of the Polish government to continue negotiations with the Czech side and to find a solution outside of the courtroom (Aktualne, 2022). While the intergovernmental negotiations preceded the lawsuit and continued to a limited extent also after the lawsuit to the Court of Justice of the EU was filed, Poland was refusing to accept the liability for the environmental damage inflicted in Czech territory and the countries were long not able

to agree on measures to prevent further water loss or financial compensation for the construction of alternative water infrastructure to supply water in the Liberec region, let alone the degradation of local land and air pollution. But after the European Commission announced that it will reduce EUR 15 million from the funds provided to Poland just as a fine for their failure to comply with the interim measure issued by the court, the negotiations intensified (Advokatni Denik, 2022).

#### **4.1.4. The final settlement of the dispute outside the courtroom**

On the 3rd of February 2022, the day before the final court ruling was scheduled, the Czech and the Polish government entered into a bilateral agreement that settled the dispute outside the proceedings and the initial lawsuit issued by the Czech government was withdrawn. In return, the Polish side committed to a financial compensation of EUR 35 million to expand water supply infrastructure in the affected region and the two states negotiated a list of measures that promise to prevent further water loss on the Czech side of the border. Thus, the final decision of the court was never issued, as the withdrawal of the lawsuit terminated the proceeding with an immediate effect (Security Magazin, 2022).

In April 2022, a group of citizens from the Liberec region filed a lawsuit against the Czech government to the Czech Constitutional Court concerning the legitimacy of the intergovernmental agreement entered between Czechia and Poland. The claimants argue that the agreement focuses only on the financial compensation and fails to prevent further water loss in the region, which violates their constitutional rights. Moreover, the claimants emphasize the obligation of the Czech government to protect natural resources in its territory established by the Constitution (iDNES, 2022).

## **4.2. The impacts of the mining activity on residents of the Liberec region affected by the environmental degradation and water loss**

When it comes to the everyday practical impacts on the lives of people in the region, many of the villages in the region suffer from long-term water shortages and have to rely

on water delivered by fire trucks (Water or Coal, 2020). The experiences of different households differ, depending on how severely their wells have been affected. Many of the shallower wells have already completely dried up while some of the deeper ones still work but are expected to stop functioning in the next few years due to low levels of water. The majority of the region relies on private or municipal wells to access drinking water, because the area is not connected to water distribution pipes.

A local resident in an interview for Vinohradska 12 stressed that he counted on the fact that the activity in the mine and the power plant would be suspended by the year 2020, when purchasing his property that lies right next to the mine. He further expressed his concerns for the consequences of the mining and the energy production will likely have on his life, now that they are expected to last until 2044, especially with regard to access to water (Kabrhelova, 2021).

Kamil Kronus describes that his family can no longer rely on water in their house and have to visit their extended family in the nearby town to do laundry and to shower (Water or Coal, 2020).

Another resident of Vaclavice, Michael Martin explains that he even had his well deepened after it dried up a few years ago, but it did not help, and he still has no access to drinking water at his property. Therefore, he is dependent on obtaining water for his family from the municipal well. He underlines, that they are extremely careful with their water usage in the house, because getting even the bare minimum of water supplies to provide for their basic needs takes him about 4 hours every week (ArteTV, 2021).

Matous Kirsner, a local farmer, complains that the water shortages got so severe he was forced to prematurely slaughter his cattle. He explains that the drought significantly affected his pastures and there was no new grass growing to feed the animals (Water or Coal, 2020).

Milan Starec, spokesman for the local association Uhelna further adds that the expansion of the mine and its impacts drastically reduce the value of their land and property, which intervenes with their constitutionally protected property rights. He further emphasizes how the mine does not only directly drain groundwater in the area, which depletes water supplies for the people, but also affects water circulation in the natural landscape, which has destructive effects on local ecosystems. He concludes that the local groups are predominantly worried about their water, but many of them are also deeply concerned about the detrimental ecological impacts they have witnessed over the past decades (Blistan, 2022).

### **4.3. How was the dispute experienced from the Polish perspective?**

When justifying the government's decision to ignore the interim order of the Court of Justice of the European Union, the Polish Prime Minister Mateusz Morawiecki argued that the mining activity could not be suspended because the lignite supplying the Turov power plant does not allow import from farther mines and emphasized that Poland would have to shut down a power plant that generates up to 8% of Polish energy demand. Additionally, he claimed that the suspension would have far-reaching consequences on the well-being of Polish citizens in the Bogatynia region. He described the region as otherwise underdeveloped and economically dependent on the Turov power plant and the mine because the overwhelming majority of people living in Bogatynia are employed by the Turov facility. Further, he added that the service sector of the region is dependent on the employees of Turov spending their income there and losing this revenue would lead to pervasive decline of economic activity in the entire region (Ekolist, 2021).

Further, in an interview for *Cesky Rozhlas*, a Polish energy reporter Karolina Baca-Pogorzelska emphasizes that the Turov facility employs around 8 thousand people, and an immediate closure of the facility would indeed hurt the regional economy, due to the economic dependence of the entire Bogatynia region on Turov. She further adds, that during her conversations with residents of Bogatynia, most people expressed a shock and disappointment over the court's decision to suspend the mining. One of the often-repeated arguments was the fact, that Czechia itself operates several mines in its territory nearby the border with Poland which in their view undermines the strength of their arguments against the Turov mine. With regard to the argument of the Polish Prime Minister, the reporter argues that in the broader context of energy transformation from fossil fuels to renewable sources in Europe, the Polish government did not set very ambitious goals, lags behind with revitalization of coal regions, and uses the potential impacts of phasing out coal on the social and economic rights of citizens to justify its coal dependence. She concludes that the majority of local residents she spoke to were not aware of the severity of the water loss caused in the Czech territory and viewed the Czech demands as unreasonable and she attributes the misconceptions to lack of dialogue between the Czech and Polish government (iRozhlas, 2021).

In an interview with employees of the Turov coal mine for ArteTV regarding their views on the dispute, engineer Marta Kukuc expresses her disagreement with the Czech

lawsuit, that she views as unfair. She says that while she is aware of the water issues on the Czech site, she believes that the impact of the mine on the water depletion is being exaggerated by the Czech site. She argues that in her opinion the impacts of the ongoing dry season and the effects of climate change contribute to the water depletion to a greater extent than the water drainage occurring in the mine (ArteTV, 2021).

#### **4.4. The legal perspectives on the development of the Túrow case**

When approaching the Túrow case study from a legal perspective, it is important to firstly analyse the legitimacy of the mining activity taking place after the year 2020, explore the arguments of the lawsuit filed by the Czech government to the European Court of Justice of the EU, touch upon the argument of the court in its interim decision to suspend mining in Túrow, inspect the measures outlined in the intergovernmental agreement between Czechia and Poland, and scrutinize the claims contained in the constitutional claim filed in April 2022.

To further elaborate on the human rights dimensions of the case, I also analyse which human rights are relevant to the case, how were they affected, what are the corresponding responsibilities of the Czech and Polish governments, and which human rights principles can be applied to shed a light on the dispute.

##### **4.4.1. The legitimacy of the mining activity in Túrow under Polish national law**

The Túrow energy complex had a mining permit valid until the year 2020. As any large-scale industries with potential impacts on the environment, to extend the permit and thus authorize the mining past the year 2020 the company Polska Grupa Energetyczna needed to obtain an environmental impact assessment, that serves as a legal tool to integrate environmental considerations into decision-making processes under the law of the European Union. Under Polish law, a mining permit can only be obtained after the environmental impact assessment decision has become final, meaning after all appeals have been properly dealt with. The Polish authorities issued

an assessment decision, but subsequently decided to speed up the whole process considering the impending expiration of the mining permit. Therefore, they issued a so-called "immediate enforceability clause" for the assessment decision, so that mining could be extended before a decision on the appeals was made. However, the immediate enforceability clause was later annulled by the Polish Administrative Court in Warsaw. Appeals against the environmental impact assessment decision in Poland are still ongoing, as are appeals for extending mining permits until the year 2044. Thus, as none of the decisions has yet come into force, the mining activity in Turów is taking place illegally (Frank Bold, 2022).

#### **4.4.2. The legal arguments in the lawsuit filed by the Czech government to the Court of Justice of the European Union against Poland**

In an interview for *Ceskolipsky Denik*, Petra Urbanova, a legal expert providing advice in the Turów case, explained that the Czech government based the lawsuit on the fact that the authorization of the mining activity in Turów was not compliant with EU law and also because it further violated rights of Czech citizens. In the lawsuit, the government argued that the Polish authorities did not comply with the EU legislation in the proceedings to extend the mining permit. She further stresses, that the state is responsible for all activities and decisions carried out by the government authorities that affect another member State. That is why Czechia filed the lawsuit against Poland, not the company which operates the Turów mine. The possibility to sue Poland is based on the Article 259 of the Treaty on the Functioning of the European Union. The article stipulates that if a member state considers that another member state has failed to fulfil its obligations under the EU law, it can bring the matter before the Court of Justice of the European Union.

The lawsuit was the first one in the history of EU, when one member state sues another with regard to environmental protection. Czechia argued that the decisions made by Polish authorities were incompliant with the Environmental Impact Assessment Directive, the Strategic Environmental Assessment Directive, the Water Framework Directive, as well as the Directive on the Right to Information (*Ceskolipsky Denik*, 2021).

The lawsuit was further aimed at addressing the alleged violations of rights of Czech citizens. As explained by Martin Smolek, a representant of Czechia before the Court of Justice of the European Union, Czech citizens were not allowed to participate in either the mine expansion permit proceedings or the subsequent judicial review of the decision. He adds that Poland also did not provide the Czech side with the necessary technical and environmental documentation and did not adequately take into account the environmental impact assessment (Liberecky Denik, 2021).

#### **4.4.3. The interim decision of the Court of Justice of the European Union ordering an immediate suspension of mining activity in Túrow**

While the interim order to suspend all activity in the Túrow coal mine was ignored by Poland, the subsequently imposed fines for the state's decision to disobey the court played a vital role in the development of the dispute, especially with regard to the intergovernmental negotiations between Czechia and Poland.

The interim decision was based on the argument that mining in Túrow causes adverse and irreversible ecological damage and the water depletion caused by the mine generates impacts on the lives of resident of the affected region so severe that the mining must be suspended immediately. The measure also states that the suspension of activity in the Turów mine will not seriously undermine the stability of Poland's energy network and therefore priority must be given to the protection of the environment, groundwater, and human health. (Nase Pojizeri, 2021).

#### **4.4.4. Analysis of the intergovernmental agreement between Czechia and Poland regarding the Túrow coal mine**

On the 3rd of February 2022, a meeting between Polish Prime Minister Mateusz Morawiecki and his Czech counterpart Petr Fiala took place and an agreement was signed to address the impacts of mining activities in the Túrow mine (Vlada Ceske Republiky, 2022). Most importantly, the agreement contains an obligation of Czechia to withdraw the lawsuit brought before the Court of Justice of the European Union in exchange for a



payment of financial compensation and some other supportive measures to be taken by Poland.

While the agreement was celebrated as a success by both governments, the measures agreed in the agreement were criticized by legal experts, environmentalist, and activists. The majority of the inhabitants of the Liberec region viewed the settlement as a betrayal and a failure of their representatives to protect their rights. The main reason for the criticism from the locals was the fact that the compensations agreed were insufficient to cover the expenses for building the infrastructure needed to supply the affected region with water. Further, the agreement lacks an environmental dimension as it focuses solely on financial compensation and fails to include adequate environmental protection measures (Frank Bold, 2022). In an interview I conducted with a lawyer that was legally representing the Liberec region during the dispute, she argued that from a legal standpoint, she considered the decision of the Czech government to settle the dispute outside the courtroom a mistake, as the court was expected to uphold the lawsuit.<sup>1</sup>

The Czech government addressed some of the criticisms and emphasized that the financial compensation in the agreement will allow the state to address at least some of the issues caused by the mining and further stressed that settling the dispute through the agreement rather than waiting for the final ruling of the court was crucial to maintain friendly relations with Poland (Seznam Zpravy, 2022). Nonetheless, shortly after the agreement was signed and the regional administration proceeded to begin works to expand water supply infrastructure to the affected areas, the price estimate of the project was calculated for EUR 65 million, while Poland only agreed to pay EUR 35 million. The price estimation also only covers the expansion of water infrastructure and does not include any other measures such as compensation of the citizens for the harm suffered and for the decreased value of their property or revitalization of the affected landscape (Ceske Noviny, 2022).

While at first sight, the agreement contained measures that should mitigate the negative impacts of the mine, those measures cannot actually effectively protect the water and the environment because they are based on obsolete technical and environmental data (Frank Bold, 2022). With respect to water protection in the Czech territory, the

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<sup>1</sup> Interview with Eliska Beranova, Energy & Climate Lawyer at the Frank Bold Law Office, 15th of April 2022, conducted digitally

Czech government basically sacrificed a piece of it in exchange for monetary compensation. According to the Czech Minister of the Environment, the finances provided by Poland should at least provide funding to expand crucial water infrastructure, so the affected groups gain access to drinking water again (Seznam Zpravy, 2022). However, the water supply systems will not solve the impending far-reaching impacts of the mining on the environment, including air pollution and degradation of local ecosystems due to drought and erosion. Nonetheless, the government describes the resulting agreement as a satisfactory compromise because the water infrastructure will not have to be paid by Czech taxpayers (Seznam Zpravy, 2022).

One of the problematic aspects of the agreement is that it was signed despite the fact that Poland has failed to prove that the future expansion of the mine will not cause damage in the Czech territory. Polish environmental impact assessment documentation is outdated and does not correspond to the actual current and future impacts of the mining activity. Current hydrogeological data have concluded that the damage caused by the mining is several times higher than was ever predicted in the Polish environmental impact assessment (Datel and Hrabankova, 2020).

By law, only mining which does not cause damage to the environment of Czechia can be considered legal and the Czech government cannot consent to a further damage of the Czech territory, especially when it entails violations of human rights of its citizens. Yet, the Czech government accepted the agreement, knowing that the only protective measure proposed by Poland were based on incorrect technical and environmental data and thus, the damage will continue and intensify.

Another issue is that the agreement does not contain adequate measures to effectively prevent further damage in Czech territory. While the agreement contains an obligation of the Polish side to build an underground wall that should prevent further water loss and to monitoring its functionality, according to detailed technical documentation, the underground wall that is supposed to protect the groundwater was built with the primary goal to protect the mine from the inflow of water from the Czech territory, not to protect the water resources on the Czech side. So, the barrier primarily serves to protect the mine itself and was not designed to protect drinking water sources on the Czech side and there are no other protection measures regarding the water issue. Thus, the agreement will not prevent further water loss and environmental harm in the Czech territory (Frank Bold, 2022).

The only real success of the agreement is the fact, that it contains an obligation of the states to share all relevant information regarding the mine and its impacts, exchange technical and environmental documentation, and cooperate when undertaking future environmental and hydrological impact studies.

However, the agreement will not protect the Czech the area from further damage, in particular from further significant decrease in groundwater levels and degradation of thousands of hectares of Czech territory due to drought.

#### **4.4.5. Constitutional complaint filed by local groups against the Czech government**

In April 2022, a group of individuals from the Liberec region filed a complaint at the Czech Constitutional Court against the Czech government for its failure to protect their rights and to protect the natural environment of Czechia.

The claimants challenged the conclusion of the intergovernmental agreement between Czechia and Poland regarding cooperation to address the effects of the Tůrow coal mine. The complaint argued that the government's resolution violated the complainants' constitutionally guaranteed rights under Articles 11 and 35 of the Czech Charter on Fundamental Rights and Freedoms. They described that by signing the agreement with Poland, the government refused to protect their fundamental human rights and their natural environment. They added that the agreement thwarted the feasibility of otherwise available legal instruments to effectively protect their property and the environment. By doing so, the government violated its obligation to protect its citizens, to ensure sustainable use of natural resources, and protect the natural environment established by Article 7 of the Czech Constitution (iRozhlas, 2022).

With regard to human rights, the claimants argued that the agreement directly violates their constitutionally guaranteed fundamental rights, in particular property rights and the right to a healthy environment. The Czech government breached its obligation to provide active protection to the owner in situations in which their property rights are being disturbed or restricted by third parties. Further, the impacts of the mining activity severely impair their right to a healthy environment, considering that the mine has

detrimental consequences on the air they breathe, the water they drink, and the natural ecosystems they depend on (Ceska Televize, 2022).

The claimants subsequently emphasized that a healthy environment is one of the key values that should be protected by democratic society. The absence of environmental protection poses a threat to a number of other human rights and constitutional values, such as human freedom or the protection of the private and family life. Protection of human freedom without the protection of human life, health, and an environment sufficiently healthy to support life and freedom would be meaningless. The document further highlights the positive obligation of the state to protect life and health of the citizens. Human life cannot exist without water, and especially with regard to water protection, the protection of the environment must be prioritized by the state (Enviweb, 2022).

The complaint concludes that the government's approval of the agreement affected their right to a healthy environment and their legitimate expectation that the state would defend its citizens, because the government agreed to further damages on the environment and gave up its legal instruments to protect them. The complainants therefore demand that the Constitutional Court declares that the agreement infringes on their constitutionally guaranteed rights to property protection and the right to a healthy environment and further claim that the Constitutional Court decides that the government should take all necessary steps to remedy its illegal conduct (Ceska Televize, 2022).

The recent constitutional complaint represents a relatively novel approach to realizing environmental protection while utilizing human rights arguments and human rights provisions. Unfortunately, since the complaint was filed in April 2022, this thesis will not cover its further development, the proceedings, and the final ruling of the Czech Constitutional Court.

#### **4.5. Human rights dimensions of the Túrow dispute**

The Túrow dispute carries an abundance of human rights implications and directly affects human rights of both Czech and Polish citizens. Thus, to be fully comprehended it should be approached from a human rights sensitive approach.

#### **4.5.1. Human rights implications of the mining activity for the residents of Liberec region**

The potential impacts on human rights of the people living on the Czech side of the border have been repeatedly alluded to throughout this chapter. Most notably, the Czech people themselves have brought up the violations of the right to adequate standards of living, right to water, right to property, and right to private and family life. The lack of access to water directly affects their living standards and considerably decreases the value of their property.

However, other human rights should be considered as well. As demonstrated in the litigation review in chapter 3, adverse environmental harm is very likely to compromise the health of people. Especially in relation to drinking water becoming unsafe due to underground chemical processes, the health, and in extreme case even the lives of the people might be directly affected.

With regard to other rights outlined in chapter 2 of the thesis as rights most vulnerable to the effects of environmental degradation and climate change, the impacts of the Túrow facility clearly violate the right to sufficient, safe, acceptable, physically accessible, and affordable water for personal and domestic uses of the thousands of people in the Liberec region affected by the water loss. Furthermore, the water depletion also intervenes with the rights of both present and future generations, as the water management in the region is completely unequitable and unsustainable.

Additionally, the violation of procedural rights of the citizens should be considered as well. Both the Polish and the Czech authorities have frequently excluded the concerned groups from the proceedings, denied public participation in their decision-making processes, ignored communications from the public and even refused to provide relevant information about the development of the dispute.

#### **4.5.2. Human rights implications of the dispute for the residents of the Bogatynia region**

The situation regarding Túrow also significantly affects rights of the people living on the Polish side of the border in the Bogatynia region. As described in an interview

with a Polish journalist Klara Klinger for a station Cesky Rozhlas, the region's economy is completely dependent on the Turov energy complex, that represents the biggest job provider in the area employing up to 8 thousand people. Thus, an immediate shut down of the mine and the plant would negatively affect the thousands of employees of the mine, their families, and also the service sector in the region that relies on the income from the Turov employees. Another interesting fact is that in the Bogatynia region, the everyday life is so closely connected to coal extraction and energy production, that the mine and the plant have cultural and emotional values to many of the locals. Thus, social, and cultural rights of the people on the Polish side should be considered. Nevertheless, the Polish journalist further stresses that the current situation could have been avoided if the Polish government addressed the urgency of decarbonisation in time. Instead, the government prioritized short-sighted economic development over the long-term benefits of phasing out coal and restructuring the industry focus in the region over a longer time period. And now, that the situation has escalated, the state and the state-owned company operating Turov use the employees of the mine and the power plant as an argument to further avoid decreasing its reliance on coal (iROZHLAS, 2021).

This argument can be further supported by the fact that the state prioritized the expansion of the coal mine and the extension of coal energy production in Turov over its participation in the EU Just Transition Fund that would provide a considerable financial boost with the objective of restructuring the industry profile in the region towards more environmentally sound technologies (Blistan, 2022).

Furthermore, while the Turov facility does not affect groundwater in the Polish territory, the other environmental impacts, especially the air pollution caused by the coal power plant affect Polish citizens as well. Thus, the right to life, the right to health, and the right to a healthy environment should be considered and measured against the social and economic benefits of coal energy production.

#### **4.5.3. Relevant human rights obligations of Czechia and Poland**

In respect to the obligations of the government of both Czech and Poland corresponding to the rights of their citizens that are potentially affected by the ongoing

dispute, both states have to a certain extent failed to protect and promote the rights of their citizens.

Firstly, both states performed poorly on ensuring accountability and effective remedy for human rights violations, especially in the view of the Polish dismissive approach to accept liability for environmental harm on one hand and the Czech government withdrawing from the proceedings at the Court of Justice of the European Union that was initiated to protect the rights of Czech citizens.

Secondly, both states have failed at ensuring that their citizens have the capacity to adapt to climate change. When the Czech government prioritised financial compensation for ecological damage in its territory and consented to further destruction of the natural environment and resources in the Liberec region, it considerably diminished the resilience of the local ecosystems to the impacts of climate change and the capacity of the local population to adapt to environmental changes. Similarly, by issuing the decision to extend coal mining and energy production, the Polish government deprived the region of the opportunity to receive funds from the EU Just Transition Fund for coal regions. The Polish government has decided to extend mining, even though the region was interested in applying for the fund instead (Liberecky Denik, 2021). This again decisively affected the adaptation capacity of the entire region and its residents.

Thirdly, both states failed to protect the human rights of the affected communities from business harms by enabling the company operating the mine and the power plant to profit at the expense of the health, living standards, and long-term well-being of the people.

Lastly, both Czechia and Poland failed to ensure informed and effective participation in the decision-making regarding both the expansion of the mine and the subsequent negotiation of the intergovernmental agreement, despite the fact that the outcomes of those processes directly affect the lives of their citizens.

In respect to the consequences of the states to comply with their environmental, climate, and human rights obligations, the failures of both governments have been addressed through litigation. In the case of Poland, it was the lawsuit at the Court of Justice of the European Union that was later withdrawn. In the case of Czechia, the citizens sued the government at the Czech Constitutional Court, but the outcome of the proceedings is yet to be established.

#### **4.5.4. Human rights principles applicable to the dispute**

When applying core human rights principle on the dispute, the importance of the principle of interrelatedness and interdependence of human rights is demonstrated in the context of the dispute. As exemplified by the relationship between the right to a healthy environment and the right to life and health in chapter 2 of the thesis, states must apply a more holistic approach when evaluating the impacts of their policies on their citizens.

The principles of equality and non-discrimination are also of major significance in the Túrow dispute. Those principles demand states to involve groups that might be affected by their plans and policies into decision-making to ensure that the rights of those groups are properly communicated and addressed. However, both states in the dispute failed to properly include the local residents into their decision-making, even despite the fact that the affected residents were actively pursuing a dialogue with the governments.

Likewise, the significance of the principle of participation and inclusion to ensure that policies are successfully adapted to local circumstances becomes evident in the case of Túrow. The lack of public participation and, inadequate information regarding the development of the dispute, and the failure of both governments to include affected communities into decision-making regarding the situation in Túrow significantly exacerbated the conflict between the residents on each side of the border.

Moreover, the principle of state accountability and the rule of law need to be underscored in relation to the Túrow dispute to better safeguard that the states are aware of their responsibility for ensuring that all their policies respect and promote human rights of their citizens rather than hinder them.

#### **4.6. The Túrow dispute from a global perspective: realizing sustainable development and achieving climate action**

The dispute could be approached through many different perspectives and disciplines. The events unfolding around the Túrow coal mine could be understood as a demonstration of the conflicting interest between the economic, social, and environmental dimensions of development as outlined in the theory chapter of the thesis, reminding us that there is no silver bullet to balance the contradictory interests in energy



transitions. From a legal perspective, the case could be addressed as a violation of international environmental law, further conflicting with the Polish climate obligations, and failing to align with the state's commitments in achieving the sustainable development goals.

The case further underlines the international political interplay in environmental matters, the conflicting interest between pursuing development while preserving the environment and the omnipresent struggle to include social dimension into development projects. In the case of Túrow, the governments evidently prioritize the economic dimension of development over both the environmental and social dimensions. The case study thus touches upon the complexity of balancing the protection of social and environmental rights and how this situation mirrors the ongoing struggles in achieving social and environmental development goals simultaneously.

As established in section 2.8 of chapter 2, the SDGs are anchored in human rights and directly connected to human rights law. Environmental goals such as the SDG 7 (Affordable and clean energy) and the SDG 13 (Climate action) are in theory directly related to a number of human rights. In the context of the Túrow case, the connection between environmental goals and the right to life, health, and water is particularly highlighted. The manner in which the dispute was settled in the intergovernmental agreement has not succeeded to protect the human rights of the groups and individuals affected by the coal energy production. Simultaneously, the dismissive approach of both states towards pursuing environmental protection, climate mitigation and decarbonization did not comply with the commitments of the states in the field of sustainable development.

With regard to climate change, the section 2.9.2. lists climate obligations of states that are also applicable to the Túrow dispute. From the climate perspective, the failure of Poland to step up in its climate mitigation efforts by decreasing its dependence on coal demonstrated considerable human rights implications, in particular for the Czech residents. However, the inadequate efforts of the Polish government to prepare coal-dependent regions such as Bogatynia for the energy transition that is taking place in Europe further negatively affects the adaptation capacity of the residents of Bogatynia. Moreover, by choosing to continue with coal production in Bogatynia until the year 2044, the government deprived the region of the possibility to receive financial support from the EU Just Transition Fund. The participation in the EU Just Transition Fund would allow the region to progressively decrease its economic dependence on coal production

and replace it by other industries in order to maintain long-term employment rate and the related economic and social benefits. Thus, the outcomes of prioritizing short term economic benefits over environmental protection and climate mitigation demonstrate how the decision of the government to continue coal production might negatively impact the social and environmental rights of its citizens in the long run.

Further, the decision of the Czech government to prioritize financial compensation over demanding stricter protection of water and landscape in its territory will also adversely impact the capacity of the region to adapt to climate change that will likely bring about increasingly frequent dry seasons.

#### **4.7. The impacts of human rights considerations and the influence of other factors in the Túrow case**

The Túrow dispute demonstrates how environmental litigation in connection to human rights concerns has a potential to serve as a legal tool in cases when the argument of climate mitigation or environmental protection simply does not provide leverage to address an issue by other legal means. Due to Túrow's immediate proximity to the territories of the neighbouring states, Czechia and Germany were protesting the expanding mining activity in Túrow for decades without any support from the international community. The activity in the coal and the energy generation in the power plant generated considerable environmental damage and dramatically affected the air quality levels in the area, but these concerns were not backed up by environmental law that would enable legal action. But the sudden disappearance of water in the Czech territory completely transformed the dialogue within a year. The lack of access to drinking water constitutes a violation of the human right to adequate housing and living standards that is protected under international human rights instruments, the law of the European Union, and the Czech national law. Thus, the Túrow case offers a demonstration of a rights-sensitive approach to environmental disputes in Europe.

In the analysis of the Túrow case study, I measured my findings against the concepts established in the theory chapter of the thesis. Namely, I utilized the typology outlined by Gauri and Gloppen that distinguishes different types of human rights-based approaches in order to identify the types of approaches used in different stages of the dispute. Further, the case study abundantly applied human rights principles and

determined the presence of some of the challenges to human rights-based approaches also in the context of the study. Next, the case study discussed the relationship between human rights obligation, sustainable development goals, and climate change commitments of states in the context of Czechia and Poland.

Approaching the conflict from a human rights perspective sparked action and cooperation among residents of the region, raised international media attention and awareness of the situation, and opened up a dialogue regarding compensation for loss and damage on the intergovernmental level between Czech and Poland that was virtually non-existent until the beginning of the proceedings. While the final settlement between the governments was disappointing for many, as it failed to protect the Czech environment, the application of human rights arguments enhanced negotiations between the states and achieved monetary compensation for the environmental damage caused. Moreover, it raised a dialogue in Czechia and Poland, two heavily coal-dependent countries, regarding the urgent need to reconsider their long-term decarbonisation policies, especially in regions relying almost exclusively on the revenue from coal energy production such as Bogatynia in order to avoid similar disputes in the future.

#### **4.7.1. The role of human rights-talk approach and the role of media in raising awareness on the issue**

Firstly, the human rights talk approach was particularly significant before the initiation of the proceedings. The civil society actors including the regional association Uhelna representing the local population, national and international environmental NGOs, and groups of activists from Czechia, Poland, and Germany utilized human rights talk during their campaigns to raise awareness of the issue and to create pressure on the Czech government to deliver on its obligation to protect the infringed human rights. In relation to raising awareness, the role of media coverage also played a crucial role. The civil society protests in the Liberec region and the escalating conflict between the people living on Czech and Polish side of the border attracted a lot of media attention, first on the local, regional, and national level and subsequently, the conflict was covered by international media such as the Guardian, BBC, and the New York Times.

Nonetheless, under the proceedings at the Court of Justice of the EU, the Czech government put a lot less emphasis on the human rights talk and focused a more on the non-compliance of the environmental impact assessment process regarding the mining in Tůrow under the EU law. As I was not able to find the explanation for the shift in the case documentation nor the media coverage I brought it up during my interview with Eliska Beranova, a lawyer that was legally representing the Liberec region under the proceedings. She clarified that the government partially abandoned the human rights talk under the proceedings because it did not considered it strategic in negotiating with Poland and decided to argue with the breach of EU directives instead.<sup>2</sup> Another factor that led to the change of strategy was the fact that between the submission of the lawsuit and the actual proceeding there was a change of government in Czechia and therefore, the government representatives under the proceedings were not the same people who originally submitted the lawsuit.

#### **4.7.2. The role of legal mobilization approach and the significance of economic enforcement under the proceedings**

Secondly, the legal mobilization approach was crucial to presenting the lawsuit to the Court of Justice of the EU. The Czech government turned to the court with the objective to protect the rights of their citizens after diplomatic means failed. The lawsuit utilized the generous provisions of the EU law that establish the accountability of states for both environmental harm and human rights violations. As demonstrated on the case study, winning the dispute was neither the primary goal nor the final outcome of the lawsuit. However, despite the controversial settlement of the dispute, the legal mobilization has generated many positive impacts. For instance, it drew a lot of international media attention that subsequently created pressure on governments. Further, it opened up a dialogue in Poland and Czechia on the urgency to transition to more agreeable and less harmful energy sources and it considerably raised awareness of climate issues amongst the local residents. Next, the pressure coming from the proceedings did motivate the governments to look for compromise, albeit the final settlement was a disappointment

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<sup>2</sup> Interview with Eliska Beranova, Energy & Climate Lawyer at the Frank Bold Law Office, 19<sup>th</sup> of January 2022, conducted digitally

for most. It is important to mention, that prior to the proceedings the Polish government refused to accept responsibility for the damages or cooperate in hydrological research, let alone to compensate the affected region for the water loss.

However, the legal mobilization by itself was not very effective until it was accompanied by enforceable economic sanctions. The fact that the EU had the option to enforce EUR 15 million by deducting the amount from funds allocated to Poland was of vital importance, as the Polish government explicitly stated that it did not intend to obey the interim decision of the court to suspend mining activity nor pay the fine it imposed for non-compliance with the order. The negotiations between governments were not very fruitful until the EU threatened Poland to deduct the money it owed on fines from their share of the EU funds. The key role of enforceable economic sanctions when realizing protection through legal mobilization must not be overlooked. Thus, the enforcement difficulties of human rights-based approaches as suggested by the applied theory were confirmed under the Túrow study, because if Poland was not a recipient of money for the EU funds, the enforcement of the imposed fine would be extremely problematic.

#### **4.7.3. The influence of political contexts within and between countries**

The case study further manifested that the political context also plays a vital part with regard to the practical impacts of human rights-based approaches. Since Czechia and Poland maintain close business and diplomatic relationships, the government of Czechia did not want to lose an important business partner and further escalate the conflict between the countries that was starting to affect the cooperation of the governments in all areas of international politics. Settling the dispute outside the courtroom through an intergovernmental agreement was argued to be the best possible solution that would ensure financial compensation to restore access to water in the Liberec region, guarantee access to information regarding the development in the mine while simultaneously preserving friendly relationship between the states (Newsbox, 2022).

Another important factor considered in the dispute was the fact that Czechia and Poland are some of the most coal-dependent countries in Europe (Denik Referendum, 2021). This affected not only the political will of the governments to address

environmental harm caused by coal production but the fact that Czechia operates several coal mines near the Polish border significantly weakened the arguments the Czech side was bringing into the negotiations. The importance of coal energy production for Czechia was also emphasized by many Polish citizens when arguing against the legitimacy of the demands in the Czech lawsuit.

#### **4.7.4. The shortcomings of anthropocentric approaches and the added value of implementing the human right to a healthy environment**

The Túrow dispute demonstrates the problematic implementation of the anthropocentric approach typical in the human rights language. In the case of Túrow, the Czech government focused its arguments solely on meeting human needs, in particular access to water, rather than attempting to protect nature itself based on its intrinsic value. The intergovernmental agreement subsequently indeed failed to address the ongoing ecological harm. Instead, it was preoccupied merely by obtaining financial compensation to ensure access to water for humans by expanding water infrastructure. Therefore, it does not consider the effects of massive droughts and erosion on the landscape, soil, and local ecosystems. Thus, while providing some basic safeguards for the local residents regarding their access to water, the agreement did not achieve environmental protection of the Czech territory, at least not in the short-term. Conversely, it might actually exacerbate the situation in the future by legitimizing the ongoing environmental damage and by the commitment of the Czech party not to sue Poland again regarding the damage caused by the Túrow facility. Therefore, the drawbacks of human rights-based approaches as inherently anthropocentric and thus unsuccessful in addressing environmental harm as suggested by the theory were exemplified in the context of the Túrow case.

In this situation, the implementation of the human right to a healthy environment as described in the section 2.9.5. of the thesis could be relevant. While the human right to a healthy environment still focuses predominantly on human needs dependent on a sufficiently healthy environment, its implementation achieved higher standards of environmental protection in the case *Minors Oposa v. Philippines* included in the litigation overview in chapter 3 of the thesis. The main reason the implementation of the

human right to a healthy environment achieves better impacts on environmental protection in many cases is that while violations of human rights such as the right to life and the right to health require relatively serious environmental damage to take place, violation of the human right to a healthy environment can be inflicted even by less severe environmental damage.

#### **4.7.5. Novel findings: democracy and changing government as a limitation to following through with the lawsuit and the application of human rights as ultima ratio**

Besides confirming many of the concepts suggested by the HRBA approach, the Túrow case study further generated certain novel findings that are largely absent in the literature.

The first finding concerns the impacts of the type of governance in a country, in the case of Túrow a democracy where political power shifts every 4 years. Thus, on the Czech side, the set of government representatives that filed the lawsuit in February 2021 was then replaced in December 2021 by a more conservative right-wing government with very different priorities in the area of environmental protection. The issues of different priorities and legal strategies of the new government were brought up to me during my interview with a lawyer Eliska Beranova, who described a dramatic shift in the strategies the new government wanted to pursue and the desired outcomes it was hoping to achieve. In her view, while the previous government aimed at achieving stricter environmental regulation in order to prevent further water depletion, stopping the expansion of the coal mine, and accelerating the decarbonization in the region, the new government taking office in December 2021 prioritized maintaining good business and diplomatic relations with Poland and finding a compromise with the Polish side regarding the amount of financial compensation.<sup>3</sup> The information provided in the interview can be further confirmed by publicly available statements of the incumbent government representatives in the proceedings. The following statement was made by the Czech Minister of Foreign

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<sup>3</sup> Interview with Eliska Beranova, Energy & Climate Lawyer at the Frank Bold Law Office, 23<sup>rd</sup> of March 2022, conducted digitally

Affairs in February 2021 upon the submission of the lawsuit to the Court of Justice of the European Union:

*“I am genuinely disappointed that the lawsuit has to come now that the whole of Europe is deciding how to gradually reduce coal mining in order to address climate change. In Turow, on the other hand, they are still trying to figure how to expand it. Yet, at the same time, Poland also wants to close all coal mines in the country by the year 2049 at the latest. Less than three decades of mining are not worth losing water and a place to live for the residents of the Liberec region. In my opinion, we should aim to close all our mines in the Czech Republic by the year 2033. Coal energy production has failed to ensure prosperity. Maintaining good employment rates and satisfactory salaries is certainly possible without coal in the concerned regions.”*

(Liberecky Denik, 2021)

In contrast, after signing the intergovernmental agreement in February 2022, the new Czech Prime Minister Petr Fiala commented with following:

*“I think it's a great success. We managed to finally get rid of an issue that has burdened the Czech-Polish relations for several years now.”*

(iROZHLAS, 2022)

Based on the statements combined with the analysis of the intergovernmental agreement in the section 4.4.4. of this chapter it can be argued that the priorities and the objectives of the lawsuit have significantly shifted with the new government taking office in December 2021. This has greatly affected the way the dispute was eventually settled and the final wording of the intergovernmental agreement. Thus, I conclude that in the context of this case the shift of government personnel had significant impacts both on the application of the human rights-based approach and the final outcome of the dispute, especially in respect to achieving environmental protection and enhancing climate mitigation in the region.

Finally, in the Turow case study and similarly in some of the cases included in the litigation overview in chapter 3, I observed that human rights-based approaches as a legal tool to achieve environmental protection were often utilized as an ultima ratio, meaning as a last resort argument after other solutions fail to deliver. In the Turow case



study, both the human rights talk approach, and the legal mobilization approach were utilized because the existing environmental regulation did not include any provisions to effectively address the specific situation caused by the transboundary harm.

## CHAPTER 5: CONCLUSION

### Introduction

The rationale of the thesis was based on the interdependent relationship between human rights and the environment, and the argument that environmental issues and climate change have far-reaching consequences on human rights. A key goal was to analyse the implications of implementing the human rights-based approach when addressing environmental degradation and realizing climate action, especially with regard to the impacts on the accountability of states. The thesis firstly explored relevant theoretical approaches and legal frameworks to identify some of the historical impacts of the HRBA on development. Subsequently, it connected the HRBA to development to the international climate and human rights legal framework by emphasizing the human rights impacts of environmental degradation, climate change, and the related obligations posed on governments to protect human rights from environmental harms. The study examined the positive impacts and shortcomings of the HRBA and subsequently applied the human rights approach to global environmental litigation and the specific case of the Túrow coal mine.

I utilized a combination of qualitative research methods, namely document analysis, doctrinal legal research, empirical critical legal research, and a case study approach with the objective to construct the argument for the application of the human rights-based approach to environmental and climate issues and further demonstrate its impacts on historical environmentally catalysed litigation and an ongoing case study concerning environmental harm caused by coal mining.

The following sections provide an overview of the key finding of my research and discuss how these findings answer the research questions outlined in chapter 1.

## **5.1. The main findings of the thesis**

### **5.1.1. How and to what extent does the application of a human rights-based approach to development (HRBA) impact environmental protection and climate action?**

The practical and theoretical impacts of the utilization of a human-rights based approach to address environmental and climate issues were demonstrated in the global litigation overview in chapter 3 and in the context of the Túrow case study in chapter 4.

The environmentally catalysed litigation overview demonstrated several impacts of the application of the HRBA both in achieving environmental protection and addressing climate change. The study found that the application of the HRBA improved environmental protection by increasing standards in national and international environmental regulation. For instance, by including human rights arguments when addressing the responsibility of state for environmental protection, several countries were able to achieve improved protection of rainforests while others successfully addressed environmental contamination that was proven to generate human rights violations. With regard to climate change, applying the HRBA to climate litigation enabled states like the Netherlands to increase their climate mitigation and adaptation efforts. In respect to the legal impacts of the cases, the application of the HRBA led to the creation of important legal precedents, such as the recognition of the principle of intergenerational justice that has been further utilized to protect natural resources from unsustainable management and depletion. Additionally, using human rights concerns helped to establish human rights limits of development that ensure that states cannot exclusively prioritize pursuing economic interests if those adversely affect the natural environment. Simultaneously, the study identified some of the shortcomings of the HRBA. For instance, the problematic enforcement of human rights obligations can be observed both in the global cases and in the Túrow case, especially in situations where adhering to the court's decision, upholding human rights, and protecting the environment entails economic sacrifices, at least in the short term.

The Túrow case study uncovered the potential of HRBA in raising awareness about environmental issues in situations in which national environmental law failed. Although the HRBA did not manage to generate direct positive impacts on environmental

protection in the Túrow case, it did significantly influence the awareness of the governments on the urgency of undertaking energy transitions in order to prevent future human rights violations caused by insufficient decarbonisation efforts. In the context of Túrow, the potential impacts of applying the HRBA on environmental protection were diminished by the decision of the Czech government to settle the dispute outside the courtroom and to turn a blind eye to the environmental destruction of its territory in exchange for financial compensation. However, the influence of other factors must be considered in the context of the case, such as the fact that there was a change in government that took place during the proceedings, the dependence of Czechia on coal energy production that weakened human rights arguments, and the diplomatic relationship between the Czech and the Polish government that influenced the Czech decision to withdraw the lawsuit at the Court of Justice of the European Union.

Thus, while the application of the HRBA has proven its potential to generate practical impacts on environmental protection and climate action, its success is subject to contextual limitations, such as economic interests, the political will of states and private sector players, and political, economic, and diplomatic priorities of governments.

### **5.1.2. What has been the impact of environmentally catalysed human rights litigation worldwide?**

The overview of global environmental litigation that applied human rights law and human rights perspective further shed a light on the application of the HRBA on environmental and climate issues. The most notable impacts of the environmentally catalysed global cases included the recognition of the principle of intergenerational equity, the establishment of the responsibility of states for preserving their natural environment, and the corresponding accountability of states for human right violations inflicted by environmental degradation and climate change. Litigation on the topic has moreover determined that adverse environmental degradation directly infringes on the rights to life, dignity, and health. In the context of climate change, the litigants were able to establish state accountability for human rights violations caused by inaction to address climate change. Many of the cases also affirmed the obligation of states to counteract climate change to protect the human rights of future generations, and even established

the accountability of non-state actors for their potential contribution to climate disruption.

### **5.1.3. How and to what extent does the HRBA enable stakeholders to hold governments and businesses to account for environmental degradation and inaction on the climate crisis?**

The application of the HRBA has positively influenced the ability of individuals and groups affected by environmental degradation and climate change to hold their governments to account for their failure to protect human rights. For instance, in the Urgenda case in the Netherlands, the court upheld the lawsuit and affirmed the responsibility of the Dutch government for its carbon dioxide emissions that were negatively impacting human rights. Additionally, the Pakistani climate lawsuit demonstrated how the HRBA enables vulnerable citizens to address the insufficient climate efforts of their governments and further promotes access to justice in environmental matters.

In the case of Turow, the utilization of the HRBA in the wording of the lawsuit against Poland did achieve the recognition of the responsibility of Poland for the ecological damage and the water depletion in Czech territory. The EU's Court of Justice, in its interim decision, ordered the suspension of mining activity in Turow on the grounds that the environmental harms caused violated fundamental human rights were violated. Accordingly, the Court found Poland to be accountable for this breach of human rights and subsequently fined the Polish state for failing to obey the court order. However, since the final decision of the court was never issued due to the withdrawal of the lawsuit, the accountability of the Polish state was never fully addressed. Importantly, however, the constitutional complaint that was submitted by Czech citizens in reaction to the final settlement directly addresses the accountability of the Czech government for its insufficient efforts to protect its national environment and natural resources. A final decision on this complaint is yet to be reached.

Therefore, while the HRBA demonstrated major successes in enabling stakeholders to hold their government responsible in global climate cases, its impact in

fostering greater accountability of Czech and Polish governments on the Túrow case is yet to be determined.

## **5.2. The relevance of the HRBA to environmental issues**

While the HRBA is still subject to contextual limitations, the approach has demonstrated its added value in the pursuance of environmental goals. The application of human rights principles, the clear language of human rights law regarding state accountability for any activity that violates human rights, and the active obligations of states when addressing infringements of human rights allow the HRBA to strategically target situations in which human rights are threatened by environmental issues.

With regard to environmental and climate decision-making processes, the Túrow case demonstrated how the lack of transparency is a major challenge in the quest to address environmental harm. Thus, the human rights principles of participation and inclusion play a vital role as they ensure effective participation of those directly affected by the implementation of environmental and climate policies.

While the final settlement of the Túrow case has been a disappointment for many, the application of the HRBA has nonetheless significantly influenced the development of the dispute. Without the utilization of human rights talk, the dispute would never have gained substantial media coverage, which was crucial for generating pressure on the Czech government to file the lawsuit. Furthermore, the presence of human rights arguments in the lawsuit against Poland made it significantly more persuasive for the court. Before the proceedings at the Court of Justice of the European Union, there was limited dialogue between the Czech and Polish governments. And while the intergovernmental agreement itself did not provide effective protection of the environment, it did at least address water depletion issues and established a more transparent cooperation scheme regarding the future development of the Túrow mine.

The Túrow dispute demonstrated how the presence of human rights concerns in environmental litigation can serve as a legal tool in cases where arguments in favour of climate mitigation or environmental protection do not by themselves ensure improved access to justice. The final outcome of the proceedings in the Túrow dispute was also influenced by the fact that both Czechia and Poland are highly coal-dependent

countries. It will be interesting to follow the development of a similar dispute in the context of countries less reliant on fossil fuels.

### **5.3. The way forward**

While the HRBA has been historically utilized to address world poverty and the marginalization of the Global South in global development, the goal of this study was to shed further light on the potential impacts of its application to address environmental issues in the Global North. Exploring the full potential of the HRBA in addressing environmental and climate issues would require applying the approach to environmental disputes in different parts of the world, and in countries with varying levels of prioritization to environmental protection.

I followed the Túrow dispute from the initiation of the proceedings in February 2021 until its final settlement in February 2022. However, in April 2022, another legal step was taken when a group of individuals from the Liberec region filed a complaint at the Czech Constitutional Court against the Czech government for its failure to protect their rights and the natural environment of their country. If the demands of the complainants are upheld by the Czech Constitutional Court, it would lead to the nullification of the intergovernmental agreement that temporarily settled the dispute. As the complaint itself abundantly utilizes human rights arguments and aims to achieve a holistic protection of the environment of the Liberec region (rather than focusing solely on the issue of water depletion), its success in the proceedings would require an independent analysis of the impacts of its utilization of the HRBA in achieving environmental protection in the Liberec region.

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