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Climate Change and State Responsibility for Human Rights Violations: Causation and Imputation

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Abstract

The Paris Agreement provides that States 'should respect, promote and consider their respective obligations on human rights' in 'taking action to address climate change'. Should therefore States be held responsible for anthropogenic greenhouse gas emissions in breach of fundamental obligations, that is, the duties to respect, protect and fulfil first, second and third generation human rights? The key cases of the Inuit Petitions to the Inter-American Commission on Human Rights and Kivalina demonstrate that there are serious objective and subjective impediments to holding a State responsible for greenhouse gas emissions. By contrast, the decision of the Hague District Court in Urgenda has the potential to prompt a paradigm shift, whereby the evolution from first to second and third generation human rights allows streamlining fundamental issues of causation, extraterritoriality, attribution of responsibility and policy discretion. It is therefore arguable that the international recognition of a human right to a sustainable environment would require the plaintiff to only demonstrate direct causation, instead of indirect causation, thus fundamentally shifting the burden of proof to the defendant. Furthermore, such a right would allow attributing responsibility pro rata, based on minimum reduction targets outlined in the UNFCCC regime,

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overcoming issues of extraterritoriality and policy discretion. The human right to a sustainable environment entails asserting the fundamental nature of the no-harm rule.

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