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Mandatory due diligence laws and climate change litigation: Bridging the corporate climate accountability gap?

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Abstract

The debate on corporate climate accountability has become increasingly prominent in recent years. Several countries, particularly in the Global North, have adopted mandatory human rights and/or environmental due diligence legislation. At the same time, judicial and quasi-judicial proceedings are helping to shape the contours of corporate climate accountability. This article considers how litigation against corporations and due diligence legislation interact, and thereby help develop and strengthen corporate climate accountability. While the practice in this area is still limited, there is scope to reflect on early developments and how they may influence both future climate litigation as well as ongoing and future law-making on due diligence. We first review recent developments in climate litigation against corporations, focusing on the extent to which they rely on climate due diligence obligations. We then survey existing and proposed due diligence legislation, examining the extent to which it addresses corporate climate accountability. Finally, we identify scenarios of how due diligence legislation and climate litigation may interact and possibly converge to strengthen corporate climate accountability. We furthermore identify knowledge gaps and areas for further research.

Keywords: climate change litigation, corporate accountability, corporate sustainability, due diligence, human rights.

1. Introduction

Companies' greenhouse gas (GHG) emissions play an undisputed role in driving climate change (Heede, 2014). At the same time, climate change exposes companies to a range of risks, including risks related to damage to assets (e.g., due to climate-induced floods or droughts), risks from shifts in policies and markets, and legal risks (Kreibiehl et al., 2022). Voluntary initiatives, such as the Task Force on Climate-related Financial Disclosure, try to mitigate corporate GHG emissions and the associated risks (LoPucki, 2022). However, companies' climate pledges are presently inadequate to meet the Paris Agreement's temperature goal of keeping global warming to well below 2°C above pre-industrial levels (Day et al., 2022).

Over the past decade, two distinct phenomena have attempted to bridge the glaring gap in corporate climate accountability. First, there has been a global surge in lawsuits targeting companies' inaction on climate change (Eskander et al., 2021; Ganguly et al., 2018). In an unprecedented decision, a Dutch court in 2021 ordered a company—Royal Dutch Shell—to reduce its GHG emissions along its entire supply chain by 45% by 2030

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compared to 2019 levels.[1] Second, various governments, mostly in the Global North, have adopted mandatory due diligence (MDD) legislation, requiring companies to identify, prevent, mitigate, and remedy the adverse human rights and environmental impacts of their operations, including climate-related impacts (Gustafsson et al., 2022; Salminen & Rajavuori, 2019). These phenomena have clear potential to strengthen corporate climate accountability, by construing and enforcing corporate obligations and liabilities in a transnational setting. Simultaneously, both phenomena need to overcome major legal challenges that are typical of climate change governance. These challenges include complex questions concerning companies' individual contribution to climate change, causality, the scope of their obligations vis-à-vis their supply chain, and the provision of effective remedies for ubiquitous harm.

While much literature has considered corporate climate litigation and MDD laws in isolation, some recent studies explore connections between MDD legislation and climate action (Bright & Buhmann, 2021; Macchi, 2021, 2022), whereas others note a growing use of due diligence concepts in climate litigation (Bertram, 2022; BIICL, 2021; Seck, 2022). This article contributes to this emerging body of scholarship by analyzing how corporate climate litigation and MDD legislation interact. To this end, we first review developments in litigation, shedding light on how climate lawsuits against companies rely on due diligence obligations (Section 2). We review developments in law-making, uncovering the extent to which MDD laws include specific corporate obligations on climate change (Section 3). We then draw up three scenarios of how corporate climate litigation and MDD laws may interact and possibly converge to strengthen corporate climate accountability (Section 4). Our conclusions identify knowledge gaps and areas for further research (Section 5).

2. The rise of corporate climate change litigation

Over the last decade, a burgeoning body of scholarship has investigated various facets of climate change litigation—that is, lawsuits raising questions of law or fact regarding climate science, mitigation, or adaptation, which are brought before international or domestic judicial, quasi-judicial, and other investigatory bodies (Markell & Ruhl, 2012). This literature shows that climate lawsuits increasingly rely in whole or in part on constitutional or human rights law obligations (Peel & Osofsky, 2018; Savaresi & Auz, 2019; Savaresi & Setzer, 2022). It also shows that climate litigation increasingly targets fossil fuel companies, as well as corporations operating in GHG-intensive sectors, such as food and agriculture, transport, and finance (Setzer & Higham, 2022).

This emergent practice of climate change litigation targeting corporate actors builds on a variety of legal arguments and strategies. Some lawsuits rely on contract and tort law, while others are based on financial regulation (Benjamin, 2021; Solana, 2020; Weber & Hösli, 2020). Some of these lawsuits seek to derive specific corporate duties to undertake climate change mitigation from constitutional or human rights law (Beauregard et al., 2021). Savaresi and Setzer (2022), for example, identified 16 corporate climate lawsuits invoking rights enshrined in international soft law instruments, such as the UN Guiding Principles on Business and Human Rights (UNGPs) and the Organization for Economic Co-operation and Development (OECD) Guidelines for Multinational Enterprises (MNE Guidelines). These lawsuits typically argue that companies have a responsibility to reduce GHG emissions—including those produced by their own activities and by their subsidiaries, their products and services, and their suppliers—as well as to support, rather than oppose, climate policies (Savaresi & Setzer, 2022; Setzer & Higham, 2022).

In a first group of lawsuits, applicants relied exclusively on corporate human rights obligations and responsibilities to launch complaints before non-judicial bodies. For example, the recommendations from the *Carbon Majors Inquiry* carried out by the Philippines Human Rights Commission,[2] relied on national and international human rights instruments to find that the world's largest corporate emitters are responsible for human rights violations associated with climate impacts (Savaresi & Wewerinke-Singh, 2022). Similarly, dispute resolution mechanisms established under the OECD's MNE Guidelines have heard climate-related complaints brought on the basis of international soft law documents (Achtouk-Spivak & Garden, 2022).

In a second group of lawsuits, applicants relied on a combination of human rights and tort law to bring complaints before judicial bodies. For example, in *Milieudefensie et al v. Royal Dutch Shell plc*,[3] a court found that, under Dutch civil law, Shell had a specific duty to prevent the serious risks caused by the GHG emissions it generates. The court construed a self-standing corporate obligation to reduce emissions, relying on Dutch tort

law, read in light of the UNGPs, which the court considered an "authoritative and internationally endorsed 'soft law' instrument, which set out the responsibilities of states and businesses in relation to human rights."[4] The court thus used international human rights instruments to determine the scope of the corporate duty of care to reduce emissions (Macchi & van Zeben, 2021).

In a third group of lawsuits, applicants drew specifically on novel legislation establishing human rights and/or environmental due diligence obligations. For example, in *Notre Affaire à Tous and Others v. Total*, citizens and non-governmental organizations (NGOs) sued France's largest oil company, relying on French MDD legislation, which requires companies to adopt measures to protect human rights and the environment.[5]

These early cases seemingly indicate that there is a growing willingness to creatively use diverse hard and soft law instruments to challenge companies through climate change litigation, also on the basis of due diligence obligations. This litigation must be viewed in the context of broader efforts to bridge the enforcement and accountability gaps that plague climate change law and policy, both at the national and at the international level (Savaresi, 2021). This practice is increasingly visible also in the context of recent MDD laws.

3. MDD laws and climate change

Some corporate climate litigation relies on notions of human rights due diligence enshrined in international and national law instruments. Since 2011, the UNGPs, the MNE Guidelines, and several other OECD instruments have referred to human rights due diligence as a set of distinct corporate responsibilities (OECD, 2018, 2022). These responsibilities entail the creation of processes through which companies themselves manage their potential and actual adverse human rights and environmental impacts. Typically, these processes include identifying and assessing a company's impacts, amending practices in light of projected impacts, and tracking the effectiveness of and providing information on measures taken to mitigate impacts (Bonnitcha & McCorquodale, 2017).

Despite its origin in non-binding international instruments, human rights due diligence has crystallized into voluntary company practices, industry standards and, crucially, legislation. National and regional MDD laws have been key in making human rights due diligence a distinct legal obligation for managing companies' adverse social and environmental impacts across their global supply chains (McCorquodale, 2022). Over the past decade, several MDD laws have been enacted, mostly in the Global North, and many are under preparation, (Lichuma, 2021; Salminen & Rajavuori, 2019) including a Directive on corporate sustainability due diligence in the EU (European Commission, 2022). In addition to specific MDD laws, due diligence concepts are also encapsulated in sectoral legislation, such as the EU's Directive on corporate sustainability reporting passed in December 2022.[6]

MDD laws typically require companies above a certain size—measured on the basis of financial capital or number of employees—to identify, assess, mitigate, and report on the human rights risks associated with their operations and across their value chain. In recent years, the coverage of MDD obligations has expanded. For example, the 2017 French *Loi de vigilance* covered just 200–250 companies, whereas the 2021 Norwegian MDD law covered close to 9000 companies. Similarly, the 2022 EU proposal on corporate sustainability due diligence envisages covering approximately 17,000 EU and third-country companies.

Substantively, most MDD laws target the adverse human rights impacts caused by company operations and by their suppliers. Typically, these include social risks, such as child and forced labor, or workers' safety. Some MDD laws—like those of France and Germany—explicitly cover companies' adverse environmental impacts, while others deliberately leave these out—like Norway's MDD law (Krajewski et al., 2021).

Compliance and enforcement are often considered MDD laws' weak points (Quijano & Lopez, 2021; Schilling-Vacaflor & Lenschow, 2021). In general, MDD laws rely on diverse compliance techniques, including administrative oversight and court injunctions. The monitoring of companies' performance is primarily done by public bodies, but some MDD laws rely on private monitoring and enforcement. The French *Loi de vigilance* provides the most powerful private enforcement mechanisms, enabling private parties to demand courts to evaluate the comprehensiveness and implementation of a company's plans, and to seek enforcement through civil lawsuits. The proposal for an EU Directive on corporate sustainability due diligence includes civil liability provisions for adverse company impacts, which have also been debated extensively in some countries, such as Switzerland and Finland (Bueno & Kaufmann, 2021; MEAE, 2022).

Some recent MDD law proposals explicitly mention corporate climate impacts and responsibilities. The proposed EU Directive on corporate sustainability due diligence, for example, requires companies to adopt plans ensuring the compatibility of their business model and strategy with the Paris Agreement. Similarly, the proposed Dutch MDD law identifies climate change as a key component of due diligence obligations (Tweede Kamer, 2022). General environmental due diligence obligations—such as the ones in the French MDD law—can be interpreted to also cover GHG emissions (Macchi, 2021). Even in the absence of specific due diligence legislation, the practice of interpretation of international due diligence instruments—such as the OECD MNE Guidelines—increasingly refers to companies' due diligence also in respect to "environmental" and "climate" impact.[7]

Environmental concerns, including climate change, are thus increasingly woven into the fabric of MDD obligations, providing new entry points to strengthen corporate accountability (Macchi, 2022). At the same time, MDD law-based corporate climate accountability also suffers from structural weaknesses. Some, such as the limited personal and geographic scope or enforcement challenges, are common to all areas covered by MDD laws (Quijano & Lopez, 2021; Salminen & Rajavuori, 2019). Others, such as identifying and mitigating supply chain emissions within the due diligence process or aligning corporate climate impacts with the strong human rights emphasis of the most established international due diligence norms, are unique to corporate climate accountability.

4. Interactions between climate change litigation and MDD laws: Three scenarios

The developments in corporate climate litigation and MDD legislation summarized above are exemplary of the plurality of actors, modes of governance, and geographies that are involved in advancing corporate climate accountability. While there is a wealth of literature on the complex interactions between state and non-state governance (Cashore et al., 2021; Eberlein et al., 2013), particularly in the context of climate governance (Andonova et al., 2017), the role of litigation is largely overlooked in these bodies of literature (but see Bertram, 2022). We suggest that climate litigation and MDD legislation may interact in three main ways: (1) MDD legislation can provide grounds for climate change litigation; (2) climate change litigation might fill gaps where MDD legislation does not yet exist or is weakly enforced; and (3) litigation may act as a driver for MDD legislation.

4.1. MDD legislation as a ground for litigation

To date, MDD laws have not been frequently invoked in corporate climate litigation for two main reasons. First, while many MDD laws have been adopted, only a handful are currently in force. Second, MDD laws rarely contain effective dispute resolution mechanisms (Bueno & Bright, 2020; Quijano & Lopez, 2021). The French MDD law provides a rare example of the possibility associated with using MDD laws to directly invoke corporate climate obligations in judicial proceedings. So far, four complaints have been filed, targeting the French energy company Total, a supermarket chain Casino, and major international bank BNB Paribas. While none of these cases has reached the final stages of adjudication, these lawsuits provide valuable insights into how MDD legislation might be used as a ground for climate litigation.

In *Notre Affaire à Tous et al. v. Total*,[8] the applicants asked the court to order Total to publish a plan identifying a strategy to address the risks resulting from the company's emissions and to align its operations with the Paris Agreement's temperature goal. Total resisted the application on procedural and jurisdictional grounds concerning the competent judicial forum, but its objections were dismissed. In *Les Amis de la Terre v. Total*,[9] the applicants complained that Total had failed to assess the human rights and environmental risks of a large-scale oil project in Uganda and Tanzania, arguing that Total's plan did not account for the project's life-cycle GHG emissions. As in *Notre Affaire à Tous*, Total resisted the application on procedural and jurisdictional grounds, but its objections were dismissed by the French Supreme Court (*Cour de cassation*) in December 2021. In February 2023, the Paris Civil Court found the complaint inadmissable due to a procedural technicality regarding the initial claim. Finally, in *Envol Vert et al. v. Casino*,[10] several NGOs filed a complaint against a large supermarket operator, alleging that its suppliers' practices contributed to deforestation and the destruction of carbon sinks in the Brazilian Amazon. The plaintiffs asked the court to order the company to prepare a comprehensive plan to

address the risks and also to compensate the victims for the damage already suffered. The complaint has not yet been heard. More litigation on climate grounds is on the way, with French NGOs announcing an MDD law-based lawsuit against BNP Paribas over the bank's involvement in the financing of new oil and gas projects.[11]

These lawsuits show how MDD laws may be used in climate change litigation. Substantively, they point to the possibilities for including climate-related considerations in due diligence obligations, even in the absence of explicit statutory provisions to this effect (Macchi, 2021). Procedurally, these lawsuits show how a self-standing due diligence obligation enforceable by third parties has the potential to create a highly dynamic monitoring system. It is plausible that in future applicants might rely more on liability provisions envisaged in the proposal for an EU Directive on corporate sustainability due diligence to enforce companies' obligations also in relation to climate change.

However, the lawsuits above also expose the difficulties in pursuing such due diligence claims. French MDD law-based litigation has no direct influence on corporate climate obligations, given that claims focus on compliance with the obligation to prepare vigilance plans, rather than on an obligation to reduce corporate emissions. This is perhaps not surprising, given that due diligence obligations are typically obligations of conduct rather than obligations of result. Moreover, there is a degree of uncertainty concerning the precise scope and contours of obligations enshrined in MDD laws, which have already been exploited by defendant companies (Savourey & Brabant, 2021). Lastly, the arguments over the competent judicial forum highlight the procedural questions that might emerge when litigating the transnational impacts of corporate operations (Salminen & Rajavuori, 2021).

It is furthermore worth noting that the majority of MDD laws rely on administrative monitoring and enforcement, whereby public authorities are responsible for company oversight, and no private enforcement remedies are available (McCorquodale, 2022). To our knowledge, so far there have been no lawsuits whereby a public authority asked a court to order a company to fulfill its obligations under MDD legislation. This might be because most MDD laws have only recently been adopted, and more public enforcement lawsuits might materialize as more MDD laws are enacted and implemented.

MDD laws may also be used in litigation only indirectly. Corporate reports and communications are increasingly used as evidence in administrative, civil, or criminal proceedings concerning companies' social or environmental impacts. In *Lungowe v. Vedanta*,[12] for instance, the UK Supreme Court gave great weight to Vedanta's group-wide policies, which demonstrated a degree of control over its subsidiaries' environmental performance (Varvastian & Kalunga, 2020). MDD laws' disclosure obligations increase the availability of such information, as do their monitoring mechanisms. For example, Norway's MDD law includes the right to request information on how a company addresses actual and potential adverse impacts on human rights and decent working conditions. Even though companies are likely to formulate their reports and plans cautiously, the expanding scope of due diligence obligations will increase plaintiffs' insight into companies' risk positions as well as their governance mechanisms, thus providing new grounds for litigation (Hösli & Weber, 2021).

4.2. Corporate climate litigation as a gap-filler in MDD laws

The majority of MDD laws adopted or proposed so far do not focus directly on the adverse impacts of company operations on climate change. Thus, climate change litigation has potential to influence the development of due diligence obligations concerning companies' climate performance and thus enhance corporate climate accountability.

The clearest example of this gap-filling function is *Milieudefensie et al. v. Royal Dutch Shell plc*. The judgment of the District Court in The Hague identified several gaps in the sources and the substantive reach of human rights due diligence obligations with regard to corporate climate accountability. First, the court made it clear that, due to an abstractly defined "unwritten duty of care," the Dutch civil law system may be interpreted so as to include a corporate due diligence obligation based on international instruments, even in the absence of a domestic MDD law. Second, the court's reasoning drew on international consensus on norms concerning human rights due diligence and climate change. The court thus not only filled perceived accountability gaps in the domestic legal system, but also explicitly aligned the concept of human rights due diligence with international climate change instruments, such as the Paris Agreement. The extension of civil law remedies to cover the exercise of "control and influence over emissions" across Royal Dutch Shell's value chain highlights new opportunities to close the enforcement gap that plagues human rights due diligence norms, also in MDD laws.[13] *Milieudefensie*

et al. v. Royal Dutch Shell plc. may be regarded as an example of the sporadic and jurisdiction-dependent judicial innovations in interpreting tort law provisions to address new risks and hazardous activities, pending the adoption of more specific dedicated legislation or novel liability doctrines (Hook et al., 2021; Olszynski et al., 2017; Salminen, 2019).

This gap-filling role may also be performed by mechanisms outside the formal judicial systems. For instance, in *Oxfam Novib, Greenpeace Netherlands, BankTrack and Friends of the Earth Netherlands (Milieudefensie) v. ING*, the plaintiffs requested the Dutch National Contact Point to scrutinize the bank's climate policy and to urge it to align its climate policies with the OECD MNE Guidelines. The National Contact Point interpreted the due diligence process established under the OECD MNE Guidelines to cover "respect of their environmental impact, including climate impact" across "their value chain."[14] Accordingly, the due diligence process was supposed to influence how the company should (1) measure and publish its total carbon footprint, (2) publish specific and measurable emission reduction targets, and (3) reduce its indirect GHG emissions and align with the Paris Agreement.[15] The National Contact Point's stance was noted in the stocktaking and development of the MNE Guidelines, in which it was suggested that climate change obligations are likely to feature more prominently in future iterations of the Guidelines (OECD, 2021). Corporate climate litigation has the potential to contribute to the evolution of climate obligations in other due diligence instruments, such as the Business and Human Rights Treaty currently under negotiation, or the EU's corporate sustainability due diligence directive (Hartmann & Savaresi, 2021).

4.3. Corporate climate litigation as a driver for MDD legislation

Corporate climate litigation can act as a driver for MDD legislation in three ways. A first possibility is that a court could order a government to develop legislation to address corporate GHG emissions. In *Massachusetts v. EPA*, the US Supreme Court[16] provided a clear mandate for the US Environmental Protection Agency to develop rules on GHG emissions. Similarly, lawsuits challenging a government's lack of regulatory action vis-à-vis corporate GHG emissions could end up with a court ordering the adoption of MDD legislation (or amending existing legislation to explicitly cover companies' climate impacts). However, in many jurisdictions, courts are hesitant to order the adoption of specific legislation. And even if corporate climate litigation is followed by the adoption of a new MDD law (or amendment of an existing one), it will not always be clear whether this legislative development was primarily driven by the litigation.

Second, litigation can draw attention to the lack of corporate action, and point to the need for new corporate obligations, which could be encapsulated in MDD legislation. For instance, following *Milieudefensie et al. v. Royal Dutch Shell plc*, one of the original plaintiffs (Milieudefensie) lobbied for the inclusion of specific climate due diligence obligations in a forthcoming Dutch MDD law, arguing that court proceedings may take too long and that an MDD law could be implemented more swiftly (Voermans, 2021). An updated legislative proposal of the Dutch MDD law, published in November 2022, has come to include several climate-related obligations, including developing a plan to reduce climate risks (Tweede Kamer, 2022).

Third, the very companies targeted by corporate climate litigation may push for MDD legislation, with a view to creating a level playing field and improving legal certainty (Smit et al., 2020). Although there is limited evidence of companies advocating for climate legislation to pre-empt potentially costly litigation (Colares & Ristovski, 2014), litigation risks may make companies come out in favor of MDD legislation. Companies may also support MDD laws that enshrine more lenient due diligence obligations in law and/or reducing liability risks. MDD laws, like the EU's proposed corporate sustainability due diligence directive, tend to have less ambitious HRDD obligation compared to the UNGPs (Patz, 2022). They can also introduce new defenses enabling companies to escape liability for their adverse impacts, such as those caused by GHG emissions, including when assessing the potential breach of a duty of care in tort litigation (Bueno & Bright, 2020). MDD laws may thus also thwart attempts to promote corporate climate accountability through litigation.

5. Conclusions and further research

This article has examined the interplay between MDD legislation and corporate climate litigation. It suggests that, whether based on MDD laws or embedded in tort, public, and human rights law, corporate due diligence

obligations increasingly feature in national and transnational climate litigation. The practice in this area at present remains limited and mostly confined to European countries, but it is likely to expand in the future, providing a tool—albeit an imperfect one—that can help to hold companies to account for their GHG and climate impacts. Recent MDD laws have begun to either explicitly cover corporate climate impacts and responsibilities, or to extend the interpretation of general due diligence obligations to cover also GHG emissions. However, corporate climate accountability based on MDD laws suffers from several structural weaknesses, such as a limited scope and weak enforcement. Furthermore, there is still friction between human rights protection and climate goals in corporate due diligence duties. Despite these drawbacks, MDD laws clearly provide entry points to strengthen corporate climate accountability.

We put forward three possible scenarios of the interaction between MDD laws and climate change litigation. First, MDD legislation may provide the legal basis for climate change litigation. Second, climate litigation may fill gaps where MDD legislation does not exist or is weakly enforced. Third, litigation may act as a driver for new MDD legislation. The first two types of interaction can already be observed in practice, whereas the third scenario may soon unfold, as corporate climate litigation keeps growing. Due to this highly dynamic relationship, there is much scope to continue investigating the role of MDD laws in strengthening or weakening corporate climate accountability.

Key areas for future research include the conceptual evolution of due diligence duties, the design of MDD laws under the pressure of litigation, and a better understanding of the geographies of corporate due diligence. Climate change concerns are neither normatively nor operationally fully embedded in existing corporate due diligence duties. Litigation is likely to play a crucial role at this stage of the evolution of MDD laws, and in-depth case studies of future judicial or quasi-judicial proceedings could help in bringing climate and human rights due diligence duties together. There are also opportunities for studying the politics and dynamics of litigation-led lawmaking more broadly, given that many plaintiff NGOs and defendant companies are concurrently involved in discussions on the design of MDD duties, including in relation to climate change.

Substantively, the interplay between climate change, liability, and human rights due diligence needs to be further explored. Specifically, MDD laws can both expand corporate liability to cover climate change but also create new defenses to exempt them from liability. Litigation, whether based on civil or administrative law, is a natural testing ground for exploring these dynamics. The progressive inclusion of climate change obligations in MDD laws has a clear, but not yet fully understood, role in developing and concretizing the legal framework for climate liability. Litigation associated with MDD legislation may therefore shed light on the possible remedies and thus feed into the design of climate liability legislation.

The uneven geographies of corporate climate due diligence duties also necessitate further research. It is well-known that both MDD laws and climate litigation are heavily skewed toward the Global North, even though the adverse impacts of climate change are most acutely felt in the Global South. Further analysis is needed to understand the legal, political, and financial implications that flow from such a highly unbalanced geographical adoption of MDD laws and of climate due diligence duties in the Global South.

In sum, both corporate climate litigation and MDD laws have simultaneously emerged as a partial solution to the corporate climate accountability gap. Neither corporate climate litigation nor MDD laws can provide all the answers, and there are other ways for closing the corporate accountability gap, such as investor pressure and the repurposing of private climate finance. From a broader governance perspective, however, the analysis of the interaction between MDD legislation and corporate climate litigation demonstrates the important role that legal practice might play in bringing about corporate climate accountability.

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Data availability statement

Data sharing is not applicable to this article as no new data were created or analyzed in this study.

Endnotes

[1] *Milieudefensie et al. v. Royal Dutch Shell plc* (2021).

[2] *In re Greenpeace Southeast Asia and Others* (2022).

[3] *Milieudefensie et al. v. Royal Dutch Shell plc* (2021).

[4] *Milieudefensie et al. v. Royal Dutch Shell plc* (2021), paragraph 4.4.11.

[5] *Notre Affaire à Tous and Others v. Total* (pending).

[6] Directive (EU) 2022/2464 of the European Parliament and of the Council of 14 December 2022 amending Regulation (EU) No 537/2014, Directive 2004/109/EC, Directive 2006/43/EC and Directive 2013/34/EU, as regards corporate sustainability reporting, OJ L322/15.

[7] *Oxfam Novib, Greenpeace Netherlands, BankTrack and Friends of the Earth Netherlands (Milieudefensie) v. ING* (2019).

[8] *Notre Affaire à Tous and Others v. Total* (pending).

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[12] *Lungowe v. Vedanta Resources plc* (2019).

[13] *Milieudefensie et al. v. Royal Dutch Shell* (2021), paragraph 4.4.25.

[14] *Oxfam Novib, Greenpeace Netherlands, BankTrack and Friends of the Earth Netherlands (Milieudefensie) v. ING* (2019), paragraph 4.2.

[15] *Oxfam Novib, Greenpeace Netherlands, BankTrack and Friends of the Earth Netherlands (Milieudefensie) v. ING* (2019), paragraph, 3; 5.2.

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