

Research Article

Questioning Environmental Rights: The Role of NGOs in Horizontal Environmental Disputes in South Africa and Indonesia

Fersanda Batrysia Alaina*

Durham University, United Kingdom.

ABSTRACT: Significant gaps in environmental protection continue to arise from the combined pressures of climate change, human rights challenges, and institutional weaknesses. This paper compares the distinct roles of non-governmental organizations (NGOs) in addressing environmental and climate change disputes in Indonesia and South Africa. Employing a comparative legal analysis of each country's horizontal human rights framework and relevant case studies, the study identifies notable divergences in NGO strategies. In South Africa, the direct horizontal application of rights enables NGOs to pursue strategic litigation that strengthens corporate accountability. By contrast, Indonesia's indirect horizontal application compels NGOs to rely more heavily on public advocacy, mobilization, and judicial interpretation to confront state and private actors. The paper concludes that NGOs play a supplementary role by providing expertise and resources to enhance policy and enforcement. It argues that adopting a direct horizontal application, as in South Africa, could strengthen Indonesia's capacity to hold multinational corporations directly accountable for environmental harm.

KEYWORDS: Environmental Rights; Corporate Accountability; NGOs; Strategic Litigation

I. INTRODUCTION

The escalating climate crisis is fundamentally and inextricably intertwined with the issue of human rights. Climate change has transcended its traditional classification as a mere scientific or environmental concern, becoming a profound and direct threat to the very definition and exercise of fundamental human rights. The United Nations Human Rights Council officially acknowledged this grave nexus in Resolution 7/23, stating that climate change has “implications for the full enjoyment of human rights.” A shifting climate critically jeopardizes essential human rights like the right to life, health, food security, and access to clean water by precipitating more frequent and intense natural disasters, exacerbating food scarcity as evidenced by 783 million people facing hunger in 2022, including 258 million acutely food-insecure in the most vulnerable countries—and facilitating the proliferation of infectious diseases.¹ This alarming reality challenges the established normative frameworks of human rights. It compels a comprehensive

¹ Dipinder S Randhawa, ‘The Challenge of Food (In)security in ASEAN’ (2024) RSIS Commentary 015 <https://rsis.edu.sg/wp-content/uploads/2024/01/CO24015.pdf> accessed 15 October 2025.

*Corresponding author, email: fersanda.b.alaina@durham.ac.uk



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re-evaluation of how these protections must be guaranteed in an era of unprecedented environmental instability. Consequently, incorporating a human rights-based discourse into climate change mitigation efforts “encourages more effective, fairer, and more sustainable policy outcomes by promoting accountability concepts and participatory and democratic principles in decision-making.”

Despite this unequivocal linkage, the institutional and legal response to this crisis remains a patchwork of fragmented and often insufficient initiatives, creating significant gaps in protection. International human rights mandates are hindered by jurisdictional limitations and a lack of specialized legal authority to tackle climate abuses because core environmental treaties, like the Paris Agreement with its non-binding Nationally Determined Contributions (NDCs), fail to create direct, enforceable corporate duties that human rights bodies can leverage.² While there are ongoing debates regarding the usage of general principles and customary international law to combat global human rights and climate change issues, in many developing nations, this normative ambiguity is further exacerbated by pervasive weak governance and inconsistent legal enforcement. This pervasive institutional failure and legal vacuum present an insurmountable challenge, rendering it exceedingly difficult for marginalized communities to pursue meaningful and legitimate redress for their grievances. In this complex and challenging landscape, defined by institutional shortcomings and a persistent legal lacuna, the role of non-governmental organizations becomes critical and indispensable.

When countless environmental issues unfold globally, questions are raised about the roles of non-governmental organizations (NGOs) in private disputes, particularly in advancing human rights. In developing countries like Indonesia and South Africa, where constitutional violations by executives have been identified, NGOs’ legal obligations in such disputes remain contested. For example, in Indonesia a civil law country the NGO Save Sangihe Island (SSI) worked to defend the rights of residents by supporting the

² Victor, D. G., et al. (2022). Credibility of National Climate Goals: Key to Paris Agreement Success. Brookings Institution. United States of America. Retrieved from <https://coillink.org/20.500.12592/zfd5jj>.

case against a Canadian-owned gold mine, which had obtained an environmental permit without consulting the affected communities. However, inconsistent application of indirect horizontal human rights left the case unresolved, reflecting the challenges NGOs face in ensuring environmental justice, which include overcoming the high burden of proof required to establish causation between corporate activities and diffuse environmental harm. Contrastingly, South Africa's mixed legal system allows for a more direct horizontal application of human rights, strengthening NGOs' roles in environmental litigation. The case of *Maledu v Itereleng Bakgatla* demonstrates this, as the NGO LAMOSA acted as *amicus curiae*, supporting communities whose informal land rights were threatened by mining operations. These examples illustrate how differing legal systems influence the recognition of NGOs in environmental disputes and raise critical questions about their varying roles across jurisdictions.

It is further proposed that Nonprofit Organizations, or NPOs (this paper will use this term interchangeably with NGOs), play complementary, supplementary, and adversarial roles. We will later examine whether these roles manifest similarly in environmental litigation across two countries with different legal systems and horizontal human rights applications—does one system afford NPOs a stronger or weaker position? As noted earlier, NPOs can significantly advocate for specific human rights in horizontal applications, whether as a party to a case or as *amicus curiae*.

Against this backdrop, this paper explores the role of NGOs in private disputes over environmental degradation in both countries. How does South Africa's direct horizontal application of human rights compare to Indonesia's indirect approach? What lessons can Indonesia draw from South Africa's practices? This study evaluates how these structures shape NGO involvement in environmental litigation by analyzing the legal frameworks of South Africa's mixed legal system and Indonesia's civil law system. The paper concludes by emphasizing the catalytic role of NGOs in advancing horizontal human rights. It offers recommendations for countries that have not fully implemented direct horizontal applications in environmental cases.

II. METHODOLOGY

This paper employs a qualitative research methodology grounded in a comparative legal analysis. The study systematically examines the distinct legal frameworks of Indonesia and South Africa, focusing on their respective approaches to the horizontal application of human rights in environmental disputes. Data was obtained through a comprehensive review of academic literature, constitutional provisions, statutory laws, and judicial precedents from both jurisdictions. The methodology utilizes a case-study approach to provide empirical substance to this analysis, scrutinizing specific legal cases from each country—such as Maledu in South Africa and those involving the Save Sangehe Island (SSI) in Indonesia—and other related cases. By analyzing these case studies, the research aims to identify the varying roles and strategies of non-governmental organizations (NGOs) and to draw concrete conclusions about how a direct versus indirect horizontal application of rights impacts the effectiveness of legal enforcement and the pursuit of environmental justice.

III. NGOs' ROLES IN HORIZONTAL ENVIRONMENTAL AND CLIMATE CHANGE DISPUTES

As emerging issues in the environmental context rise, the conventional approach of state and international institutions, which were primarily designed to handle short-term, contained disputes, often proves inadequate in resolving human rights-based cases. These institutions' legal and political frameworks are ill-equipped to address the complex, long-term, and transboundary nature of climate change, which unfolds across decades and national borders. This fundamental mismatch frequently results in protracted legal battles or a complete failure to resolve disputes, leaving individuals and communities, often the most vulnerable to climate harm, without adequate legal recourse.³ The main difficulty

³ Brian J Preston, 'The Evolving Role of Environmental Rights in Climate Change Litigation' (2018) 2 *Chinese Journal of Environmental Law* [150-155].

lies in updating legal frameworks built on traditional ideas of jurisdiction and causality to effectively assign responsibility and offer solutions for harms with unclear, widespread, and global origins and effects. This institutional gap has created a space where the role of social empowerment and individuals has become increasingly vital.

A. New governance paradigm beyond state-centric models

It is now argued that individuals and civil society can significantly contribute to environmental decision-making and seek remedies for environmental harm.⁴ Beyond environmental degradation disputes, progress in attribution science has enhanced the ability to connect environmental harm to private entities, leading to an increase in successful climate litigation against corporations.⁵ In doing this, it is contested that NGOs, NPOs, or non-profit sectors (NPS)—those three concepts will be used interchangeably in this paper—have always aimed at altruistic goals.⁶ Their recognized legal status in international human rights law enables them to influence climate and environmental policies at both national and global levels.⁷ Their complementary role⁸ seen as just no different than complementary and adversarial roles to promote human rights in a system rooted in legitimacy, accountability, and transparency, as well as delivering the people's voice in political changes.⁹

The rise of non-state actors is a defining feature of modern governance, challenging the traditional state-centric model of international relations. These entities, which include multinational corporations, international NGOs, and transnational civil society groups, wield considerable influence over global policies and practices. They are particularly

⁴ Francesco Francioni, 'International Human Rights in an Environmental Horizon' (2010) 21 *The European Journal of International Law*.

⁵ Pia Rebelo & Xavier Rebelo, *Rights-Based Climate Change Litigation Against Private Actors* Kim Bouwer et.al. (eds) *Climate Litigation and Justice in Africa* (Bristol University Press 2024) [189].

⁶ Christian Tomuschat, *Human Rights: Between Idealism and Realism* (Oxford University Press, 2008) [248-250].

⁷ *Ibid.*

⁸ *Ibid.*

⁹ Michel Tshiyoyo, 'The Changing Roles of Non-Governmental Organizations in Development in South Africa: Challenges and Opportunities' in Vito Bobek and Tatjana Horvat (eds), *Global Perspectives on Non-Governmental Organizations* (IntechOpen 2023).

involved in environmental and human rights matters. As their power has grown, so has the need to define their responsibilities and obligations, moving beyond the traditional view that only states are responsible for protecting human rights.¹⁰ Recognizing a broader range of actors is crucial for understanding how environmental and human rights disputes are litigated today.

This evolving landscape necessitates a clear distinction between how human rights apply to different parties. The traditional application of human rights law, known as the vertical effect, obligates states to protect the rights of their citizens.¹¹ This model assumes a power imbalance where the state is the primary duty-bearer and the individual is the rights-holder. However, the rise of powerful private entities has led to the development of the horizontal effect, which applies human rights obligations directly between non-state actors.¹² This horizontal framework enables NGOs and individuals to hold corporations and other private actors accountable for environmental harm and human rights abuses, a shift that is fundamental to the new wave of climate litigation.

B. The Shifting Role of NGOs

While NGOs contribute indirectly to environmental protection, their role is complicated by the unstable division of labor with public institutions and the lack of clear boundaries within the discursive community, leading to indeterminacy in defining and interpreting human rights practices.¹³ Meanwhile, international legal instruments enforcing environmental standards for private entities remain inadequate, and even existing mechanisms face implementation challenges.¹⁴ Consequently, strategic climate litigants,

¹⁰ Tamara Meshel, 'International Arbitration: The New Frontier of Business and Human Rights Dispute Resolution' (2021) 44 *Dalhousie Law Journal* [108].

¹¹ Jennifer Corrin, 'From Horizontal And Vertical To Lateral: Extending The Effect Of Human Rights In Post Colonial Legal Systems Of The South Pacific' (2009) 58 *International and Comparative Law Quarterly* [31-71].

¹² Lottie Lane, 'The Horizontal Effect of International Human Rights Law in Practice: A Comparative Analysis of the General Comments and Jurisprudence of Selected United Nations Human Rights Treaty Monitoring Bodies' (2018) 5 *European Journal of Comparative Law and Governance* [8].

¹³ Charles R. Beitz, *The Idea of Human Rights* (Oxford University Press, 2009) [10].

¹⁴ Pia Rebelo & Xavier Rebelo. *Loc. Cit.*

including NGOs, develop innovative approaches to hold corporations accountable.¹⁵ Before delving further into this issue, it is vital to evaluate the recognition of environmental rights within the environmental and climate change litigation framework and explore the role of NPOs in this context.

The *Leghari*¹⁶ and *Urgenda*¹⁷ These cases highlight the growing recognition of environmental rights in climate change litigation. They use rights-based arguments to challenge government policies and corporate actions. *Leghari* emphasizes constitutional values and climate justice, while *Urgenda* leverages human rights principles to interpret national duties of care.¹⁸ In the *Urgenda* case, it is noteworthy that the organization, alongside 900 Dutch citizens, united to challenge the government, demonstrating the power of NPOs to mobilize civilians in combating insufficient climate policies that violate human rights and the government's duty of care under national and international law.¹⁹ The foundation is uplifting the people's voice by initiating, organizing, and advocating for the case, which became a landmark example of climate litigation and inspired similar environmental-based lawsuits worldwide.

Global Witness and RAID, two environmental advocacy NGOs, have filed a lawsuit against the London Metal Exchange (LME). They assert their role in holding private actors accountable by challenging the LME's decision to allow nickel trade from Indonesia, which they claim contributes to significant environmental harm.²⁰ In this case, the institution acts as a key promoter and defender of human rights, plays a vital role in holding powerful actors accountable (such as a giant industry), and ensures freedom and justice by civilizing power, as the scholar states, "for the preservation of freedom and

¹⁵ *Ibid.*

¹⁶ *Ashgar Leghari v Federation of Pakistan* (2015) W.P. No. 25501/2015 (Lahore High Court).

¹⁷ *Urgenda Foundation v The State of the Netherlands* (2015) HAZA C/09/00456689 (District Court of The Hague).

¹⁸ *ibid.*[191-192].

¹⁹ *ibid.*[194]

²⁰ Pratima Desai and Eric Onstad, 'Pressure groups sue LME for allowing trade of "polluting" Indonesian metal' (Reuters, 8 February 2024) <<https://www.reuters.com/markets/commodities/pressure-groups-sue-lme-allowing-trade-polluting-indonesian-metal-2024-02-08/>> accessed 10 January 2025 and London Mining Network, 'LME Press Release' (February 2024) <<https://londonminingnetwork.org/wp-content/uploads/2024/02/LME-Press-Release.pdf>> accessed 10 January 2025.

justice.”²¹ Moreover, when climate lawsuits are rising, their role is driving the litigation efforts against companies that contribute to climate change, invoking human rights and environmental laws, and advocating for stricter climate action and accountability, especially in cases where governmental measures fall short.²²

Previously, NGOs’ engagement in human rights and environmental issues was often slower and less direct. Their role was primarily focused on raising awareness, advocacy, and supporting victims from a distance, rather than actively pursuing litigation or directly challenging private corporations.²³ This was partly due to legal and institutional barriers that made it difficult for them to be recognized as legitimate litigants in court. For a long time, the responsibility to address human rights issues and environmental harm was seen as a duty of the state, with NGOs acting as supplementary partners to governmental bodies.

However, the rise of climate lawsuits has fundamentally shifted this dynamic. The inability of states to address the climate crisis has created a void that NGOs are now filling with increasing assertiveness. Their growing role in driving litigation against companies directly responds to this gap. This proactive stance, which invokes human rights and environmental laws, represents a strategic evolution in their approach to accountability. NGOs are no longer content to wait for state action. However, they are directly challenging powerful actors to secure stricter climate action and greater accountability, particularly in cases where governmental measures fall short.²⁴

Within the debatable theories proposed by academia, NPOs serve three roles: complementary by promoting legitimacy, transparency, and accountability; supplementary

²¹ Maria Nassali, *Beating The Human Rights Drum: Applying Human Rights Standards to NGOs’ Governance* (Pretoria University Law Press 2015) [7].

²² The Guardian’s ‘Sharp rise in number of climate lawsuits against companies, report says’ (The Guardian, 2024) < <https://www.theguardian.com/environment/article/2024/jun/27/sharp-rise-in-number-of-climate-lawsuits-against-companies-report-says> > accessed 10 January 2025.

²³ Louis B. Kimmelman and Edna Sussman, ‘2017 Fordham International Arbitration & Mediation Conference Issue: Introduction’ (2018) 41 Fordham International Law Journal [785].

²⁴ ‘Holding Corporations Accountable for Damaging the Climate’ (2014) *Environmental Law Alliance Worldwide* [30-35].

by filling gaps in government functions, advocating for democracy, and checking state power; and adversarial in authoritarian or transitional contexts by voicing the people's demand for changes.²⁵ The COVID-19 pandemic has also redefined NGOs' roles in developing countries, presenting challenges and opportunities. The focus now is on how NGOs can maximize these opportunities to overcome operational hurdles and enhance their contributions to development.²⁶ We will later analyze which category the actions of these foundations fall into, specifically regarding horizontal human rights disputes in relation to environmental and climate change issues, as seen in their practices across two different countries.

IV. LEGAL SYSTEMS IN HORIZONTAL HUMAN RIGHTS APPLICATION IN HORIZONTAL ENVIRONMENTAL AND CLIMATE CHANGE DISPUTES: INDONESIA AND SOUTH AFRICA

It is academically asserted that human rights are approached differently across legal systems. Constitutional factors like the adoption year, drafting context, legal system type, UN and regional human rights affiliations, and stance on international law influence the incorporation of rights, with civil law systems tending to directly adopt human rights treaties and emphasize both rights and duties more than common law systems.²⁷ This study will focus on analyzing how the distinct legal systems of South Africa and Indonesia influence the fulfillment of human rights. Interestingly, one country utilizes the mixed legal system (the Roman-Dutch and English law in South Africa) and another applies the civil law system (Indonesia), respectively.

Before delving into that topic, it is important to emphasize that the direct horizontal application of human rights treaties imposes clear responsibilities on private entities.²⁸

²⁵ Michel Tshiyoyo. *Op.Cit.*[3].

²⁶ *Ibid.*

²⁷ Eleni Frantziou, 'Horizontal by Design: A Systematic Analysis of the Application of Human Rights to Private Actors in the Text of World Constitutions' (unpublished, 27 November 2024) accessed 4 December 2024; Brian Sang YK, 'Horizontal Application of Constitutional Rights in Kenya: A Comparative Critique of the Emerging Jurisprudence' (2018) 26(1) *African Journal of International and Comparative Law* <<https://doi.org/10.3366/ajicl.2018.0217>> accessed 25 November 2024 [3].

²⁸ John H. Knox, 'Horizontal Human Rights Law' (2008) 102 *American Journal of International Law* [46].

Direct horizontal application is a powerful legal doctrine that holds private entities, such as corporations or non-governmental organizations, directly responsible for respecting human rights. Unlike the traditional vertical application, where human rights obligations are solely between a state and its citizens, direct horizontal application creates a direct legal link between two private parties. This means that a company, for instance, can be directly sued for violating human rights provisions outlined in international treaties.²⁹ This framework gives individuals a direct cause of action against private actors, rather than relying on the state to act as a mediator or enforcer. By bypassing the state, this doctrine provides a more immediate and effective avenue for legal redress and holds non-state actors accountable for respecting, protecting, and fulfilling human rights. This approach is becoming increasingly important in global disputes, such as environmental and climate change issues.

These responsibilities require adherence to the treaties' provisions and allow individuals to seek legal redress for violations, thereby holding non-State actors accountable for respecting, protecting, and fulfilling human rights.³⁰ While academics have expanded and refined the concept of direct horizontal effect, focusing on the interpretation of human rights, the definition of indirect horizontal effect remains contested at both international and domestic levels.³¹ Unlike those effects, which address the obligations of private entities, the state-mediated effect emphasizes the state's positive obligations as a safeguard for fundamental rights.³² On the one hand, while it is contended that civil law countries are more inclined to implement human rights treaties directly, it is also argued that the type of legal system underlying the Constitution seems to have only a limited influence on how the horizontal effect is addressed.³³

Many civil law countries operate under the principle of monism, where international treaties, including human rights treaties, are automatically considered part of domestic

²⁹ Lottie Lane.*Loc.Cit.*

³⁰ *Ibid.*

³¹ *Ibid.*

³² *Ibid.*

³³ Eleni Frantziou.*Op.Cit.*[10].

law upon ratification. This structure allows for the direct application of these treaties in national courts, making it easier to impose human rights obligations on private entities. However, the reality is more complex. While the legal systems of civil law countries are often seen as more conducive to this direct implementation, the specific application of the horizontal effect is not uniform.³⁴ In practice, the state-centric nature of civil law traditions, which historically views the state as the primary guarantor of rights, can sometimes create a barrier. This can lead to an indirect application of human rights norms, where judges use constitutional principles to interpret existing civil laws rather than directly applying a treaty to a dispute between private parties. The actual implementation varies significantly from one civil law country to another, reflecting the nuanced interplay between legal tradition and political context.

While mixed legal countries are found to include direct horizontal clauses—like in South Africa—limited research has been conducted to determine whether the more state-centric conception of rights in civil law countries impacts the application of horizontality within those jurisdictions.³⁵ In certain civil law countries—like in Indonesia—indirect horizontal effect is still observed, and the provisions for horizontal application vary significantly—some are explicitly defined, while others remain ambiguous regarding their scope and limitations.³⁶ Therefore, the following subsections will explore the compelling hypotheses currently available, focusing on the application of horizontality in environmental and climate change Disputes.

A. Indonesia's Indirect Horizontal Human Rights Effects in Environmental and Climate Change Disputes

Despite having a constitution that guarantees human rights, the Indonesian state has a long-standing and well-documented record of failing to uphold these protections. Reports from organizations like Amnesty International and Human Rights Watch

³⁴ Hugh Collins, 'On the (In)compatibility of Human Rights Discourse and Private Law' (2012) *LSE: Law Society and Economic Working Paper 7/2012*.

³⁵ *Ibid.*

³⁶ *ibid.*[17].

consistently highlight abuses by state actors, including arbitrary killings, torture, and the repression of peaceful protests.³⁷ This culture of impunity is particularly evident in regions with separatist movements, such as West Papua, where human rights violations by security forces often go unpunished. Such a context of state-sanctioned abuses creates a significant trust deficit and makes it difficult for individuals and communities to rely on public institutions for justice.³⁸

These institutional failings have created a legal shortfall that demands alternative approaches. With traditional state-led mechanisms proving inadequate and a judiciary reluctant to engage with the full scope of climate disputes, individuals and civil society are compelled to seek creative legal pathways.³⁹ The challenge is navigating a system where the state's positive obligations to protect human rights are often unfulfilled, forcing a re-evaluation of how legal rights can be applied to private disputes. This is where the intricacies of Indonesia's civil law system and the application of horizontal human rights become particularly relevant.

A civil law system nation, Indonesia, is using an indirect horizontal human rights application,⁴⁰ meaning that the obligation to fulfill human rights is heavily influenced by interpreting relevant private law in line with a specific constitutional obligation.⁴¹ In Indonesia, the legal traditions inherited from Dutch and French civil law place civil and public law on equal footing, allowing public law rights to apply in private law without explicit codification or incorporation into the *ius constitutum* of civil law, though the applicability of these public rights in the private law realm does not reveal much about

³⁷ Amnesty Indonesia, *"Do not Bother, Just Let Him Die": Killing With Impunity In Papua* (Amnesty International Indonesia 2018).

³⁸ Conrado M. Cornelius, 'Climate Change Litigation in Indonesia: The Good, the Bad, & the Ugly' African Perspectives On International Climate Change Law Symposium (Center For International Law, National University Of Singapore (CIL-NUS)).

³⁹ Irman Putra and Arief Fahmi Lubis, 'Human Rights Protection under the Indonesian Constitution: Progress and Challenges' (2024) 2 *West Science Law and Human Rights*.

⁴⁰ Nigel D. White and others, 'Blurring Public and Private Security in Indonesia: Corporate Interests and Human Rights in a Fragile Environment' (2028) 65 *Netherlands International Law Review*.

⁴¹ Shidarta, Stijn Cornelis van Huis, Eko Riyadi, 'How Do Indonesian Judges Approach Human Rights in Private Law Cases? A Comparative Exploration' (2022) 15 *Journal of East Asia and International Law* [305-307].

the nature of their application.⁴²

The indirect approach applied in the country is inconsistent⁴³It is highly disputed, particularly due to its unclear application in cases of environmental degradation. For instance, 56 Indonesian Women sued a Canadian-owned gold mine for its wrongfully granted environmental permit, which did not include people in Sangihe Island in the consultation of their environmental documents.⁴⁴ In this case, Save Sangihe Island (SSI), an NGO, was trying to enforce the Sangihe people's rights by urging the company to disclose its environmental documents for gold mining activities.⁴⁵ Before the Sangihese individuals lost the case, they had the social media's attention and gathered with environmentalists and activists, as well as NGOs, including SSI, in front of the Indonesian Supreme Court,⁴⁶ Indonesian Ministry of Energy and Mineral Resources (ESDM) and the Embassy of Canada to Indonesia.⁴⁷

In a more recent case, people from South Sumatra filed a lawsuit against three plantation companies, claiming they have been suffering from chronic smoke haze caused by ongoing fires linked to the companies' peatland activities, which put their lives in danger.⁴⁸ The civilian plaintiff is also supported by an NGO, the South Sumatra Smoke Suit Initiative (*Inisiasi Sumatera Selatan Penggugat Asap*).⁴⁹ Moreover, following one of the hearings of the case, an environmental organization, Greenpeace, sought to intervene

⁴² *Ibid.*

⁴³ *Ibid.* [312-313].

⁴⁴ Ottawa, 'Indonesian Women Win Legal Victory to Protect Small Island Home From Canadian Baru Gold' (MiningWatch Canada, 2022) <<https://miningwatch.ca/news/2022/6/10/indonesian-women-win-legal-victory-protect-small-island-home-canadian-baru-gold>> accessed 05 December 2024.

⁴⁵ Yultrina Pieter and others v Head of the Department of Investment and Integrated One-Stop Service North Sulawesi and others [2022] Decision No. 57/G/LH/2021/PTUN.Mdo (Manado State Administrative Court, 22 June 2022).

⁴⁶ Fakhri Fadlurrohman, 'Sangihe Gold Mine Rejection Action (*Aksi Penolakan Tambang Mas Sangihe*)' (Kompas, 2022) <<https://www.kompas.id/baca/foto/2022/11/17/aksi-penolakan-tambang-emas-sangihe>> accessed 05 December 2024.

⁴⁷ Karin Nur Secha, 'After the Ministry of Energy and Mineral Resources, the Residents of the Canadian Embassy Protest Reject the Mine in Sangihe (*Usai Kementerian ESDM, Warga Demo Kedubes Kanada Tolak Tambang di Sangihe*)' (Detik, 2022) <<https://news.detik.com/berita/d-6167190/usai-kementerian-esdm-warga-demo-kedubes-kanada-tolak-tambang-di-sangihe>> accessed 05 December 2024.

⁴⁸ Greenpeace Southeast Asia, 'South Sumatran Residents Sue Plantation Companies Over Peatland Smoke Haze' (Greenpeace, 2024) <<https://www.greenpeace.org/southeastasia/press/66462/south-sumatran-residents-sue-plantation-companies-over-peatland-smoke-haze/>> accessed 15 January 2025.

⁴⁹ *Ibid.*

to highlight the urgent need for justice, holding corporations accountable for damaging public health, the environment, and the climate through their operations.⁵⁰ Although the case remains unresolved, Greenpeace underscores the lasting consequences of the companies' actions, including significant carbon emissions, environmental damage, and the worsening of global warming.⁵¹

On the one hand Indonesia's legal framework, particularly its 1945 Constitution, explicitly obligates the government to protect, respect, and fulfill human rights for all citizens.⁵² Articles 28A through 28J, added during constitutional amendments, detail these rights, including the right to a healthy environment and life. Article 28I, paragraph (4) states explicitly that the "protection, promotion, enforcement, and fulfillment of human rights shall be the responsibility of the state, particularly the government."⁵³ This means the state is expected to refrain from violating rights and take positive actions to ensure they are realized and protected.

However, the state's failure to fulfill this constitutional duty carries significant consequences, though they are often unaddressed. When the government neglects its responsibility to protect citizens from harm caused by non-state actors, it undermines the rule of law and erodes public trust in its institutions.⁵⁴ Legally, this can lead to citizens seeking redress through the administrative court system or even international forums. Politically and socially, such a failure fuels public discontent and empowers civil society organizations to fill the void, often by resorting to more confrontational methods like social media campaigns and protests to attract national and international attention. This dynamic, where the state's inaction creates a vacuum, directly illustrates why NGOs must assume complementary and adversarial roles.

⁵⁰ Igor Oneill, 'Hearings Begin in South Sumatra's Peatland Smoke Haze Lawsuit' (Greenpeace, 2024) <<https://www.greenpeace.org/southeastasia/press/66602/hearings-begin-in-south-sumatras-peatland-smoke-haze-lawsuit/>> accessed 15 January 2025.

⁵¹ *Ibid.*

⁵² Abdul Rahman, Sugianto, Dudung Hidayat, 'Protection Of Human Rights In The Indonesian Constitution: An Analysis Of The 1945 Constitution' (2024) 2 *Journal of Law Sciences (Legisci)*.

⁵³ Indonesian Constitution 1945, Art. 28A-28J.

⁵⁴ Syarifatul Hidayah, 'State Responsibility in Protecting Human Rights: An International Legal Perspective' (2023) 2 *International Law Discourse in Southeast Asia*.

These two cases, among many environmental and climate change lawsuits in Indonesia, demonstrate that NGOs primarily play a role by mobilizing public opinion, using social media, and organizing protests, like SSI did, attracting national and international attention to their struggles.⁵⁵ It falls within the complementary and adversarial roles of NPOs.⁵⁶ This also points to the state's failure to directly apply constitutional human rights against non-state actors, leaving citizens dependent on intermediaries and judicial interpretation.⁵⁷ As a result, NGOs step in to complement the state's responsibility in protecting its citizens' rights.⁵⁸

While NGOs play a pivotal role in amplifying marginalized voices, the reliance on judicial interpretation in Indonesia's indirect horizontal application of human rights creates significant challenges,⁵⁹ Particularly in environmental cases. Without clear constitutional or statutory guidance, applying public law rights in private disputes often depends on judicial discretion, leading to inconsistencies.⁶⁰ This ambiguity complicates accountability for corporations responsible for environmental harm and burdens affected communities and NGOs advocating on their behalf.⁶¹ Cases like SSI's fight for transparency on Sangihe Island or ISSPA's efforts against peatland fires in South Sumatra illustrate the need for a more direct horizontal human rights application. Refining the country's horizontal applications in such rights would align private law with constitutional mandates, strengthening environmental governance and ensuring systematic enforcement of obligations against non-state actors, fostering greater environmental justice and accountability.⁶²

⁵⁵ Fakhri Fadlurrohman.*Loc.Cit.*

⁵⁶ Michel Tshiyoyo.*Loc.Cit.*

⁵⁷ Shidarta, Stijn Cornelis van Huis, Eko Riyadi.*Op.Cit.*[312-313].

⁵⁸ Sutan Sorik dan Laely Nurhidayah, 'The Role of NGOs in Environmental Governance in Indonesia' (2024) 21 *Jurnal Konstitusi*, Published by The Registrar and Secretariat General of the Constitutional Court of the Republic of Indonesia.

⁵⁹ Shidarta, Stijn Cornelis van Huis, Eko Riyadi.*Loc.Cit.*

⁶⁰ *Ibid.*

⁶¹ Laurie S Wiseberg, 'The Role of Non-Governmental Organizations (NGOs) in the Protection and Enforcement of Human Rights' in Janusz Symonides (ed), *Human Rights: International Protection, Monitoring, Enforcement* (Routledge 2003)[780-786].

⁶² Shidarta, Stijn Cornelis van Huis, Eko Riyadi.*Loc.Cit.*

B. South Africa's Direct Horizontal Human Rights Effects in Environmental and Climate Change Disputes

The transition from apartheid to a constitutional democracy in 1994 marked a fundamental change in how South Africa's government approaches human rights. The new Constitution, often hailed as one of the most progressive in the world, was a direct response to a history of systematic and state-sanctioned human rights abuses. This new legal order was built on a foundation of dignity, equality, and freedom, with the explicit goal of healing past divisions and establishing a society based on democratic values. Central to this new system was the entrenchment of a Bill of Rights, which serves as the supreme law of the land, binding all state organs.

This Bill of Rights is not merely a set of aspirations; it is a legally enforceable document with profound implications for South African law. Unlike many legal systems, human rights obligations are solely “vertical.” South Africa's Bill of Rights is designed to be “horizontal” in its application. This means that its protections extend beyond the relationship between the citizen and the state and can also be enforced in disputes between private individuals and entities. This innovative approach reflects the nation's history, recognizing that widespread human rights violations often occur in the private sphere and require a robust legal framework to address them.

On the other side of the world, a hybrid law country, South Africa, directly applies horizontal human rights. A “mixed legal system” refers to a jurisdiction combining elements of civil law, common law, and, arguably, customary law. South Africa developed through the coexistence of Roman-Dutch law, English law, and indigenous legal traditions. The nation underwent law reform that transformed the mixed legal system by repealing discriminatory apartheid-era laws and integrating constitutional principles into statutes, customary law, and common law. Then, as mentioned before, the “direct effect” that the country applies imposes clear obligations on private entities to uphold, protect, and fulfill human rights, making breaches directly actionable by affected individuals.

South Africa boasts a well-developed environmental law framework, with the

concept of “transformative environmental constitutionalism” playing a key role in its constitutional legal system. The popular case in this context is the Thabametsi case, an NPO-Earthlife Africa Johannesburg, challenged the environmental authorization of a proposed coal-fired power station near Lephalale, Limpopo Province, owned by Thabametsi Power Company. The organization sued the project handler and the company as the fourth and fifth respondents because the Chief Director failed to consider the climate change impacts of the proposed coal-fired power station before granting environmental authorization. This violated Section 24(1) of NEMA, which mandates assessing environmental impacts, including pollution and degradation. Earthlife argued that the lack of a detailed climate change impact assessment rendered the decision irrational, unreasonable, and unlawful, as it disregarded the station’s significant greenhouse gas emissions and broader climate implications. Besides this case, *Maledu v Itereleng Bakgatla* underscores how environmental rights can be directly impacted in disputes involving private entities, as affected communities challenged a mining company’s decision. This case is highly relevant since an NGO, LAMOSA, joined as *amicus curiae*, highlighting the nature and implications of mining rights in their submission.

Both cases present the existence of NGOs in horizontal disputes regarding environmental and climate change lawsuits; one supported the court by providing expertise or, arguably, information sharing to a higher level, which, in this case, is the court. On the other hand, one took direct legal action to ensure compliance with environmental regulations, serving a complementary role by holding those responsible accountable for fulfilling their duties. This distinction reflects varying strategies—advocacy through legal expertise versus active litigation.

The shift from advocacy to active litigation by non-state actors represents a pivotal development in the landscape of human rights enforcement across Africa. This strategic approach, often referred to as strategic litigation, is a direct response to a gap in accountability left by insufficient government oversight and, in some cases, corporate impunity. Rather than providing support or information to the courts, these non-state actors, including NGOs and community-based organizations, now deliberately initiate high-

profile legal challenges to address systemic human rights violations and environmental degradation. These cases are carefully chosen not only for their merit but also for their potential to establish legal precedents, influence public policy, and enforce a higher standard of conduct for state and private entities. For instance, an NGO might challenge a mining company's permit based on its environmental impact, or sue a government agency for failing to provide adequate water and sanitation, arguing a violation of socio-economic rights.⁶³ This proactive stance transforms these organizations from passive observers into critical legal agents, using the judiciary as a crucial arena for social change when political and administrative channels prove ineffective. This rise of legal activism is a testament to civil society's increasing sophistication and determination to leverage a nation's constitutional and legal frameworks to demand justice and safeguard vulnerable communities from exploitation.

This engagement in active litigation yields profound benefits beyond just a single case outcome, fundamentally reshaping the legal and social contract. Foremost among these is the reinforcement of accountability, which forces powerful entities, from multinational corporations to government departments, to answer for their actions in an impartial court of law. This creates a powerful deterrent against future wrongdoing and helps build a culture of legal compliance. Secondly, it is a key driver of legal development. By bringing novel and complex issues to court,⁶⁴ These non-state actors compel the judiciary to interpret and expand human rights jurisprudence, particularly in emerging areas like climate change, the right to a clean environment, and the obligations of private actors under a constitutional regime. This process can lead to landmark rulings that redefine legal obligations and set new environmental and human rights protection benchmarks. Finally, and perhaps most importantly, active litigation empowers marginalized communities. It provides a formal, institutional mechanism for those who have historically been silenced to have their voices

⁶³ *Oposa v Factoran, Jr.* (1993) 224 SCRA 792 (Phil) is a landmark case establishing the intergenerational responsibility principle.

⁶⁴ The *Thabametsi* case enforced climate change assessments under constitutional environmental rights, the *Maledu Itelegeng* case protected indigenous property rights against mining, and the Indonesian *Save Sangihe Island* case, where citizen-led litigation successfully challenged environmental permits.

heard and to seek redress. By forcing the hand of justice, these organizations provide hope and tangible results, demonstrating that the law can be a tool for the vulnerable to challenge the powerful. The robust legal framework, particularly in countries with strong constitutional protections and a hybrid legal system like South Africa, provides a fertile ground for this strategic legal action, allowing NGOs to navigate public and private law complexities.

The hybrid legal system that places direct responsibility on private entities to uphold environmental rights and its strengthened environmental framework allows NGOs like Earthlife Africa and LAMOSA to play significant roles in environmental legal disputes. They use litigation and advocacy to address rights violations, offering a potential model for other countries to follow in improving environmental protections. However, the complexity of this system, as seen in one, requires NGOs to continually enhance their legal expertise and knowledge to navigate challenges and effectively promote human rights.

V. CONCLUSION

Preserving the environment is fundamentally interconnected with the efforts of thriving humankind.⁶⁵ Alongside this, the traditional legal and political frameworks of states and international institutions, which were designed for more straightforward, contained disputes, have proven insufficient. They often struggle to address climate change's complex, long-term, and transboundary nature, which unfolds across national borders and decades. This institutional gap has opened a vital space for individuals and non-state actors, such as NGOs, to become significant change agents.⁶⁶ Leveraging international human rights norms and innovative legal arguments, one should argue that NGOs play

⁶⁵ Brian J Preston. *Loc. Cit.*

⁶⁶ Ravi Menon and Chiara Zilioli, *Climate-Related Litigation: Recent Trends and Developments* (Network for Greening the Financial System 2023).

a catalytic role in shaping legal strategies and advancing environmental justice.⁶⁷ Their effectiveness, however, depends on how much horizontal human rights applications are recognized within a country's legal framework. These organizations have evolved beyond their conventional role of raising awareness and supporting advocacy. They now engage in strategic litigation, a proactive approach where they initiate high-profile legal challenges to hold governments and powerful corporations accountable for environmental harm and human rights violations. This strategic use of the judiciary represents a fundamental shift in their role, transforming them into critical legal enforcers who complement the work of public institutions by ensuring accountability where state action falls short.⁶⁸ This is particularly crucial as advancements in attribution science increasingly allow us to link specific environmental harms to private entities. This evolution is rooted in a critical development in human rights law: the transition from a solely vertical effect to an expanded horizontal effect. The vertical effect, which traditionally placed the burden of human rights protection on the state as the sole duty-bearer, is no longer adequate for a world dominated by powerful private corporations.⁶⁹ The horizontal effect, by contrast, directly imposes human rights obligations between non-state actors. This legal doctrine is the engine behind the new wave of climate litigation, as it empowers NGOs and individuals to directly sue private entities for their damaging actions, bypassing the need for state mediation.⁷⁰ Landmark cases like *Urgenda* exemplify this power. In this case, an NGO mobilized citizens to hold their government accountable for a duty of care under human rights law.⁷¹ While legal traditions, such as a country's civil or common law system, may influence how this principle is applied, the core concept remains the same: it offers a more immediate and effective avenue for legal redress. This provides a mechanism for holding non-state actors accountable for respecting and fulfilling human rights, ensuring that legal frameworks can adapt to modern challenges.

⁶⁷ Francesco Francioni.*Loc. Cit.*

⁶⁸ Kumaravadivel Guruparan and Harriet Moynihan, *Climate Change and Human Rights-Based Strategic Litigation* (Chatham House, 2021).

⁶⁹ *Ibid.*

⁷⁰ *Ibid.*

⁷¹ Lottie Lane.*Loc. Cit.*

While constitutionally guaranteed, Indonesia's legal framework for human rights operates within a challenging context of state failure and institutional shortcomings. As a civil law country, Indonesia utilizes an indirect horizontal application of human rights, which means that constitutional protections are applied to private disputes not directly, but through judicial interpretation of existing private and administrative laws. This approach creates a complex and often inconsistent legal landscape for holding non-state actors accountable. Without clear and direct constitutional mandates for private entities to uphold human rights, the burden of enforcement falls heavily on the state, which, as demonstrated by numerous reports, often fails to fulfill its constitutional obligations to protect its citizens. This legal and institutional vacuum has necessitated a pivotal role for NGOs and civil society. Instead of relying on a direct legal path, organizations like Save Sangihe Island (SSI) and the South Sumatra Smoke Suit Initiative (ISSPA) must employ a multi-pronged approach that combines legal action with public pressure.⁷² In the Sangihe case, for example, SSI mobilized public support through protests and social media to pressure a mining company to disclose its environmental documents. Similarly, in the South Sumatra lawsuit, ISSPA and Greenpeace have supported residents in their claims against plantation companies, highlighting the urgent need for corporate accountability through both judicial processes and public advocacy.⁷³ This dynamic reveals that environmental protection in Indonesia is heavily dependent on state intervention and the sustained activism of NGOs, rather than a clear and direct legal obligation for corporations to uphold human rights. The result is a system where accountability is inconsistent, and enforcement relies more on a public outcry than on a legally straightforward process. The transition to a constitutional democracy in South Africa in 1994 established a new legal order with a Bill of Rights at its core, a direct response to the human rights abuses of the apartheid era. This constitutional framework is distinct from many others because its human rights protections are vertical, applying between the state and the individual, and horizontal, meaning they can be directly applied to disputes between private entities and citizens. This innovative legal design was born from recognizing that human rights

⁷² Maria Nassali. *Loc. Cit*

⁷³ Michel Tshiyoyo. *Op. Cit.*[11].

violations often occur in the private sphere and require a robust, legally enforceable framework to address them. South Africa's hybrid legal system, which combines civil and common law elements, utilizes this direct application to impose clear obligations on private corporations to uphold human rights. This legal environment has fostered a pivotal shift in environmental governance, enabling non-state actors like NGOs to engage in what is known as strategic litigation.⁷⁴ This proactive approach involves initiating legal challenges to determine the outcome of a single case, establish broader legal precedents, and influence public policy. The *Thabametsi* case, in which Earthlife Africa successfully challenged a coal power plant's environmental authorization, serves as a prime example. The NGO sued the company for failing to conduct a climate change impact assessment, which was a direct violation of environmental⁷⁵ In a different but equally vital capacity, the NGO LAMOSA joined the *Maledu* case as an *amicus curiae* or 'friend of the court,' providing critical expertise on land rights and mining, strengthening the community's position. Both cases illustrate how South Africa's legal system, with its direct application of human rights and emphasis on transformative environmental constitutionalism, provides a fertile ground for NGOs to hold private entities accountable and safeguard vulnerable communities.⁷⁶ NGOs supplement state efforts by providing expertise, legal resources, and research to improve policy implementation and environmental regulation enforcement.⁷⁷ These efforts pressure governments and corporations to uphold environmental rights and influence public discourse, ensuring that environmental and climate change concerns are prioritized. Their ability to translate environmental concerns into legally actionable claims strengthens the application of horizontal human rights, even in jurisdictions where direct obligations on private actors are still evolving. The question lies in how one can learn. Indonesia can learn from South Africa's experience of embedding direct horizontal application to strengthen legal frameworks that hold

⁷⁴ 'Earthlife Africa Johannesburg v Minister of Environmental Affairs and Others' (2017) 2 *Southern African Legal Information Institute*.

⁷⁵ *Ibid.*

⁷⁶ Pia Rebelo and Xavier Rebelo. *Op.Cit.*[190].

⁷⁷ *ibid.*[3].

corporations accountable.⁷⁸ They could also adopt South Africa's model of structured NGO involvement in legal proceedings to enhance transparency and accountability in environmental governance. Doing this could strengthen NGOs reliance on their roles regarding legal enforcement in this context, since it could be adjusted to balance human rights law and environmental law.⁷⁹

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⁷⁸ *Ibid.*

⁷⁹ Stefan Theil, *Toward the Environmental Minimum-Environmental Protection Through Human Rights*, (University of Oxford 2021) [276].

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