A DECADE OF PARADIGM SHIFT OF FOCUS FROM HISTORICAL RESPONSIBILITY AND CONTRIBUTION TO CLIMATE CHANGE TO INCREASING USE OF CLIMATE LITIGATION TO HOLD GOVERNMENTS AND COMPANIES IN HIGH CARBON EMITTING SECTORS (COAL, OIL, GAS AND AUTOMOBILE ETC) ACCOUNTABLE FOR THEIR CLIMATE INACTION AND CONTINUING CONTRIBUTIONS TO GLOBAL WARMING, WHICH GRAVELY THREATEN THE SAFETY/STABILITY OF CLIMATE AND HUMAN RIGHTS (TO LIFE, HEALTH, DIGNITY, FOOD AND SUSTAINABLE DEVELOPMENT) OF THE PRESENT AND FUTURE GENERATIONS: - A CASE FOR UPHOLDING CLIMATE RULE OF LAW AND JUSTICE.

BEING AN OPENING ADDRESS

BY

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As the world grows hotter, drier and harder hit by extreme weather events such as unprecedented flooding and the effects of sea level rise, prospects of achieving food security, poverty eradication, gender equality, education and energy for all, and other Sustainable Development Goals (SDGs 1-17) by 2030 are at risk.

The people most vulnerable (women, children, youth, rural populace) to the effects of climate change having less means to cope and adapt are those who already experience systematic exclusion, marginalization and disadvantage in Societies, and will be further disproportionately affected, and will bear the brunt of the impact, **if no climate action is taken by governments and corporate high Carbon emitters/polluters.**

Climate change is becoming a threat multiplier disrupting livelihoods, driving people into forced displacement and migration, intensifying Scarcities of natural resources which can drive violence and conflict, and mounting pressure on Government/State-Citizen relations and State/Government capacity to protect climate against harm, promote the security and welfare of all people, and advancing economic development in a sustainable manner for the benefit of all.

Hence Climate change is not just a pressing global environmental challenge, but its impacts are disproportional, affecting mostly developing and least developed countries, despite historically contributing the least to the causes of climate change. Efforts to address its negative consequences and impacts also **raise difficult questions for Law and politics: - on what roles should law, our various legal institutions and the actors within our Legal institutions (Judges, lawyers, legislators, the academia and climate activists) play in understanding emerging issues of climate protection against harm as a legal duty, adaptation and**

mitigation measures to climate change, compensating damage and loss, climate financing and the relations between climate change and Rule of Law for climate Justice.

All the above deeper questions can be framed as Rule of Law issues, wherein law as an instrument of policy and change can play a protective, responsive and instrumental roles in climate crisis. At its heart, the Rule of law requires laws to be Justly made and applied, underlines rules that promote inclusivity and participation, and open power to multiple voices and visions of the future, underscores the need for legal clarity and certainty, predictable and effective legal institutions, compliance and enforcement mechanisms, independent judiciary, human rights protection and access to justice for Legal redress/remedies.

The Rule of law is thus vital to climate safety or stability and justice, as an unsafe climate is a threat to our Collective Survival as human race, human rights (to life, dignity, health, food, property. and sustainable development) and Could widen economic and gender inequality. In this regard, the principles underlying the global recognition of an Environmental Rule of Law inform an evolving concept of "Climate Rule of Law," which offers a policy and conceptual framework for strengthening climate change interventions in the pursuit of economic development. It can create normative standards to inform accountability for climate action climate and inactions. It can promote climate justice that seeks to accelerate transformative climate action through the rule of law approaches, including empowering the most climate vulnerable people to realize their environmental rights and actively participate in climate decision-making processes affecting their lives, and increasing access to justice and legal empowerment in climate change matters so that people can actively seek legal redress and remedies as well as contribute to policy reform on climate matters.

The prospects for 'Climate Rule of Law and Justice' can be explained through the following emerging trends: -

- Today, Climate change is not only the Concern of global climate treaties like the UN Framework on Climate Change, Kyoto Protocol and the Paris Agreement on Climate change, nor is it that of a growing national Climate change Legislations, such as the Kenyan Climate Change Act of 2016, Climate change Law of Portugal and the Nigeria's Climate Change Act, 2021, but also the concern of broader legal frameworks ranging from human rights protection, land use and democratic governance.
- Climate litigation has taken on even greater importance after the failure of the Glasgow, Scotland, UK 2021 UN 26th Climate Change Conference, COP 26 to deliver the action and resources required to accelerate the energy transition and remedy the mounting harms against climate. Litigation in national and regional **courts plays an ever more important role in trying to compel the urgently needed climate action, by holding governments accountable and increasingly, Corporate entities in high emitting sectors are facing mounting public scrutiny and potential legal liability over the incompatibility of their operations and carbon-intensive products with a safe climate for the present and future generations**. From the high profile court Cases such as **Urgenda v. The Netherlands** and **Juliana v. United States**, which ask courts to demand stronger climate action by highly industrialised nations, to the rise in forward-looking Corporate Climate cases involving Shell, Total and Santos (in the Netherlands, France and Australia), to proceedings against German automakers and lawsuits in the state and federal courts in the USA against Shell, BP and Exxon Mobil fossil fuel companies for their climate deceptive products and services

affecting consumers (green - washing), as well as the South African's Case against government on the need for a climate change impact assessment as a prerequisite for the authorisation of proposal to build a coal-fired power station, **signals the visibility of law in climate change policy and debates as well as in judicial decisions, international treaty negotiations and new national Climate Change laws across the globe.**

- Lawsuits have already begun to hold corporations accountable for failing to rapidly bring their emission in line with a 1.5°C pathway. The most prominent recent example is the ground-breaking ruling in the **Netherlands, Milieudefensie et.al v. Shell**. The Hague District Court's May 2021 decision marked the first time a company has been held legally accountable for its contribution to climate change. The court ordered Shell to reduce its emissions out of duty to respect human rights and conform to the temperature goals set in the Paris Agreement. The ruling also set a precedent in holding Shell responsible for emissions across its supply chain, including those from its own operations and emissions from the use of its products which constitutes the lion's share of its carbon footprint. Shell must also reduce is overall global emissions of 45% below 2019 levels by 2030. This means that Shell cannot rely on engineered carbon dioxide removal techniques or purported negative emissions technologies that are not currently, and may never be , viable or safe at scale.

In **France**, a similar litigation is pending against Total (Total Energies). Environmental NGOs and local municipalities are seeking to hold the French fossil fuel giant accountable for failing to adequately report climate risks from its business operations and products and align its activities with the goals of the Paris Agreement.

In **Germany**, new corporate climate accountability litigation has also arisen. Following a successful constitutional climate case against German Government, wherein the German Constitutional Court ruled that the government owed a rights-based duty to its citizens to take more aggressive steps in Curbing emissions, environmental groups have commenced legal proceedings against German automakers (BMW, Mercedes-Benz and Volkswagen) for failing to align their business operations with the Paris Agreement climate goals and upholds the rights of future generations. Through their parallel lawsuits, DUH and Greenpeace Germany aim to compel the automakers to end the sale of fossil fuel Powered cars by 2030. Additionally, Greenpeace is demanding that VW reduce its emissions by 65% by 2030. **These cases signal that the growing trend toward challenging corporate climate impacts extends to automobile industry beyond the fossil fuel/petroleum Sector.**

In Australia, On 25 August 2021, the Environmental Defenders Office (EDO) file the first oil and gas industry **green washing** Case, targeting Australian Company SANTOS. The suit challenges Santos' claims that fossil gas is clean and that the company has a credible plan to reach net-zero emissions by 2040. As EDO explains, this is a landmark world-first test case in relation to assessing the lawfulness of the viability of Carbon Capture and Storage (CCS) and the environmental impacts of blue hydrogen, increasingly touted as a key element in Santos pathways toward net zero emissions.

In the **USA**, about a dozen lawsuits filed in State and federal courts against petroleum companies under tort, consumer protection and investor protection laws, with reference to the companies' ongoing climate deceptive practices, describing misleading representations around hydrogen and CCS, indicating how petroleum Companies promote their purported climate change "solutions" that could have legal

ramifications. Lawsuits brought by the District of Columbia, Vermont, and New York City, for example, cite Shell's portrayal of hydrogen as a form of greenwashing. In the DC case, the complaint calls out Shell for advertising hydrogen as "Clean" while omitting that nearly all hydrogen produced in the USA comes from fossil gas. The Case of **Vermont v. Exxon Mobil et.al**, filed in September 2021, also notes that Shell both overstates its investments in hydrogen and ignores the adverse environmental impacts of this alternative fuel. Shell's Omission of the link between fossil gas and hydrogen is also cited in a case filed by New York City on Earth Day 2021 against Exxon Mobil, Shell, BP and the oil and gas lobby group, the American Petroleum Institute, alleging violations of the City's Consumer Protection Law. Another case, **Beyond Pesticides V. Exxon Mobil**, brought under the DC Consumer protection Act, likewise alleges that Exxon has engaged in greenwashing, including through deceptive advertisements that obscure the problems with CCS while making it appear that CCS is a major part of Exxon's business and a key solution to the climate crisis.

In **the South African case of Earthlife Africa Johannesburg v. Minister of Environmental Affairs (Thabametsi),** the issue was whether a climate change impact assessment was a prerequisite for the authorisation of a proposal to build a 1200MW coal-fired power station set to begin operation until 2061. In a ruling, that Climate impact assessment was necessary, the Court noted that South Africa contributes to global GHG emissions because of its mining and coal-intensive energy systems. The Court referred to its mandate to apply international law under sections 39 (1) (b) and 233 of the Constitution, and government documents such as the National Climate Change Response White Paper and legislation such as the Electricity Regulation Act. The Court's approach suggests that policy and legislative documents are useful and relevant in determining the Compatibility of State actions with its

climate-related commitments under the law, including the Paris Agreement on climate change.

A growing number of lawsuits demand that companies align their operations with the emissions reductions that science report shows are necessary to avoid further harm to people and the planet. **Courts are being called upon not only to hold companies accountable for the contributions to the present climate crisis and its devastating impact, but increasingly to compel them to act now to prevent ongoing and future harm. This kind of forward-looking corporate accountability is indispensable to climate justice.**

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