Chapter 5

Elevating women's voices in transnational climate litigation

The case of *Asmania et al. v Holcim*

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Introduction

This chapter explores the challenges and opportunities related to the inclusion of women[1] – and, more specifically, fisherwomen – communities in transnational climate litigation[2] from a practitioner's point of view. It does so by discussing *Asmania et al. v Holcim* (*Asmania*),[3] a climate case filed by four Indonesian plaintiffs against a multinational corporation in a Swiss court under Swiss law.

Although climate litigation is on the rise,[4] civil law cases focusing on adaptation and loss and damage have been launched rarely, and even fewer times have women acted as plaintiffs.[5] This might stem from the fact that civil cases generally face severe procedural hurdles and factual and contextual limitations.[6] *Asmania* is, therefore, an exception in the landscape of climate litigation and a good example for showcasing why the involvement of women is critical for catalysing intersectional transformative climate action and the quest for community-based climate adaptation solutions.

To this end, the chapter first discusses the factual aspects of *Asmania* by presenting the background of the litigation. Secondly, it discusses how an intersectional approach can prove key to understanding how differentiated impacts of climate change on women shape, and are shaped by, the complex power dynamics of existing systems of inequality and oppression. Against this backdrop, the chapter looks at the gendered impacts of climate change on the Indonesian island of Pari and how women on the island have collectively responded. Thirdly, the chapter explains how listening to community demands in Pari, specifically from women, exposed the importance of adaptation measures and non-financial damages. Finally, the chapter describes how incorporating the Indonesian reality into the Swiss civil law framework discloses new gender-sensitive challenges that are disadvantageous for women.

The authors, who have been closely involved in the campaign 'Call for Climate Justice'[7] in support of *Asmania*, have analysed information gathered in several individual and group interviews conducted by them or their colleagues on the island of Pari, as well as the evidence presented in the legal proceedings in Switzerland.

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Background of the litigation: *Asmania et al. v Holcim*

Climate change impacts on Pari Island

Pari is a small island in the Indonesian Western Pacific Ocean located about 40 km from Jakarta, the capital of Indonesia. The island is 2.6 km long and measures approximately 430 m at its widest point. At its highest point in altitude, Pari's elevation measures 1.5 m.[8] About 1,500 inhabitants live permanently on the island. Its geographic location, size, and elevation make the island particularly vulnerable to the effects of climate change.

Due to climate change–induced sea level rise, small islands and low-lying coasts are particularly exposed to cascading and mutually reinforcing impacts, such as loss of coastal ecosystems and ecosystem services, salinisation of groundwater, flooding, or damage to coastal infrastructures.[9] These impacts, in turn, affect the health, food, water security, as well as traditions and cultural values of humans living in such areas.[10] Indonesia is exceptionally affected by these impacts due to its geographic location and many coastlines.[11]

These impacts are already severely felt on Pari Island. With increasing intensity and regularity, parts of the island are flooded by the sea.[12] Sometimes, the water stays on the island for up to one week before flowing back into the sea, which forces some inhabitants to move to other places. Other inhabitants sleep with water under their beds and raise their beds with a handful of stones.[13] The floods cause damage to houses and other infrastructure and pollute freshwater wells. Tourism, which is, besides fishery, the main source of income for the islanders, is highly affected by these developments.[14]

A study by German climate scientists analysing the attribution of the floods on Pari Island and the related impacts to climate change draws a daunting outlook for the island's future. The study asserts that the mean sea level will continue to rise for the next centuries.[15] This rise will lead to an increase in extreme water levels, and thus more frequent and intense floods.[16] This makes it almost certain that human-induced global warming and the associated sea level rise will lead to more future climate change–related impacts and damages on Pari.[17] Yet the extent of these impacts and damages depends largely on how much the Earth warms in the years to come.

Litigation filed in Switzerland

Facing these increasingly challenging threats to their livelihoods, four inhabitants of Pari Island – Asmania, Arif Pujanto, Mustaqfirin, and Edi Mulyono – took legal action. They filed a lawsuit against the world's biggest cement manufacturer, the multinational corporation Holcim Ltd (Holcim), demanding climate justice.[18] Holcim is a public limited company with subsidiaries in 70 countries, headquartered in the city of Zug, Switzerland.[19] The Holcim Group operates 266 cement and grinding plants worldwide and is on the list of the so-called carbon majors,

which constitute the 107 companies that have contributed most to climate change.[20] According to an analysis conducted by attribution scientist Richard Heede, Holcim and its predecessor, Lafarge, have produced 7.26 Gt (billion tons) of cement from 1950 to 2021, which caused an estimated 7.15 $GtCO_2$ emissions (scopes 1, 2, and 3).[21] This result amounts to 0.42% of all global industrial emissions from 1751 to 2021.[22]

The plaintiffs demand Holcim to (1) reduce the emissions of the whole group in accordance with the 1.5 degrees Celsius limit defined in the Paris Agreement (mitigation),[23] (2) contribute to the costs of local flood prevention measures and water distilleries (adaptation), and (3) compensate them for financial and non-financial damages they have already suffered, as well as for future impending damages (loss and damages).[24] This holistic approach of the claim includes both a historical dimension of accountability for past contributions to climate change–induced loss and damages and a forward-looking dimension of accountability for future effects of greenhouse gas emissions. Yet the plaintiffs demand from Holcim solely the share of 0.42% of all costs of the damages, in line with the contribution of Holcim to all industrial emissions from 1751 to 2021.[25] Their requests are based on a classic tort claim under Swiss civil law for compensation of financial and non-financial harm and, for the emission reduction and the flood prevention measures, on a violation of their personality rights.[26]

In July 2022, the plaintiffs filed a conciliation request to the conciliation authority in Zug, where the Holcim Group is registered. The conciliation meeting between the parties failed in October 2022, which led the plaintiffs to file a complaint to the district court (Kantonsgericht) of Zug in January 2023. In October 2023, the plaintiffs received a first favourable decision from the court. Contrary to the arguments brought forward by Holcim, the judge granted the plaintiffs legal aid.[27] That means that the state covers the costs of their lawyer as well as the court fees and that they are exempt from paying a deposit for the fees of Holcim's lawyers. The legal action of the four islanders of Pari is backed by the 'Call for Climate Justice'[28] campaign supported by three non-governmental organisations (NGOs),[29] highlighting not only the wider topics of climate justice and loss and damages but also the role of the cement industry in the context of climate change.[30]

Getting the full picture through the lens of intersectionality

The situation on Pari Island is not exceptional. Human-induced climate change is increasingly causing weather and climate extremes around the world.[31] This has resulted in extensive adverse impacts and related losses and damages to humans and nature, which, in turn, have exacerbated existing inequalities and created new vulnerabilities.[32] All this is aggravated by historic marginalisation linked to gender, ethnicity, disability, age, economic poverty, and historical and ongoing patterns of inequity, such as colonialism.[33]

There is consensus on the fact that the adverse impacts of climate change affect women differently than other population groups.[34] Women also constitute most of the world's poor and often depend directly on ecosystems at risk as their primary source of food and income, which aggravates their exposure.[35] Nevertheless, not all women are equally affected by climate change. A series of contextual factors and power structures exacerbate the vulnerability to climate change impacts of particular groups of women and determines their ability to adapt to them.[36]

In order to better understand this convergence, intersectionality, as an analytical tool, sheds light on how social identities, such as race, age, gender, class, religion, geography, and mental health, among others, intersect with one another and interact with power structures to create and reinforce power, disparity, and discrimination.[37] In turn, this understanding can uncover emancipatory pathways for women in the face of climate change, as it sheds light on the agency that women may (or may not) be able to exercise in climate adaptation or mitigation processes.

While it is outside the scope of this chapter to do an intersectional analysis of the *Asmania* case, the authors refer to the main factors intersecting the lives of the women of Pari island, especially those politically active in the defence of their island.

Multi-layered gendered impacts of climate change

The gendered impacts of climate change appear in various ways, yet it is important to note that 'gendered' impacts are too often solely understood as impacts of climate change on women. This understanding falls short of the multifaceted gender dimensions of humans, including, for instance, non-binary, gender-queer, bi-gender, gender-fluid, or male population groups, to name just a few.[38] However, since the impact of local women in Pari on the presented case study was the most influential, this chapter focuses on the 'gendered' impacts on women.

For instance, in rural and agriculture-dependent areas, women tend to be vested with disproportionate household responsibilities, including cleaning, collecting fuel and water, shopping for food, and cooking. Following disasters and extreme weather events, such tasks become more labour-intensive, decreasing women's ability to achieve economic autonomy and heightening the risks and experiences of physical violence.[39] This exposure results in higher levels of mortality and morbidity among women in situations of disaster and extreme weather events.[40] These risks are further exacerbated by failures to engage in gender-responsive disaster planning, implementation, and information sharing, which neglect the specific needs of diverse groups of women.[41]

Similarly, as climate change negatively affects the availability, accessibility, consumption, and production of food,[42] it multiplies the risk of women facing food insecurity. Women are often the first in the family to skip meals or abstain from eating during times of scarcity.[43] This has negative impacts on their health, even more so for pregnant and breastfeeding women. Climate change further reduces the availability of clean water in terms of its quality and quantity. As women are often

primarily responsible for water collection, a lack of access or longer distances to clean water worsens their situation.[44] In turn, women's inability to meet family or household expectations exposes them to violence, recrimination, or punishment.[45] This disproportionate pressure on women to support their families may also affect women's mental health.[46] In times of crisis, this can cause stress-related disorders or even depression, especially if there is no prospect of an amelioration of the situation in the future. For Indigenous women and girls who have a special connection to the territories they live on and cultivate, these impacts are even more severe.[47]

Women not only tend to lack equal access to environmental and climate information but also are often excluded from participation in environmental, climate, and disaster risk decision-making processes, and from access to justice and effective remedies when their rights are threatened or violated.[48] This systematic underrepresentation of women inhibits climate action and further exacerbates harm, even more so as the needs of Black, rural, and Indigenous women have been highly disregarded in the context of global climate measures (both in the design and implementation phases).[49] This reality reflects that climate change mitigation, adaptation, and financing for loss and damages have mainly focused on male livelihoods, neglecting the usually unpaid responsibilities fulfilled by women.[50]

Intersectionality and women's agency in the face of the climate crisis

Understanding the differentiated impacts of climate change and how they interact with the multiple social identities of women is crucial to address their needs in the face of the climate crisis effectively.[51] Failing to consider the inequalities and power relations at play when assessing these impacts has led to a disproportionate focus on vulnerability in current debates, which is often associated with victimhood and passiveness, disregarding agency and empowerment as a crucial part of adaptation and mitigation strategies.[52]

Empowerment is linked to the ability to make meaningful choices by those previously denied this capacity.[53] However, for empowerment to take place, the exercise of the ability to choose must be carried out in ways that do not merely reproduce but, indeed, actively challenge the structures of inequality in their society.[54] The capacity to make such choices requires not only control and access to resources (for instance, land, education, healthcare, financial assets, or services) but also a process in which women see themselves as having the capacity and the right to participate and exert influence.[55]

In the context of climate change, the ability of women to choose the ways in which their society will adapt to the challenges posed by the crisis entails the participation of women in decision-making at all levels (community, local, national, and international). But simply 'adding women' to the table does not equal empowerment.[56] This requires, for instance, addressing structural gender inequality with respect to information-sharing and knowledge.[57] Consequently, all attempts to actively include women in climate action (either in litigation, policy formulation,

or implementation) must guarantee that women's participation is not nominal or tokenistic.

Succeeding in meaningful inclusion would not only empower women but also boost the general struggle against climate change as more comprehensive solutions emerge. As an example, the prominent role of women in the aftermath of natural disasters, and in the implementation of climate adaptation measures, has been increasingly recognised.[58] Women and women-led organisations are often the first responders during a crisis. Thanks to their strong local networks, they can identify the most vulnerable in need of assistance.[59] Furthermore, the participation of women's organisations in local decision-making on climate change adaptation has proven to be essential to ensure that the socio-economic needs of all members of their communities are included. This is because women's perspectives often include consideration and awareness of their immediate family and surrounding community.[60] In this sense, women's differentiated views and perspectives can inform more holistic, effective, and transformative climate action, including litigation pathways. Similarly, an intersectional approach can show how power structures and categorisations can be reinforced, but also challenged and renegotiated.[61]

Gendered climate impacts on Pari Island and the women's collective response

The risks mentioned at the beginning of this chapter are particularly high for women living in small island developing states. These women are exposed to extreme hazards, such as rising sea levels, intensifying natural disasters, and the destruction of natural ecosystems on which their primary income depends, as the example of Pari shows.[62]

Many women on Pari Island have traditionally worked as fisherwomen and seaweed cultivators to provide for their families. Water pollution around the Thousand Islands coastal area, changes in currents and sea temperature, combined with recurrent flooding have led to a significant decline in fish availability and have made seaweed farming unviable, affecting major sources of women's income.[63] After a decline in their harvest during the past years, in 2023, two of the plaintiffs stated that for the first time the local seaweed harvest was completely ruined because of the high temperature of the sea, which hinders the natural growth of the plants.[64] Faced with these challenges, during the last decade, many women have turned away from fishing and seaweed cultivation, venturing into tourism, cooking for tourists, renting bicycles, or working in homestays and shops.[65] All these alternatives are currently threatened by the impacts of flooding on tourism on Pari Island.

The aftermath of each flooding event involves an extensive clean-up process to eliminate seawater and waste that has entered houses, shops, and public spaces. This task is taken on primarily by women, who, in the face of a flood and its aftermath, have to not only ensure the physical safety of their children but also provide them and their families healthy food (including safe drinking water). Yet after most

of the floods, men would not bring income home from fishery and tourists would cancel their trips, leaving women without income and the necessary cash to buy fresh food. Various women described this overall situation as a 'double burden' for the women of the community.[66] This situation has affected not only the financial stability and economic advancement of women on Pari but also their mental health. Many women worry about their future, their physical safety, the safety of their loved ones, and the livelihoods of the whole island community.[67]

The community of Pari is battling these effects through collective action.[68] A group of women founded a female collective called *Perempuan Pejuang Pulau Pari* (Women's Group of Pari Island), which carries out various community activities.[69] The women's collective manages a beach at the eastern tip of the island, which includes regular cleaning and caretaking of the facilities and the local ecosystem, for example, cutting trees which are dying from the augmenting salinisation of the soil due to rising sea levels. The group further cultivates communal gardens, where they grow different types of vegetables. Yet due to recent floods, the group had to change the location of this communal garden twice in the last three years. Many of its members are worried because the sandy land and the availability of fresh water on the limited territory of the island leave them not many alternative spaces to cultivate in the future.[70] This threatens the local food supply of fresh fruit and vegetables, which is next to the loss of income and the salinisation of groundwater, one of the most concerning consequences of flooding for the inhabitants.

The women's group further undertakes massive adaptation efforts to protect the island from the impacts of flooding by planting mangroves on a large scale.[71] The group cultivates mangrove seedlings, sells them to tourists and school classes, and assists them in planting. This sensitises the visitors to the collective struggle to respond to climate change. These seedlings and their growth are then systematically monitored and documented. Yet the women stated that their efforts do not suffice to protect the island, because the seedlings need many years to grow to a size big enough to grant protection to the shores; thus, a larger quantity of seedlings is needed.[72]

The impact of women's voices on the legal design of the case

Having discussed the multi-layered systems of oppression that shape how women on Pari experience the impacts of climate change and how they might exercise their agency, this section highlights the challenges of capturing these multidimensional realities in fact-finding and fitting them into the pre-framed procedural framework of a civil suit in the Swiss legal system. It firstly shows how the women of Pari were vital in determining the legal design of the case. Secondly, the section discusses how some norms of the Swiss legal framework are disadvantageous for women's participation in transnational climate litigation and thereby add additional layers of discrimination.

The influence of women's participation in the fact-finding process

During the fact-finding process in preparation for the 'Call for Climate Justice' campaign and, ultimately, the legal case, several individual and group interviews were conducted.[73] The outcome of the interviews on the impacts of the floods on the island and community life varied substantially when women were involved, either as interviewers or respondents. A salient trend was that when men were interviewed, conversations circled mainly around damages to property and the impacts on fishing. Conversely, when the interviews involved predominantly women, more facets of the impacts on the island emerged, including impacts on food and water security, as well as on children and the mental well-being of the community at large. In addition, several women demonstrated a better understanding of household finances and how the floods had affected this aspect of their family life than their male partners. For instance, while one of the male plaintiffs explained how the water well in his house was regularly flooded by seawater and how much it cost them to supplement the family with distilled water, the women who were interviewed explained how the water system on the island functioned and how many of the wells were at risk. The women further elaborated on how the floods affect not only their financial stability and economic advancement but also their mental health. Children cannot go to school after each flood, as the floods start mostly during the night and scare them, so they can't sleep.[74] Similarly, the women expressed concerns not only for their physical safety and that of their children and neighbours but also where they themselves and their families would live in the future, as many coral reef islands like Pari are likely to become uninhabitable by 2050.[75]

Furthermore, a group interview with the local women's group, with the support of female interpreters, confirmed the aforementioned individual impacts on a larger scale. A more comprehensive image of the collective social support system on the island emerged. For example, whenever a family would not have enough savings for food due to a flood or lack of fishery income, others would support them. Or when the house of one family is flooded, others help bridge the challenges and support renovating potential damages. As a last resort, women would borrow money to cover their daily needs and the educational expenses of their older children who moved to neighbouring islands after primary school to continue their education.[76]

It became evident how religious practices on the island can impact women's participation. Most of the inhabitants of the island of Pari practice Islam. Therefore, at special times of the year, like the holy month of Ramadan, women have additional domestic responsibilities, such as preparing the food for the fast-breaking meal, *Itfar*. These responsibilities made it difficult for women to participate in community meetings to strategise around the island's climate struggle if they were held before sunset. Hence, finding times compatible with women's responsibilities on the island played an essential role in engaging in conversations with women and actively listening to their differentiated experiences and needs.

Along these lines, the perspectives of the women of Pari proved to be highly influential in the demands of the public campaign and the legal case. The inclusion

of female perspectives, both from interviewers and from interviewees, in the fact-finding and decision-making was crucial not only for capturing a differentiated and holistic picture of different human rights implications of the floods but also for including demands for adaptation measures into the litigation strategy. Women advocated for building longer and higher gabion seawalls (traditional seawalls, called '*bronjongs*') and planting mangroves to protect the island. In addition, in terms of adapting to the threat to the island's groundwater, the women brought forward the need for each family to have its own water distillery to provide safe drinking water.[77]

Fitting the reality of Pari Island into Eurocentric legal concepts

Before diving into the material and procedural obstacles of the litigation, two introductory questions should be answered: First, how can such a claim be filed in Switzerland? Second, what is the material legal basis for this transnational loss and damage claim?

Whenever launching transnational litigation, the choice of forum is crucial. To access Swiss jurisdiction for loss and damages, the facts of a civil matter must be 'international' and have a link to Switzerland.[78] Such 'internationality' can be caused by a contractual or non-contractual relationship among parties in different countries or by events that take place outside the Swiss territory with a connection to Switzerland.[79] There is no contractual relationship between the plaintiffs and Holcim (nor has there ever been one). Hence, the only option for a forum is a non-contractual relationship with a connection to Switzerland. But one might ask, How is the damage of the fishers on Pari Island linked to Switzerland?

In Swiss law, potential doors to access a forum are claims of unjust enrichment or classical tort claims.[80] As for tort cases, an asset (both financial and non-financial in nature) affiliated to an individual person, and so-called 'absolute rights', must be violated or endangered. Under such absolute rights fall different kinds of property rights (material and immaterial property rights, for example, patents and authorship) and personality rights.[81] Pure financial damages can only be claimed if there is an additional legal norm which protects financial assets from specific behaviour, for example, criminal norms for fraud or theft.[82]

Hence, to launch transnational litigation in a Swiss court, victims of climate-related loss and damage need to claim a violation of their property or of their personality rights caused by an action of a person or entity based in Switzerland. Yet these legal notions, as well as the procedural rules for claiming them, are at least partially disadvantageous for women, as we show next.

The patriarchy of property rights

The first known transnational climate case against a polluter launched in the Global North, *Luciano Lliuya v RWE*, is based on an infringement of property rights.[83] In this case, a Peruvian farmer, Saúl Luciano Lliuya, argues that his property is threatened

by the impacts of climate change, and that RWE, a major German coal producer, is partially responsible for this threat. To substantiate his claim, Lliuya argues that he and RWE live in a neighbourly relationship and that RWE's emissions, therefore, affect his property, despite RWE's headquarters being located in Germany, more than 10,000 km from his house in the Peruvian Andes.[84] While the case was rejected in the first instance, in the second instance, the Higher Regional Court of Hamm foreshadowed in November 2017 that due to the cross-border effects of greenhouse gas emissions, such a kind of global neighbourly relationship might fall under a provision of the German Civil Code and that property rights might be applicable in this situation.[85] This preliminary decision already broke a legal paradigm.[86]

However, property rights might not be an avenue open to many women on the front line of the climate crisis living predominantly in the Global South.[87] This is because women do not own as much land and assets as men on a global scale. Due to legal, cultural, and economic barriers, only 20% of the world's land is owned by women.[88] In many countries, a woman's ability to inherit land is restricted by discriminatory land, succession, civil, customary, religious, and family laws.[89] For instance, 76 states do not have laws granting women equal rights to property and inheritance.[90] The land and property rights of Indigenous and rural women often rely on community-based tenure systems that are under-recognised and insecure.[91] As a consequence, rural women are also disproportionately affected by land grabs.[92] These patriarchal-designed property cycles make it difficult for women to access fertile land and agricultural extension services.[93] In addition to limited land ownership, the land owned by women tends to be smaller than men's, inferior in quality, and usually more exposed to flooding, erosion, and other adverse climatic effects.[94] Consequently, requiring a property right to have legal standing as a plaintiff in a transnational claim is a systemic disadvantage for women.

As for the women of Pari, many of them co-own assets with their husbands (for example, their family houses and fish farms). However, the property rights on the island have been historically contested since the country's independence from the Netherlands.[95] Although a decision of the Indonesian Ombudsmen acknowledged the property rights of the islanders, some inhabitants have been left without formal property titles.[96] Furthermore, many women are personally and professionally active on territories that are not legally owned by or assigned to them, such as the communal gardens they use for cultivation and the beach at the eastern tip of the island which they operate as a women's collective. Consequently, the damages to communal gardens, the installations of the women's group at the beach, the coastal habitat, and the freshly planted mangroves were not included in the compensation claim in the *Asmania* case, despite being of high financial value and importance to the women of the island. The same is true for the general damages to the ecosystems of the island which lack a formalised asset link to one or various persons.

The door opener of personality rights

As mentioned previously, the second legal basis for transnational climate litigation under Swiss law are so-called 'personality rights'. Unlike property rights,

personality rights offer a much broader angle of women's participation in transnational litigation. Therefore, personality rights were used as the legal basis for the claims of the Indonesian plaintiffs in the *Asmania* case.[97]

The notion of the protection of personality is codified in the Swiss Civil Code (CC) and traditionally applied in cases of invasive journalism that might affect the reputation or right to privacy of the subject of the media reports.[98] Article 28 of the CC states that '[a]ny person whose personality rights are unlawfully infringed may petition the court for protection against all those causing the infringement'.

An infringement is unlawful if it is not justified by the consent of the person whose rights are violated, by an overriding private or public interest, or by the law.[99] Yet while not widely known or applied in practice, the protection of personality rights has a much broader scope than the protection from aggressive media reporting. Essentially, it is the realisation of the horizontal effects of human rights, meaning, the materialisation of human rights among private individuals and entities. These horizontal effects of human rights stem from the state's duty to protect human rights from infringements by third parties. Article 28 of the CC fulfils this purpose by protecting the personality of persons from infringement by others.[100]

As a result of humans having a wide set of rights, the notion of personality rights is broad. According to legal scholarship, the legal definition of 'personality' consists of numerous facets which should be interpreted by legal notions (rights) ascribed to a person. Scholars list, for instance, (1) physical areas of protection, such as the right to life, physical integrity, sexual freedom, bodily self-determination, or personal freedom; (2) psychological areas of protection, such as one's emotional life and mental integrity or the right to relationship and respect for loved ones; or (3) social spheres of protection, such as the right to one's image, voice, and words, the right to informational self-determination, the right to respect intimacy and privacy, and the protection of economic advancement.[101]

When a violation of anyone's personality rights occurs, the affected person may petition the court for protection against all those causing or contributing to the infringement. This differs from the traditional causality criterion in tort law, as minor contributions are also sufficient to be held legally responsible for violating personality rights. When claiming such a violation, affected persons may ask the court to (1) prohibit the threatened infringement, (2) order that an existing infringement cease, or (3) declare that an infringement is unlawful if it continues to have an offensive effect.[102] Suppose a claimant has suffered financial damage or mental harm due to the violation of his or her personality rights and wants to request financial compensation. In that case, the Swiss Civil Code refers to the general clauses for ex-contractual tort claims and just satisfaction, referred to as the 'law of delict'.[103]

With this wide angle, personality rights offer much more legal ground for claims of women to participate in litigation than property rights. For instance, the disproportionate climate change impacts on women in the areas of physical safety, mental health, and food (in)security all fit into this notion. Applying this concept, the plaintiffs argue in the complaint that the climate change impacts on Pari violate and further threaten their personality rights in all areas of protection, physical,

psychological, and social, which ultimately hinders their personal freedom, economic advancement, and mental well-being. For one of the plaintiffs, a violation of his physical safety is claimed because his house is regularly flooded during the night while electric appliances are connected to the grid, which poses a severe safety hazard for him and his family.[104]

This argumentation is crucial in the context of climate justice as it opens the litigation door to many individuals and vulnerable groups impacted by climate change who tend not to have contractual relationships with the biggest polluters. It is even more interesting considering the landmark judgment by the Grand Chamber of the ECtHR in the case of *Klimaseniorinnen v Switzerland*, as Article 8 of the European Convention on Human Rights, and its interpretation by the ECtHR, must also flow into the domestic interpretation of personality rights in the context of climate change.[105]

Although health and physical integrity are a facet of a person's personality rights, the literature does not name any eco-dimension of personality rights. This might change considering the case law of the European Court of Human Rights reading this dimension into other human rights and with the emerging right to a clean, healthy, and sustainable environment, which Switzerland has not only recognised but also heavily supported in the process of codification in the United Nations (UN) system.[106]

Procedural obstacles as door stoppers

One of the hurdles of civil litigation in Switzerland and other jurisdictions is the burden of proof of the claimant, combined with a relatively high threshold of the duty to substantiate the claim. In the Swiss judicial system, this duty to substantiate means that an assertion of fact does not have to contain all details.[107] It is sufficient if the facts, which are to be subsumed under the standards supporting the claim, are asserted in their essential features or outlined in a manner corresponding to the customs of life.[108] In tort claims, the assertion of facts traditionally heavily relies on documentary evidence. For example, bills and bank statements are used as evidence of financial transactions or debts. Tax declarations and salary statements can be proof of wealth and income. Medical documentation, advisory opinions, and health insurance statements can serve as evidence of health issues. This practice relies heavily, as the Swiss Federal Supreme Court states, 'in a manner corresponding to the customs of life'[109] in Switzerland or other economies in the Global North.

The community on Pari Island, on the other hand, primarily does business in an informal economy, meaning that most transactions of finances and goods are executed in cash based on oral agreements, without a paper trail. Freshly bought fish is sold directly at the harbour or to neighbours. Mangrove seedlings are produced in local gardens and sold to tourists without receipts. Tourists pay for their accommodation in cash without any formal proof of purchase. Furthermore, the inhabitants of Pari are exempt from paying income or wealth taxes, which leaves them without any formal tax statement issued by an official state authority.[110] This

informality is not unusual in the Global South, as 2 billion people (roughly 61% of the global employed population) earn their living in the informal economy.[111] Out of this 61% of the global employed population, women are more exposed to informal employment in sub-Saharan African countries, Southern Asia, and Latin American countries. Female labour force participation is low in many countries, and women are predominantly responsible for guaranteeing a family's access to food and water.[112]

Furthermore, on a global scale, women do not have the same access to information and communication technologies (ICTs) as men.[113] Therefore, they benefit less from the emerging field of scanning and advanced photograph applications on mobile phones and computers, which simplify the documentation of evidence and financial transactions and assets. Although women often have the best overview of their family's financial situation,[114] the high procedural threshold for its substantiation often poses a major hurdle for female plaintiffs from the most vulnerable communities in the Global South. In the *Asmania* case, Asmania, the leader of the local women's group, is one of the plaintiffs, who, unlike most women in the community, has a bank account, which facilitated the documentation of her financial situation.[115] For many other women, however, the evidentiary requirements of the Swiss judicial system could act as an insurmountable obstacle.

Conclusion

This chapter aimed at understanding how the women of Pari have influenced the building of the legal case of *Asmania* in the wider context of women participation in transnational climate litigation. The chapter first showed how climate change has different impacts on women but that not all women are affected equally. It described how understanding and considering the power dynamics and systems of oppression that traverse the lives of women in the context of climate change are a critical resource for catalysing effective and transformative climate action, including litigation. The chapter then turned to the example of the women of Pari and showed how they carry a double burden when dealing with the impacts of climate change on the island. When preparing the litigation, due to their special exposure, the voices of the Pari women were immensely important for unveiling the multifaceted impacts of climate change – especially regarding non-financial damages – not only on women but also in the broader community. Gender-sensitive interviews proved to be a crucial tool for capturing the full picture of damages. Then, the chapter outlined the vital role of the women of Pari when developing solutions and concrete suggestions for adaptation measures at the local level. Their ideas flowed directly into the legal design of the complaint against Holcim. Lastly, the chapter looked at the Swiss legal system. The example of the *Asmania* case showed how certain legal norms, which heavily determine access and success of civil loss and damage claims, mirror a Western and patriarchal-dominated world. By design, the Swiss legal system forms another disadvantageous layer for women's participation in transnational litigation.

In light of these, when dealing with climate litigation, an intersectional approach by practitioners is key to cast light on new and existing linkages and positions that can facilitate alliances between voices that are usually marginalised in the negotiations between the most dominant stakeholders in the climate arena.[116] This becomes increasingly important in transnational litigation, as legal norms and procedures in some countries might inadequately reflect societies from outside their jurisdiction and thereby foster disadvantages for vulnerable groups. A failure to address these dynamics actively might lead to litigation and litigators being closed off to and not driven by the demands of the individuals and communities they are representing – including the differentiated demands of the individual members within the communities.[117] However, when local communities, particularly women, like in the case of the Pari islanders, are effectively involved in transnational climate litigation, the law can be used as a tool not only to obtain redress but also to give voice to their demands and their differentiated experiences of climate change impacts in a political and legal arena that would otherwise be inaccessible to them.[118]

Along these lines, recognising women's leadership in climate struggles should be acknowledged and promoted. The chapter has shown that women, like Asmania, who lead such cases are not mere heroes. Asmania is a leader in her community and most probably inspirational for other women. However, people like Asmania need the right structural conditions to execute their agency. A critical intersectional approach in this context moves away from a reductionist narrative; instead, it critically assesses and addresses how power relations and social inequalities interfere with the ability of women to exercise their agency.[119]

Understanding these processes and dynamics helps develop alternative climate actions, including litigation processes that not only address the differentiated impacts of climate change on women but also do so from an intersectional and community-based perspective and approach.

Ultimately, only by listening to and elevating the voices of women and girls on the front line of the climate crisis will the goal of achieving systemic and empowering transformation be possible.

Notes

1 Whenever this text uses to the term 'women', it refers to both women and girls.
2 For the purpose of this chapter, 'transnational *corporate* climate litigation' is understood as cases of plaintiffs who aim to hold parent companies liable in the jurisdictions of their headquarters for climate-related harms that have occurred in other jurisdictions. The term 'transnational climate litigation' also involves legal actions against governments which have a cross-border component.
3 *Asmania et al. v Holcim* (2022) A1 2023 9, Justice of the Peace of the Canton of Zug (Switzerland) (*Asmania*); for more background of the case, see the website of the supporting campaign HEKS, 'Call for Climate Justice' (*Call for Climate Justice*) <https://callforclimatejustice.org/en/the-case> accessed 2 May 2024.
4 See Joane Setzer and Catherine Higham, 'Global Trends in Climate Change Litigation: 2023 Snapshot' (*Grantham Research Institute on Climate Change and the Environment*, 2023) <https://www.lse.ac.uk/granthaminstitute/wp-content/uploads/2023/06/Global_trends_in_climate_change_litigation_2023_snapshot.pdf> accessed 1 September 2024;

Michael Burger and Maria Antonia Tigre, 'Global Climate Litigation Report: 2023 Status Review' (*Sabin Center for Climate Change Law*, 2023) <https://scholarship.law.columbia.edu/sabin_climate_change/202/> accessed 2 September 2024; see also *Lliuya v RWE* (2017) 2 O 285/15, Oberlandesgericht Hamm (Germany) (*Lliuya*).

5 For an overview of tort climate litigation, see Laura A Duarte Reyes and Nina Burri, 'Transnational Corporate Liability in the Era of Loss and Damages: The Case of Asmania et al. vs Holcim' in Stefano Zirulia, Lidia Sandrini and Cesare Pitea (eds), *What Future for Environmental and Climate Litigation? Exploring the Added Value of a Multidisciplinary Approach from International, Private and Criminal Law Perspectives* (Milano University Press 2024); Maria Antonia Tigre and Margaretha Wewerinke-Singh, 'Beyond the North-South Divide: Litigation's Role in Resolving Climate Change Loss and Damage Claims' (2023) 32(2) *RECIEL* <https://onlinelibrary.wiley.com/doi/epdf/10.1111/reel.12517> accessed 2 September 2024.

6 See Duarte Reyes and Burri (n 5). For a discussion of attribution and causation, see John McClure et al., 'Attributions for Extreme Weather Events: Science and the People' (2022) 174 *Climatic Change* 22; F Otto et al., 'Causality and the Fate of Climate Litigation: The Role of the Social Superstructure Narrative' (2022) 13(5) *Global Policy* 736; Rupert F Stuart-Smith et al., 'Attribution Science and Litigation: Facilitating Effective Legal Arguments and Strategies to Manage Climate Change Damages' (2021) <https://www.smithschool.ox.ac.uk/sites/default/files/2022-03/attribution-science-and-litigation.pdf> accessed 2 May 2024; RF Stuart-Smith et al., 'Filling the Evidentiary Gap in Climate Litigation' (2021) 11 *Nature Climate Change* 651.

7 See HEKS (n 3).

8 See Jochen Hinkel et al., 'Heutige und zukünftige Auswirkungen des Klimawandels und Meeresspiegelanstiegs auf der Insel Pari' (2023) *GCF Working Paper* <https://zenodo.org/record/7566046> accessed 2 May 2024; Walhi, 'The Impacts of Climate Change on the Island of Pari' (*Walhi*, 2022); *Asmania* (n 3), [42].

9 IPCC, 'Chapter 12' in *Climate Change 2021: The Physical Science Basis. Contribution of Working Group I to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change* (2021) 1786 <https://www.ipcc.ch/report/ar6/wg1/downloads/report/IPCC_AR6_WGI_FullReport_small.pdf> accessed 2 September 2024; IPCC, 'Summary for Policymakers in Climate Change 2022 – Impacts, Adaptation and Vulnerability: Working Group II Contribution to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change' in HO Pörtner et al. (eds), (2022) <https://www.ipcc.ch/report/ar6/wg2/downloads/report/IPCC_AR6_WGII_FullReport.pdf> accessed 21 November 2024.

10 IPCC, 'Summary for Policymakers 2022' (n 9) B.4.2, B.4.3, B.5.2, figures SPM.2, SPM.3.

11 The World Bank Group, 'Indonesia, Climate Change Overview' (*World Bank Climate Change Knowledge Portal*, 2020) <https://climateknowledgeportal.worldbank.org/country/indonesia?fbclid=IwAR15fRpwkzJuhQ2nGZamVYiUofeEO5uN4KLp8v99a7XEaCQSAVBz4bMo90s> accessed 2 May 2024; The World Bank Group and Asian Development Bank, 'Climate Risk Profile: Indonesia' (2021) 2, 16–17, Table 7 <https://www.adb.org/sites/default/files/publication/700411/climate-risk-country-profile-indonesia.pdf> accessed 8 September 2024.

12 *Asmania* (n 3), [66ff].

13 See *Asmania* (n 3) and oral testimony by Asmania during her visit to Switzerland in June 2023.

14 Testimonies of the plaintiffs presented in *Asmania* (n 3); Walhi (n 8) 6ff; see also Fadli Gaper, 'Warga Pulau Pari Terdampak Banjir Rob, Holcim Digugat' (*KBR Indonesia*, 21 September 2022) <https://kbr.id/nasional/09-2022/warga-pulau-pari-terdampak-banjir-rob-holcim-digugat/109571.html> accessed 2 May 2024; Peter Jeung, 'Four Indonesians Take Swiss Cement Giant to Court Over Climate' (*Al Jazeera*, 1 February 2023)

<https://www.aljazeera.com/news/2023/2/1/four-indonesians-take-swiss-cement-giant-to-court-over-climate> accessed 2 May 2024; Matthias Müller, 'Ein Paradies zerrt Holcim vor Gericht' (*Neue Zürcher Zeitung*, 2 February 2023) 22 <https://callforclimatejustice.org/wp-content/uploads/Seiten_22_23_Neue_Zuercher_Zeitung_2023-02-02.pdf> accessed 2 May 2024. For a detailed analysis of the attribution of these impacts to climate change see Hinkel et al. (n 8).

15 Hinkel et al. (n 8) 32. See also Barrett Chapter 6, pp 193–195.

16 See Hinkel et al. (n 8); Makan A Karegar et al., 'Nuisance Flooding and Relative Sea-Level Rise: the Importance of Present-Day Land Motion' (2017) 7 *Scientific Reports* 1; IPCC, 'Climate Change 2021' (n 9) 1786; see also Sean Vitousek et al., 'Doubling of Coastal Flooding Frequency within Decades Due to Sea-Level Rise' (2017) 7 *Scientific Reports* 1.

17 Hinkel et al. (n 8); see also Karegar et al. (n 16); IPCC, 'Climate Change 2021' (n 9) 1786; Vitousek et al. (n 16).

18 *Asmania* (n 3).

19 The group was created after the merger of the companies Holcim Ltd and Lafarge in 2015.

20 See Paul Griffin, Richard Heede and Ian van der Vlugt, 'The Carbon Majors Database – Methodology Report 2017' (*CDP*, 2017).

21 Of this total, scope 1 operational emissions account for 5.33 GtCO2 (74.6%), scope 2 emissions 0.40 GtCO2 (5.5%), and scope 3 indirect emissions 1.42 GtCO2 (19.8 per cemt); Richard Heede, 'Carbon History of Holcim Ltd: Carbon Dioxide Emissions 1950–2021' (*Climate Accountability Institute,* 2022) <https://callforclimatejustice.org/wp-content/uploads/Heede-Report.pdf> accessed 2 May 2024.

22 Heede (n 21) 24. These calculations do not include other anthropogenic sources of greenhouse gases, such as non-CO_2 gases (nitrous oxide, various methane sources, F-gases), and non-energy CO_2, such as from land use, deforestation, agriculture, animal husbandry, etc. See all the reports available at Holcim, 'Sustainability Reports' (*Holcim*, 2023) <https://www.holcim.com/sustainability/esg/sustainability-reports> accessed 2 May 2024. For the majority of the subsidiaries listed in the consolidated report, the defendant holds a 100% stake.

23 When describing the gap between Holcim's current strategy and the necessary reduction pathways to reach 1.5 degrees Celsius, the plaintiffs refer to the analysis done by HEKS, 'Holcim's Climate Strategy: Too Little – Too Late' (*HEKS*, 2023) <https://callforclimatejustice.org/wp-content/uploads/HEKS-EPER_Climate-Analysis_Summary_EN_DEF.pdf> accessed 2 May 2024.

24 *Asmania* (n 3); 'Rechtsbegehren 1–5', 3–4.

25 *Asmania* (n 3), 'Rechtsbegehren 2–5', 3–4.

26 For a more detailed analysis, see heading titled 'The patriarchy of property' in the following text.

27 *Asmania* (n 3).

28 See HEKS (n 3). For an analysis of this campaign from a political science perspective, see Anya Mayaputri, Gracia Paramitha and Nurul Isnaeni, 'The Island's Call for Justice: NGO Advocacy in the Climate Litigation Case of Pari Island in Indonesia' (2024) 56 *Technium Social Sciences Journal* 282.

29 The three NGOs are the Swiss Church Aid HEKS/EPER, the German organisation European Center for Constitutional and Human Rights (ECCHR), and the Indonesian environmental organisation Walhi.

30 The industry as a whole emitted an estimated total of up to 8% of global CO_2 emissions by 2022. See Robbie M Andrew, 'Global CO2 Emissions from Cement Production, 1928–2018' (2019) 11 *Earth System Science Data* 1675, 1676.

31 For a comprehensive overview, see IPCC, 'Summary for Policymakers 2022' (n 9).

32 Following Shellae Versey's definition, *vulnerability* is understood as 'a state when experiencing harm from a hazardous event has high probability, and recovery time is

lengthy'. See H Shellae Versey, 'Missing Pieces in the Discussion on Climate Change and Risk: Intersectionality and Compounded Vulnerability' (2021) 8 *Policy Insights from the Behavioral and Brain Sciences* 67, 68.

33 IPCC, 'Summary for Policymakers 2022' (n 9) A.2., C.5. See also Murcott, Tigre and Ann Samuel 'Introduction', pp 2–5.

34 UNHRC, 'Report of the Office of the United Nations High Commissioner for Human Rights, Analytical Study on Gender-Responsive Climate Action for the Full and Effective Enjoyment of the Rights of Women to the Human Rights Council' (UN doc A/HRC/41/26, 2019); UNHRC, 'Report of the Special Rapporteur on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment, David R Boyd' (UN doc A/HRC/52/33, 2023) [34]; ECOSOC, 'Report of the UN Secretary-General on Achieving Gender Equality and the Empowerment of All Women and Girls in the Context of Climate Change, Environmental and Disaster Risk Reduction Policies and Programs, Presented to the Commission on the Status of Women' (UN doc E/CN.6/2022/3, 2022); OHCHR, 'Analytical Study on Gender-Responsive Climate Action for the Full and Effective Enjoyment of the Rights of Women' (UN doc A/HRC/41/26, 2019); UNHRC, 'Report of the Office of the United Nations High Commissioner for Human Rights on the Summary of the Panel Discussion on Women's Rights and Climate Change: Climate Action, Good Practices and Lessons Learned' (UN doc A/HRC/42/26, 2018); CEDAW, 'General Recommendation No. 37 (2018) on the Gender-Related Dimensions of Disaster Risk Reduction in the Context of Climate Change' (CEDAW/C/GC/37, 2018).

35 UNHRC, 'Analytical Study' (n 34).

36 Ana T Amorim-Maia et al., 'Intersectional Climate Justice: A Conceptual Pathway for Bridging Adaptation Planning, Transformative Action, and Social Equity' (2022) 41 *Urban Climate* 101053. See also Dutta and Lofts, Chapter 4, pp 137–138, for an Indian perspective on gendered vulnerability to climate change, and Ladan and Maduekwe, Chapter 8, pp 240–242, for a Nigerian perspective.

37 In this chapter, the authors address the notion of intersectionality with a focus on human–human relationships. Relations of power can be found in all relations from institutional practices to individual actions and human–nature power dynamics. For a more detailed discussion of different intersectionality approaches, see Angela Hefti, 'Intersectional Victims as Agents of Change in International Human Rights-Based Climate Litigation' (2024) 0 *Transnational Environmental Law* 1 (on the recent climate cases before the European Court of Human Rights); Natalia Urzola Gutiérrez, 'Gender in Climate Litigation in Latin America: Epistemic Justice Through a Feminist Lens' (2024) 16(1) *Journal of Human Rights Practice* 208 (for an overview of the gender-specific context in Latin American and litigation); Amorim-Maia et al. (n 36) (with a focus on adaptation planning and action); Michael Mikulewicz et al., 'Intersectionality and Climate Justice: A Call for Synergy in Climate Change Scholarship' (2023) 32(7) *Environmental Politics* 1276 (for linking intersectionality to climate justice); Shellae Versey (n 32) 68 (with a perspective from the discipline of psychology). See also Murcott, Tigre and Ann Samuel, 'Introduction'.

38 See Urzola Gutiérrez (n 37) 210.

39 UNHRC, 'Report of the Special Rapporteur on Violence Against Women and Girls, Its Causes and Consequences, in the Context of the Climate Crisis, Including Environmental Degradation and Related Disaster Risk Mitigation and Response, Reem Alsalem' (UN doc A/77/136, 2022).

40 CEDAW (n 34) [4]; E Neumayer and T Plümper, 'The Gendered Nature of Natural Disasters: The Impact of Catastrophic Events on the Gender Gap in Life Expectancy, 1981–2002' (2007) 97 *Annals of the Association of American Geographers* 551; UNHRC, 'Summary Panel Discussion' (n 34) [11]; UNHRC, 'Report of David R Boyd' (n 34).

41 CEDAW (n 34) [4], [6].

42 UNHRC, 'Analytical Study' (n 34) [6].
43 Global Gender and Climate Alliance, 'Gender and Climate Change: A Closer Look at Existing Evidence' (2016) <https://wedo.org/wp-content/uploads/2016/11/GGCA-RP-FINAL.pdf> accessed 2 May 2024.
44 UNHRC, 'Report of David R Boyd' (n 34), [17f]; UNHRC, 'Analytical Study' (n 34) [9]; UNHRC, 'Summary Panel Discussion' (n 34) [1], [5].
45 UNHRC, 'Report of David R Boyd' (n 34) [17f]; UNHRC, 'Analytical Study' (n 34) [9]; UNHRC, 'Summary Panel Discussion' (n 34), [1], [5].
46 Kim R Van Daalen et al., 'Extreme Events and Gender-Based Violence: A Mixed-Methods Systematic Review' (2022) 6 *The Lancet Planetary Health* 504; Gender and Alliance (n 43).
47 UNHRC, 'Report of David R Boyd' (n 34) [83].
48 See for many UNHRC, 'Report of David R Boyd' (n 34) [34]; UNHRC 'Analytical Study' (n 34), [12].
49 See, for an overview, UNFCCC, 'Synthesis Report by the Secretariat on the Differentiated Impacts of Climate Change on Women and Men; the Integration of Gender Considerations in Climate Policies, Plans and Actions; and Progress in Enhancing Gender Balance in National Climate Delegations' (UN doc FCCC/SBI/2019/INF.8, 2019), [46ff] <https://unfccc.int/sites/default/files/resource/sbi2019_inf8.pdf> accessed 2 May 2024.
50 UNHRC, 'Report of the Special Rapporteur (Reem Alsalem)' (n 39).
51 See Versey (n 32) 67 and Murcott, Tigre and Ann Samuel Introduction, pp 6–11.
52 Houria Djoudi et al., 'Beyond Dichotomies: Gender and Intersecting Inequalities in Climate Change Studies' (2016) 45 *Ambio* 248, 251; Urzola Gutiérrez (n 37) 4.
53 Naila Kabeer, 'Economic Pathways to Women's Empowerment and Active Citizenship: What Does The Evidence From Bangladesh Tell Us?' (2017) 53 *The Journal of Development Studies* 649.
54 Kabeer (n 53).
55 A Cornwall, 'Women's Empowerment: What Works?' (2016) 28 *Journal of International Development* 342.
56 UNFCCC (n 49) [30ff].
57 UNFCCC (n 49) [30ff]. See also Lisa Chamberlain, 'The Value of Litigation to Women Environmental Human Rights Defenders in South Africa' in Cathi Albertyn et al. (eds), *Feminist Frontiers in Climate Justice* (Edward Elgar Publishing 2023) 213 ff, for insight on the experience of the use of litigation by women impacted by mining in South Africa. See also Ladan and Maduekwe, Chapter 8, pp 240–242, and Dutta and Lofts, Chapter 4, pp 137–140 (on gender inequality).
58 M Picard, 'Beyond Vulnerability to Gender Equality and Women's Empowerment and Leadership in Disaster Risk Reduction: Critical Actions for the United Nations System' (2021) <https://caribbean.eclac.org/publications/beyond-vulnerability-gender-equality-and-womens-empowerment-and-leadership-disaster> accessed 2 May 2024.
59 Picard (n 58).
60 Picard (n 58).
61 Anna Kaijser and Annica Kronsell, 'Climate Change through the Lens of Intersectionality' (2014) 23(3) *Environmental Politics* 417. See also Uehara, Chapter 3, pp xx–xx.
62 UNFCCC (n 49), [13ff]; see also UNHRC, 'Report of the Special Rapporteur (Reem Alsalem)' (n 39) [6] and [61].
63 Walhi (n 8) 13.
64 See Walhi (n 8) 13 and information provided by the plaintiffs during their visit to Switzerland in June 2023, supported with visual documentation.
65 See Walhi (n 8) 12f.
66 Wahli (n 8) 12.
67 *Asmania* (n 3) [72–75], [88], [100–104], [114–119].
68 This sub-chapter is based on information gathered in various individual and collective interviews conducted by the authors on Pari Island. Furthermore, see Walhi (n 8) 3f, 12f.

69 Bincang Perempuan, 'Perempuan Pulau Pari Mengeluh Sulitnya Menjaga Laut dan Pesisir' (*Bincang Perempuan*, 10 November 2023) <https://bincangperempuan.com/perempuan-pulau-pari-mengeluh-sulitnya-menjaga-laut-dan-pesisir/.> accessed 2 May 2024.
70 Perempuan (n 69); *Asmania* (n 3), [102], [114].
71 See, for example, 'Indonesians Sue Swiss Firm Over Climate Change' (*Deutsche Welle*, 2 February 2023) <https://www.youtube.com/watch?v=yJKXmPFz4a4&ab_channel=DWNews> accessed 2 May 2024; 'Inselbewohner verklagen Weltkonzern' (*ARD Weltspiegel*, 24 September 2023) <https://www.ardmediathek.de/video/weltspiegel/indonesien-inselbewohner-verklagen-weltkonzern/das-erste/Y3JpZDovL2Rhc2Vyc3RlLmRlL3dlbHRzcGllZ2VsLzQyYWYwMzc3LTZjN-DUtNDg0Zi1iODk1LWRjODQ0NDE3OGRmZQ#:~:text=Vier%20Bewohner%20der%20Insel%20Pari,f%C3%BCr%20den%20steigenden%20Meeresspiegel%20verantwortlich> accessed 2 May 2024.
72 *Asmania* (n 3) [72], [214].
73 See HEKS (n 3); Walhi (n 8) 3f; see also evidence offered in *Asmania* (n 3).
74 Testimony of Asmania provided in June 2023 during her visit in Switzerland; *Asmania* (n 3); Walhi (n 8) 8ff; HEKS, 'Asmanias Kampf für Klimagerechtigkeit' (*HEKS Blog*, 2023) <https://www.heks.ch/blog/asmanias-kampf-fuer-klimagerechtigkeit> accessed 2 May 2024.
75 Hinkel et al. (n 8) 20.
76 Walhi (n 8); interviews conducted by the authors on Pari in April 2022.
77 *Asmania* (n 3) [205].
78 See 'Federal Act on Private International Law' <https://www.fedlex.admin.ch/eli/cc/1988/1776_1776_1776/de> accessed 2 May 2024 (PILA).
79 For instance, see Article 113 of PILA to determine when a characteristic obligation of a contract is to be performed in Switzerland. Article 3 of PILA further offers the exceptional forum in Switzerland if proceedings abroad are impossible or cannot reasonably be required and when the case has a 'sufficient' connection to Switzerland.
80 See PILA, Articles 127 and 129.
81 M Kessler, 'Artikel 41' in H-U Vogt et al. (eds), *Basler Kommentar Obligationenrecht I* (Basel 2019), N 31ff.
82 Kessler (n 81) N 8, 12f.
83 *Lliuya* (n 4).
84 *Lliuya* (n 4) 2–3, 25–31; see also N Walker-Crawford, 'Climate Change in the Courtroom: An Anthropology of Neighborly Relations' (2023) 23 *Anthropological Theory* 76.
85 Oberlandesgericht Hamm, *Lliuya vs RWE*, Hinweis-und Beweisbeschluss of 30 November 2017; Oberlandesgericht Hamm, *Lliuya vs RWE*, Oral Hearing of 17 November 2017. For the oral arguments of the judge, see Germanwatch, '§1004 – Global Neighbourhood' (*The Climate Case – Saúl vs. RWE*, 2023) <https://rwe.climatecase.org/en/legal#neighbourhood> accessed 2 May 2024.
86 Duarte Reyes and Burri (n 5).
87 The authors acknowledge the limitations attached to referring to the Global South as a reduced and heterogeneous reality, which leaves out important considerations of the complicated roles played by developing and developed nations in the context of climate change. Nevertheless, Jacqueline Peel and Jolene Lin contend that 'there is still value in the Global South grouping as the basis for an analysis of transnational climate litigation, not least because it is these countries – situated in Asia, the Pacific, Africa and Latin America – that are among the most vulnerable to impacts from climate change'. See Benjamin J Richardson et al., 'Introduction: Climate Law and Developing Countries' in Benjamin J Richardson, Yves Le Bouthillier, Heather McLeod-Kilmurray and Stepan Wood (eds), *Introduction: Climate Law and Developing Countries – Legal and Policy Challenges for the World Economy* (Edward Elgar Publishing 2009) 1, 5–6; J Peel and J Lin, 'Transnational Climate Litigation: The Contribution of the Global South' (2019) 113 *AJIL* 4, 679–726.

88 UNHRC, 'Report of David R Boyd' (n 34) [21].
89 UNHRC, 'Report of David R Boyd' (n 34) [76].
90 UNHRC, 'Report of David R Boyd' (n 34) [76].
91 UNHRC, 'Report of David R Boyd' (n 34) [21] and [25]; see also UNHRC, 'Analytical Study' (n 34) [8].
92 UNHRC, 'Report of David R Boyd' (n 34) [26].
93 UNHRC, 'Analytical Study' (n 34) [8].
94 UNHRC, 'Report of David R Boyd' (n 34) [25].
95 Martini Martini and Efridani Lubis, 'Analisis Yuridis Peralihan Tanah Girik Ke Hak Guna Usaha Berdasarkan Itikad Tidak Baik Di Pulau Pari Kepulauan Seribu DKI Jakarta' (2021) 7(1) *Veritas* 547632.
96 'Press Release: Ombudsman Temukan Maladministrasi dalam Penerbitan 62 SHM dan 14 SHGB di Pulau Pari' (2018) <https://ombudsman.go.id/artikel/r/artikel – press-release – ombudsman-temukan-maladministrasi-dalam-penerbitan-62-shm-dan-14-shgb-di-pulau-pari-> accessed 2 May 2024.
97 *Asmania* (n 3) [228ff].
98 See arts 28ff of 'Swiss Civil Code' <https://www.fedlex.admin.ch/eli/cc/24/233_245_233/de> accessed 2 May 2024 (CC).
99 See CC (n 98) Article 28 [2].
100 For an overview, see A Meili, 'Article 28' in T Geiser and C Fountoulakis (eds), *Basler Kommentar Schweizerisches Zivilgesetzbuch I* (Schulthess 2022); see also C Kirchschläger, 'Articles 28/28a' in W Fischer and T Luterbacher (eds), *Kommentar zu den schweizerischen Haftpflichtbestimmungen* (Dike Publishing 2016).
101 See Meili (n 100) N 17 and 37; Kirchschläger (n 100) N 9ff. The wide scope resembles the approach of the European Court of Human Rights (ECtHR) in the interpretation of Article 8 of the Convention.
102 See CC (n 98) Article 28a.
103 See Article 41 of the Swiss Code of Obligations (CO) for financial tort claims, and Article 49 CO for just satisfaction for mental harm. Article 41 CO reads: 'Any person who unlawfully causes loss or damage to another, whether wilfully or negligently, is obliged to provide compensation.' Further, specific tort rules are available for product liability, consumer credits, or the sale of travel packages, among others.
104 *Asmania* (n 3) [232–243].
105 The Grand Chamber found that Article 8 also encompasses a right for individual effective protection (by the state authorities) from the serious adverse effects of climate change on their lives, health, well-being, and quality of life. ECtHR, *Verein Klimaseniorinnen Schweiz et al. v Switzerland* (2024) 53600/20, European Court of Human Rights.
106 UNHRC, 'The Human Right to a Safe, Clean, Healthy and Sustainable Environment' (UN doc A/HRC/48/L.23/Rev.1, 2021); UNGA, 'The Human Right to a Clean, Healthy and Sustainable Environment' (UN doc A/76/L.75, 2022); The Federal Council, 'Switzerland's Contribution to Recognising the Human Right to a Clean, Healthy and Sustainable Environment' <https://www.admin.ch/gov/en/start/dokumentation/medienmitteilungen.msg-id−89824.html> accessed 28 July 2022.
107 Swiss Federal Court, BGer 4A_443/2017 of 30 April 2018, E 2.1 and E 4.1.
108 Swiss Federal Court, BGer 4A_443/2017 of 30 April 2018, E 2.1 and E 4.1.
109 Swiss Federal Court, BGer 4A_443/2017 of 30 April 2018, E 2.1.
110 *Asmania* (n 3) [324].
111 Florence Bonnet, Joann Vanek and Marty Chen, 'Women and Men in the Informal Economy – A Statistical Brief' (*WIEGO*, January 2019) 1 <https://www.wiego.org/sites/default/files/publications/files/Women%20and%20Men%20in%20the%20Informal%20Economy%20-%20A%20Statistical%20Brief%20-%20for%20web.pdf>

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112 International Labour Office (n 111) 21.

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