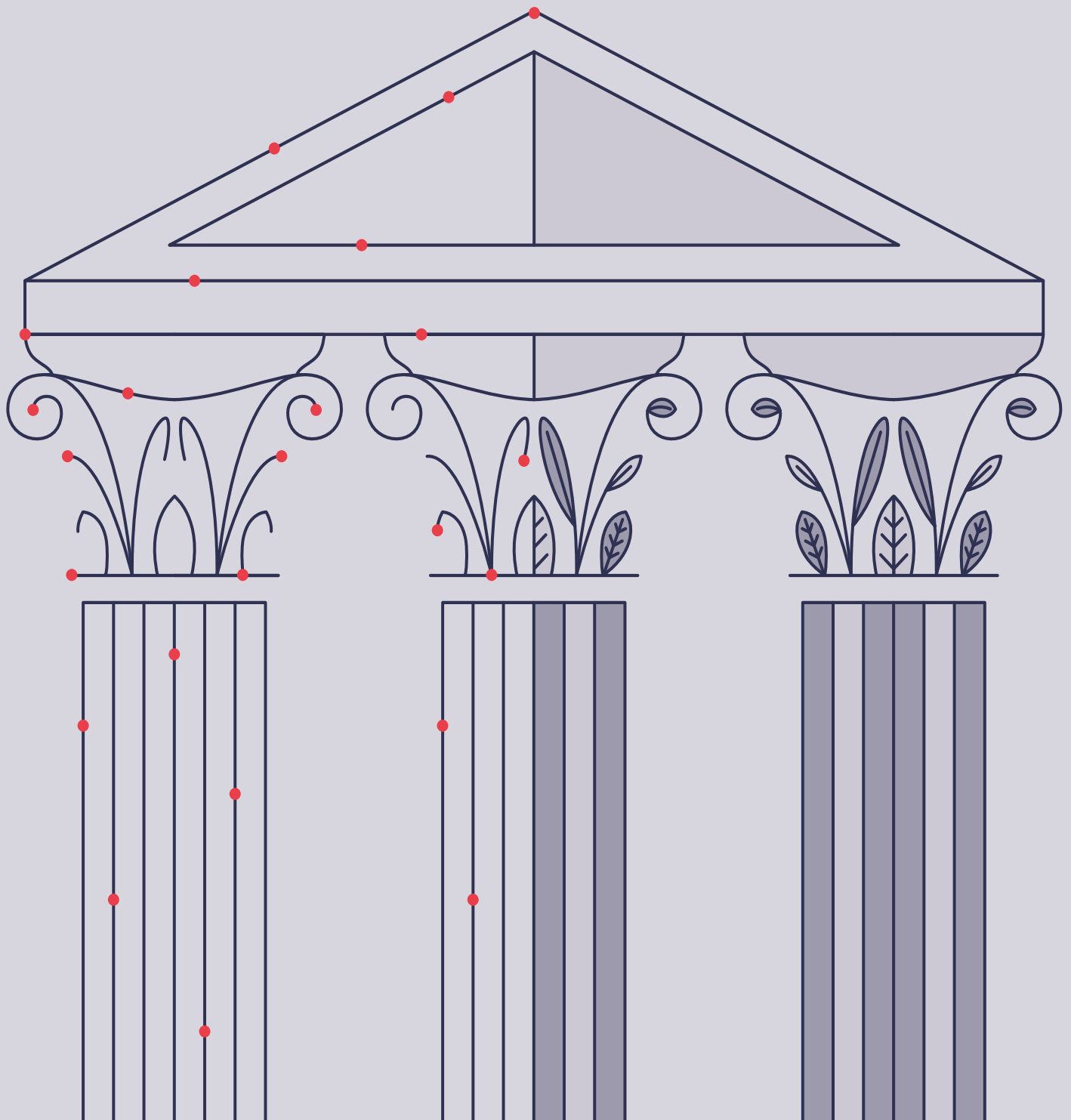


# Global trends in climate change litigation: 2023 snapshot

Joana Setzer and Catherine Higham



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# Summary

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## Key trends, 1 June 2022–31 May 2023

- 2,341 cases have been captured in the Sabin Center’s climate change litigation databases, 190 of which were filed in the last 12 months. The growth rate in cases appears to be slowing but diversity in cases is still expanding.
- Climate change litigation has now been additionally identified in Bulgaria, China, Finland, Romania, Russia, Thailand and Turkey.
- More than 50% of climate cases have *direct* judicial outcomes that can be understood as favourable to climate action. Climate cases continue to have significant *indirect* impacts on climate change decision-making beyond the courtroom, too.
- Domestic legal protections (e.g. for the right to a healthy environment) along with domestic climate legislation, play a critical role in cases against governments.
- Litigants are employing recognisable strategies across different jurisdictions. Most recorded cases are ‘climate-aligned’ outcomes but non-climate aligned litigation (e.g. ‘ESG backlash’) is increasing.
- More cases are being filed against corporate actors, with a more complex range of legal arguments. Around 20 cases filed by US cities and states against the Carbon Majors are now likely to go to trial.
- There has been growth in ‘climate-washing’ cases challenging the accuracy of green claims and commitments. Some cases seeking financial damages are also challenging disinformation, with many relying on consumer protection law.
- Challenges to the climate policy response of governments and companies have grown significantly in number outside the US.
- Litigation concerning investment decisions is increasing and can help clarify the parameters within which decisions should be made in the context of climate change.
- High-emitting activities are now more likely to be challenged at different points in their lifecycle, from initial financing to final project approval.

This report reviews key global developments in climate change litigation, with a focus on the period June 2022 to May 2023, drawing primarily on the Climate Change Litigation databases maintained by the Sabin Centre for Climate Change Law.

## Overview of observations and trends

### Case numbers continue to grow but the overall rate of growth may be slowing

Overall, more than 2,341 cases have been captured in the Sabin Center’s climate litigation databases. Around two-thirds of these cases (1,557) have been filed since 2015, the year of the Paris Agreement. Of these, 190 were filed in the last 12 months. Although the overall number of cases continues to grow, the growth rate may be slowing. This appears to be due in part to a continuing decline in the number of cases filed in the United States in the years since the end of the Trump administration. Outside the US, growth has remained relatively steady, except in 2021, when there was a significant spike in the number of cases filed.

### Climate change litigation continues to be identified in new jurisdictions

In the past 12 months, cases from seven new jurisdictions were added to the databases: Bulgaria, China, Finland, Romania, Russia, Thailand and Turkey. The growth in new cases continues to vary

significantly between jurisdictions, with Germany standing out as having a high number of recent cases.

Although the majority of cases are filed in the Global North, new cases continue to be identified in the Global South (135), with innovative arguments based on human and constitutional rights being a common theme. Newly identified cases in China suggest that China may be developing a unique form of climate litigation, where the courts may play a role in guiding enterprises' response to climate change.

### Three requests for advisory opinions from international courts and tribunals may shape future litigation

Requests for advisory opinions have been filed before the International Tribunal on the Law of the Sea (ITLOS), the Inter-American Court of Human Rights and the International Court of Justice. Although such opinions are non-binding, they have great potential to shape the future development of climate change law.

### Outside the US, NGOs and individuals continue to file many climate cases, targeting a diverse range of actors, including companies

Nearly 90% of the cases filed since June 2022 outside the US (hereafter referred to as 'Global cases') have been brought by non-governmental organisations (NGOs), individuals, or both acting together, continuing a trend from previous years. However, there has been a decline in the proportion of Global cases filed against governments. Historically, these have made up 70% of cases; in the last 12 months only around 54% of cases filed were targeting this group. On the other hand, strategic litigation against companies continues to develop, with cases targeting corporate actors from across a growing range of sectors.

### The number of strategic cases continues to rise, with litigants employing recognisable strategies across different jurisdictions

Many climate cases can be classified as 'strategic', meaning that they are filed with the aim of influencing the broader debate around decision-making with climate change relevance. Litigants in strategic cases often use similar strategies to those employed elsewhere.

In assessing the strategies used in strategic cases that were filed outside the US between 2015 and May 2023 we identify the following:<sup>1</sup>

- **'Government framework' cases:** 81 cases have been filed against governments outside the US, which seek to challenge their overall climate policy response. Cases may be focused on challenging the lack of ambition of the response, or a failure to implement policies or legislation, or both.
- **'Corporate framework' cases:** 17 cases have been filed against large corporations challenging their climate plans and/or targets on the basis that these are inadequate. Some of these cases may also involve arguments about 'climate-washing' (see below).
- **'Integrating climate considerations' cases:** 206 cases that seek to integrate climate considerations, standards or principles into a given decision have been filed globally. Such cases are often filed with the dual goal of stopping specific harmful policies and/or projects and making climate concerns more mainstream among policymakers. Many such cases challenge the development of new fossil fuel projects.
- **'Turning off the taps' cases:** 28 cases aimed at preventing the flow of finance to high-emitting or harmful projects or activities have been filed globally, 14 against public bodies

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<sup>1</sup> Many cases employ more than one strategy and are therefore counted more than once.

or state-owned financial institutions (such as export credit agencies), and 12 against private parties including banks and pension funds.

- **'Failure-to-adapt' cases:** 14 cases challenge a government or corporation for failure to adapt to the requirements of the climate crisis, either by failing to adapt property or operations to physical risks or by failing to consider transition risks.
- **'Polluter pays' (compensation) cases:** 17 cases seeking monetary damages or awards from defendants based on an alleged contribution to climate change harms have been filed. These include cases seeking compensation for past and present loss and damage associated with climate change; contributions to the costs of adapting to anticipated future climate impacts; compensation to 'offset' emissions, where defendants' activities have caused damage to carbon climate sinks.
- **'Climate-washing' cases:** 57 cases challenge inaccurate government or corporate narratives regarding contributions to the transition to a low-carbon future, or misinformation about climate science. The overwhelming majority of these (52) have been filed against corporations.
- **'Personal responsibility' cases:** 8 cases seek to incentivise the prioritisation of climate issues among public and private decision-makers, by attributing personal responsibility, whether criminal or civil, for a failure to adequately manage climate risks.

### The last few years have seen an explosion of 'climate-washing' cases

One strategy that has seen significant growth in recent years has been the focus on companies' so-called 'climate-washing' activities, concerning both climate misinformation and misleading green claims. In addition to looking at non-US cases, in Part II of the report we took a more in-depth look at the growth in both US and non-US cases filed against companies and changes in this figure over time. We find that a total of 81 climate-washing cases against companies were filed between 2015 and 2022. Of these, 27 were filed in 2021 and 26 were filed in 2022, compared with just 9 cases in 2020 and 6 cases in 2019.

### Not all strategic litigation aims to advance climate action

Strategic litigation may seek to delay or prevent climate action. We call this 'non-climate aligned' litigation. Outside the US, such litigation can be difficult to identify, in part because cases are less likely to fall within the fairly narrow definition of climate litigation employed in the databases. Nonetheless, new cases challenging government powers to regulate or intervene in certain areas have been identified in the last 12 months. In the US 'anti-ESG [environmental/social/governance] backlash' litigation is one of the most recent trends to emerge.

### Just transition cases are being filed against governments and companies

Climate litigation is commonly associated with 'pro-regulatory' (i.e. climate-aligned) cases aimed at advancing climate action and 'anti-regulatory' (i.e. non-climate-aligned) cases seeking to delay or obstruct climate action. We also distinguish 'just transition litigation': cases that aim to strike a balance between advancing the transition to a low-carbon economy with protecting the rights of affected communities, highlighting the complex interests and needs involved in the transition process.

### Climate change litigation continues to have significant impacts on climate governance

An assessment of direct judicial outcomes in climate change cases indicates that more than 50% of the 549 cases in which either an interim or final decision has so far been rendered have outcomes favourable to climate action. Some cases with a favourable outcome have directly led to new climate policies and action. However, even when there is a positive judicial outcome, it is not always clear that the way in which a judgment is implemented would lead to an increase in climate mitigation or adaptation.

To understand the impact of climate litigation on climate governance and beyond, it is also critical to look at indirect impacts. These include the way in which climate litigation is amplifying perceptions and awareness of climate change risks among key stakeholders, including financial regulators and the legal community; the way in which climate change litigation is impacting the markets, with new research suggesting that litigation against companies impacts their share prices; and the way in which even unsuccessful litigation can shape narratives around climate action, encouraging decision-makers to change their approach.

## **Trends in focus: recent developments in climate litigation**

### **Against governments: the role of human rights and the role of climate legislation**

In the past 12 months there have been significant developments in government framework cases, also known as systemic climate litigation or *Urgenda*-style cases [after the *Urgenda Foundation v. State of the Netherlands* case].

#### *International and regional courts are playing a key role in the development of jurisprudence relevant to framework cases*

Recent developments at the international level include a decision by the UN Human Rights Committee in the case of *Daniel Billy and others v. Australia*, finding that states have an obligation to take adaptation measures to protect the human rights of citizens. The European Court of Human Rights is soon expected to rule on three cases that further question states' obligation to protect human rights through the adoption of ambitious mitigation targets (*KlimaSeniorinnen v. Switzerland* and *Careme v. France*, heard in May 2023, and *Duarte Agostinho et al. v. Portugal and 32 Others*, scheduled for September).

#### *Domestic legal protections are also of critical importance*

Domestic legal protections, such as the constitutional right to a healthy environment, have been part of the basis for framework cases to advance in various countries (e.g. *Held v. Montana* and *Navahine F. v. Hawai'i Department of Transportation*). At the same time, climate change framework laws continue to offer a statutory basis for new cases both at the framework and the sectoral level (see *Deutsche Umwelthilfe v. Germany*).

#### *Human rights arguments against governments are used extensively beyond framework cases*

This has been seen, for example, in the 'Cancel Coal' case in South Africa, where arguments and evidence similar to those first developed in framework cases were used to challenge a government procurement process.

### **Against corporations: past and future responsibility, and loss and damage**

Efforts to establish corporate responsibility for harm from climate change caused by products have gained traction in recent years. Around 60 cases have been filed globally against the so-called 'Carbon Majors', with 20 of the 29 US cases filed by cities and states.

#### *A merging of parallel trends in corporate cases has occurred in the past 12 months*

Corporate liability cases have been characterised by significant differences in the type of relief sought. Some seek financial damages based on historic responsibility. Others aim to align companies' activities with the Paris Agreement and human rights obligations. An important development in recent months is the merging of both types of cases (e.g. *Asmania et al. v. Holcim* and *Greenpeace Italy et al. v. ENI S.p.A.*).

#### *Increased emphasis is being placed on current and past losses*

Cases such as *Asmania* highlight damages *already suffered* due to climate-related events. Loss and damage arguments are increasingly prevalent in polluter-pays cases. For instance, *Municipalities of Puerto Rico v. Exxon Mobil Corp* links hurricane impacts to compounded losses sustained by the communities.

### *Disinformation is becoming increasingly important*

Cases continue to develop new arguments relating to disinformation spread by high-emitting companies about the impacts of their products. *Municipalities of Puerto Rico v. Exxon Mobil Corp* accuses fossil fuel companies of continuous deception, amounting to racketeering activities. The case uses claims under the Racketeer Influenced and Corrupt Organizations Act (RICO), a piece of legislation that was previously used in past cases against the tobacco industry.

### *Corporate responsibility cases continue to expand beyond the Carbon Majors*

Several cases filed against auto manufacturers in Germany seeking to prohibit the production and sale of internal combustion engine vehicles have now been dismissed. However, new cases continue to be filed invoking 'due diligence' obligations, including cases involving financial institutions.

### **Managing climate risks: good investments in a warming world?**

Recent litigation cases have focused on the question of what constitutes a reasonable investment strategy in the context of the low-carbon transition. These cases involve interpreting legal obligations under corporate and financial law to protect firms, shareholders, investors and beneficiaries.

### *Focus on predicted future impacts of current investment decisions*

Early cases filed by shareholders focused on financial impacts already sustained by the company due to mismanagement and failure to disclose climate risks. More recent cases, such as *ClientEarth v. Shell Board of Directors*, focus on predicted future impacts, arguing that continued investment in fossil fuel projects will lead to long-term losses. While the initial case was rejected by the UK High Court, it raises questions about decision-makers' role in determining our planetary future and the need to adapt to the reality of climate change.

### *Litigation can help clarify responsibilities and encourage active engagement with uncertainty by key decision-makers*

Adapting decision-making and risk management systems to the complexity of climate change remains a challenge, meaning that active and transparent engagement with uncertainty is critical. Litigation can help clarify obligations and responsibilities, as seen in the case of *Butler-Sloss v. Charities Commission*, where trustees successfully sought confirmation that aligning investments with environmental goals is not a breach of fiduciary duties.

### **Climate-washing and green claims**

### *Climate-washing cases have surged in recent years and in the future are likely to be shaped by new laws and standards plus action from enforcement agencies*

These cases cover various types of misinformation, including challenges to corporate climate commitments, claims about product attributes, overstated investments or support for climate action, and failure to disclose climate risks. Examples include complaints against Glencore for expanding coal production despite net zero commitments, challenges to claims of products being 'climate-neutral', a case against Volkswagen for inconsistency between climate pledges and corporate lobbying, and allegations of failure to disclose climate risks by banks. There have also been complaints regarding 'state-sponsored greenwashing' in Australia and challenges to the EU's Green Taxonomy.

Laws and standards, such as the now updated OECD Guidelines, EU Directive on Green Claims, and initiatives by regulatory bodies, are becoming more common. This could lead to further litigation and discourage climate-washing behaviour.

### **Combined strategies targeting the full lifecycle of high-emitting activities**

### *Key high-emitting sectors are increasingly subject to litigation all along the value chain*

Cases continue to be filed against new fossil fuel developments targeting multiple stages of the value chain, from project development cases (e.g. *Sierra Club Canada Foundation et al. v.*



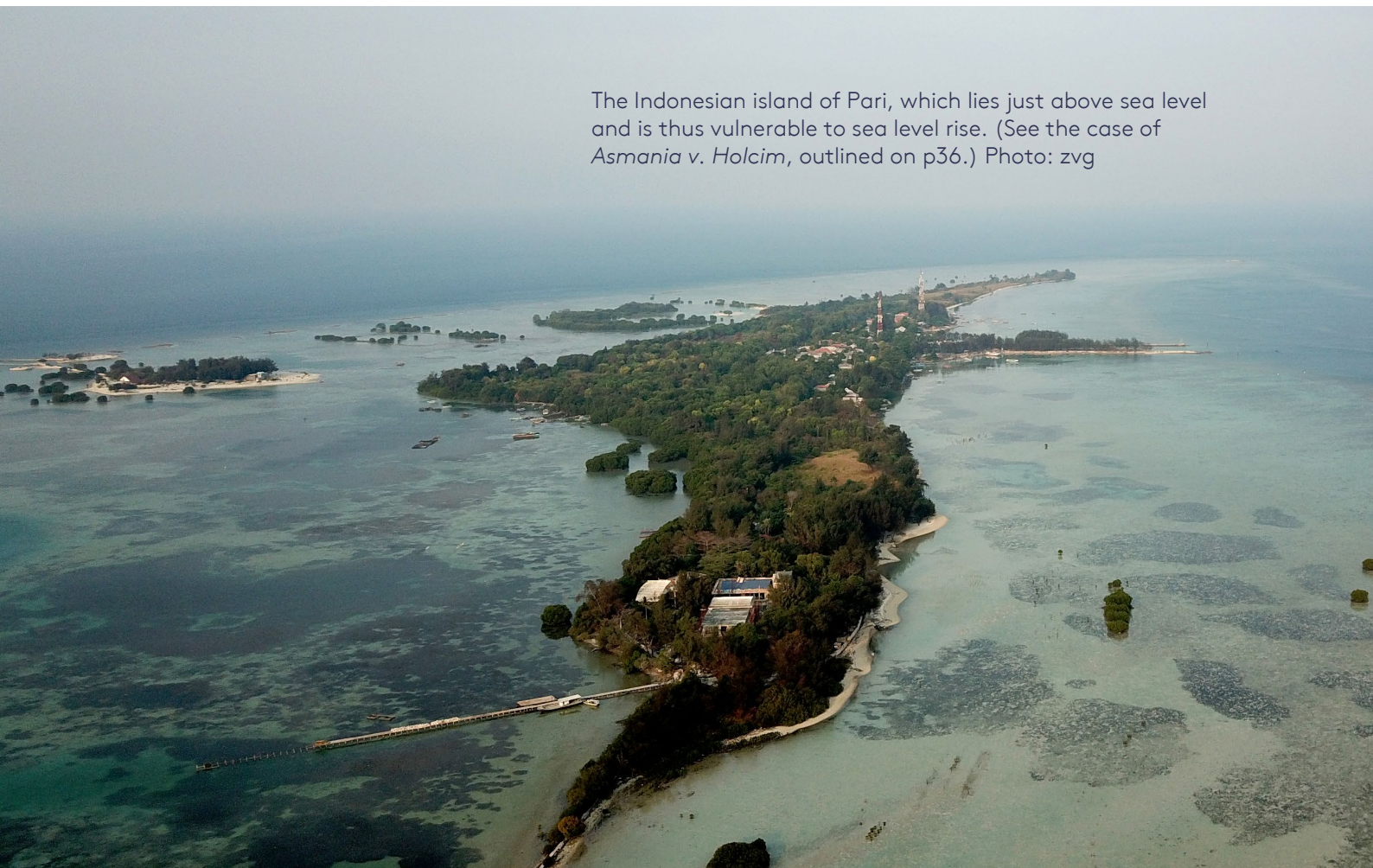
*Minister of Environment and Climate Change Canada et al.*) to cases concerning financing for the entire sector (e.g. *Notre Affaire à Tous v. BNP Paribas*). Similar trends are observed in cases addressing deforestation, where lawsuits target financing and communications by agriculture companies contributing to deforestation (e.g. a second lawsuit against BNP Paribas by Brazilian and French NGOs and the complaint filed with the US Securities and Exchange Commission against Brazilian meat giant JBS).

## Future trends

We predict increasing litigation focused on the following issues in the coming years:

- **Litigation focused on the biodiversity–climate nexus**, particularly arguing that more ambitious measures are needed to restore forests and enhance their carbon absorption capacities
- **Future cases addressing the duties of governments and corporations to protect the ocean** from further climate impacts and to explore ocean acidification and ocean-based carbon dioxide removal techniques
- **Litigation arising from extreme weather events where climate change may not be the central focus**, but where cases can still have significant implications for climate action
- **Cases concerning short-lived climate pollutants**, such as methane and black carbon soot, which are identified by scientists as crucial targets for mitigation
- **International litigation between states**, particularly regarding disputes over fossil fuel production and use.

The Indonesian island of Pari, which lies just above sea level and is thus vulnerable to sea level rise. (See the case of *Asmania v. Holcim*, outlined on p36.) Photo: zvg



# Introduction

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This is the fifth annual instalment of the Grantham Research Institute's *Global trends in climate change litigation* series. Each report provides a synthesis of the latest research and developments in the climate change litigation field, outlining general trends to date as well as focusing on cases filed in the previous 12 months. This report's focus is the period 1 June 2022 to 31 May 2023 and contains an update on case numbers, metrics and categorisations based on those used in previous years' reports, along with a thematic review of recent cases.

## Defining climate change litigation

Our primary goal in this series is to help readers understand the ways in which the law and the courts are being used as a tool to advance and challenge a variety of often inconsistent climate change-related agendas. To provide a succinct and coherent overview of this rapidly evolving field, we adopt a fairly narrow definition of climate [change] litigation. We consider such litigation to include cases before judicial and quasi-judicial bodies (this includes bodies such as arbitral tribunals, national human rights institutions, consumer watchdogs, and OECD National Contact Points, to name just a few) that involve material issues of climate change science, policy, or law. This is the approach adopted by the Sabin Center for Climate Change Law at Columbia Law School in identifying cases for inclusion in its Climate Change Litigation Databases, which form the primary data source for this report.

We acknowledge that although it is helpful for our purposes, this definition of climate change litigation has its limitations. As many scholars have noted, there will be numerous cases in which neither climate change science nor climate change law is at the heart of the case, but which will nonetheless have a serious impact on the volume of greenhouse gas emissions or on a country's resilience to climate change (see Peel and Osofsky, 2020; Bouwer, 2018; Hilson, 2010). Notably, the narrow definition of climate change cases adopted here excludes other forms of 'environmental' litigation, which may focus primarily on legal protections for biodiversity or air quality but which may nevertheless have significant co-benefits for climate action.

Similarly, cases in which climate change is a more peripheral issue are not included in this study, largely because those cases are not included in the climate litigation databases due to insufficient capacity to process an ever larger number of cases. We should point out that climate litigation in countries of the Global South is more likely to bring in climate change issues 'at the periphery' of the argument, and therefore excluding these cases may contribute to indicating a bias towards climate litigation in Global North countries (Peel and Lin, 2019). For example, a recent report on climate change in Indonesia identified at least 80 criminal cases in which the term 'climate change' featured in at least one court document, including witness statements (Sulistiawati, 2023). Many of these cases are centred on responsibility for forest fires and illegal deforestation and include a "superficial" (ibid.) mention of climate change in the context of the longer-term impacts of such activities. While 'peripheral' cases can play a role in shaping climate jurisprudence, and may when taken in aggregate be important for global climate action, such cases will not be discussed in this report for the reasons stated.

## Data sources

The primary source of data for this report is the [Global Climate Change Litigation database](#) maintained by the Sabin Center for Climate Change Law, supported by institutional partners including the Grantham Research Institute on Climate Change and the Environment. A separate [US Climate Change Litigation Database](#) is maintained by the Sabin Center in collaboration with the law firm Arnold & Porter.

This report focuses primarily on lessons to be drawn from the Global (i.e. non-US) database, but supplements this by drawing on US data where we deem this helpful for highlighting similarities and differences between trends in the US and those elsewhere.

### **Box A. Understanding climate-alignment of cases and the emergence of ‘just transition litigation’**

Attention on climate litigation tends to focus on cases seeking to advance climate action (Setzer and Higham, 2022), sometimes referred to as ‘pro-regulatory’ cases. However, not all climate litigation is filed with that aim in mind. Climate litigation can also be brought to challenge the introduction of regulations or policies that would lead to greenhouse gas emission reductions or other ‘positive’ climate outcomes. Such cases have in the past been referred to as ‘anti-regulatory’ (Peel and Osofsky, 2015), ‘defensive’ (Ghaleigh, 2010) or

simply ‘anti’ (Hilson, 2010). For the most part they are filed by litigants who have a financial or ideological interest in delaying or obstructing climate action.

As in our previous reports, we adopt the terms ‘climate-aligned’ and ‘non-climate-aligned’ to describe these two types of cases. We use the idea of ‘alignment’ to reflect the fact that the litigants’ motivation for filing a given case may extend beyond the desire to accelerate or delay global or local climate action agendas.

In this report we introduce a third distinct category of cases: ‘just transition litigation’. These are cases that challenge not the lack of climate action but the manner in which that action is being taken (see further discussion on p.18). In our 2022 report we classified such cases as a sub-category of non-climate-aligned litigation. However, as our understanding of the issues involved in these cases evolves, it is evident that this is too simplistic a way of understanding the complex issues raised. As we discuss in further detail below, the objective of just transition litigation is not to undermine climate action. Often, the applicants’ aim is to strike a better balance between the actions taken to advance the transition and the rights of communities impacted by those actions. In this regard, the examination of just transition litigation highlights the diverse interests and needs that co-exist in the transition to a low-carbon economy (Savaresi et al., forthcoming; Tigre et al., 2023b).

### **Data coverage and limitations**

Since 2021, coverage of many jurisdictions has improved, thanks to the Sabin Center’s convening of the [Peer Review Network of Climate Litigation](#), a group of scholars and practitioners from around the world who track litigation within specified geographical areas and participate in ongoing information- and knowledge-sharing and dialogue about climate litigation. Nonetheless, the databases are unlikely to contain every case from every court in every country. The US Climate Change Litigation Database benefits from the assistance of commercial litigation databases in the US and is therefore likely to be more comprehensive than the Global database.

The databases offer a diverse and cross-cutting sample of cases covering a wide range of geographies, levels of government and types of actors and argument, enabling observations to be made about trends and innovations, which often inform and inspire further litigation efforts. While we attempt to give combined figures for cases in and outside the US, in some instances, given the high volume of US cases, we treat US and non-US cases separately.

### **Box B. Improving the provision of data on climate law**

In previous years, data for this report series has been drawn from the [Climate Change Laws of the World \(CCLW\)](#) database, maintained by the Grantham Research Institute in partnership with the Sabin Center. The CCLW database contains the most comprehensive global dataset of climate change legislation and policy from around the world. This database has since May 2023 been upgraded through a new partnership with climate tech start-up Climate Policy Radar, which enables users to benefit from tools grounded in machine learning and natural language processing techniques to search for information within the full text of laws and policies and in multiple languages.

Prior to the upgrade, the CCLW database also offered litigation data drawn from the Global Climate Change Litigation database. As a temporary measure, litigation and legislation data will be offered separately as the Grantham Research Institute, the Sabin Center and Climate Policy Radar work together to develop a single integrated global resource to better support data users.

Access the datasets at: [climate-laws.org](https://climate-laws.org) and [climatecasechart.com](https://climatecasechart.com).

### **Structure of the report**

**Part I** of the report provides an update on overall global trends in climate litigation, discusses the increased use of strategic climate litigation and some of the strategies employed, reviews the 'direct' outcomes of litigation and provides a discussion of the broader impacts and costs of litigation.

**Part II** takes a more detailed look at some of the strategies identified in Part I and at the interrelationships between them. We then move on to a discussion of possible future trends in litigation, focusing on the climate policy areas we think are most likely to be subject to legal controversy in the coming months and years.

A brief conclusion sums up and looks to future trends. More detail about our methodology is provided in the Appendix.

# Part I. Understanding overall trends

In this section we provide an update on overall trends, including global case numbers and the timing, location, actors and focus of climate change litigation. We discuss the increased use of strategic climate litigation and some of the strategies employed by litigants, review the ‘direct’ outcomes of litigation and provide a discussion of the broader impacts and costs that litigation can entail.

## Location and timing of cases

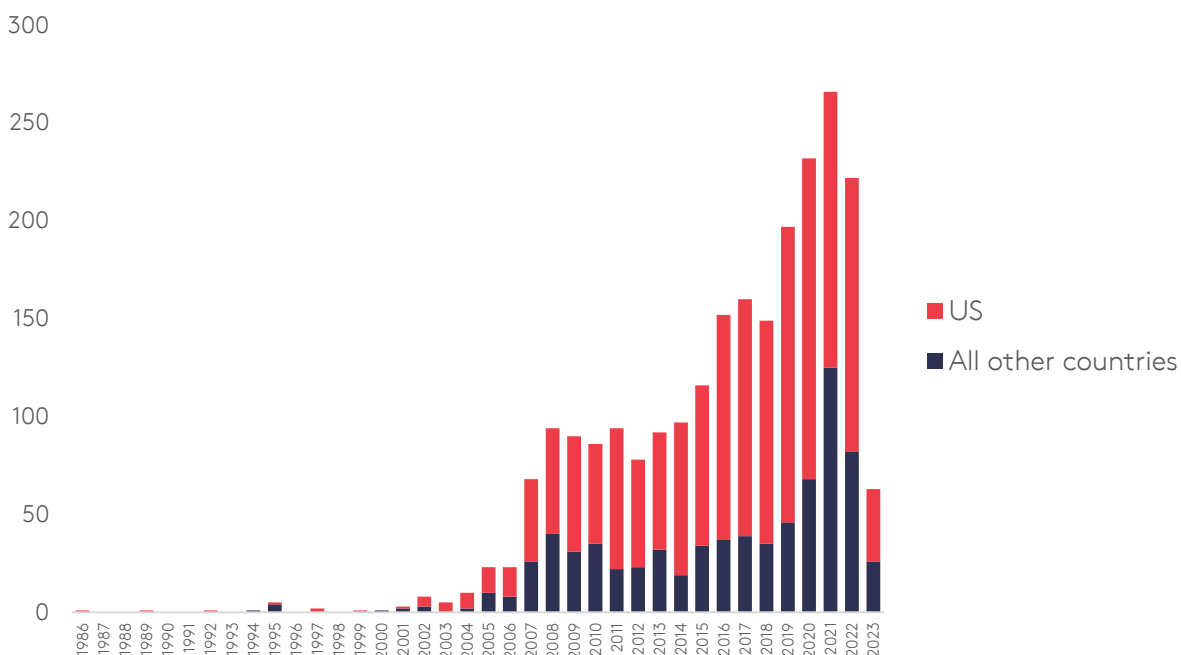
### Cases over time

Overall, at least 2,341 cases have been captured in the Sabin Center’s climate litigation databases.<sup>2</sup> Of these, 190 were filed in the last 12 months (i.e. 1 June 2022 to 31 May 2023). Around two-thirds of the total cases (1,157) have been filed since 2015, the year of the Paris Agreement. That year saw the start of a new ‘wave’ of litigation characterised by increasing diversity in the range of legal arguments used and the geographical spread of the cases (Setzer and Higham, 2022).

### *The growth rate in new climate cases may be slowing*

Although the overall body of cases has continued to grow, data from the last few years suggests that growth may be slowing (see Figure 1.1). In the calendar year 2021 a total of 266 new cases were filed, while in 2022 this figure was 222.

Figure 1.1. Total climate change cases over time, US and non-US (1986 to 31 May 2023)



Note: Data collection for 2023 is still underway, and there may be a small delay between cases being filed and being identified and processed for inclusion in the databases, therefore the 2023 data are incomplete.

Source: Authors based on Sabin Center databases

<sup>2</sup> Includes all cases in the most recent data download for US cases available on 31 May 2023 (updated on 23 May), and all cases included in the Global database, or being processed for inclusion in the Global database, as of 31 May 2023.

Part of the slowdown in the overall rate of growth may be the fact that US case numbers peaked in 2020, the last year of the Trump presidency (see further Silverman-Roati, 2021). By contrast, the number of non-US cases filed each year continues to see fairly steady incremental growth, except in 2021 when there was a significant surge in cases. While it is not clear what caused this surge, one explanation may lie in increased availability of resources within and engagement from the NGO community who were actively involved in pursuing climate litigation around this time (see also discussion of claimants and defendants on p.18 below). Of course, many climate cases – particularly those involving requests for financial compensation – are still at very early stages. Should such cases meet with success, it is likely their number would increase, particularly in light of early interest shown by funders of commercial litigation (see Setzer and Higham, 2021; Kaminski, 2023; Hodgson, 2023).

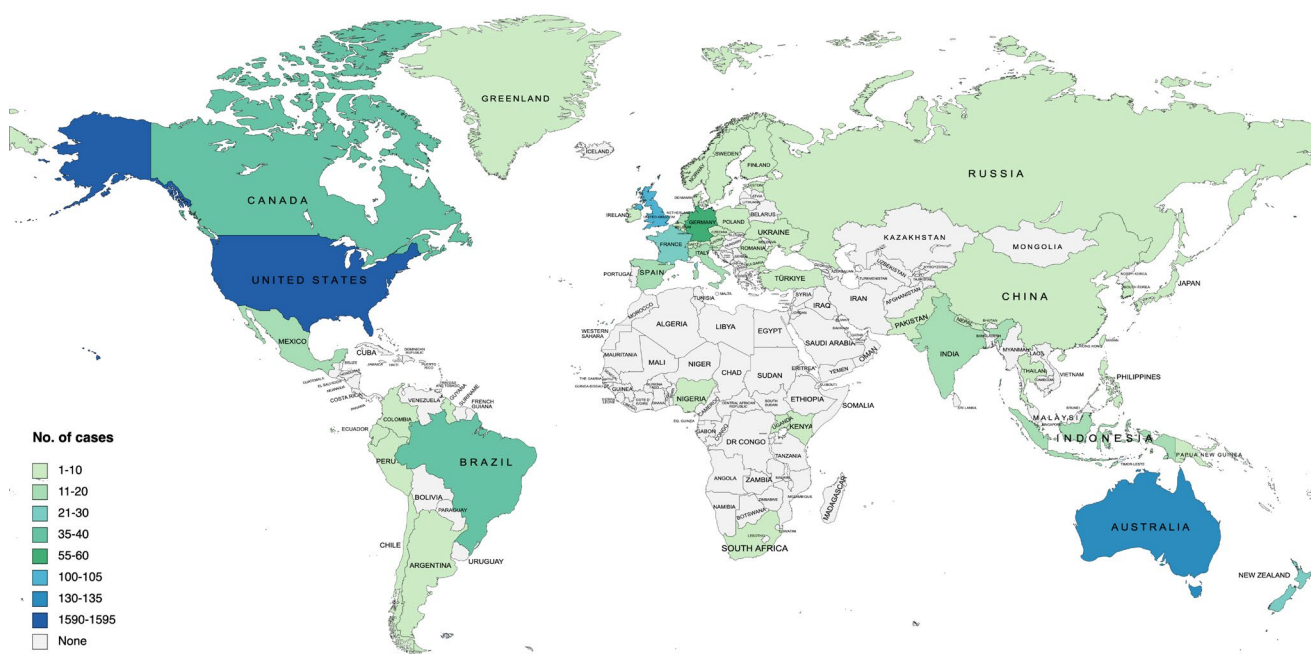
### Cases by country

Cases have been filed in at least 51 countries from across every region of the world (see Figure 1.2). Cases have also been filed before international or regional bodies, courts or tribunals, which is discussed further later on.

In the past year, cases from seven new jurisdictions have been added to the Global database: Bulgaria (first case filed in 2021), China (first case filed in 2016), Finland (first case filed in 2022), Romania (first case filed in 2023), Russia (first case filed in 2022), Thailand (first case filed in 2022), and Turkey (first case filed in 2021).

The United States remains the country with the highest number of documented climate cases, with 1,590 cases in total. Next is Australia, where 130 cases have been identified, and the United Kingdom, where 102 cases have been identified. 67 cases have been filed before the Court of Justice of the European Union. Relatively high numbers of cases have also been documented in Germany (59), Brazil (40), and Canada (35).

**Figure 1.2. Number of climate litigation cases around the world, per jurisdiction (up to 31 May 2023)**



*Note: Cumulative figures to 31 May 2023. This figure only includes cases filed before national courts or quasi-judicial bodies specific to a given country. The 118 cases filed before international or regional bodies, including the courts of the European Union, are not included.*

*Source: Authors based on Sabin Center databases. Created with mapchart.net.*

### *National contexts inform the nature and number of climate cases*

The number of cases is growing at varying rates across different jurisdictions. For example, the number of German cases documented in the Global database has doubled since our last report (increasing from 27 to 59). This may in part be explained by an increase in climate litigation in the wake of the successful outcome in *Neubauer et al. v. Germany*, which has been described as leading to a new generation of German cases (EUFJE National Report Germany, 2022). Subsequent cases concern the implementation of the Climate Protection Act – which was the subject of the *Neubauer* judgment – at the sectoral level (e.g. *BUND v. Germany*; *Deutsche Umwelthilfe v. Germany (LULUCF)*), subnational climate action (e.g. *Luca Salis et al. v. State of Sachsen-Anhalt*), and cases challenging the transition plans of corporations, including those in the auto industry (e.g. *Kaiser et al. v. Volkswagen AG*). Complaints to consumer protection bodies and courts concerning ‘climate-washing’ make a significant proportion of the cases (21 out of 59 – see further discussion in Part II). This rapid rise in cases in Germany in recent years provides a good reminder of the need to take national contexts and specificities into account when considering trends in litigation (see also Box 1.1).

#### **Box 1.1. How climate change legislation shapes climate change litigation – and vice versa**

Not all climate change litigation relies on climate change legislation, that is, on legislation specifically introduced as part of a country’s climate policy response. Instead, many of the highest-profile climate change litigation cases have been based in pre-existing legal duties, such as obligations under constitutional, human rights, consumer protection, or tort law. In these cases, litigants are asking the courts to interpret how such well-established legal duties should be interpreted in the face of novel fact patterns involving climate change.

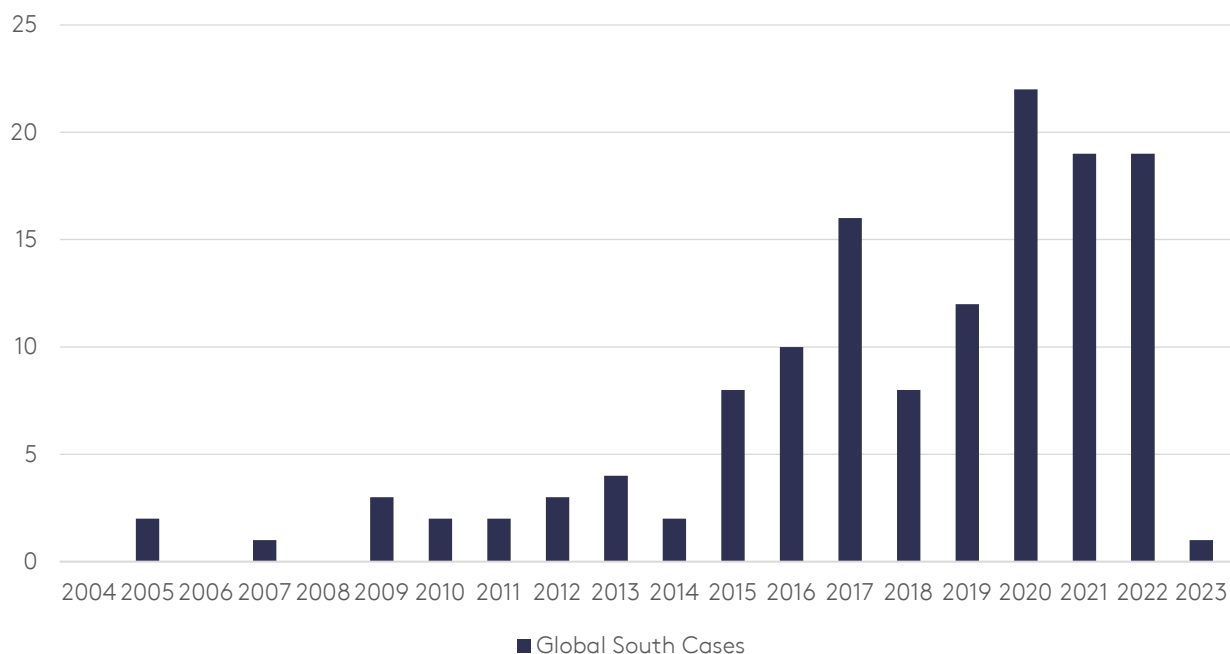
Nonetheless, the existence of climate change-specific legislation, particularly climate change framework legislation, is likely to shape the form of climate litigation in a given country. Around 60 countries around the world have now adopted domestic climate change framework laws that establish long-term climate change objectives, and also introduce the institutions and inter-institutional processes required to meet them (Higham et al., 2021; Averchenkova et al., 2017; Iacobuta et al., 2018). Of these, nearly half include a target to achieve net zero emissions by 2060 or earlier. Such laws often enshrine commitments made at the international level through countries’ Nationally Determined Contributions (NDCs). However, national laws may also be more ambitious than the NDCs (at least initially) and surpass them in scope.

National variation in the design of these laws has a significant impact on the legal arguments adopted by litigants in climate change litigation cases, as discussed further in Part II. Frequently, such legislation is adopted or amended to create the necessary governance arrangements to support ambitious climate policy programmes and is then followed by further legislative action aimed at implementing specific climate policy measures. Such legislation may be shaped in part by past climate change litigation within a given jurisdiction, as in the case of Germany, where new climate targets were introduced following the case of *Neubauer et al. v. Germany*. The existence of such legislation is also likely to shape the future direction of litigation efforts (for further discussion of this phenomenon in the European context see Higham et al., 2023).

## Cases in the Global South

Historically, most climate cases falling within our definition have been filed in the Global North.<sup>3</sup> However, recent years have seen a growth in cases filed before courts in the Global South, along with improvements in the collection of such cases. Overall, 135 cases from the Global South have now been captured in the database, with more than 50 of those filed since 2020 (see Figure 1.3).

**Figure 1.3. Number of climate litigation cases in the Global South over time (2004 up to 31 May 2023)**



Source: Authors based on Sabin Center databases

Several key trends specific to Global South climate litigation have previously been identified. Among the most important trends are the innovative use of human rights arguments (Garavito, 2020), particularly arguments relying on the right to a healthy environment, and cases seeking to address gaps in the enforcement of pre-existing environmental legislation aimed at preventing environmental degradation (Lin and Peel, 2019; Setzer and Benjamin, 2020a, 2020b; Ohdedar, 2022). Such arguments have been most frequently used before Latin American courts (Auz, 2022; de Vilchez and Savaresi, 2023; Tigre et al., 2023b), but also in Africa (Bouwer, 2022; Bouwer et al., forthcoming 2024; Loser, forthcoming), and to a lesser extent in Asia. In many cases such legislation may not be specifically targeted at climate issues. This year, for the first time, cases from China have been added to the Global database, with indications that Chinese courts may continue to develop a unique form of climate litigation appropriate to their national context (see Box 1.2 below).

<sup>3</sup> The distinction between the 'Global South' and 'Global North' is based on economic inequalities, but the 'Global South' is not a homogeneous group of countries: legal development and legal capacity vary by country. We use the list of G77 + China countries to determine if a country is in the Global South.



### Box 1.2. Climate litigation in China

The first two Chinese cases to be included in the database were filed simultaneously in 2016 by Chinese NGO The Friends of Nature against two state-owned utility companies in the provinces of Gansu and Ningxia. The NGO argued that the companies' failure to connect all available renewable power in the province to the grid violated the law on renewable energy, and that the companies should be held responsible for the environmental damage caused by the unnecessary continued reliance on coal power. The case against Gansu was settled in April 2023, with the Gansu state company agreeing to invest at least 913 million RMB in the construction of new energy supporting grids and improve the grid's transmission capacity of electricity generated by new energy sources. The second lawsuit – *Friend of Nature v. Ningxia State Grid* – is still pending.

While these cases were brought against state-owned companies, "it would be unthinkable for courts to pre-empt explicit central policy by overstepping into political roles" in cases more directly targeting government bodies (Yan, 2020: 374). However, there is potential for cases to be brought between private parties, as suggested by the third climate case filed in China – *Beijing Fengfujixin Marketing and Technology Co. Ltd. v. Zhongyan Zhichuang Blockchain Co. Ltd.*

China does not yet have a specific law on climate change, but courts can use existing government climate policies to interpret existing legal duties in favour of more ambitious climate action (Zhu, 2022). The possibility that courts in China will increasingly be required to determine disputes with climate change dimensions is supported by a recent media release by the Supreme People's Court of the People's Republic of China, after the court issued a new guideline on environmental protection. According to the media release, the guideline "stipulates that courts nationwide need to guide enterprises to save energy and reduce carbon emissions".

### *Developments in Global South jurisdictions that illustrate key trends*

- **South Africa:** An important decision was recently handed by a South African Court in *Sustaining the Wild Coast NPC and Others v. Minister of Mineral Resources and Energy and Others* (Moodley, 2022). In September 2022 the High Court of South Africa confirmed that the grant of an exploration right for oil and gas, resulting in the need to conduct a seismic survey along the South Coast of South Africa, was unlawful. The Court referred to the 'unburnable' fossil fuel reserves and the inconsistency of further oil and gas exploitation with South Africa's international climate change commitments.

To understand developments in South Africa in full, we need to look beyond the narrow definition of climate cases. One relevant case is *Trustees for the Time Being of the Groundwork Trust and Vukani Environmental Justice Alliance Movement in Action v. Minister of Environmental Affairs* (the 'Deadly Air' case), in which the applicants challenged the failure of the South African government to protect people's constitutional rights to health and wellbeing from toxic levels of ambient air pollution caused by coal-fired power generation projects in South Africa's Mpumalanga province, an area in which 12 coal-fired power stations, a coal-to-liquids plant, a refinery, and many polluting industries and mines are located. South Africa's Climate Change Act has been delayed and awaiting promulgation for over two years (Loser, forthcoming), so the case was brought as pollution and coal litigation. Professor David Boyd, the UN Special Rapporteur for Human Rights and Environment, intervened as a friend of the court. In March 2022 the Pretoria High Court issued a landmark decision, and the South African government was for the first time declared in breach of a constitutional right due to the health impacts of air pollution.

- **Indonesia:** In July 2022, a group of Indonesian youth filed a complaint against the government before the National Human Rights Commission, arguing that the government had failed to fulfil its obligations to protect their human rights including the right to a healthy environment (*Indonesian Youths and others v. Indonesia*). The case builds on a previous investigation by a national human rights institution, the Philippines Commission on Human Rights, the nearly seven-year-long *National Inquiry on Climate Change*. That inquiry investigated whether 47 of the largest fossil fuel companies in the world had violated the human rights of Filipinos. It was concluded in May 2022, with the Commission stating that major corporate emitters, including their value chains, may be compelled to undertake human rights due diligence and be held accountable for failure to remediate human rights abuses arising from their business operations (see further Setzer and Higham, 2022). Although the Indonesian case differs in its focus on the government, the previous Inquiry may provide an important model.
- **Brazil:** In July 2022, Brazil's constitutional and highest court gave an unprecedented recognition to the importance of the Paris Agreement. The judgment was given in *PSB et al. v. Brazil (on Climate Fund)* (ADPF 708), which challenged the government-induced paralysis of the Climate Fund, established by Brazil's National Policy on Climate Change to promote the financing of climate mitigation and adaptation projects. The decision brings significant lessons in a broad range of aspects of climate litigation (Tigre and Setzer, unpublished). The court found – for the first time in global climate change litigation – that the Paris Agreement is a human rights treaty. This recognition helps parties to integrate climate change and human rights into a shared framework for action, promoting greater accountability, international cooperation and climate justice (Knox, 2020). The decision also recognised the importance of climate finance to mitigate greenhouse gas emissions, and addresses challenges over the separation of powers. Procedurally, the case provides several legal innovations, including the possibility of having political parties as plaintiffs and the court holding a public hearing to inform the justices on the science and facts of climate change. The court invited 66 experts to speak, among them scientists, environmentalists, indigenous people, representatives from the agribusiness and financial sectors, economists, academics, parliamentarians and representatives of the federal and state governments.



Plenary session, Brazilian Supreme Court, during the judgement on the *PSB et al. v. Brazil* case on the Climate Fund. Photo: Carlos Moura/SFT.

Another case in Brazil shows how litigants in the Global South are innovating in other areas. In June 2022, a Brazilian NGO filed a lawsuit against Brazil's national development bank and its investment arm (*Conectas Direitos Humanos v. BNDES and BNDESpar*). The NGO claims that BNDESpar, which is responsible for managing BNDES's shareholdings in various high emitting companies, has no procedure in place for assessing the impact of its investments on the climate, and that this is a violation of Brazil's commitments under both the Paris Agreement and the National Policy on Climate Change.

- **Turkey:** A case in Turkey also demonstrates some of the challenges facing Global South communities as the impacts of climate change manifest. A cooperative of fishermen operating around the Marmara Lake, a wetland of national importance, filed a case against the government (*S.S. Gölmarmara ve Çevresi Su Ürünleri Kooperatifi v. Republic of Türkiye Ministry of Agriculture and Forestry, Manisa Directorate of Provincial Agriculture and Forestry*). The fishermen alleged that the government had failed to prevent the deterioration and drying up of the lake through a failure to conduct adequate environmental impact assessments for various infrastructure projects, as well as a failure to implement international obligations regarding climate change mitigation. The applicants argue that due to the government's failure to protect the lake, they should be exempt from paying for their fisheries licences.

### International and regional cases

Although the vast majority of climate cases are filed before domestic courts and the courts of the EU, there have been at least 50 cases or complaints filed before 11 international and regional courts and tribunals, and before UN Treaty Bodies and Special Procedures and the UN Framework Convention on Climate Change (UNFCCC) Kyoto Protocol Compliance Committee.<sup>4</sup> Around 20 of these cases have been filed before human rights bodies, while 12 have been filed before Investor-State Dispute Settlement (ISDS) bodies under International Investment Agreements (see further Fermiglia et al., forthcoming).<sup>5</sup> Ten of the remaining cases were complaints under the non-compliance procedure of the Kyoto Protocol, filed between 2009 and 2018.

During the past 12 months, four new cases have been filed before international bodies. These include three requests for advisory opinions from international courts and one complaint requesting that prosecutors from the International Criminal Court investigate the Board of BP for its role in climate change.

#### *Three requests for advisory opinions from international courts*

Requests for advisory opinions have been filed before the International Tribunal on the Law of the Sea (ITLOS), the Inter-American Court of Human Rights (IACtHR) and the International Court of Justice (ICJ). The request to ITLOS, submitted by the Commission of Small Island States on Climate Change and International Law, asks the Court to clarify what States' obligations are under the United Nations Convention on the Law of the Sea (UNCLOS) in terms of preventing, reducing and controlling pollution of the marine environment and protecting and preserving the marine environment in relation to climate change impacts. This is the first time that an advisory opinion has been sought on specific issues associated with sea level rise, and climate change more

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<sup>4</sup> Currently, we are aware of cases filed or complaints submitted before the following bodies: International Court of Justice, International Tribunal on the Law of the Sea, Inter-American Court of Human Rights, Inter-American Commission on Human Rights, East African Court of Human Rights, European Court of Human Rights, World Trade Organisation Dispute Settlement Body, UNFCCC (Kyoto Protocol Compliance Committee), UN Human Rights Committee and UN Committee on the Rights of the Child, Office of the Prosecutor of the International Criminal Court, various UN Special Procedures, UN Secretary General, Permanent Court of Arbitration, Stockholm Chamber of Commerce, and International Centre for the Settlement of Investment Disputes. As discussed, cases have also been filed before the Court of Justice of the European Union and the European General Court, but we treat cases before EU courts as comparable to cases before domestic courts given the EU's unique supranational status.

<sup>5</sup> This is only a small sample of all climate-relevant ISDS cases, included for reference, which are more comprehensively mapped elsewhere.

generally. It builds on an established track record developed in UNCLOS case law in relation to obligations to protect the marine environment, and advances a legal exploration of the climate-ocean nexus (Roland Holst, 2022).

The request to the IACtHR was made jointly by Chile and Colombia, and asks for clarification on the scope of state obligations, in both individual and collective dimensions, to respond to the climate crisis. The request includes questions about climate adaptation and environmental defenders' protection, matters that were overlooked by a previous advisory opinion (OC-23/17) in which the IACtHR recognised the justiciable right to a healthy environment, making reference to climate change (Viveros and Auz, 2023).

Also for the first time, the ICJ, the world's highest court, has been asked to consider the question of climate change. The request for an advisory opinion was made by a group of 18 states led by the small island nation of Vanuatu and took over three years to be tabled, in part because standing rules mean that requests for such opinions can only be brought by public international bodies, and therefore require a broad base of support among member states. On 29 March 2023, the UN General Assembly unanimously adopted a resolution to ask the ICJ for an advisory opinion on climate change. The resolution asks the ICJ to clarify the duties of states to protect the climate system and the rights of present and future generations from climate-induced harms, as well as the legal consequences for states that have caused significant climate harm to the planet and its most vulnerable communities.

While there is a risk of a 'cacophony' of differing opinions arising from the cases, it is possible that the differences in scope of each request may instead help ensure complementarity and consistency between the opinions ultimately given by the courts (Auz and Viveros-Uehara, 2023), which are likely to play a significant role in shaping future cases against governments around the world. Even if advisory opinions from international courts are almost invariably non-binding, commentators have suggested that they nonetheless carry significant legal and moral weight, providing new reference points for legal discourse (Roland Holst, 2022). An advisory opinion from the ICJ, in particular, could make clear that nations whose emissions of greenhouse gases contribute to serious harm in other countries have a duty under international law to cease or alter their harmful activities (Kysar, 2022). The 'concretisation' of reasoning on legal obligations of states adopted in such cases is also likely to inform the decisions of other courts around the world (Savaresi et al., 2021).

## Claimants and defendants: key actors in climate litigation

### NGOs and individuals continue to file a high number of climate cases

Nearly 90% of the cases filed during the 12 months since June 2022 outside the US (hereafter referred to as 'Global cases') have been brought by non-governmental organisations (NGOs), individuals, or both acting together. This is consistent with our previous year's findings. In the US, the percentage remains lower, with just over 70% of cases brought by these actors, and a relatively high proportion (13%) of US cases filed in the last year brought by corporations and trade associations.

However, it should be noted that this trend is fairly recent. If we compare these figures with the overall number of cases filed since 1986, we see that the proportion of cases filed by these actors has changed over time: in total just under 60% (440 out of 751) of all Global cases have been filed by NGOs and individuals, while Sabin Center research into cases filed in the US in the four years of the Trump administration demonstrates that around 70% of cases were filed by NGOs (Silverman-Roati, 2021).<sup>6</sup>

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<sup>6</sup> Cases brought by NGOs in their capacity as shareholders are classified as 'NGO cases' (e.g. *ClientEarth v. Shell Board of Directors*).

The increasing number of global cases filed by NGOs and individuals largely mirrors the increase in 'strategic' and 'semi-strategic' climate cases filed in recent years (discussed below), showing that litigation continues to be used as a tool for groups that tend to be excluded or who are unsatisfied with climate governance decisions to try to get a seat at the negotiating table (Batrok and Khan, 2022).

### Outside the US, cases are targeting a more diverse range of actors, beyond governments

An examination of the climate litigation datasets suggests that historically, the majority of climate cases have been filed against governments. However, over the past 12 months, there has been a decline in the proportion of Global cases filed against governments. Only around 52% of the 61 cases filed between 1 June 2022 and 31 May 2023 were uniquely targeting this group. In addition, the four international advisory opinions concern the obligations of governments, but we classified them as not having an individual defendant.<sup>7</sup> On the other hand, just over 40% of cases were filed with corporations or trade bodies among the defendants (we include here five cases filed against the international football governing body FIFA in a range of European countries, alleging that the organisation was involved in greenwashing around the World Cup).<sup>8</sup>

### Strategic climate change litigation and case strategies

It is increasingly understood that climate change litigation is being used strategically "as a tool to influence policy outcomes and/or to change corporate and societal behaviour" (Bouwer and Setzer, 2020). In such cases, the focus is on achieving pro-regulatory impacts, although 'anti-climate' uses of strategic litigation (opposing climate change adaptation and/or mitigation policies, legislation or projects) are also possible (Golnarghi et al., 2021). In part, the climate change movement has already learned from strategic human rights litigation (Silbert, 2022). Batros and Khan (2022) discuss further lessons that strategic climate litigation can learn from strategic human rights litigation: the importance of identifying the role of the litigation as part of an overall theory of change (i.e. a set of interventions that are expected to lead to a desired outcome); consideration about challenges of implementation of judgments; and the need to evaluate risks of strategies.

Defining a case as strategic is a subjective and often imperfect effort (see the Appendix for more on our methodology). For the purposes of this study, we consider the following key components when classifying a case as strategic. Where some but not all of these factors are present, we consider cases to be 'semi-strategic'; however, we count semi-strategic and strategic cases as one group given that they share more similarities than differences for the purpose of this discussion. The key components are:

- **Identity of the plaintiffs.** In strategic litigation the plaintiffs are selected to communicate a carefully designed message (Peel and Markey-Towler, 2021). Most cases of strategic climate litigation are filed by an NGO, individual campaigner, a Member of Parliament or political party. Okoth and Odaga (2021) refer to 'litigation plus', an approach whereby as well as selecting claimants, the NGO and its lawyers work with communities to develop legal strategies around their concerns. Others use the term 'movement lawyering' to emphasise the importance of co-creating strategic litigation with affected communities at the centre (Cummings, 2017). Claimants are usually represented by an experienced legal team with a track record of bringing other strategic legal interventions (Peel and Markey-Towler, 2022).

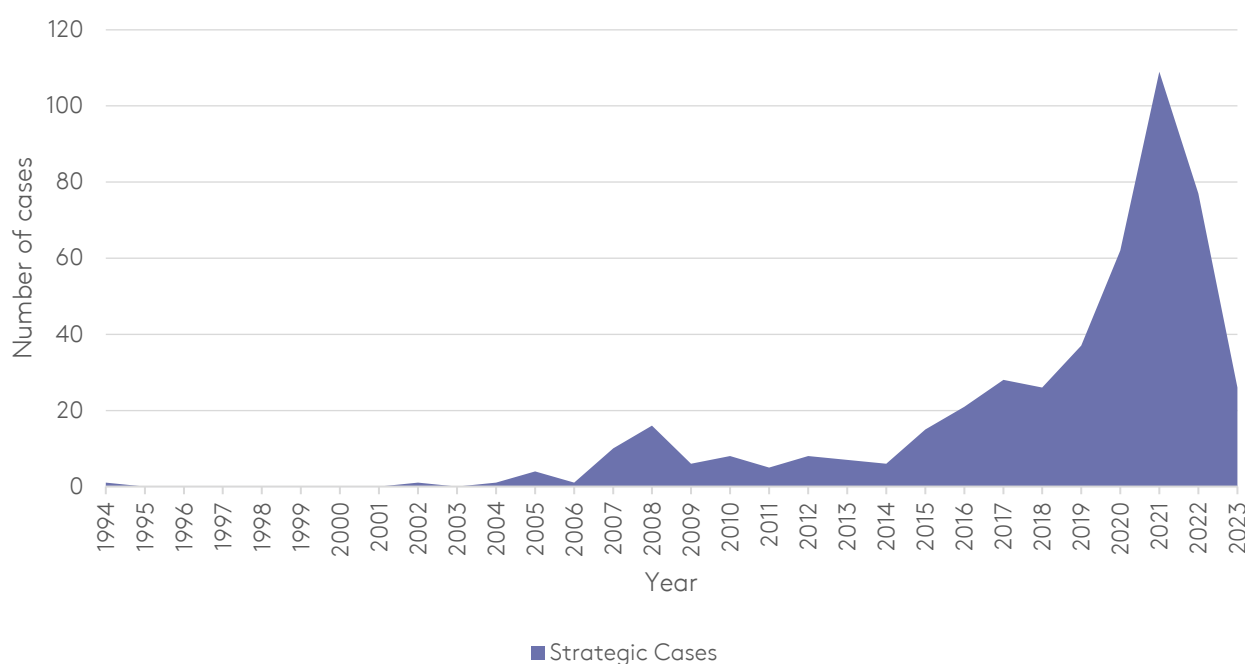
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<sup>7</sup> It is open to debate whether these requests strictly count as 'litigation', but as they are critical to the development of the law in this area we have included them as such in this report.

<sup>8</sup> Cases filed against individual directors on behalf of a corporation are recorded in our dataset as involving both the corporation and individuals.

- **Identity of the defendants.** Strategic climate litigation has targeted actors that make the largest direct contribution to the problem (e.g. governments that can legislate and the largest emitters of CO<sub>2</sub>) and actors who mislead the public about their climate action or consideration of climate risks. In addition to targeting the ‘obvious suspects’, strategic litigation can be brought against actors that are not so visible but are crucial for the survivability of the value chain, such as the public authorities that grant the licences and permits necessary for high emitters to carry out core activities, and the financial institutions that provide the necessary capital or insurance for high emitters to develop their core activities. This latter approach, which builds on systems thinking, is described by Solana et al. (2023) as ‘systemic lawyering’.
- **Aim of the litigation.** Strategic litigation sees advocates using climate litigation “to drive ambition in climate action, taking a long view beyond the immediate success or failure of individual cases” (Bouwer and Setzer, 2020). Strategic cases seek remedies that extend beyond the situation of individual litigants and contribute to intended policy and regulatory impacts (Peel and Markey-Towler, 2021). Objectives for litigation might differ when comparing Global South jurisdictions with rich or developed countries (Setzer and Benjamin, 2020a), and in any one country the strategies might change quite significantly depending on the directions established by national leaders (e.g. climate litigation during the Trump era – see Gerrard and McTiernan, 2018).
- **If the case is one piece of a larger puzzle.** Strategic litigation is part of a broader advocacy strategy of one or several organisations (Eilstrup-Sangiovanni, 2019). When the legal intervention is connected to a larger advocacy strategy, it is possible to observe that the lawsuit complements or focuses on specific aspects of messages that will be raised by one or a group of organisations outside the courts. These efforts will be carried out by NGOs lobbying or pressuring legislators and policymakers, or sending letters to targeted companies, or by protesters taking to the streets. The climate litigation movement is also part of an emergent transnational climate litigation network that generates ideas and facilitates intellectual and financial resources to litigants (Iyengar, 2023). Media coverage and a communications campaign are often another part of this larger puzzle.

Figure 1.4. Strategic cases filed outside the US over time



Source: Authors based on Sabin Center databases

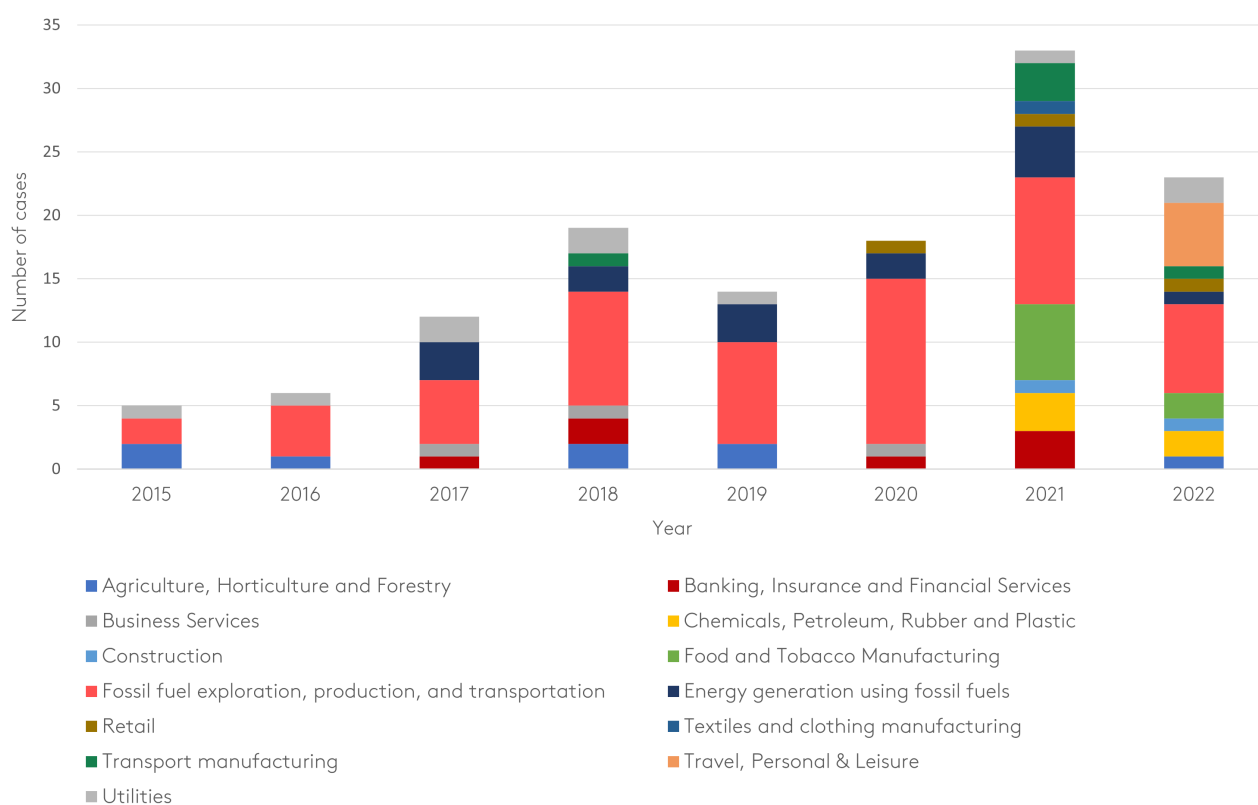
## Strategic litigation against companies

Strategic litigation against companies is an area of increasing interest to many actors. Early examples of such litigation were filed in the US and focused on fossil fuel companies. More recently, the number of strategic cases challenging corporate action has started to diversify, with cases filed in new geographies and against companies in a wide range of sectors. Cases are focused on companies, financial institutions and trade associations in recognition of the fact that these organisations often have a significant influence on climate action, often to the serious detriment of citizens (Brulle and Downie, 2022).

When analysing all cases filed against companies between the start of 2015 and the end of 2022, we observe that 80% can be classed as strategic or semi-strategic. The year 2021 saw the highest number of corporate cases filed to date, with more than 30 cases so far identified (representing around 30% of all strategic cases filed that year). Analysis of these cases confirms their increasing diversification, with cases targeting companies in an increasingly diverse range of sectors over time (see Figure 1.5). One of the reasons for this trend appears to be a significant increase in 'climate-washing cases' – that is, cases seeking to hold companies accountable for claims about the climate-friendliness of their operations, products or services (discussed further below). Part of the shift may also be attributable to the increasing sophistication of litigation strategies and the identification of new pressure points within corporate value chains, particularly regarding the provision of finance for high-emitting activities.

Together with the increase in the types of cases and actors involved, there is a growing effort to understand the unique aspects of climate litigation across the corporate world. For example, in this last year a new global initiative examining the unique aspects of climate litigation across the corporate world was launched – the Global Perspectives on Corporate Climate Legal Tactics, led by the British Institute of International and Comparative Law (BIICL).

**Figure 1.5. Number of cases against corporations by sector type, including US and Global cases (2015–2022)**



Note: For the most part, the classification of 'sector type' is based on data about defendant companies drawn from the Orbis database. However, we have classified cases concerning energy generation using fossil fuels and cases concerning fossil fuel exploration production and transport according to the subject matter of the case rather than the sector listed on Orbis, given the high volume of such cases.

Source: Authors based on Sabin Center databases

## Types of strategies in climate-aligned cases

In our 2022 report, we developed a typology of strategies being deployed by litigants in cases against companies and governments around the world in climate-aligned cases. This typology is just one of many ways to understand the diversity of climate change litigation cases, with other classifications emphasising different aspects of the phenomenon (see also UNEP, forthcoming). Our aim here is to help the reader understand more about the theories of change that underlie different types of cases. Many cases employ multiple strategies concurrently.

Last year, we applied that typology to all ‘strategic’ and ‘semi-strategic’ global cases filed since 2015, the year of the Paris Agreement. This year, we provide an updated assessment, and identify key growth areas. As the field has developed, we have also made several modifications to the typology:

- In last year’s report, we included a strategy type labelled ‘public finance’. This year we have broadened that category to include cases against both public and private financial institutions and we call this broader category ‘turning off the taps’: since all cases that use this approach share a common goal of depriving high-emitting activities of vital financial resources, even if such activities remain legal. The complexities of this group of cases and of the legal obligations governing the incorporation of climate risks is further discussed in Part II. Cases using this strategy also often employ a secondary strategy as well.
- We have added a new category to capture the three requests for advisory opinions described above, since the strategy adopted in such cases clearly differs from those used in contentious proceedings. We call these cases ‘Global Guidance’ cases.
- We have modified the description of several categories to make clear the multiple types of cases included within them. This also includes modifying the title of our previous category of ‘compensation’ cases to ‘polluter pays’ cases.

The results of our review of 382 climate-aligned ‘strategic’ or ‘semi-strategic’ cases identified in the Global database and filed between 1 January 2015 and 31 May 2023 are outlined in Table 1. 1. (We have identified more than 430 strategies. This is more than the number of cases as several cases use more than one strategy, as noted above.)

**Table 1.1. Climate-aligned litigation strategies in Global cases**

Strategy type ( <i>with examples</i> )	No. of cases in which this strategy is used, by defendant type	
	2022	2023
<p><b>Government framework:</b> Cases that challenge the implementation or ambition of climate targets and policies affecting the whole of a country’s economy and society. They can be divided into two broad types: (i) ‘ambition cases’, concerning the absence, adequacy or design of a government’s policy response to climate change; and (ii) ‘implementation cases’, concerning the enforcement of climate protection measures to meet existing targets or implement existing plans (Higham et al., 2022). Cases often raise issues concerning the validity or interpretation of climate change framework laws. By focusing on the framework within which climate action should happen, litigants seek to have an impact on a broad range of operational decisions. Recent examples: <i>Anton Foley and others v. Sweden</i>; <i>Iten ELC Petition No. 007 of 2022</i>.</p>	Government (65)	Government (81)



<p><b>Corporate framework:</b> Cases that seek to disincentivise companies from continuing with high emitting activities by requiring changes in corporate governance and decision-making. These cases focus on company-wide policies and strategies, and frequently draw on human rights and environmental due diligence standards. They have been brought before national courts, and proceedings have also been opened before OECD national contact points and national human rights bodies (both types are included in our case count). It is common for these cases to draw heavily on the legal theories developed in framework cases against governments, but due to the different responsibilities of governments and companies they should be viewed as a distinct category. Recent examples: <i>Notre Affaire à Tous and others v. BNP Paribas</i>; <i>Greenpeace Italy et al. v. ENI S.p.A., the Italian Ministry of Economy and Finance and Cassa Depositi e Prestiti S.p.A.</i>; <i>ClientEarth v. Shell Board of Directors</i>.</p>	Corporate (12)	Corporate (16) Corporate and government together (1)
<p><b>Integrating climate considerations:</b> Cases that seek to integrate climate considerations, standards, or principles into a given decision, with the dual goal of stopping specific harmful policies and projects, and mainstreaming climate concerns in policymaking*. Cases may challenge new policies developed without careful consideration of climate impacts, or decisions to roll back or reduce the level of ambition in existing climate policies. Cases may also focus on permits and licensing related to high emitting activities and individual projects. Recent examples: <i>Mexican Center for Environmental Law (CEMDA) v. Ministry of Energy and Others (on the Energy Sector Program 2022)</i>; <i>Dennis Murphy Tipakalippa v. National Offshore Petroleum Safety and Environmental Management Authority and Anor</i>; <i>R (Finch on behalf of the Weald Action Group and Others) v. Surrey County Council (and Others)</i>.</p>	Government (103) Corporate (20) Government and corporate together (4)	Government (165) Corporate (22) Government and corporate together (12) No defendant (7)
<p><b>Turning off the taps:</b> Cases that challenge the flow of finance to projects and activities that are not aligned with climate action. Cases may be filed against public or private financial institutions, or a combination of the two. Cases may also be filed by shareholders. Their common goal is to amplify the importance of climate risk in financial decision-making, increasing the cost of capital for high emitting activities to the point where such activities become economically unviable, even if they remain legally permissible. Recent examples: <i>Conectas Direitos Humanos v. BNDES and BNDESPAR</i>; <i>Notre Affaire à Tous and others v. BNP Paribas</i>.</p>	Government (n/a) Corporate (n/a)	Government (14) Corporate (12)
<p><b>Failure to adapt:</b> Cases that challenge a government or corporation for failure to take climate risks into account. Cases may allege (i) failure to consider and address the current or future threats posed by climate change to a given facility or area (Markell and Ruhl, 2012; UNEP, 2021); or (ii) failure to develop systems to identify and manage physical and transition risks, i.e. a ‘failure to adapt’ to the low-carbon transition (Golnaraghi at al., 2021). Many of the latter group of cases have been filed against financial service providers. Recent example: <i>S.S. Gölarmara ve Çevresi Su Ürünleri</i></p>	Government (3) Corporation (5)	Government (7) Corporation (4) Individual and corporation (1) Government and individual (1) No defendant (1)

<p><i>Kooperatifi v. Republic of Türkiye Ministry of Agriculture and Forestry, Manisa Directorate of Provincial Agriculture and Forestry.</i></p>		
<p><b>Polluter pays (compensation):</b> Cases seeking monetary damages or awards from defendants based on an alleged contribution to climate change harms. These cases seek to implement the ‘polluter pays’ principle, and disincentivise greenhouse gas pollution by impacting the profitability of high emitting activities. Three different avenues have been used to date: (i) compensation for past and present loss and damage associated with climate change; (ii) contributions to the costs of adapting to anticipated future climate impacts; (iii) compensation to ‘offset’ emissions, where those activities have caused damage to carbon climate sinks. Recent examples: <i>Asmania et al. v. Holcim</i>; <i>Ministerio Publico Federal v. de Rezende</i>.</p>	<p>Government (0) Corporate (8) Individual (1)</p>	<p>Government (5) Corporate (11) Individual (1)</p>
<p><b>Climate-washing:</b> Cases that challenge inaccurate government or corporate narratives regarding contributions to the transition to a low-carbon future (Benjamin et al., 2022). Cases can concern misleading claims asserting that products or services are more climate-friendly than they really are. Increasingly, these cases focus on claims regarding terms such as ‘net zero’, ‘climate neutrality’ and ‘deforestation-free’. They can also concern the degree to which misinformation campaigns, or failure to disclose known risks, have contributed to harm caused by climate change. Recent examples: <i>Verbraucherzentrale Baden-Wuerttemberg v. DWS</i>; <i>Church of England Pensions Board and others v. Volkswagen AG</i>; <i>Climate Alliance Switzerland v. FIFA</i>.</p>	<p>Government (3) Corporate (13)</p>	<p>Government (5) Corporate (52)</p>
<p><b>Personal responsibility:</b> These cases seek to incentivise the prioritisation of climate issues among public and private decision-makers, by attributing personal responsibility for a failure to adequately manage climate risks to particular individuals. Cases may include actions filed by shareholders or pension fund beneficiaries. They may also involve requests for criminal prosecutions of individuals, with cases of this type filed against both politicians (e.g. Bolsonaro, former president of Brazil) and corporate actors (such as the Board of BP). There is also growing discussion in the literature of responsibility for professionals that may enable climate-damaging activities, such as lawyers and accountants (Vaughan, 2022), although no cases have so far been identified. Recent example: <i>ClientEarth v. Shell Board of Directors</i>.</p>	<p>Individual acting for a corporation (1) Individual acting for a government (0)</p>	<p>Individual acting for a corporation (4) Individual acting for a government (4)</p>
<p><b>Global guidance:</b> These cases seek to engage the normative authority of international courts on climate issues in a way that may influence the future development of climate diplomacy and the future interpretation of states’ legal obligations by both international and domestic courts and tribunals. This strategy contributes to establishing a stronger foundation for further action, but does not necessarily anticipate an immediate impact on greenhouse gas</p>	<p>Non-contentious, concern obligations of governments (1)</p>	<p>Non-contentious, concern obligations of governments (4)</p>

emissions. Recent examples: advisory opinions filed before the ICJ, ITLOS and IACtHR.

Notes: *\*The standards in question may be drawn from national legislation, international conventions or soft-law instruments. The cases often involve questions about the application of existing legal standards – such as requirements to consider environmental impacts, including cumulative environmental impacts – to the issue of climate change even when ‘climate change’ is not explicitly mentioned in the legislation or policy.*

*Where the case number is 0 for the year 2022, this is because no such cases were documented in our 2022 report, even though we anticipated that such cases might be possible. All 2023 case numbers are based on the empirical review of cases.*

*Where the case number is listed as n/a for 2022 this is because we did not previously include this category in the report, or we did not include the defendant type within the category (e.g. previously the ‘turning off the taps’ category was referred to as public finance and only involved government defendants).*

*The case of Notre Affaire à Tous and others v. BNP Paribas is used as an example of both a ‘corporate framework’ case and a ‘turning off the taps’ case as it is an important example of a case employing two strategies concurrently.*

In Part II, we provide more in-depth analysis of some of the key trends identified above. However, from the outset, it is critical to note that although litigants may use different combinations of strategies in any given case, they frequently seek to apply these to the same key issues. For example, if we look at the last 12 months, we see developments in a range of cases employing different combinations of strategies targeting fossil fuel supply-side activities, plus deforestation and land use. Cases target different actors (public and private financial institutions, companies, permitting authorities) and different decision points in the lifecycle of fossil fuel and agricultural commodities (licensing/permitting, financing, production, and transportation). This litigation exists in tandem with the increasingly intense debate about fossil fuel phase-outs and deforestation-free supply chains in international and domestic climate policy circles (van Asselt and Green, 2022; Partiti, 2021).



Youth plaintiff Georgi testifies while Judge Seeley listens in the *Held v. Montana* case.  
Photo: Robin Loznak/Our Children's Trust.

## Strategies in non-climate-aligned cases

Not all strategic litigation is aligned with climate goals. We have identified 16 non-climate-aligned strategic cases in the Global database filed since 2015.<sup>9</sup> We divide the strategies present into three types:

- **Regulatory powers** cases, in which litigants argue that a government body or branch of government has exceeded its authority in introducing climate regulations.
- **Stranded assets** cases, in which litigants seek compensation from a government, alleging that a climate-justified policy measure has impacted their property rights through either reducing the value of an asset or preventing its use entirely. These cases may be filed with the dual goals of recouping on losses (a non-strategic ambition) and dissuading governments from introducing further regulation and/or encouraging the repeal of regulations, i.e. creating 'regulatory chill' (a strategic ambition), making these cases extremely challenging to classify.
- **Strategic litigation against public participation** cases, in which a government or company files a case against those engaging in climate action to try to dissuade them and others from future action.

In the past 12 months, only two new strategic non-climate-aligned cases have been recorded in the Global database. These include an unsuccessful 'regulatory powers' challenge to a decree adopted by the Region of Flanders in Belgium, which prohibits the installation and replacement of new oil boilers (*Belgische Federatie der Brandstoffenhandelaars vzw and Others and Lamine v. Flemish Government*), and an unsuccessful 'stranded assets' case filed by German companies RWE and Uniper before the Dutch courts seeking compensation following the early closure date imposed on one of its coal-fired power plants as a result of the Dutch coal phaseout law (*RWE and Uniper v. State of the Netherlands [Ministry of Climate and Energy]*). The Dutch domestic proceedings are running in parallel with requests for arbitration made by the companies under the ISDS provisions of the Energy Charter Treaty, an international agreement that has been the subject of extensive controversy because of the wide protections it offers to fossil fuel investors (see ClientEarth 2022).<sup>10</sup>

In the US, non-climate-aligned cases are well documented, with recent cases including a challenge to Minnesota's efforts to introduce greenhouse gas standards for vehicles (*Minnesota Automobile Dealers Association v. Minnesota Pollution Control Agency*) and another challenging Los Angeles' ban on oil drilling (*Warren E&P inc. v. City of Los Angeles*). Another strand of non-climate aligned claims emerging in the US can be understood as 'ESG backlash litigation'. In May 2023 twenty-three Republican state attorneys general sent a letter to members of the Net-Zero Insurance Alliance (NZIA) expressing "serious concerns" about whether the NZIA's requirements comply with federal and state laws. As a result of growing US political pressure and 'material antitrust risks' (Smith and Bryan, 2023), several global insurers started to quit the NZIA, which is one part of the Glasgow Financial Alliance for Net Zero (GFANZ) created by the former Bank of England governor Mark Carney before the UN climate summit COP26 in 2021. GFANZ and its members have come under attack from Republican politicians in the US who target collective climate action groups whom they perceive to be unfairly hitting the oil and gas industry. The story continues to grow in complexity: at least one Republican state attorney general, the attorney general of Kentucky, is now the subject of a lawsuit seeking to prevent his office from investigating ESG investing in the state. The lawsuit was filed by a bank trade association and affordable financier (*HOPE of Kentucky, LLC v. Cameron*).

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<sup>9</sup> This is only a small sub-sample of all climate-relevant ISDS claims documented to date (see Fermeiglia et al., forthcoming). Similarly, there may be claims before other forms of arbitral tribunal of which we are not yet aware.

<sup>10</sup> Following unsuccessful negotiations on the creation of a fossil fuel carve-out for the Treaty, a number of European states signed up to the Treaty have signalled their intention to withdraw from the Treaty and are calling for a coordinated EU exit (Fermeiglia et al., forthcoming).

One reason there are relatively few non-climate-aligned strategic cases in the Global database may be the difficulty of identifying such cases as ‘climate’ cases. For example, the past year has seen two challenges to ‘climate-friendly’ government actions filed in Europe that do not strictly meet the definition of ‘climate change litigation’ outlined above. The first is a case filed by US oil giant Exxon Mobil challenging the EU’s decision to impose a ‘solidarity tax’ on oil and gas companies as part of its response to the energy crisis provoked by Russia’s illegal invasion of Ukraine. While the case is clearly part of a corporate pushback against the new regulations (and as such may or may not be considered strategic litigation), it does not involve a clear issue of climate law or policy, since ostensibly the primary motivation for the policy measures under challenge (RePower EU) is energy security, and Exxon’s challenge relates to the legal authority of the EU institutions to levy such a tax (Partington, 2022). Similarly, a case filed by Dutch Airline KLM against Schiphol Airport that aimed to reduce flight traffic, resulted in a suspension of new measures by the airport, although it appears from news reports that the proceedings centred on aspects of the policy intended to address noise pollution rather than greenhouse gas emissions (see Taylor, 2023).

### Just transition cases

Climate litigation is a complex phenomenon, and increasingly the binary distinction that we make between aligned and non-aligned is insufficient to describe lawsuits raising questions over the justice and fairness of measures adopted to deliver climate action. To describe such claims, scholars have developed the term ‘just transition litigation’ (Savaresi and Setzer, 2022).

The term ‘just transition’ is now widely used to reflect the idea of a transition to a low-carbon economy in which the benefits and burdens of climate impacts and action on climate change are shared fairly among different sectors of society, and in which everyone is given a voice in decision-making processes that will affect their lives and livelihoods. Although originally grounded in the labour movement, the term has now taken on a broader resonance, and is engaging questions of distributive, procedural and recognition justice (Wang and Lo, 2021).

In turn, ‘just transition litigation’ can be defined as lawsuits raising questions over the justice and fairness of measures adopted to deliver climate action (Savaresi et al., under review). Just transition litigation must be brought by or on behalf of those who are negatively affected and structurally disadvantaged by the transition – such as workers, indigenous and traditional communities, women, children, minorities and other marginalised or vulnerable groups (ibid.).

There may be overlap between categories, with some cases that make arguments about the insufficiency of climate action to protect human rights also making arguments about the distributional impacts of current policies (e.g. *Mexican Center for Environmental Law [CEMDA] v. Ministry of Energy and Others [on the Energy Sector Program 2022]*). Others, like *Regional Government of Atacama v. Ministry of Mining and Others (2022)*, raise concerns over human rights violations associated with mineral extraction activities aimed to facilitate the transition. Still other cases might challenge policies purporting to advance the just transition, but which in reality would have limited benefits for communities and would entrench high emitting activities (e.g. *ADI 7095 [Complejo Termeléctrico Jorge Lacerda]*).

### Outcomes and impacts of climate litigation

One of the most critical questions for all actors interested in climate change litigation is: does it work? However, this question is too simplistic. It is now well established that climate litigation can have a range of impacts, and that each case can have diverse impacts. These are often characterised as either **direct impacts**, where the result of the case results in a statement of law that requires a change in the behaviour of the defendant (and potentially similar actors), or **indirect impacts**, where the case results in increasing costs and risks for an actor or actors, changes in public awareness, changes in policy or a variety of other types of change (Peel and Osofsky, 2015; Setzer, 2022). In addition to distinguishing between direct and indirect impacts, it is also helpful to separate impacts from outcomes, as even a successful final judgment (i.e. positive outcome) may not always result in a direct impact (Setzer et al., forthcoming). Moreover,

impacts can occur even before a case is filed and contribute to shifts in understanding and behaviour both during and for many years after the legal proceedings (Solana, 2020).

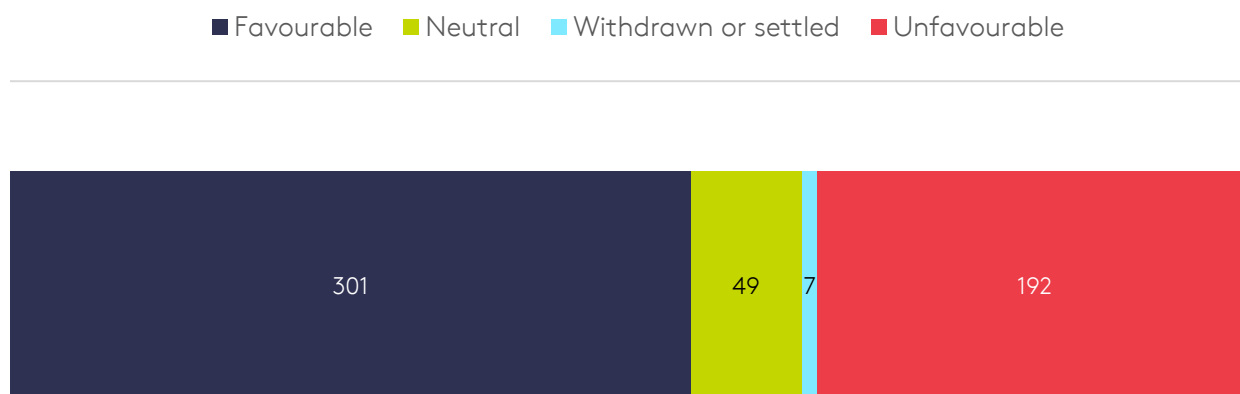
Peel et al. (2022) undertook a review of 280 publications addressing the impacts of climate change litigation: i.e. publications that examine key aspects relating to how climate change litigation achieves impact and in what circumstances. They find that there has been a significant focus in the impact literature on ‘high-profile cases’ – cases decided by the highest court in a judicial system, cases that received high media attention, or cases that are novel in some way, e.g. employing a novel legal theory or interpretation. However, discussion of impacts is typically brief and speculative, written close in time to case developments and therefore limited in assessment of longer-term impacts. Overall, Peel et al. conclude that care should be taken in extrapolating ‘lessons’ about the strategic value of different litigation targets, jurisdictions or forums, or legal avenues pursued in claims. There remains a research gap in “systemic, empirical, and long-term” studies on the impacts of climate litigation (ibid: 16).

Bearing these limitations in mind, below we first provide a brief overview of outcomes of cases filed outside the US and the potential impacts of climate litigation (see also Appendix: Methodological notes). We look at the direct judicial outcomes of cases where an interim or final decision has been issued, building on our analysis from previous years. We then provide comments on the ways in which litigation may be influencing the behaviour of different actors, particularly corporate and financial market actors.

### Judicial outcomes: innovation and complexity

Around 55% of the 549 cases in which either an interim or final decision has so far been rendered have had outcomes that are favourable to climate action (see Figure 1.6). Cases are classified as neutral when it is not possible to assess whether the judgment would have a positive or negative impact on climate action. Cases may also be assessed as positive even where not all grounds argued by the claimants were successful (see further the Appendix: Methodological notes).

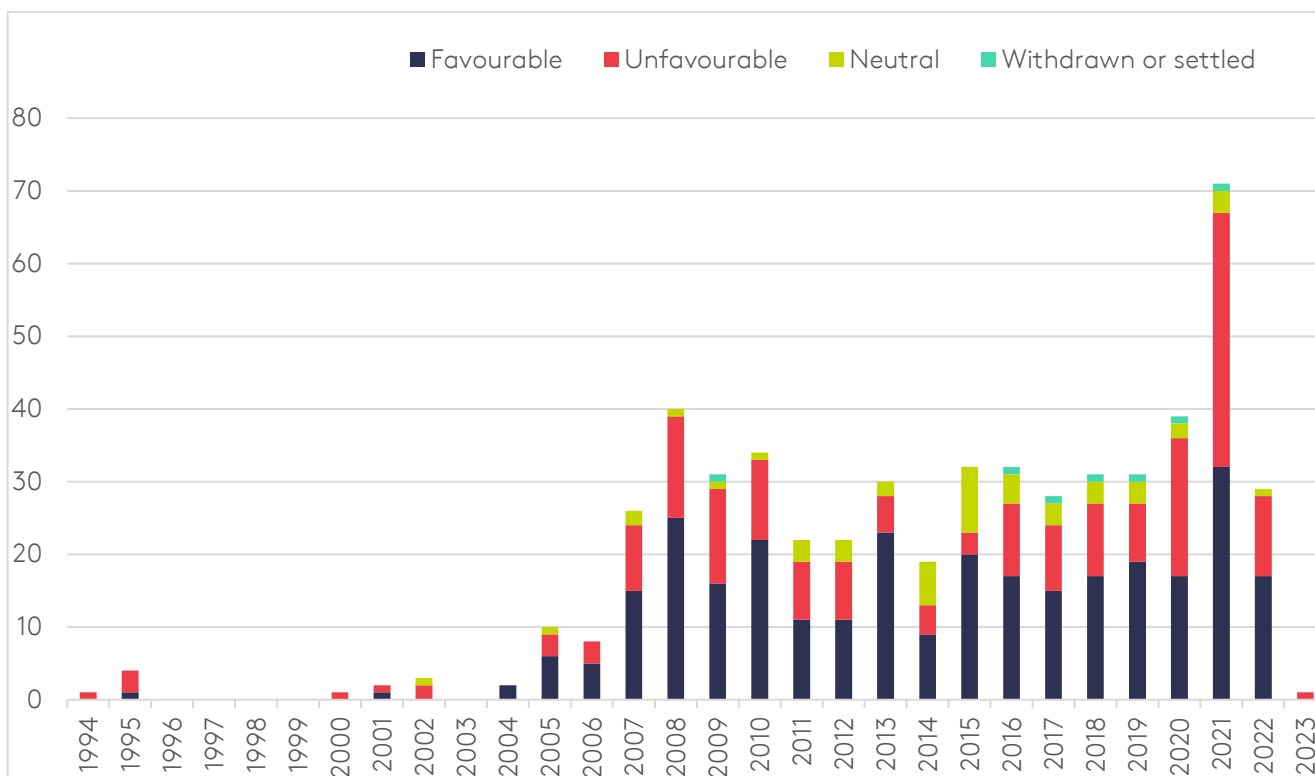
Figure 1.6. Outcomes in global climate litigation



Source: Authors using Sabin Center’s databases

However, this figure only tells part of the story. If we compare the ‘success’ of cases by year of filing, we see a more complex picture emerging (see Figure 1.7). Although there was a spike in the number of unsuccessful cases when a group of 13 similar cases filed in Germany in 2021 were all dismissed simultaneously, cases filed more recently have seen a more even distribution of favourable and unfavourable outcomes. It is of course also worth noting that many cases filed in recent years, and therefore the majority of those using many of the more innovative strategies described above, have yet to conclude: 161 of the 301 cases filed outside the US since the start of 2020 are still awaiting decisions.

Figure 1.7. Outcomes in Global climate cases over time



Source: Authors using Sabin Center’s databases

### Favourable outcomes do not always lead to clear impacts

In some cases, the climate action resulting from a ‘favourable outcome’ may be relatively easy to identify, but in others it is more difficult. Two cases show this contrast. The first is the Australian case of *Bushfire Survivors v. EPA*, which resulted in the creation of the Climate Change Policy and Plan for 2023–2026, and the beginning of a process that “will eventually translate into hard emissions limits on licences” (Collins, 2023). The second is the UK case of *Friends of the Earth v. Secretary of State for BEIS (Net Zero Strategy)*, decided in July 2022. The judgment was hailed a victory by campaign groups after the court ordered the government to revise its Net Zero Strategy and make it more transparent, especially when the government did not appeal the ruling (Higham and Setzer, 2022). However, when the government subsequently issued a revised strategy – in part in response to the court order and in part following a change in leadership – the result was a document that “scales back” commitments in some areas in comparison to the previous iteration (Dehon and Parekh 2023). Further litigation on the same question is a possibility, which could result in a change in course, but this is far from certain.

The impacts of the French Conseil d’Etat’s judgment in the case of *Grande-Synthe v. France* are similarly hard to assess. In that case, the Conseil d’Etat ordered the French government to increase new measures to meet legislated 2030 greenhouse gas emission reduction targets. According to media reports, earlier this year the Court reviewed the government’s progress and found it inadequate. The court then ordered new measures to reduce emissions within a year to compensate for a lack of progress, despite the court’s acknowledgement that the government had made good-faith efforts to comply with its order (AFP, 2023).

A further complication is introduced when we try to understand the impacts in terms of greenhouse gas emission reductions linked to climate action or policy changes arising from climate litigation. Mayer (2022) goes as far as to question whether litigation could lead to new legislation which in turn ‘displaces’ emissions to new jurisdictions (so-called carbon leakage). However, recent empirical analysis finds no evidence of this phenomenon occurring as a result of

the stock of existing legislation (Eskander and Fankhauser, 2023), and there is no reason to believe legislation arising as a result of litigation would be any different.

### Indirect impacts of litigation

If we look beyond the outcomes, we see an even more complex picture emerging. Below we discuss three areas where there appears to be growing evidence of the 'indirect' impacts of the types of litigation discussed above.

#### *Amplifying 'climate risk'*

Finance is one sector that is starting to take considerable interest in the issue of climate change litigation. In last year's report we noted the increasing volume of evidence to show that actors external to the core community of climate litigation practitioners were starting to take the phenomenon of climate change litigation seriously. We suggested this evidence could be used as a proxy to understand where litigation risk might be influencing decision-making, citing references to climate litigation in the Bank of England's climate stress testing exercise and a paper on climate litigation produced by the Network for Greening the Financial System (Higham and Setzer, 2022).

New stakeholders have been engaging with climate litigation in the last 12 months, including the Climate Financial Risk Forum (CFRF), a joint initiative by the Prudential Regulatory Authority (PRA) and the Financial Conduct Authority (FCA) in the UK that brings together senior financial sector representatives to share their experiences in managing climate-related risks and opportunities. The CFRF published a report in December 2022 to guide the thinking of insurers and related stakeholders in their approach to managing and mitigating climate litigation risk. The report notes "climate litigation risk is emerging as a significant challenge for the insurance industry and one which will crystallise far ahead of the impact of climate change on physical insurance perils". Additionally, the World Economic Forum held a panel on the topic for the first time earlier this year, in Davos.

Increasingly, international and regional bodies are also taking climate change litigation into account in their work. In 2021, the Parliamentary Assembly of the Council of Europe recommended that the Committee of Ministers commission a study on "national climate litigation cases" as part of its broader work to address "issues of civil and criminal liability in the context of climate change". This recommendation was subsequently taken up by the Committee of Ministers, which invited the European Committee on Legal Co-operation to consider

### **Box 1.3. Climate change and the legal profession: has climate-conscious lawyering entered the mainstream?**

The rise in climate change litigation and changing perceptions of the risk such litigation carries, along with the increasingly urgent warnings from the scientific community on the need for all sectors of society to engage in the climate challenge, have led to increasing interest in the topic of climate change from the broader legal community. All but one of the world's top 10 law firms by revenue have recently published reports or commentaries on climate litigation, while bar associations and other membership organisations, including judges' associations, are becoming increasingly engaged (see Dernback et al., 2023; ELF and CCBE, 2023; EUFJE, 2022).

Law societies, professional bodies that represent lawyers qualified in a certain jurisdiction, are also starting to issue guidance on the impact of climate change on the profession. For example, the Law Society of England and Wales published guidance in April 2023 noting that for lawyers, the most significant greenhouse gas emissions are likely to be emissions associated with the matters upon which they advise. Much of the conversation among legal practitioners is framed around the concept of 'climate-conscious lawyering', an idea popularised by Brian Preston, Chief Justice of the Land and Environment Court of New South Wales (Preston, 2021), after it was first developed by Bouwer (2015). The concept requires lawyers to incorporate an active awareness of the reality of climate change and how it interacts with legal problems into their daily practice.



conducting such a study about climate litigation. At the same time, the UN Special Rapporteur on Climate Change has recently **launched a call for submissions** regarding “Enhancing climate change legislation, support for climate change litigation and advancement of the principle of intergeneration justice”. Developments are also attracting attention among the broader legal profession (see Box 1.3 above).

### *Impacts on firm value*

As the issue of climate change litigation becomes increasingly visible for investors, an important question is whether markets are systematically taking climate litigation risks into account. Evidence quantifying their impacts is still limited. A recent interdisciplinary study has assessed whether climate litigation systematically causes defendant corporations’ stock prices to fall and to what degree (Sato et al., 2023). It finds small but statistically significant changes in valuation result from climate litigation. A filing or an unfavourable court decision in a climate case reduces firm value by -0.41% on average, relative to expected values. The largest stock market responses are found for cases filed against Carbon Majors, reducing firm value by -0.57% following case filings and by -1.50% following unfavourable judgments. Larger market reactions are observed in ‘novel’ cases involving a new form of legal argument or in a new jurisdiction. The study concludes that lenders, financial regulators, and governments should consider climate litigation risk as a material financial risk, since the observed decline in firm value suggests that the market is already responding to litigation risk.

### *Shaping narratives*

Much of the literature on the impacts of climate litigation has focused on the way that the existence of a climate case may influence decision-making processes, even if the case itself is unsuccessful in the face of procedural or doctrinal hurdles. Setzer and Bouwer (2020) described this as cases “shaping narratives”. The past 12 months have seen new developments that may be examples of this phenomenon in operation. In 2021, ClientEarth took the Belgian National Bank to court over its implementation of a European Central Bank corporate bond purchase scheme (*ClientEarth v. Belgian National Bank*). The scheme formed part of the ECB’s monetary policy and was originally developed only with regard to the Bank’s financial stability mandate. This meant that many of the bonds purchased were effectively supporting the high emitting activities of some of Europe’s most polluting companies. ClientEarth argued that this was inconsistent with Europe’s climate objectives and with the Paris Agreement. The case was initially dismissed on procedural grounds. It was then appealed by ClientEarth but in November 2022 the NGO issued a press release noting it had withdrawn the case, after the ECB updated its policy to ensure that new bond purchases were “tilted” towards climate-friendly activities, in a bid to align with the Paris Agreement. While the exact relationship between the case and the ECB’s decision remains unclear, it provides another example of the way in which even unsuccessful cases can potentially have an influence on climate governance.

## Part II: Litigation trends in focus

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We have sought above to provide an overview of the landscape of climate change litigation cases identified to date. In this part of the report we take a more detailed look at the interrelationships between some of the strategies identified. This is necessary because a strict focus on dividing cases by actor type, geographical region or strategy may obscure certain commonalities and disparities between cases: for example, in terms of the legal grounds on which cases are brought or the types of decision-making that cases seek to influence.

Later, we move on to a discussion of possible future trends in litigation, focusing on the climate policy areas we think are most likely to be subject to legal controversy in the coming months and years.

### Developments in litigation against governments: the roles of human rights and climate legislation

Significant developments in government framework cases have taken place over the past 12 months and these cases continue to grow in number.

Such cases are sometimes referred to as systemic climate litigation (Kelleher, 2022) or ‘Urgenda-style cases’ (the latter after the landmark case *Urgenda Foundation v. State of the Netherlands*) (Maxwell et al., 2022). They typically challenge the ambition or implementation of a government’s economy-wide climate policy response. This group of cases is perhaps the most well-known subset of climate litigation cases, with litigants in different jurisdictions taking inspiration from noticeable successes elsewhere.

Government framework cases have been filed in 34 out of the 51 countries where climate cases have been recorded, and also before international and regional courts and tribunals. In 2022, government framework cases were filed for the first time in Russia, Indonesia, Sweden and Finland. In 2023, new framework cases were also filed against Austria and Romania, and a new case was filed against the Netherlands by citizens from the overseas territory of Bonaire. Around 70% of the government framework cases documented to date have included constitutional or human rights arguments (Higham et al., 2022). Typically, these cases include arguments about whether the ambition of national climate action is sufficient to protect the human rights of citizens, and many refer to international or regional human rights treaties.

Below, we discuss recent developments in cases before international and regional human rights bodies, before looking at the role that domestic climate legislation or constitutional protections are playing in national cases. Finally, we look beyond government framework cases, examining how some of the human rights arguments first developed in these cases are now being employed elsewhere.

#### Leveraging human rights treaties

One major development in the international jurisprudence in this area from the last 12 months that may influence subsequent cases is the decision of the UN Human Rights Committee in the case of *Daniel Billy and others v. Australia*. The case was brought by a group of Torres Strait Islanders alleging that the Australian government’s failure to address climate change violated their human rights under the International Covenant on Civil and Political Rights. In particular, the claimants alleged violations of Article 27 (the right to culture), Article 17 (the right to be free from arbitrary interference with privacy, family and home), and Article 6 (the right to life). The majority decision of the Committee upheld the complaint, confirming that the Australian government’s inaction violated the Islanders’ rights to enjoy their culture and be free from arbitrary interferences with their private life, family and home. However, the decision focused on the inadequacy of adaptation measures to protect the islands and the Committee did not accept

arguments that the violations also stemmed from Australia's failure to adopt more ambitious actions with regard to greenhouse gas emission reductions (mitigation).

The question of states' obligation to protect human rights through the adoption of ambitious mitigation targets remains a live issue, one that the European Court of Human Rights is expected to rule on in coming months (see Box 2.1).

### **Box 2.1. Climate litigation before the European Court of Human Rights: shaping the next generation of European climate cases?**

In March 2023, there was a further major event in the development of international human rights law in the context of climate cases. The Grand Chamber of the European Court of Human Rights (EctHR) held hearings in two of the climate cases currently pending before it, *KlimaSeniorinnen v. Switzerland* and *Careme v. France*. The third case communicated to the Grand Chamber, *Duarte Agostinho et al. v. Portugal and 32 Others*, will be heard on 27 September 2023. This is particularly significant since more than half of all government framework cases filed to date have been filed in European countries (Setzer et al., 2022).

Despite its silence on the matter to date, the Strasbourg system holds promise for prospective climate litigants in light of the Court's existing case law on environmental issues – the Court has decided around 300 environmental cases (ECHR, 2022). Although the right to a healthy environment is not explicitly protected under the Convention, the Court has held that government failures to protect citizens from environmental harm caused by pollution may amount to a violation of protected rights, particularly the rights to life and private and family life (Articles 2 and 8 of the European Convention on Human Rights).

Speculation about the Court's response to this caseload is growing. If the applicants are successful, the ruling could become a landmark judgment, setting the course for future case law regarding human rights obligations of states in the context of climate change in Europe and beyond (Heri, 2022). The Court's decision may go beyond determining a human rights violation: it may also result in an order for governments to adopt legislative and administrative measures to prevent a global temperature increase of more than 1.5°C, including concrete emission reduction targets (see Keller et al., 2023 on potential remedies).

However, the applicants face several hurdles, not least the need to establish the right of standing, which involves satisfying stringent requirements to demonstrate 'victim status'. From the questions asked by the judges in the proceedings in the *Careme* case, this will be a critical issue in the case's ultimate determination.

Even if the applicants are not successful – that is, even if the Court decides that there was no violation by the States, or that the applicants lack standing – it is likely that further government framework cases will continue to be brought, in Europe and beyond.

### **Importance of domestic legal protections**

Domestic legal protections have also provided the basis for successful framework cases. Two types of challenge stand out in particular: challenges grounded in domestic constitutional protections of the right to a healthy environment;<sup>11</sup> and challenges under domestic climate framework laws.

According to a 2019 report by the UN Special Rapporteur on Human Rights and the Environment, more than 80% of UN Member States now have some form of legal protection for the right to a healthy environment in their domestic law (UNHRC, 2020). This right has formed the basis for an

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<sup>11</sup> Some climate cases have also relied on other constitutional rights, both successfully and unsuccessfully, but recent developments suggest that right-to-a-healthy-environment arguments may be gaining particular traction.

increasingly large number of cases, particularly in Latin America (de Vilchez and Savaresi, 2023). It has also been used effectively in domestic and regional courts in Africa (Bouwer, 2022; Loser, 2023). It is even a significant factor in new developments in the US: youth climate activists supported by Our Children's Trust have initiated some form of legal action in states across the country, although only two of these have yet passed initial procedural hurdles and been allowed to proceed to trial on the merits – *Held v. Montana* and *Navahine F. v. Hawai'i Department of Transportation*. Both Hawaii and Montana have the 'right to a healthy environment' enshrined in their constitutions (Gerrard, 2021).

At the same time, climate change framework laws continue to offer a statutory basis for new cases, at both the **framework and the sectoral level**. Building on past successes in framework cases in Ireland, France and Germany (see Higham and Setzer, 2021), a further German case is seeking to use the sectoral targets in Germany's climate framework law to argue that more urgent action is required in the transport sector after Germany's Council of Experts on Climate Change calculated that current measures are insufficient to meet sectoral targets (see *Deutsche Umwelthilfe v. Germany*). A similar case grounded in statutory obligations has also been filed in Finland, with the case placing a core emphasis on the government's failure to protect carbon sinks.



Youth plaintiffs are cheered on by supporters as they arrive for their **second day of trial** in the *Held v. Montana* case. Photo: Robin Loznak/Our Children's Trust.

Another example of the use of innovative human rights reasoning in a project-specific case can be seen in the March 2023 decision from the Hawaii Supreme Court in the case of *In re Hawai'i Elec. Light Co.*. The case involved an appeal from a company involved in the provision of biomass energy, Hu Honua, over a decision by Hawaii's Public Utilities Commission to withhold its approval for a power purchasing agreement for energy provided by Hu Honua. The Utility Commission concluded that the project proponent's carbon offsetting plans were highly speculative, and that even in the best-case scenario the date for the project to become carbon-neutral was 2047, two years after the state of Hawaii is required to achieve climate neutrality under state law. The company's appeal was dismissed by the court. In his concurring opinion in the case, Justice Michael Wilson argued that this decision was justified to protect not only the right to a healthy environment but also a related "right to a life-sustaining climate system". This right was acknowledged by a court in Oregon in the landmark framework case of *Juliana et al. v. US* (which was dismissed on appeal on procedural grounds but is now set to go to trial after the Federal District Court accepted an amended version of the complaint) and has also been claimed in the pending case of *IEA v. Brazil* (Setzer and Carvalho, 2021). However, the judicial recognition of a right to a stable climate remains relatively under-explored (Jegede et al., 2018), with most human rights cases focusing on the impacts of climate change on the right to a healthy environment or on other, well-established human rights.

## **Frontiers of corporate liability litigation: past and future responsibility, and loss and damage**

Efforts to hold companies – particularly fossil fuel companies – directly responsible for the climate harm caused to communities and individuals by their products were among some of the earliest climate litigation cases to capture legal (and wider) imaginations. Following the failure of several early cases filed in the US in the mid-2000s, there was a significant lull in the filing of new cases concerned with direct corporate liability for climate harm for almost a decade. That changed with the publication of new research in 2014 that directly attributed more than two-thirds of global greenhouse gas emissions to the operations of around 100 companies – the Carbon Majors (ibid; see also Heede, 2014). That study provided the critical evidence needed for a 'second wave' of climate cases to be mounted against corporations, with the Carbon Majors as the primary targets (Ganguly et al., 2018). Fifty-nine cases have now been filed against these companies globally, 20 of them by cities and states in the US (see further Box 2.2).

Within this 'second wave' of corporate liability cases there is considerable variation in terms of the relief sought (Setzer, 2022). 'Retrospective' polluter-pays cases, such as *Lliluya v. RWE*, focus on the causal connection between a company's past contribution to climate change, and seek

### **Box 2.2. US cities and states cases against the Carbon Majors now set to proceed in state courts**

One of the major issues facing cities and states that have attempted to sue the Carbon Majors have been the defendants' efforts to 'remove' the cases from the state courts where they have been filed to the federal courts. This procedural dispute has taken more than five years to resolve. However, it appears to have finally reached a conclusion: by March 2023, all six federal appellate courts tasked with determining whether the cases should be heard in state courts given the alleged breaches of state law had concluded that they should (Anderson and Sutherland, 2023). Attention then turned to a final appeal by the defendants to the US Supreme Court. The Court requested a brief by the US Solicitor General, who speaks for the federal government on matters of Supreme Court litigation, and the Solicitor General concurred with the federal courts that the cases should proceed in state courts. In April, the Supreme Court **declined to take the case (denied certiorari)** (see *City of Hoboken v. Exxon Mobil Corp.*). This means that these cases are now set to proceed to trial in state courts, although further procedural delays are still possible.

financial damages based on that past or historic responsibility. 'Prospective' corporate framework cases, such as *Milieudefensie v. Shell*, have focused on what companies should do now and in the future based on the global consensus around the need to rapidly reduce emissions. Typically, this second group of cases seeks court orders requiring companies to align their current and future activities with the goals of the Paris Agreement and to comply with their human rights obligations. 'Retrospective' cases generally present more challenging issues of causation, with applicants needing to demonstrate that past actions of the companies significantly contributed to harm or to the risk of harm. However, attribution science continues to advance and could assist plaintiffs in meeting the legal requirements for establishing causation, thereby becoming a critical factor in the success of litigation concerning adaptation and losses (Otto et al., 2022; Wentz et al., 2023).

Recent years have seen several important developments in this 'second wave' of litigation against companies. Below we consider four of these.

### Merging of parallel trends

In *Asmania et al. v. Holcim*, a lawsuit filed by a group of Indonesian islanders before a court in Switzerland in July, we see both retrospective and prospective arguments being used together. The applicants argue that building materials company Holcim (one of the Carbon Majors) should be held responsible for its contribution to climate change. The precise legal arguments under Swiss law are not yet apparent from the documents available. However, the case is supported by a new study by Richard Heede, which attributes to Holcim 0.42% of all global industrial CO<sub>2</sub> emissions since the year 1750 (Heede, 2022). The claimants' requested relief includes both a court order requiring the company to rapidly reduce emissions to align with the goals of the Paris Agreement, and a request that the company pay a proportionate share of the costs of adapting the island to climate impacts. Although many elements of this case were foreshadowed in the ground-breaking Philippines Commission on Human Rights Inquiry into the Carbon Majors that concluded last year (see Part I), this is the first judicial case that brings together corporate human rights responsibilities to reduce emissions and arguments about paying for adaptation.

Another case which has merged approaches that were previously observed separately is the case of *Greenpeace Italy et al. v. ENI S.p.A., the Italian Ministry of Economy and Finance and Cassa Depositi e Prestiti S.p.A.*. The lawsuit was filed by a group of 12 Italian citizens and two NGOs against the fossil fuel company ENI and ENI's two majority shareholders – the Italian Ministry of Economy and Finance and Italy's development bank. Building on *Milieudefensie et al. v. Shell*, it claims that ENI's decarbonisation strategy is not in line with the goals of the Paris Agreement or the best available climate science, posing environmental and health risks, and also violating human rights that are protected by the Italian Constitution and by international norms and agreements. The claimants are asking the Court of Rome to declare the company and the government institutions jointly liable for past and potential future damages, and to order they adopt an industrial strategy to reduce emissions associated with ENI's operations by 45% by 2030 against the company's 2020 baseline. No claim for the actual damage suffered by the 12 citizens or others is being sought, but the claimants are asking ENI to pay a monetary sum to be determined by the judge for any violation, non-compliance or delay in the execution of the obtaining order.

A new study by Grasso and Heede (2023) could provide further evidence for this type of case that combines retrospective and prospective arguments. Their study suggests that 21 of the world's leading fossil fuel companies are liable for annual climate reparations amounting to at least **US\$209 billion**. The paper explores the anticipated economic toll of climate-related disasters such as droughts, wildfires, sea level rise and melting glaciers between 2025 and 2050.

### Emphasis on current and past losses, i.e. loss and damage

The second important development is an emphasis not just on the costs of adapting to climate harm that is anticipated to occur in the future (as in the case of *Liluya v. RWE*), but also on damage that has already occurred (Tigre and Werewinke-Singh, 2023). This can again be seen in

the *Asmania* case mentioned above: one aspect of the claim is focused on the damage that the plaintiffs have suffered to their homes and livelihoods as a result of climate-related flooding on the island of Pari in 2021. Similar arguments about loss and damage already sustained are also an increasingly prevalent part of the evidence in polluter-pays cases before US courts (Silverman-Roati and Tigre, 2022). For example, in the recent case *Municipalities of Puerto Rico v. Exxon Mobil Corp*, the plaintiffs make extensive arguments about the “compounded losses” sustained by Puerto Rican communities as a result of Hurricane María in 2017 and Hurricane Fiona in 2022.

### A growing focus on disinformation

The third important development relates to a continuation of a trend from recent years that sees the use of evidence about climate misinformation or disinformation by companies featuring heavily in litigation against them. Again, the Puerto Rican case presents an interesting evolution of this phenomenon. The complaint alleges that the fossil fuel companies’ long history of public deception about the harm caused by climate change and the benefits of fossil fuels delivered both directly and through others amounts to defrauding the public and consumers in an effort to earn profits, and as such constitutes a continuous pattern of ‘racketeering’. Previous complaints have alleged consumer fraud and violations of state consumer protection laws (which has also led us to classify many such cases as ‘climate-washing’ – see below), but the Puerto Rican case is the first cities class action to rely on claims under the Racketeer Influenced and Corrupt Organizations Act (RICO), building on a case filed by the Department of Justice against tobacco industry claimants in the late 1990s (Silverman-Roati and Tigre, 2022). Like the other cities and states cases, the complaint is likely to be subject to procedural battles about its admissibility. However, where other cities and states have fought to have their cases heard in state courts (see Box 2.2), this case is firmly based in federal law. This is another area of litigation where advancements in research might provide valuable evidence for new cases. For example, it was recently revealed in the journal *Science* that Exxon’s public statements regarding climate science were in direct contradiction to their own scientific data (Supran et al., 2023).

### Expansion beyond the Carbon Majors

The final important development is the continued expansion of ‘prospective’ corporate-framework-style cases beyond the original group of the Carbon Majors. The growing global consensus on the need for non-state actors and financial institutions to align with the goals of the Paris Agreement makes ‘prospective’ cases possible even when past contributions to harm have not been quantified. In Germany, for example, at least four cases have been filed against car manufacturers, arguing that the companies should be prohibited from carrying on production and making sales of internal combustion engine vehicles. The cases have been dismissed, although it is understood that they will be appealed. The case of *DUH v. Mercedes Benz* illustrates some of the challenges facing litigants in German courts: efforts to rely on the same constitutional rights protections as those successfully used in *Neubauer et al. v. Germany* failed on the basis that the constitutional obligations were addressed to the legislator, not to the company. Nonetheless, many other European countries permit some application of human rights to corporations (as in the Hague District Court decision in *Milieudéfensie v. Shell*; also see Macchi and van Zeben, 2021). Moreover, we also see ‘prospective’ due diligence-based arguments continuing to expand, including to financial institutions (see discussion of a new case against BNP Paribas, below).

## Managing climate risks: good investments in a warming world?

The cases discussed in the preceding section focus on the way in which corporate activity impacts the rights of those external to the firm/entity. The cases discussed below focus on how to interpret existing legal obligations under corporate and financial law aimed at protecting the firm/entity itself, or its direct stakeholders such as shareholders, investors and beneficiaries (in the case of pension funds). Although the litigants in both groups of cases may share the same goals and adopt similar tactics, it is nonetheless important to understand that we are looking at two groups of cases that are conceptually very distinct. Both groups of cases may have positive

impacts on reducing some high emitting activities, but the degree to which the cases discussed in this section can do so is effectively bound by the requirements of profitability imposed on corporate and financial decision-makers (see Bakan, 2021).

### Early cases filed by shareholders focused on *financial impacts already sustained*

Early cases filed by shareholders against corporate executives included several cases filed on behalf of workers in the coal industry whose pension funds were heavily invested in the companies for which they worked and as a result lost significant value. The claimants argue that the managers of the fund should have foreseen the loss, given the changing regulatory context for the coal industry in the US (see *Lynn v. Peabody Energy*; *Roe v. Arch Coal*). These cases were ground-breaking in that they focused attention on the risk of 'stranded assets' and the need for duty-bearing decision-makers to anticipate the risk such assets posed to the capital they were required to safeguard. A further case was *Ramirez v. Exxon Mobil*, a securities class action filed in 2016, in which a shareholder argued that Exxon's failure to disclose information about its internal assessment of transition risk amounted to securities fraud, resulting in a drop in value for shares when the misinformation was subsequently corrected. Additional derivative actions were then filed, alleging that Exxon directors violated their fiduciary duties by allowing false and misleading disclosure of climate risks. These cases have now been consolidated into a single case (see *In re Exxon Mobil Derivative Litigation*). However, the issues raised in these cases were to some extent simpler than those in more recent cases: the actions under dispute in those cases had **already resulted in a demonstrable loss of value** as a result of the alleged mismanagement.

### More recent cases have focused on *predicted future impacts*

A focus on financial impacts already sustained is not necessarily true for more recent cases such as *ClientEarth v. Shell Board of Directors*. ClientEarth filed the case in its capacity as a Shell shareholder, arguing that the continued policy of investment in new fossil fuel projects is a breach of the directors' duties to promote the best interests of the company under the UK Companies Act 2006. In the past year, oil companies such as Shell have reported record profits. Nonetheless, the applicants argue that if the company's executives do not rapidly adapt their business model, ceasing investments in new oil and gas in particular, these short-term profits will eventually be replaced by long-term losses.

The case was initially rejected by the UK High Court, following a review of written submissions. The Court determined that the actions that ClientEarth asserted were necessary to fulfil the directors' obligations under the Company's Act, described in the judgment as 'incidental duties', went far beyond what was required by law. To be successful, ClientEarth would have needed to show that the "[d]irectors' current approach falls outside the range of reasonable responses to climate change risk and will cause harm to Shell's members". Since Shell has adopted a net zero strategy, and conducted an assessment of climate risks, the Court held that this threshold had not been met. When determining whether the case had been brought in the best interests of the company, the Court also took into consideration the fact that ClientEarth is an NGO, with a clear external agenda.

ClientEarth has now requested an oral hearing in the case. Even if the NGO is unsuccessful – as many corporate law scholars anticipate, given the high threshold for demonstrating a breach of directors duties (Gibbs-Kneller, 2022) – it is not inconceivable that a future case possibly in another jurisdiction could have a different outcome. For example, if a case were brought in a more amenable country, by a large asset owner such as a pension fund against a company that had no net zero strategy, or had failed to implement such a strategy, several of the obstacles identified by the Court would no longer be relevant. As countries start to grapple with the need to align corporate activity with sustainability objectives more broadly, the landscape for such cases may change. For example, Fiji's *Climate Change Act* specifies that as part of the duty to act with reasonable care and diligence under the Companies Act, directors must consider and evaluate climate change risks and opportunities to the extent that they are foreseeable and intersect with the interests of the company (see further Chan and Higham, 2023). The European Parliament has



also recently approved a draft of a new ‘Corporate Sustainability Due Diligence Directive’, which imposes responsibility for climate transition planning on company management.

Regardless of the ultimate outcome, this case spotlights the question of appropriate time horizons for decision-makers faced with the urgent warnings of the scientific community. In so doing, it highlights two major questions: firstly, the critical role that a current generation of decision-makers plays in determining our shared planetary future (hence the emphasis on ‘personal responsibility’ in our classification of the case) and secondly, the question of how such decision-makers must change embedded ways of thinking, i.e. ‘adapt’ to the new reality of climate change before the impacts of that reality start to be felt (hence our classification of such cases as ‘failure to adapt’ cases and our belief in their close connection to the more traditional physical ‘failure to adapt’ cases described by others [Markell and Ruhl, 2012; UNEP, forthcoming]). To date, the *Shell Board of Directors* case remains the only example of an action that goes so far in arguing that prudent management of a company requires a halt to all new fossil fuel investments – although it builds on the earlier case of *ClientEarth v. Enea*, which applied a similar argument to investments in a specific fossil fuel project in Poland, and on some of the arguments raised in the case of *McVeigh v. REST* (concerning the obligations of pension fund managers [see Setzer and Higham, 2021]).

### Litigation can be used to clarify responsibilities

The difficult balance facing decision-makers between assuming a classic understanding of good financial management, which gives paramount or near paramount importance to the need to generate a return on investment, and a more novel understanding of good investment practices in a warming world can also be seen in the case of *Butler-Sloss v. Charities Commission*, decided by the UK High Court in 2022. The case was filed by the trustees of two major charitable funds. The trustees sought confirmation that aligning their investment decisions with environmental goals such as the Paris Agreement, and therefore with the missions of their respective charities, even if it meant accepting a lower rate of return on the charities’ investments, was not a breach of their fiduciary duties. The Court confirmed that it was not, perhaps setting a precedent that may be relevant in future more contentious disputes.

### Active engagement with uncertainty

Among the issues facing both claimants and defendants in all these cases is the fundamental difficulty of adapting modern risk management systems, which tend to rely on quantitative models, to the complex dynamic processes of climate change (see Donald, 2023). Arguably, however, the inherent uncertainty in this area only strengthens the need for senior figures within corporations and financial institutions, whether C-suite, non-executive directors, or fiduciaries, to adopt explicit, well-reasoned positions, providing clarity about where uncertainties remain and on how such uncertainties have been accounted for in decision-making. By accepting responsibility and acting transparently, actors may have the best chances of convincing both potential litigants and courts that they have acted within the bounds of a reasonable margin of appreciation in the discharge of their duties.

## Climate-washing and green claims

Cases concerned with mis- and disinformation on climate change are far from new, but the last few years have seen an explosion of ‘climate-washing’ cases filed before both courts and administrative bodies such as consumer protection agencies (see Figure 2.1). We use the term ‘climate-washing’ (rather than ‘greenwashing’) to describe these cases as we include cases concerned with specific types of misinformation associated with climate change, building on work by Benjamin et al. (2022). Our definition includes cases concerned with:

- **Corporate climate commitments.** One of the most significant groups of climate-washing cases to emerge in recent years have been cases challenging the truthfulness of corporate climate commitments, particularly where these are not backed up by adequate plans and policies. In the past 12 months, such cases have continued to be filed, including a complaint

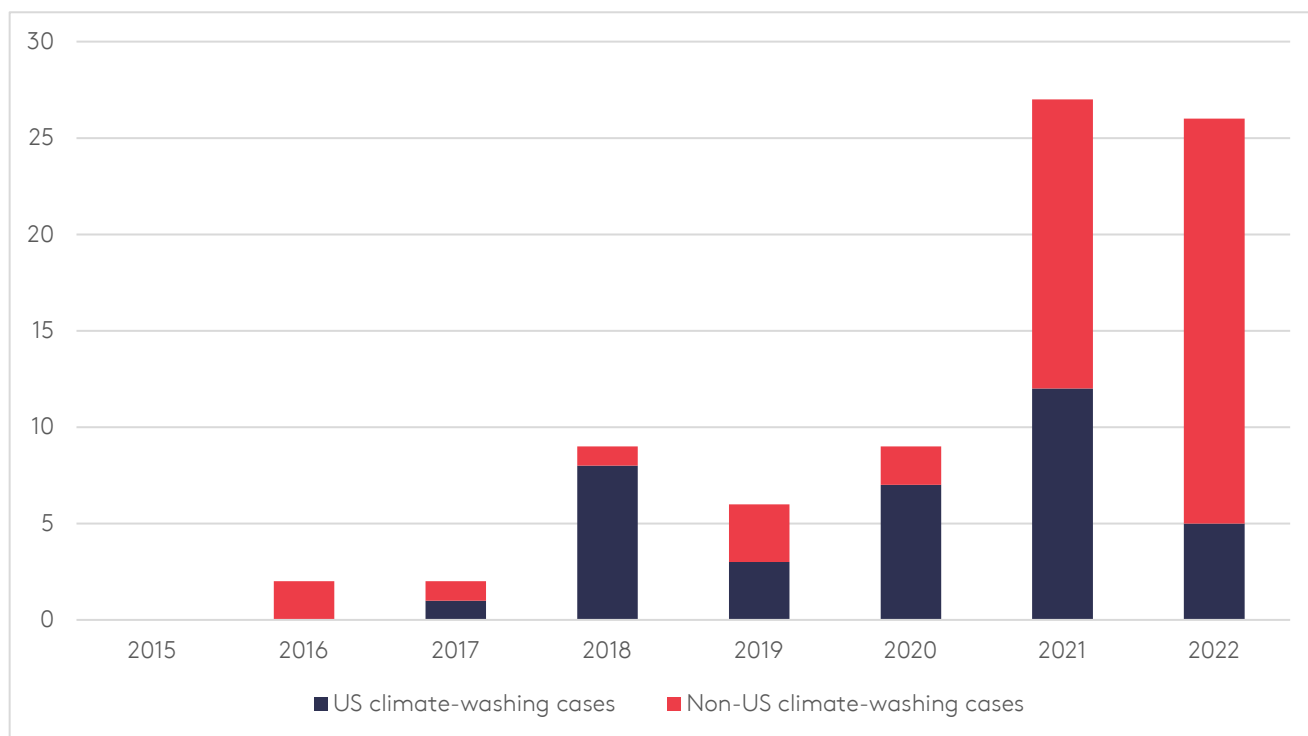
against Australian mining giant Glencore lodged by the Plains Clan of the Wonnarua People and Lock the Gate Alliance with the Australian Competition and Consumer Commission and Australian Securities and Investments Commission. The complaint argues that Glencore's continued expansion of coal production is inconsistent with its public commitments to net zero.

- **Product attributes.** The largest group of climate-washing cases identified so far involves challenges to statements about the environmental impact of particular product lines. In the last 12 months, numerous cases have been identified – many of them in Germany – that challenge claims that products ranging from dustbin liners to bananas are 'climate-neutral', 'carbon-neutral' or 'CO<sub>2</sub>-neutral'. Outside of the courts, the Environmental Defenders Office (on behalf of Greenpeace Australia Pacific) asked the Australian Competition and Consumer Commission to investigate the environmental performance of Toyota's vehicles and whether the company's claims that its operations will be net zero by 2050 are misleading or deceptive.
- **Overstating investments in or support for climate action.** Previous work has identified cases challenging advertising campaigns that overstate a company's investment in renewables or similar as a major cause for concern (see *ClientEarth v. BP*). The past year has seen an evolution in cases of this type, with a group of institutional investors filing a case against Volkswagen for the inconsistency between its climate pledges on the one hand and its anti-climate corporate lobbying on the other (see *Danish AkademikerPension and the Church of England Pensions Board v. Volkswagen*). Another example is the complaint filed by Global Witness against Shell before the US Securities and Exchange Commission (SEC), the US agency charged with protecting investors. *Global Witness v. Shell* alleges that Shell misled investors by overstating its investments in renewable energy – 1.5% was spent on solar and wind power, instead of 12% as claimed by the company.
- **Obscuring climate risks.** This group includes cases alleging failures to disclose relevant climate risks to investors and customers, and several requests for disclosure by banks and financial institutions (see *Abrahams v. Commonwealth Bank of Australia*).

A further interesting development from the last 12 months has been the filing of a complaint alleging "state sponsored greenwashing" in Australia, and several arguably similar challenges to the EU's Green Taxonomy. The first complaint, which was filed to the Australian Competition and Consumer Commission, concerns the 'climate active' trademark, a government-backed certification scheme that certifies action taken by businesses to reduce emissions. The complainant, the Australia Institute, argues that the scheme is misleading and applied far too broadly. The second complaint, filed by a group of European NGOs, is challenging the inclusion of natural gas as a low-carbon transition fuel under the EU's new Green Taxonomy, which is designed to help investors make sustainable investments. Further cases challenging the taxonomy on similar grounds filed by Austria and a member of the European Parliament are also pending (see also Higham et al., 2023).

While these are not the first 'climate-washing' complaints to involve government actors – previously, a case was filed against Ontario for a misleading advertising campaign against a federal carbon pricing scheme, and a case was filed against France regarding Total's sponsorship of the Louvre museum – they may signal a new departure as they directly call into question government efforts to address the proliferation of 'sustainability' information and climate claims by companies (see further Box 2.3).

Figure 2.1. Climate-washing cases against corporate actors in the US and outside the US, 2015–2022



Source: Authors using Sabin Center databases

The growth in climate-washing cases reflects broader concerns with corporate accountability for climate pledges along with ongoing debates about the role of companies in climate decision-making. Among the ongoing policy processes that seek to address this issue, the recent report of the UN Secretary General’s High Level Expert Group on Non-State Actor Net Zero Commitments stands out as one that may be particularly relevant for future litigation, as it provides a number of recommendations regarding such commitments that could be used to inform standards of expected conduct.

Another potentially important signal could come from the update to the OECD Guidelines for Multinational Enterprises on Responsible Business Conduct (OECD, 2023), which provides greater clarity on the importance of information accuracy and transparency. Even before this update, climate-washing complaints submitted to OECD national contact points (NCPs) had been somewhat successful in either inducing change in corporate practices or securing favourable decisions from NCPs. But it is possible that the update will help to enhance complainants’ ability to contest suspected greenwashing activities by providing NCPs with a more authoritative mandate to investigate such conduct (Aristova et al., 2023).

Several other laws and standards could give rise to litigation. For example, in the EU context, in March 2023 the Commission adopted a proposal for a Directive on Green Claims; in the UK, the Competition and Markets Authority published a new code, in effect from 20 September 2021, to ensure that environmental claims made are properly substantiated and do not mislead consumers; and the US Securities and Exchange Commission launched a Climate and ESG Task Force to develop initiatives to proactively identify ESG-related misconduct consistent with increased investor reliance on climate and ESG-related disclosure and investment. Consistent initiatives taken by legislators and regulators give a more general ‘steer’ to courts that this kind of behaviour is unacceptable, but more may be required (see Box 2.3).

### Box 2.3. Enforcing integrity in climate solutions

Although the rise in climate-washing (and the litigation aimed at exposing it) has prompted a range of responses from legislators and regulators, ongoing research by the Grantham Research Institute and law firm DLA Piper suggests that further action is needed to prevent dishonest or deceptive practices from derailing climate solutions. The project is identifying behaviours posing risks to climate solutions, running from outright breaches of criminal law, to breaches of existing regulatory law, civil law breaches or simply matters that are unethical or lacking in integrity. Examples of such behaviours include allegations of fraud and corruption related to projects implemented with climate funds, and fraud within the voluntary carbon markets. While many of these behaviours are penalised under existing legal frameworks, more targeted action might be required from enforcement authorities than has so far been seen to date.

### Combined strategies targeting the full lifecycle of high-emitting activities

Litigants are combining different strategies to target the full lifecycle of high-emitting activities. We have observed this trend in combined strategies targeting fossil fuel supply-side activities and agricultural commodities that contribute to deforestation. These orchestrated efforts result in several cases brought against public and private financial institutions, companies and permitting authorities in the licensing, financing, production, transportation and commercialisation of fossil fuels and agricultural commodities.

#### The full lifecycle of fossil fuels

Legal interventions targeting fossil fuel supply traditionally consist of challenges to government approvals of individual fossil fuel projects or the granting of licences for fossil fuel exploration ('integrating climate consideration' cases). Litigants in such cases frequently argue that climate change impacts were insufficiently considered in the environmental impact assessment process. In recent years there has been a focus on failures to assess emissions produced when the fossil fuel is used (Scope 3), rather than the emissions associated with its production (Scope 1 and 2). This strategy remains popular, with challenges in the last year mounted against many major projects, including a challenge to the Bay du Nord development in Newfoundland, Canada, an area with expected reserves of 300 million barrels of oil (*Sierra Club Canada Foundation et al. v. Minister of Environment and Climate Change Canada et al.*), and a challenge to a new permit for a liquid natural gas pipeline in Germany (*Deutsche Umwelthilfe v. State Office for Mining, Energy and Geology*).

Alongside these ongoing challenges to project approvals, we also see new 'turning off the taps' cases focused on fossil fuel supply, such as a case filed in February 2023 against BNP Paribas in France, alleging that the bank has failed to comply with its obligations under France's 'duty of vigilance law' to assess, disclose and mitigate the social and environmental impacts of its investments (*Notre Affaire à Tous Les Amis de la Terre, and Oxfam France v. BNP Paribas*). Three months after the filing, BNP Paribas announced it will reduce its financing of oil exploration and production by 80% by 2030 and phase out financing for the development of new oil and gas fields (BNP Paribas, 2023). However, following the announcement the plaintiffs noted that most of the bank's support for oil and gas is given through corporate loans and bond underwriting services, not the direct loans that BNP has addressed in its new policy (White and Bryan, 2023).

The last 12 months have also seen the continued rise of cases filed against public financial institutions and regulators over failures to ensure that decision-making is properly adapted to account for the risks associated with new oil and gas developments. In addition to the case against the Brazilian development bank discussed in Part I, there has been a case against the UK's Financial Conduct Authority alleging that the FCA failed in its duty when it approved the prospectus of an oil and gas company without requiring the company to disclose all relevant

climate risks (*ClientEarth v. Financial Conduct Authority – Ithaca Energy plc listing on London Stock Exchange*). Another UK case, filed by Friends of the Earth against UK Export Finance, was dismissed at the Court of Appeal. The case, which explicitly involves questions about what is required to align public financial flows with the goals of the low-carbon transition under Article 2.11 of the Paris Agreement, is now likely to be heard by the UK Supreme Court (*Friends of the Earth v. UK Export Finance*).

The use of multiple strategies targeting fossil fuel supply can also be seen in cases filed in the US in the past 12 months.<sup>12</sup> This includes cases filed by Earthjustice and Trustees for Alaska, challenging the Biden administration’s controversial approval of the Willow oil drilling project in Alaska’s Western Arctic, which is anticipated to add nearly 260 million tons of carbon dioxide to the atmosphere over the next 30 years.



The ‘Deadly Air’ case, in which the applicants challenged the failure of the South African government to protect people’s constitutional rights to health and wellbeing from toxic levels of ambient air pollution caused by coal-fired power generation projects (see p.15). Photo: Daylin Paul.

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<sup>12</sup> Note that US cases like Alaska Willow are not included in Table 1.1. However, the case is included here to illustrate the broader point.

## Addressing the deforestation value chain

A similar trend is observed in the more recent group of cases that seek to reduce emissions from deforestation. Some of these cases highlight the importance of preserving biodiversity-rich, natural carbon sinks, such as forests, peatlands and wetlands, from the threats posed by current land use practices. This area is likely to be the subject of an increasing volume of litigation in coming years. Numerous climate cases have been filed in the past concerning the protection of the Amazon rainforest. These include cases filed in Peru, Brazil and Colombia; and the extraterritorial supply chain case filed in France against a major French supermarket chain for its role in selling products contributing to Amazonian deforestation (*Envol Vert v. Casino*).

The latest legal interventions seeking deforestation-free supply chains target the financing made to and the communications made by agriculture companies. ‘Turning off the taps’ cases include the lawsuit brought against BNP Paribas by Brazilian NGO Comissão Pastoral da Terra and French group Notre Affaire À Tous (mentioned above), for providing financial services to companies that allegedly contribute to the deforestation of the Amazon rainforest. A ‘climate-washing’ and fraud complaint was presented by the NGO Mighty Earth to the US Securities and Exchange Commission, calling for a full investigation into alleged misleading and fraudulent ‘green bonds’ issued by the Brazilian meat giant JBS. The complaint claims that JBS based the bond offerings on its commitment to achieve net zero emissions by 2040 – but that its emissions have in fact increased and the target excluded Scope 3 supply chain emissions that comprise 97% of its climate footprint.

Another interesting point is that until recently, cases using supply chain tracing had focused on meat-based products rather than plant-based products, as there are usually fewer processing steps in the supply chain of meat-based products before they reach the supermarket shelf, making attribution of environmental harm easier. However, this trend is also changing. A recent complaint submitted by ClientEarth to the National Contact Point of the OECD in the US alleges that the Brazilian soy giant Cargill is failing to carry out proper checks on the soy it buys, trades and ships to markets worldwide to ensure it is not causing harm to people or nature. *Humane Being v. United Kingdom*, a case filed before the European Court of Human Rights, deploys novel climate arguments that focus on the danger of agricultural methane emissions and highlights that soy feed consumption in UK factory farming is a key driver of deforestation in the Amazon basin (Setzer et al., 2022). The case was dismissed not on merit, but for failure of the plaintiffs to exhaust domestic remedies.

However, so far we observe few examples of ‘integrating climate consideration’ cases, where litigants challenge government approvals granted to farming or other activities leading to deforestation.

## Future trends

### Biodiversity–climate nexus and the importance of carbon sinks

Litigation seeking deforestation-free supply chains is likely to increase with legislative developments requiring corporate actors to carry out enhanced due diligence throughout their operations and value chains, as well as enhanced remote sensing and financial data. Some of this legislation includes requirements that are specifically applicable to forest-risk commodities (e.g. the EU’s Deforestation Regulation).

This type of litigation is also likely to increase with the increasing willingness of courts to disregard separate legal personality of subsidiaries (Van Dam, 2021). Existing extraterritorial cases raise the question of how to accurately attribute the sources of harm to biodiversity. The cases point either to ownership structures (*Vedanta v. Lungowe*; *Okpabi and Oguru v. Shell*; *Mariana*) or supply chains (*Envol Vert et al. v. Casino*; *ClientEarth v. Cargill*; *BIRD v. Jaguar Land Rover*) for this purpose. Making this distinction between tracing via supply chains and tracing via ownership structure is crucial, as in practice each leads to very different legal questions and obstacles.

Still on the biodiversity and climate nexus, litigation challenging carbon sinks is another area where we might see an increase in litigation. Arguments about the protection of carbon sinks under domestic climate legislation have started to emerge as a theme in countries including Sweden, Germany and Finland over the past 12 months (Kulovesi et al., 2023).

Deforestation cases might also go beyond the climate–biodiversity nexus. A recent case brought by the last uncontacted indigenous tribe outside of the Amazon in Peru [against Jaguar and BMW](#) in Italy combined the protection of global climate, biodiversity and human rights. This type of litigation has the potential to emphasise the intention of protecting both nature and the people whose survival is dependent on and inevitable for the preservation of that nature, and could be understood as examples of ‘biocultural heritage litigation’ (Gilbert and Sena, 2018) or ‘planetary litigation’ (Kotzé, 2021).

### Focus on the ocean

In addition to the focus on terrestrial carbon sinks described above, litigation may increasingly focus on the ocean, the world’s largest carbon sink. Current estimates suggest that the ocean absorbs more than a quarter of human-caused greenhouse gas emissions (Friedlingstein et al., 2022), and about 90% of the excess heat caused by greenhouse gas emissions already in the atmosphere (NASA, n.d.).

To date, climate litigation involving the oceans has tended to focus on two types of argument (Keuschnigg and Higham, 2022). Firstly, litigants have used arguments grounded in national or international protections for ocean ecosystems and the communities that depend on them to challenge climate-damaging projects. A good example can be found in the above-mentioned case of the South African case of [Sustaining the Wild Coast and Others v. Minister of Mineral Resources and Energy and Others](#), in which applicants sought to prevent an oil exploration seismic survey on the basis that it would negatively impact coastal ecosystems, the spiritual and economic relationship that communities had to those ecosystems, and climate change. Secondly, cases have emphasised the damage that changes to the ocean and its ecosystems caused by climate change are having on communities (see [Asmania et al. v. Holcim](#)).

Coming years could see a shift in emphasis. New cases could include legal questions about the duties of governments and corporations to protect the ocean from further impacts of climate change, and therefore protecting its vital carbon sink function. Such cases would build on both the petition for an advisory opinion from ITLOS and the carbon-sink-focused litigation noted above. Ocean acidification could potentially become another area addressed by litigation, for which mitigation measures would need to focus specifically on reducing CO<sub>2</sub> emissions, rather than all or other greenhouse gases (Abate et al., 2022) and/or on ocean acidity measured in terms of pH level (Roland Holst, 2022). Cases might also emerge around efforts to enhance the ocean’s capacity to remove carbon through ocean-based carbon dioxide removal (CDR) techniques such as seaweed cultivation and enhancing ocean alkalinity (see also Silverman-Roati et al., 2021; Webb et al., 2021). While private companies dedicated to such technologies are starting to emerge, serious questions remain about the negative impacts of their deployment on marine biodiversity (Temple, 2022).

### Extreme weather events – beyond ‘climate’ litigation

As the impacts of climate change manifest in increasingly frequent and severe extreme weather events, we are seeing growth in the number of claims arising in the wake of such events. While some cases may put climate change at the centre of the claims – the *Holcim* case noted above, and the anticipatory ‘failure to adapt’ case of *Conservation Law Foundation v. Exxon Mobil* are examples – others may not fit the usual profile of climate litigation cases. One example of the latter is the case of *Stephens Ranch v. Citi Energy*, which followed winter storms in Texas in February 2020. Stephens Ranch, an operator of wind turbines, was unable to provide power to Citigroup in accordance with a power supply contract, resulting in financial losses for Citigroup which was forced to purchase the power elsewhere at a higher price. Stephens Ranch argued that it should not be held liable for breach of contract on the basis of ‘force majeure’. However, after

an initial decision from the judge, who found that the breach was related to Stephens Ranch's failure to prepare its wind turbines for severe wintery conditions despite repeated warnings to do so, Stephens Ranch settled the case (see also CCLI and CGI, 2022). Similarly, there has been a wave of further litigation in the wake of Winter Storm Uri in 2021, which although not directly focused on climate issues may have significant impacts on how the outcomes of climate-related disasters are understood (Barnes, 2023).

### Short-lived climate pollutants

Research shows that decarbonising the energy system needs to be combined with a rapid cut in non-CO<sub>2</sub> 'super climate pollutants' and protection of carbon sinks (IGSD, 2022). Super climate pollutants include longer-lived nitrous oxide and four short-lived climate pollutants (SLCPs): methane, black carbon soot, tropospheric ozone, and hydrofluorocarbons. As the science becomes clearer, different legal strategies may be used to challenge these pollutants. At the international level, the Montreal Protocol to protect the ozone layer, signed by nearly 200 countries in 1987, is considered the most successful environmental treaty (Sabel and Victor, 2022), and one that also had climate co-benefit: not only did it phase out 99% of all ozone-depleting substances, but also many of the chemicals banned under the Protocol are powerful greenhouse gases. A recent study found that the Protocol averted around 0.5°C of global warming and more than half a million square kilometres of Arctic summer sea ice loss by 2020 (England and Polvani, 2023). This precedent may inform future efforts.

Looking at litigation, investigations and lawsuits could be brought against entities involved in the illegal trade in hydrofluorocarbons. Lawsuits might also be filed against government agencies or businesses with regard to black carbon soot or tropospheric ozone. Nuisance cases could also be potentially filed against farms that emit methane and ammonia. These lawsuits can be based on existing tort or human rights laws, and regulations related to pollution and environmental protection, as well as on specific environmental legislation that seeks to hold polluters accountable for the damage they cause to the climate.

### Inter-state litigation

Our analysis suggests that most climate cases before international courts and tribunals to date consist of cases filed before human rights bodies or of investor-state arbitrations under international investment agreements. While such disputes invoke international law, they are not typical international law disputes, as they are not concerned with the obligation that one state owes to another, but rather public and private law obligations that states owe to individuals or corporations. As momentum grows behind the three requests for advisory opinions from international and regional bodies, questions emerge on the possibility of inter-state cases with climate issues at their centre being filed before international and regional bodies. Such cases could involve significant disputes about ongoing fossil fuel production and use, as in the case of *Czech Republic v. Poland*, which saw the two countries engaged in a dispute over the extension of permits for one of the largest lignite mines in Europe. While that case involved questions of European law, other countries may seek to invoke wider international legal standards in the future.



## Conclusion

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Our analysis of trends in climate litigation over the past 12 months confirms that the field of climate change litigation has continued to diversify, with an increasing number of strategic cases brought against corporate actors and financial institutions. We also observe significant transnational exchange in this area of law, with both lawyers and judges looking beyond national borders for ideas.

Cases that have been many years in the making have seen major developments: the European Court of Human Rights hearing in the *KlimaSeniorinnen* case, for example, which took place seven years after the domestic case was originally filed, and the resolution of the procedural wrangling that has dogged the US cities and states cases since 2017. The effort to engage the ICJ in the question of climate obligations has also been under consideration for over a decade. The outcomes of these processes are likely to shape the future of the field, but as demonstrated by the diverse domestic laws relied on in the various cases discussed throughout this report, there is no shortage of new avenues for litigants to pursue, even in the event of an unfavourable outcome in any different line of cases.

Although we observe new cases filed employing all the strategies we identified in our typology of strategies, climate-washing litigation stands out as one area where there has been a particular surge in action. The growth in climate-washing cases could be a result of the relative ease with which such cases can be filed, and it aligns with broader concerns about the credibility and integrity of climate action, particularly given the rapid spread of climate commitments and green claims by non-state actors. Along with the emerging field of just transition litigation, and the rise of cases focused on implementation of domestic climate statutes, this suggests that in future we may continue to see many more cases focused on how 'climate solutions' are being put into practice.

Finally, numerous new developments suggest that climate litigation is having an impact both within and beyond the courtroom. We continue to see the overall body of direct outcomes in global climate cases tilted in favour of climate action (although only just), and also new stakeholders engaging with the phenomenon of litigation. While much more work is needed to trace the full impacts of litigation over time, it is clear that it remains an important force in global and domestic climate governance.

## Appendix. Methodological notes

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### Data collection

The databases contain only cases in which an issue of climate change science, policy or law is a material issue of law or fact. Over time, as climate change has become increasingly well understood in both scientific and policy circles, more and more cases have raised these issues as central and explicit arguments and our methodology for assessing whether such an issue is present has been more strictly applied. During the course of the study period, cases have been removed from both the US and global databases, at the same time as more cases have been added. More detail can be found in the [Methodology section of the CCLW website](#) and on the [About page of the Sabin Center's climate case charts](#).

Because of considerable differences between US and non-US litigation, comparisons between them are both challenging to conduct and – depending on the kind of comparison being made – of limited analytical use.

### Overall case classification

When classifying cases for these reports we primarily base our findings on the case summaries. In cases where it is challenging to make a determination about a case based on the information available in the summaries we may sometimes also make reference to the full case documents in the databases and/or media reports. Some decisions about whether to classify a case as 'strategic' or the degree to which issues of climate change science, policy or law can be said to be a significant issue in the case are necessarily subjective. Case assessments are also often made on imperfect or incomplete information, particularly about the parties' intentions. For example, classifying a case as 'strategic', 'semi-strategic' or 'non-strategic' does not imply a judgment of one being better or more impactful than another. Cases brought to achieve a relief that will apply to an isolated situation (i.e. non-strategic) can be as important as cases that seek the realisation of broader changes in society (i.e. strategic litigation). Courts rarely have regard for the broader intentions of the parties when determining a case, meaning that cases brought with little or no strategic intent may nonetheless provide opportunities for courts to issue far-reaching judgments on novel legal issues.

Once a case has been classified as 'strategic' or 'semi-strategic', we then assess whether it is climate-aligned or non-climate-aligned, employing the definition from the Introduction. This means that we do not classify the 'climate alignment of all cases. The exception is for just transition cases, since this is such a novel area. In some instances, we classify a case as both a just transition case and a climate-aligned case, to reflect the fact that the applicants are seeking both more ambitious and more equitable climate action. One example is the case of *Greenpeace v. Ministry of Energy and Others (on the Energy Sector Program 2022)*, which challenges both the government of Mexico's alleged lack of ambition in its renewable energy purchasing and the fact that the government has not developed a strategy to ensure a just energy transition.

### Classification of strategies

As noted in Part I, we have sought to understand and quantify the strategies used in strategic climate cases. Again, this review of cases has been based primarily on case summaries and if deemed necessary by reference to original case documents or accompanying materials where these are available. In some instances, the full case strategy may not be evident from the available materials and it is possible that some cases may employ additional strategies which we have not identified here. Similarly, we have confined our review to primary and secondary strategies, but determining which strategy takes precedence is a subjective question and our assessment may differ from the deeper understanding afforded to the parties by their access to more privileged information. Nonetheless, we feel that the classification of cases by strategy can offer a more detailed understanding of the body of climate litigation, particularly given that differences in legal cultures may require different litigants to employ a variety of legal grounds to achieve the same ends.

## Classification of outcomes

When reviewing our classification of direct judicial outcomes, readers should note that we classify outcomes at several different stages within a given case. The first stage at which a case may be classified as having a given outcome (as opposed to being classed as 'open') is when there is a positive ruling on a procedural issue such as standing or justiciability, even if the case has not proceeded to trial. While we do not normally classify such interim decisions, we may do so in a case where the issues presented are of a novel nature, or where the case runs counter to a procedural decision taken in a similar case. The second stage is when there is an initial ruling on the case from a court of first instance prior to an appeal being filed (if we are aware of an appeal the case will be considered 'open'), and the third stage is when the outcomes of any appeals become known. This means that the status of a case may change from 'favourable' or 'unfavourable' throughout the course of the proceedings as different judgments are issued.

In some instances, cases that may have been classified as having negative outcomes for the parties and for immediate climate action may nonetheless advance an issue of fact or law that may have positive impacts on subsequent litigation. For example, the case of *Sacchi et al. v. Argentina* has been classified as having an unfavourable outcome for climate litigation because it was dismissed by the Committee on the Rights of the Child. However, it could be argued that the case has in fact had positive outcomes because it has helped to clarify several issues of international law. This reflects the overall limitations of imposing a quantitative assessment of outcomes on complex legal cases.

Finally, where a climate-aligned case is argued on many grounds, and succeeds on one, we would tend to classify this as a 'positive outcome'. For example, in the *UK Net Zero Strategy* case discussed above, we have classified the outcome as positive despite the fact that the applicants lost on all grounds but one.

We include a category for 'neutral' outcomes. These are cases where the outcome appears unlikely to have an immediate impact on climate action, or where it is unclear what the impact would be. For example, in the case of *Greenpeace v. Mexico (Budget reduction for combating climate change)*, Greenpeace challenged the Mexican government's decision to reduce the funds available for climate action. The case was ultimately decided by the Supreme Court on a point related to the applicant's standing. However, while that issue was resolved in favour of Greenpeace, the substantive issue was not, since the budget measure that formed the subject of the claim was no longer in force at the time that the decision was issued.

It should also be noted that we typically assess the outcome on the basis of the summary of the argumentation and evidence in the case. So, for example, in the case of *Private Forest Owners v. Thuringia*, we assessed the outcome as favourable to climate action. In that case, the applicants sought to challenge an aspect of the Thuringia Forest Act, which would have prevented them from building windfarms on land in forested areas, despite the fact that the biodiversity value of those forests was said to have been previously damaged by pest infestations and had to be cleared in any event. We acknowledge that this approach may be subject to criticism as in some cases it may be argued that a substantive outcome in favour of 'pro-climate' applicants may ultimately lead to unanticipated negative impacts, particularly where there is some dispute over the scientific basis for the claim.

As noted in the main body of this report, cases may have indirect impacts that are favourable to climate action that happen outside the courtroom. This type of impact is not considered in our classification of direct judicial outcomes. However, in many cases where a case is settled or withdrawn, this may be because of a positive resolution that addresses some of the original concerns raised in the case. Where this is apparent from the information available, we will classify the case as having enhanced climate action. For example, in the case of *Verbraucherzentrale Baden-Wuerttemberg v. DWS*, in which the consumer protection association of Baden-Wuerttemberg challenged certain advertising by DWS for making green claims, the case was settled after DWS agreed to withdraw the advertising. In this case we have listed the outcome as favourable.

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