

Global trends in climate change litigation: 2024 snapshot

Joana Setzer and Catherine Higham

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Summary

Key insights

- At least 230 new climate cases were filed in 2023. Many of these are seeking to hold governments and companies accountable for climate action. However, the number of cases expanded less rapidly last year than previously, which may suggest a consolidation and concentration of strategic litigation efforts in areas anticipated to have high impact.
- Climate cases have continued to spread to new countries, with cases filed for the first time in Panama and Portugal in 2023.
- 2023 was an important year for international climate change litigation, with major international courts and tribunals being asked to rule and advise on climate change. Just 5% of climate cases have been brought before international courts, but many of these cases have significant potential to influence domestic proceedings.
- There were significant successes in ‘government framework’ cases in 2023; these challenge the ambition or implementation of a government’s overall climate policy response. The European Court of Human Rights’ decision in April 2024 in the case of *KlimaSeniorinnen and ors. v. Switzerland* is likely to lead to the filing of further cases.
- Strategic climate cases continued to be filed against companies, with about 230 such cases now identified from 2015 to the present. Key trends in corporate climate litigation include:
 - The number of cases concerning ‘climate-washing’ has grown in recent years. 47 such cases were filed in 2023, bringing the recorded total to more than 140. These cases have met with significant success, with more than 70% of completed cases decided in favour of the claimants.
 - There were important developments in ‘polluter pays’ cases: more than 30 cases worldwide are currently seeking to hold companies accountable for climate-related harm allegedly caused by their contributions to greenhouse gas emissions.
 - Litigants continue to file new ‘corporate framework’ cases, which seek to ensure companies align their group-level policies and governance processes with climate goals. The New Zealand Supreme Court allowed one such case to proceed, although cases filed elsewhere have been dismissed. The landmark case of *Milieudefensie v. Shell* is under appeal.
 - In this year’s analysis a new category of ‘transition risk’ cases was introduced, which includes cases filed against corporate directors and officers for their management of climate risks. Shareholders of Enea approved a decision to bring such a case against former directors for planned investments in a new coal power plant in Poland.
- Nearly 50 of the more than 230 cases filed in 2023 are not aligned with climate goals. Some cases challenge climate action; others do not challenge climate action *per se*, but are concerned with the way in which it is implemented. Key types of non-aligned climate litigation include:
 - ESG backlash cases, which challenge the incorporation of climate risk into financial decision-making.
 - Strategic litigation against public participation (SLAPP) suits against NGOs and shareholder activists that seek to deter them from pursuing climate agendas.
 - Just transition cases, which challenge the distributional impacts of climate policy or the processes by which policies were developed, normally on human rights grounds.
 - Green v. green cases, which concern potential trade-offs between climate and biodiversity or other environmental aims.

Focusing on the calendar year 2023, this report, the latest in an annual series on climate change litigation cases, provides a numerical analysis of how many cases have been filed, where and by whom, and a qualitative assessment of trends and themes in the types of cases filed. We present the topline findings and analytical points in this summary.

In places we refer separately to ‘US cases’ and ‘Global cases’, the latter meaning any that have been brought to court outside the US, including before international and regional courts and tribunals.¹

More than 230 new climate cases were filed in 2023, but the overall rate of growth may be slowing down

Our dataset, primarily drawn from the Sabin Center for Climate Change Law’s Climate Litigation Databases, currently contains 2,666 climate litigation cases. Around 70% of these have been filed since 2015, the year the Paris Agreement was adopted. 233 of these cases were filed in 2023. The data suggests that the overall rate of increase in new cases may be slowing down.

Climate cases are spreading to more countries

The United States remains the country with the highest number of documented climate cases, with 1,745 cases in total, and 129 new cases filed in 2023. After the US, the countries with the highest number of recorded cases filed in 2023 were the UK with 24 cases, Brazil with 10 cases, and Germany with 7 cases. These three countries also have high aggregate numbers of recorded cases, with the UK currently at 139 cases, Brazil at 82 cases, and Germany at 60.

Climate cases were filed in 2023 for the first time in Panama and Portugal. Older cases filed in Hungary and Namibia were identified for the first time, bringing the total number of countries in which climate cases have been recorded to 55.

Cases in the Global South are increasing and gaining more attention

Currently, more than 200 climate cases from Global South countries are recorded in the databases, comprising around 8% of all cases. A landmark judgment by the Supreme Court of India in *M.K. Ranjitsinh and Others v. Union of India* established a new constitutional right to be free from the adverse effects of climate change.

2023 was a significant year for international climate litigation, particularly involving human rights

146 cases, equivalent to around 5% of all climate cases, have been filed before international and regional courts and tribunals over the years – which we describe as ‘international litigation’ – including 70 cases filed before the Court of Justice of the European Union and the European Ombudsman. Nine of these international and regional cases were filed in 2023.

Around 45% of international cases and complaints filed to date have been filed before international human rights courts, bodies and tribunals. These cases reflect a growing trend in the use of human rights arguments in climate cases. They include three cases brought before the European Court of Human Rights decided in April 2024 and the request for an advisory opinion from the Inter-American Court on Human Rights (filed in 2023).

Human rights arguments have also been made in submissions to the International Court of Justice, which is in the process of responding to a request for an advisory opinion on climate change issues (filed in 2023). In May 2024 the International Tribunal on the Law of the Sea issued its advisory opinion, finding that greenhouse gas emissions can be understood as a source of marine pollution, and that states have obligations to prevent such pollution, and to restore damaged ocean ecosystems.

Most climate litigation cases from recent years have been filed by NGOs or individuals

In 2023 the plaintiffs in more than 70% of all cases, both US and Global, included either individuals, non-governmental organisations (NGOs) or both. This trend reflects an effort by civil society actors to use the courts to raise concerns about climate action, and mirrors the rise in strategic climate litigation. However, there are further actors involved. In the US, government actors were among the plaintiffs in nearly 20% of the cases filed last year.

¹ This reflects the two separate databases maintained by the Sabin Center.

Companies and trade associations are filing cases in significant numbers

13% of all cases filed in 2023 were filed by companies and trade associations, and the vast majority of these were filed in the US. Most cases filed by companies challenge climate policy and regulation, but in some cases companies are supporting more stringent climate action or seeking to prevent 'climate-washing' (a form of greenwashing).

Cases continue to be filed against corporate actors

In 2023 around 70% of all cases involved government actors among the defendants and only 25% involved companies. However, considerable differences are emerging on this front between cases filed in and outside the US. In the US, governments were among the defendants in nearly 85% of cases, and just 15% involved companies as defendants. Governments were involved as defendants in fewer Global cases, at nearly 60%, and 40% included corporate actors among the defendants.

Companies from many sectors are now at risk of being taken to court over climate

Since the ratification of the Paris Agreement, around 230 strategic climate-aligned lawsuits have been initiated against companies and trade associations, with more than two-thirds of these cases emerging since 2020. Cases against companies have traditionally been focused on the fossil fuel sector but they are now being launched across other sectors, including airlines, the food and beverage industry, e-commerce and financial services.

Climate-aligned strategic cases use diverse case strategies

We have identified several strategies in climate-aligned strategic cases and provide an overview below of the number of cases employing each strategy and significant current or recent cases.

'Government framework' cases challenge the ambition or implementation of a government's overall climate policy responses:

- 15 new cases were filed in 2023 and 110 such cases have been filed since 2015.
- The European Court of Human Rights confirmed that government failure to act on climate change constitutes a violation of the European Convention on Human Rights in the case of *KlimaSeniorinnen and ors. v. Switzerland*.
- A landmark ruling from the US in the case of *Held v. Montana* has been described as the first big win for the US youth-led climate litigation movement.
- There is potential for an increase in litigation challenging the integrity of governments' net zero targets, i.e. over their clarity and substance.

'Integrating climate considerations' cases seek to integrate climate considerations into decisions on a given project or sectoral policy:

- 97 new cases were filed in 2023.
- Many cases concern the licensing or development of new fossil fuel production and fossil fuel electricity generation. In January 2024 the Oslo District Court ruled in the case of *Greenpeace Nordic and Nature and Youth v. Energy Ministry* that Scope 3 emissions must be considered in environmental impact assessments, to ensure protection of human rights.
- Such cases can cause projects to be delayed, abandoned or may simply result in proponents resubmitting an environmental impact assessment and receiving a further permit.

'Polluter pays' cases seek monetary damages from defendants based on an alleged contribution to harmful climate change impacts:

- 5 new cases were filed in 2023. 34 cases have been filed since 2015, mostly in the US.
- Many of the 'climate liability lawsuits' filed by subnational governments in the US against the so-called Carbon Majors moved a step closer to trial in 2023 when the US Supreme Court declined to hear arguments about whether the cases should proceed in state or federal court.
- In September 2023, California became the largest subnational government to file a climate suit, which it brought against five Carbon Major oil companies and the American Petroleum Institute, focusing on the need to hold oil companies accountable for what the state described as "decades of deception".
- The case of *Falys v. Total*, in which a Belgian farmer is suing French energy giant Total for climate damages, became the third polluter pays case filed in Europe.

'Corporate framework' cases seek to disincentivise companies from continuing with high-emitting activities by requiring changes to group-level policies and corporate governance:

- 3 new cases were filed in 2023, and 22 such cases have been recorded to date, all outside the US.
- These cases are usually linked directly to the Paris Agreement goal of limiting warming to 1.5°C, or to the related concept of net zero.
- In February 2024 the New Zealand Supreme Court overruled the Court of Appeal's previous decision to dismiss the case of *Smith v. Fonterra*. This is an important example of Paris-alignment corporate case involving a potential new duty to be heard by a common-law court.

'Failure to adapt' cases challenge a government or company for failure to address climate risks:

- 8 new cases were filed in 2023, and 64 such cases have been recorded since 2015.
- In 2023 Friends of the Earth supported two members of the public in filing a lawsuit against the UK government over its Third National Adaptation Programme.
- Increasingly, the physical and mental health impacts of climate change are becoming the focus of this type of litigation.

'Transition risk' cases concern the (mis)management of low-carbon transition risk by directors, officers and others tasked with ensuring the success of a business:

- 1 new case was filed in 2023 and just 17 such cases have been recorded since 2015.
- This is a new category of cases introduced this year to reflect an increase in litigation over the management of risk.
- In December 2023 the Polish energy company Enea indicated its intention to sue several of its former directors who had supported the company's investments in the cancelled Ostroleka C coal-fired power station project.

'Climate-washing' cases challenge inaccurate government or corporate narratives regarding contributions to the transition to a low-carbon future:

- 47 new cases were filed in 2023, and more than 140 such cases have been filed to date, making this one of the most rapidly expanding areas of climate litigation.
- Climate-washing cases have often centred on claims around the climate neutrality of products and services, with several recent claims relating to transport.
- Cases can also involve financial products and services. For example, in 2023 Australia's Federal Court ruled that Vanguard Investments Australia's claims about an ethical bond were false and misleading.

'Turning off the taps' cases challenge the flow of finance to projects and activities that are not aligned with climate action:

- 6 new cases were filed in 2023, and 33 such cases since 2015 have been recorded.
- In *Jubilee v. EFA and NAIF*, an Australian NGO is seeking to force government bodies to disclose impact assessments for investments that subsidise fossil fuels.
- Non-judicial proceedings include communications by UN experts on the responsibilities of the financial backers of Saudi Aramco under the UN Guiding Principles on Business and Human Rights, and a complaint with the American National Contact Point against insurance broker Marsh challenging the East African Crude Oil Pipeline planned by TotalEnergies in Uganda.

Direct judicial outcomes in climate-aligned strategic cases vary

We have assessed the 'success rate' of four key types of strategic cases:

- **Government framework:** Around 60% of these cases have at least one judicial decision. Of these, one-third have outcomes positive for climate action, while two-thirds have had outcomes that from the perspective of the claimants are anticipated to be negative for climate action. Some ongoing cases with decisions from appellate courts are having positive impacts on climate governance.
- **Polluter pays:** Early polluter pays cases filed in the US before 2015 were unsuccessful. However, the vast majority of the 33 cases filed since then remain open, their outcomes uncertain. The case of *Lliuya v. RWE* has advanced furthest through the evidentiary process and may be the first to receive a substantive decision on its merits.
- **Corporate framework:** The outcomes in these cases remain uncertain. Half of those decided so far have been successful and half unsuccessful. Success in the case of *Milieudefensie v. Shell*, in which Shell was ordered to increase the ambition of its emission reduction targets, and the recent Supreme Court decision in New Zealand allowing the case of *Smith v. Fonterra* to proceed to trial must be weighed against unsuccessful cases against car manufacturers in Germany dismissed by appellate courts.
- **Climate-washing:** Decided cases have mostly yielded positive outcomes. More than half of the nearly 140 climate-washing cases filed from 2016 to the present have reached official decisions and 54 of these 77 cases (i.e. 70%) have concluded in favour of the claimant.

Not all climate action is aligned with climate goals

Nearly 50 of the more than 230 recorded cases filed in 2023 include non-aligned arguments. The overwhelming majority of these were filed in the US. At times, actors involved in such cases appear to be intentionally seeking to use legal tactics to obstruct climate action. Such cases include:

- **ESG [environmental, social, governance] backlash cases**, in which tactics used by litigants in climate-aligned cases are turned against them. In 2023, there were significant cases alleging breaches of fiduciary duties related to the integration of climate risk into financial decisions and allegations concerning deceptive practices. Notable cases include *Spence v. American Airlines and State ex rel. Skrmetti v. BlackRock*.
- **Strategic litigation against public participation (SLAPP)** suits brought against activists and others who speak out about climate change and the environment. Examples include cases filed by Shell and Total against Greenpeace and other NGOs, and Exxon filing litigation against two shareholder activist organisations, Arjuna Capital and Follow This.

Not all non-aligned cases necessarily aim to obstruct climate action. We also see:

- **'Just transition' cases** challenging how climate action is designed, rather than opposing the need for such action. These cases are filed by individuals, communities or labour groups who consider climate action a threat to human rights. An example is the communication by a group of UN Special Rapporteurs to the French government concerning the development of 'mega-basin' projects which have impacts on small-scale farming and biodiversity.
- **'Green v. green' cases** involving apparent trade-offs between the need to protect biodiversity and projects or policies that are introduced on climate grounds. An example is the Indian Supreme Court case of *M.K. Ranjitsinh and Others v. Union of India*, and cases opposing offshore wind projects in the US claiming these constitute a threat to whale populations. There are signs that some of these cases may be used to prevent climate action.

Climate litigation beyond the courtroom

Climate litigation impacts extend beyond courtroom decisions, influencing policy, governance and public discourse. There are groups of key actors that both contribute to and experience these impacts:

- **Courts can have influence beyond their decisions.** Courts are playing a pivotal role in climate policy, publicising climate science through public hearings and their rulings.
- **Climate litigation has spurred legislative reforms.** Notable examples include changes to climate framework laws in Ireland and Germany following successful government framework cases. Litigation also appears to have influenced the proposed Climate Superfund Act in Vermont, which aims to hold fossil fuel companies financially accountable for climate damages. Other US states and legislators in the Philippines are considering similar laws.
- **Financial regulators are increasingly aware of and highlighting climate litigation risk.** Reports by the Network for Greening the Financial System highlight the need for better risk assessment methodologies. Central banks and financial regulators are being urged to adapt to these evolving risks.
- **The insurance sector is starting to respond to litigation risk.** Insurance and reinsurance companies face significant challenges from climate litigation, necessitating a re-evaluation of risk management strategies. Regulatory bodies are underscoring the importance of robust risk assessment models.
- **Climate litigation is impacting the broader legal profession.** Professional associations are guiding law firms to align with net zero targets and integrate climate risk into client advisories, acknowledging the ethical responsibilities of legal professionals. Legal and consulting firms also face growing risk from climate litigation.

Future trends in climate litigation

We anticipate the following future trends:

- **Post-disaster cases:** Legal disputes are emerging over recovery efforts following climate disasters, exemplified by a case in Puerto Rico challenging the reconstruction of fossil fuel-based infrastructure.
- **Ecocide and criminal law:** The concept of ecocide is gaining traction, with new legislation in Belgium and proposed EU directives addressing environmental crimes. These developments may influence future climate litigation.
- **Environmental and climate litigation synergies:** Climate litigation strategies are increasingly applied to environmental cases, such as plastic pollution. Rights-based environmental cases are also incorporating climate arguments, indicating a convergence of legal approaches.

Introduction

Over the past six years, the Grantham Research Institute, in partnership with the Sabin Center for Climate Change Law, has published annual snapshot reports in its *Global trends in climate change litigation* series. Each report provides a synthesis of the latest research and developments in the climate change litigation field.

Focusing on the calendar year 2023, this 2024 report provides:

- A numerical analysis of how many cases have been filed, where, and by whom.
- A qualitative assessment of trends and themes in the types of cases filed.

We also provide commentary on important cases filed or decided in the first five months of 2024.

In previous years most of the numerical analysis has focused on cases outside the US; this year we have expanded that approach to provide numerical analysis including subsets of both United States and 'Global' (non-US) climate cases (see Box A).

Box A. Data sources

The primary sources of data for this report are the [Climate Change Litigation Databases](#) maintained by the Sabin Center for Climate Change Law (see further the Appendix). The Sabin Center maintains two databases:

- **One contains all climate cases filed in the US** before state and federal courts, and selected cases before administrative entities. This database contains just under two-thirds of all identified climate cases around the world to date.
- **The other is a database of 'Global' cases**, which includes information on cases filed in all countries *other than the US* and in international and regional courts and tribunals.

Since 2021, coverage of many jurisdictions has improved thanks to the Sabin Center's convening of the [Peer Review Network of Global 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.

While we provide quantitative data and analysis of climate cases around the world, the existing data is not comprehensive or exhaustive. Nonetheless, the databases offer a diverse and cross-cutting sample of cases covering a wide geographical scope and range of levels of government, types of actor and types of argument, enabling observations to be made about trends and innovations in cases and countries.

Defining climate change litigation

In this series we define climate change litigation as consisting of cases brought before judicial and quasi-judicial bodies that involve material issues of climate change science, policy or law. This is the definition that the Sabin Center uses in defining which cases to include in its Climate Change Litigation Databases, and which we take as the basis for the quantitative analysis. This definition involves a narrow approach to determining what is 'climate change-related', including only cases that explicitly engage with climate change matters. However, the Sabin Center takes a broader approach to determining what is 'litigation', including notable examples of investigations, communications by domestic and international bodies, complaints to regulators, requests for prosecution and enforcement actions. We explore how those proceedings are being used as a tool to advance a variety of climate change-related agendas in so-called 'strategic litigation'; i.e. those cases filed with the aim of influencing the broader debate around climate action.

We acknowledge that there are numerous court cases around the world in which neither climate change science nor law is explicitly mentioned but which will have a serious impact on the volume of greenhouse gas emissions or on a community's resilience to climate change (see [Peel and Osofsky, 2020](#); [Bouwer, 2018](#); [Hilson, 2010](#)). These deal with matters such as illegal deforestation and planning decisions. As a result, critical developments in cases outside the Global North have often been excluded from scholarship on climate litigation. Specifying climate risks to particular locations and regions could help identify new climate cases, especially in countries in the Global South ([Field, 2024](#)).² We acknowledge the critical importance of adopting a multiplicity of approaches to understanding legal responses to climate change. Our approach is by no means intended as the last word on the subject. Instead, we are seeking to provide an easy-to-understand snapshot of some key developments to enable readers to start to understand this rapidly evolving field.

Categorisation of cases to accurately illustrate their diversity

As the amount of climate litigation has grown over the years, so too has the diversity of cases, increasing the options for categorising and classifying cases. Within the different types of cases, we see significant variation in terms of the legal arguments made by the litigants. We also see differences in the levers for changing the system identified by those involved in 'strategic litigation'. For example, activist groups concerned about fossil fuels may choose to bring a challenge to the permitting process around a given fossil fuel project; alternatively, they might choose to target the policies of the banks providing financial support to those projects. Activists concerned with emissions associated with deforestation may use the same kind of tactics, even though their thematic focus differs. Different insights about trends in climate cases emerge depending on which elements of the issue we choose to focus on – 'how we choose to cut the cake', as it were (see e.g. [United Nations Environment Programme \[UNEP\], 2023](#), for alternative approaches).

Our primary aim through this series is to provide readers with a comprehensive overview of the multifaceted dimensions of climate change litigation. We initially assess the objectives of each climate case as they appear from the complaint and any campaign materials provided by the claimants, examining whether the parties' requests for judicial relief are likely to align with climate action goals – either by fostering resilience to climate impacts or by reducing greenhouse gas emissions – or if, conversely, achieving success in these cases could potentially hinder climate objectives, such as by delaying or obstructing the implementation of certain climate policies. Historically, the labels 'pro-regulatory' and 'anti-regulatory' ([Peel and Osofsky, 2015](#)), or simply 'pro' and 'anti' climate ([Hilson, 2010](#)), have been applied to cases. However, as demonstrated in this report, the distinction is becoming increasingly nuanced. Consequently, we categorise cases as either 'climate-aligned' or 'non-climate-aligned', considering trends in each of these case types separately ([Setzer and Higham, 2022, 2023](#)).

² 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 B. Definitions in a nutshell

Climate change litigation: cases before judicial and quasi-judicial bodies that involve material issues of climate change science, policy or law.

Strategic litigation: litigation where the plaintiff seeks to both win the individual case and to influence the public debate on climate action.

Climate-aligned litigation: cases that appear from the complaint and any campaign material to be requesting judicial relief that would align with climate action goals, fostering resilience to climate impacts or reducing greenhouse gas emissions. Determining if a case is climate-aligned is not always straightforward, given the variety of views about the best way to successfully achieve climate adaptation and mitigation.

Non-climate-aligned litigation: cases that appear from the complaint and any campaign material to be requesting judicial relief that would prevent or delay climate action. As with climate-aligned cases, it is not always straightforward to identify such cases, as some may not be challenging climate action *per se* but rather the manner in which it is being carried out.

Structure of the report

Part I provides an overview of overall case numbers, including an overview of cases by year of filing, an assessment of where cases are being filed, and an analysis of the key actors involved in climate litigation.

Part II takes a closer look at climate-aligned strategic cases, identifying key strategies used in these cases, and commenting on their direct judicial outcomes.

Part III explores developments in non-climate-aligned cases, focusing on case types filed in 2023, and explaining the nuance and variety among this group of cases.

Part IV explores the impacts of climate litigation beyond the courtroom, and also the actors involved in creating these impacts. Finally, it considers what possible future trends for climate litigation seem likely.

Note about references

We have hyperlinked our in-text citations wherever possible but also provide a full references list in a separate annex, available at:
<http://www.lse.ac.uk/granthaminstitute/publication/global-trends-in-climate-change-litigation-2024-snapshot>

Part I. The global landscape of climate cases

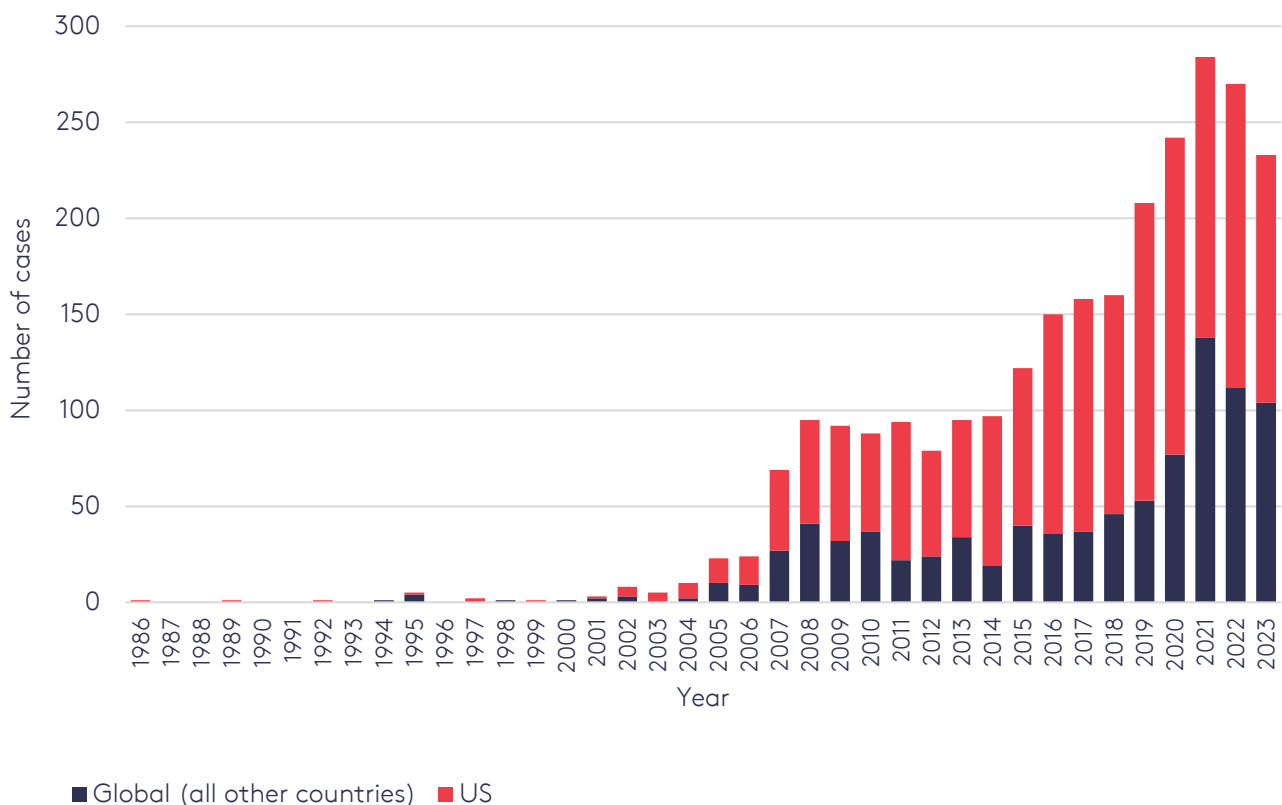
This section provides an update on key metrics regarding climate litigation. We start by discussing the overall number of cases and the pace of filing of new cases. We then provide a geographical breakdown of cases, focusing on jurisdictions where cases are frequently filed, considering cases in the Global South, and providing an overview of trends in international and regional cases. Finally, we provide an assessment of the actors involved in climate cases, discussing the growing focus on climate litigation against corporate actors.

We recognise that the growing field of climate litigation offers a complex landscape and that our primary focus on cases at the point of filing offers only a partial view. As more cases get decided, a comprehensive understanding would require further assessing decided cases, for instance analysing their types, different forms of resolution and the duration required for resolution in various jurisdictions.

Growth in climate cases

Our dataset currently contains 2,666 climate litigation cases.³ Around 70% of these cases have been filed since 2015, the year the Paris Agreement was adopted. 233 of these cases were filed in 2023. As in previous years, more cases (129 of 233) were filed in the US in 2023 than in all other countries around the world. Figure 1.1 shows the number of cases within and outside the US from 1986 to 2023.

Figure 1.1. Number of climate litigation cases within and outside the US, 1986–2023



³ This dataset contains 43 cases filed in 2024. However, our focus when discussing trends over time below is on cases filed up until the end of the calendar year 2023. This is a departure from previous years in which we have focused on a study period from May to May. The decision to change the temporal focus has been made in part to reflect changes to the data collection process as the field has grown that mean that cases often take longer to collect and process. For more information on the dataset used for this report see the Appendix.

Although hundreds of new climate cases continue to be filed, the data suggests that the rate of increase may be slowing down. The decreased filing rate in the US could be due to a year of unprecedented clean energy deployment or because of a reduction in the approval and construction of new fossil fuel infrastructure. The Sabin Center will further explore the shifts in the US landscape.

Outside the US, the possible slowdown might also be a result of delays in data collection. For example, when our last report was published in June 2023, 222 cases filed in 2022 had been identified, but this number has since increased to 270. This suggests that what currently appears to be a downward trend may become a more stable plateau as more data is collected.

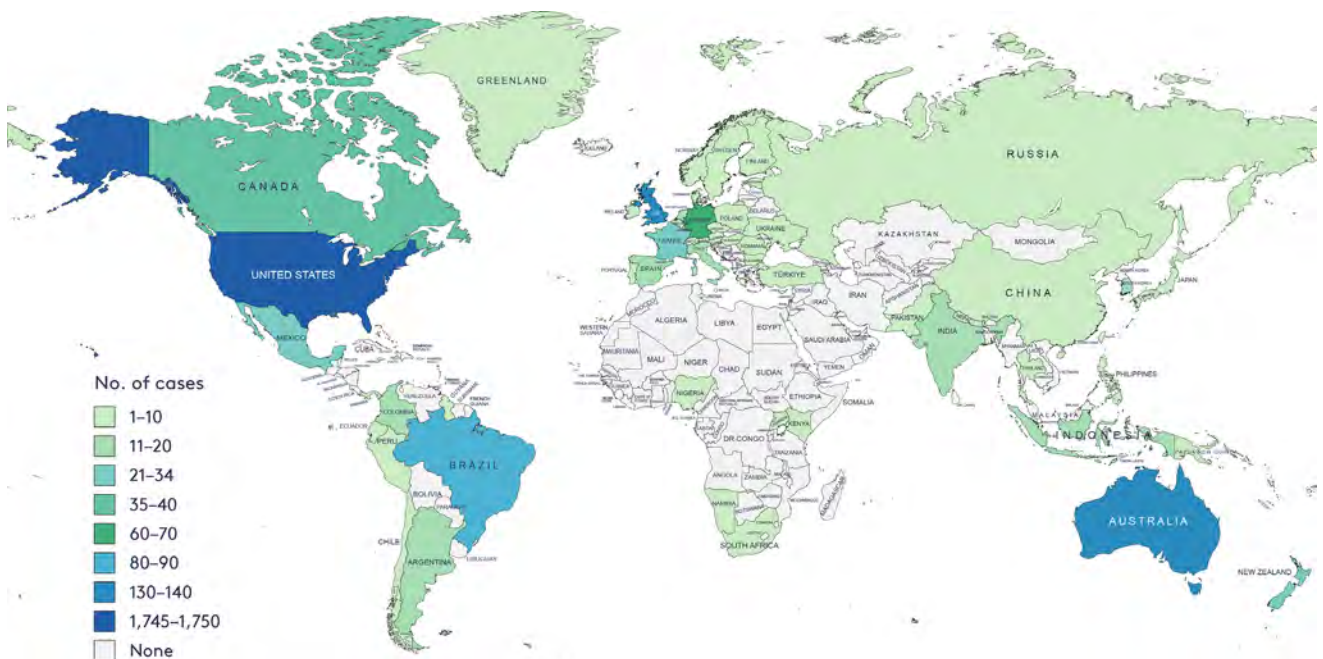
Other factors contributing to the apparent decline in new cases may include the diversification of case strategies, with more cases addressing climate issues only peripherally and thus not captured in existing databases. It is also possible that more resources might be being directed towards a smaller number of cases anticipated to have a more lasting or wide-ranging impact.

Climate cases spreading to more countries around the world

The United States remains the country with the highest number of documented climate cases, with 1,745 cases in total. Next is Australia, where 132 cases have been identified, but only 6 new cases filed in 2023 have been recorded there so far.

Climate cases have been identified in new jurisdictions since the last edition of this report. In 2023, cases were filed for the first time in Panama (*Callejas v. Law No 406 – unconstitutionality of mining concession*) and Portugal (*Associação Último Recurso et al. v. Portuguese State*). Older cases filed in Hungary and Namibia were also identified for the first time, bringing the total number of countries in which climate cases have been recorded to 55 (see Figure 1.2).

Figure 1.2. Number of cases to date in countries globally



The UK, Brazil and Germany were the countries with the most recorded cases in 2023

Outside the US, the countries with the highest number of recorded cases filed in 2023 were the UK with 24 cases, Brazil with 10 cases, and Germany with 7 cases. All three of these countries also have high aggregate numbers of recorded cases, with the UK currently at 139 cases, Brazil at 82 cases, and Germany at 60.

We observe the following important trends and developments in these countries:

- **The UK** has seen developments concentrated on its Climate Change Act. In addition to new framework cases, i.e. those challenging the government's overall approach to climate policy (discussed in Part II), there have been challenges to specific sectoral policies for their failure to contribute to achieving the national emissions reduction targets set out in the Act, including an unsuccessful challenge to the UK Food Strategy (*Global Feedback Ltd v. Secretary of State for Environment, Food and Rural Affairs*).
- **In Brazil** a study conducted by JUMA on 80 climate litigation cases filed up to March 2024 reveals distinct patterns. The Public Prosecutor's Office filed 22 cases, civil society filed 21 cases, other public bodies (including the Federal Environmental Agency) filed 15 cases, and political parties filed 14 cases. The Public Prosecutor's Office, traditionally the main initiator of environmental and climate cases in the country, now finds itself on a par with civil society in terms of the quantity of litigation it has initiated. Predominantly, cases target government entities. Meanwhile, litigation against private companies is on the rise, with 31 cases recorded. Over half of the lawsuits in Brazil concern land use and forestry issues, with equal numbers filed against government bodies for their lack of action and against individuals and companies directly responsible for deforestation (see further Box 1.1). The Brazilian Amazon is the subject of 34 of these actions. Additionally, there is a growing trend in litigation concerning civil liability for environmental and climate-related damage, primarily associated with deforestation. This trend is exemplified by the recent case of *IBAMA v. Dirceu Kruger*, which challenges the court to establish causation and quantify damage, aiming to repair and restore the area of forest in question. Furthermore, 25 cases concern the exploration, production and use of fossil fuels. Of these, 12 broadly address Brazilian energy policy, while 13 question the permitting of specific projects.
- **In Germany** there has been a significant uptick in climate-related legal action, with the number of cases more than doubling since 2021, as noted in our 2023 report. This increase followed the Federal Constitutional Court's pivotal verdict in *Neubauer et al. v. Germany* (Setzer and Higham, 2023). Although many cases from this 'second generation' have not succeeded, the past year witnessed notable victories for climate activists, for example in *DUH and BUND v. Germany*. Initiated under the Federal Climate Protection Act, which sets sector-specific emissions targets, this lawsuit challenged the sufficiency of policy measures proposed by the building and transport sectors to meet these targets. The Court sided with the plaintiffs, deeming the proposed policy measures inadequate. The government may contest this ruling, potentially intensifying an ongoing political discussion about possibly revising the law to eliminate these sector-specific targets (Bonnemann, 2023; Averchenkova et al., 2024).

Box 1.1. Forests and deforestation: carbon sinks, their preservation and ownership are increasingly the subject of litigation

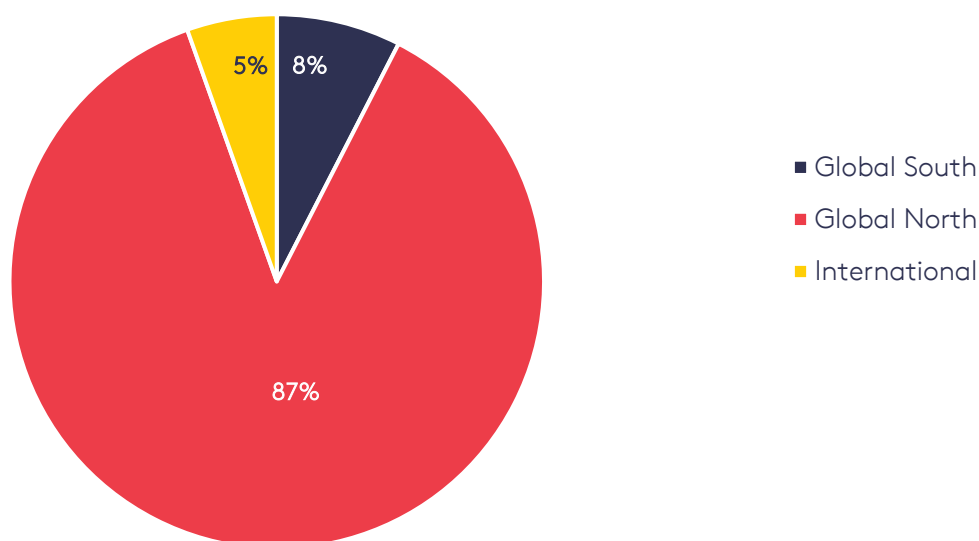
In their capacity as carbon sinks, forests are anticipated to play a vital role in any effort to balance emissions and removals of carbon dioxide in the atmosphere (i.e. achieve net zero). Cases that combine forest and climate change arguments have emerged as a significant area of legal action globally, with at least 81 recorded cases addressing deforestation and forest governance filed between 2009 and 2023. A working paper by Bisiaux et al. highlights the diverse approaches and outcomes of these cases. Brazil and the US are the most prominent locations for filings. Most cases are brought by NGOs and individuals aligned with climate objectives, but there are also a few non-aligned cases brought by companies. The legal basis for these cases varies, encompassing environmental law, air pollution regulations, human rights and private law. Litigation grounded in environmental law typically targets governments or companies, challenging project approvals. A few cases also involve deforestation in companies' value chains, including cases targeting European banks such as the 2023 case of *Comissão Pastoral da Terra and Notre Affaire à Tous v. BNP Paribas*.

Cases that combine climate, forest protection and human rights arguments increased during 2023. A notable example is the action taken by the Brazilian Public Prosecutor's Office of the State of Pará, which has initiated a series of lawsuits against various companies and a municipality for what is being termed 'forest carbon grabbing'. This term describes a scenario where the municipality issued a decree authorising the operations without previous consultation with affected communities, while companies are accused of illegally generating and selling carbon credits on the voluntary market. These activities are said to infringe upon the rights of traditional communities, highlighting the complex interplay between environmental conservation efforts and the protection of indigenous and local communities' rights.

Climate litigation in the Global South

While Brazil is the country from the Global South with the largest number of climate cases, a number of other countries in the Global South are developing unique judicial responses to climate challenges. Currently, more than 200 climate cases from these countries are recorded in the Global database, comprising around 8% of all cases (see Figure 1.3).

Figure 1.3. Percentage of cases in the Global database filed in courts in the Global North, courts in the Global South, and international and regional courts



Climate litigation in the Global South has garnered considerable attention and scholarly work in recent years. A growing body of literature, with many contributions from authors based in the Global South, is now available on this subject. Among recent publications is an edited volume on climate litigation in Africa that challenges the notion of African climate litigation falling behind its global counterparts. Its editors advocate taking a perspective that appreciates how activists and legal professionals in Africa have tailored their approaches to suit the unique and varied domestic contexts of the continent (Bouwer et al., 2024). Additionally, Lin and Peel (2024) have published the first comprehensive monograph on climate litigation in the Global South; they examine the legal strategies employed and the preliminary effects of such litigation originating from the Global South. Concurrently, the Global Network for Human Rights and the Environment maintains an extensive bibliography on climate litigation in the Global South, featuring hundreds of sources (Murcott et al., 2023).

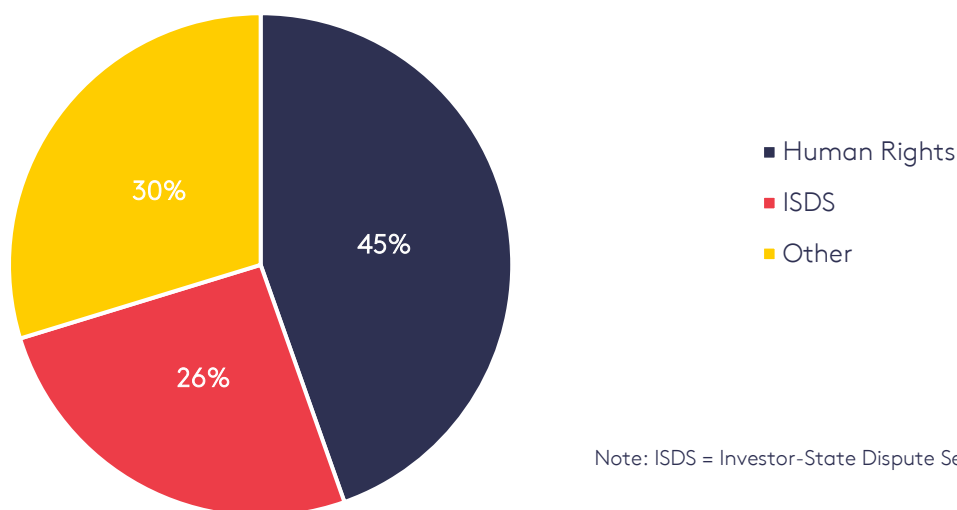
While research indicates a growing trend in utilising the courts as instruments in climate policy responses in some Global South countries, there may be a strategic avoidance of climate litigation in others. For instance, India’s historically low number of climate cases has reflected a conscious decision to avoid an overly narrow focus on emissions, as this can overlook broader issues related to livelihoods, rights and ecological concerns (Ohdedar, 2021; Kumar and Naik, 2024). However, there may be a shift there following a landmark judgment by the Supreme Court of India in *v. Union of India*. This decision established a new constitutional right to be free from the adverse effects of climate change, drawing on Article 21 (the fundamental right to life and personal liberty) and Article 14 (the fundamental right to equality) of the Indian Constitution (Kumar and Naik, 2024).

International courts and tribunals are being asked to rule and advise on climate change

Around 5% of all cases have been filed before international or regional courts, tribunals and authorities. Half of these (70 out of 146) cases have been filed before the Courts of Justice of the European Union.⁴ Nine of these international and regional cases were filed in 2023.

Outside the EU context, which has been discussed in earlier publications (see Higham et al., 2023), we see several key trends in international cases. Figure 1.4 shows the breakdown of international and regional human rights-focused cases, investor-state dispute settlement (ISDS) cases (an indicative number, as many arbitrations are conducted confidentially), and ‘other’ types of tribunal (including the International Court of Justice, the International Tribunal on the Law of the Sea and the UNFCCC’s dispute resolution bodies).

Figure 1.4. Breakdown of international and regional cases by tribunal type, excluding cases in EU courts



Note: ISDS = Investor-State Dispute Settlement

⁴ The Court of Justice of the European Union (CJEU) is the judicial branch of the EU, and it consists of two separate courts: the Court of Justice and the General Court. It does not include the European Court of Human Rights (ECtHR), which is the international court of the Council of Europe. The figure of 70 does, however, include one case filed before the European Ombudsman.

More international climate cases are filed before human rights tribunals than any other type of court

Firstly, around 45% of international cases and complaints recorded to date involve international human rights courts, bodies and tribunals.⁵ These cases reflect a growing trend in the use of human rights arguments, and include three cases brought before the European Court of Human Rights decided in April 2024 (discussed in more detail in Part II). This figure also includes a request for an international advisory opinion from the Inter-American Court of Human Rights (IACtHR).

Human rights arguments are also being made in cases beyond specialist human rights tribunals

In 2023 two requests were submitted for advisory opinions on climate change issues from international tribunals, including the request to the Inter-American Court noted above and a request to the International Court of Justice (ICJ). An earlier request was made to the International Tribunal on the Law of the Sea (ITLOS), in 2022.

These three legal requests, aimed at combating climate change, differ significantly in scope and potential impact. Each court operates under unique jurisdictional capacities, with distinct procedures and functions. The ICJ has the broadest inquiry, seeking to define state obligations and the repercussions of climate-related harm, potentially influencing global reparations for damage caused by climate change. In contrast, the IACtHR focuses on human rights issues within the Americas, while ITLOS concentrates on preventing marine pollution and preserving the marine environment.

The volume of state and general public engagement with these proceedings seem to illustrate global concern and interest in clarifying state obligations regarding climate protection. ITLOS's advisory process attracted statements from 34 states and nine intergovernmental organisations (Tigre and Silverman-Roati, 2023). The IACtHR also observed record engagement, receiving more than 260 submissions from states, international organisations, NGOs and individuals. The ICJ received 91 written statements, the highest number ever filed in advisory proceedings before the Court, primarily from states but also including contributions from entities such as the World Health Organization (WHO).

On 21 May 2024, ITLOS issued a unanimous advisory opinion (see Box 1.2). Expected outcomes from the IACtHR and ICJ opinions are anticipated in late 2024 and early 2025, respectively.

The broader implications of these opinions remain unclear, and opinions on their impacts vary. Although advisory opinions are non-binding, they carry substantial legal and moral weight, potentially spurring governments towards more ambitious climate action and setting the stage for contentious litigation (Stoeger, 2023). Some view these advisory opinions as a means to clarify the human rights obligations of states concerning climate, although the ITLOS opinion made only passing reference to human rights despite some of the submissions made including significant human rights arguments. The collective outcome across all cases may also generate a more specific articulation of states' climate commitments than currently exists (Hamilton, 2024). Others caution against potential lack of precision or overreach that might infringe on state sovereignty or complicate climate negotiations (Bodansky, 2023). Altogether, it is likely that these decisions will be used as building blocks for further litigation, both at the national level and before relevant regional or international courts.

⁵ These include the communications by UN Special Rapporteurs mentioned above, along with complaints filed before the UN Human Rights Committee and the UN Committee on the Rights of the Child. They also include cases filed before regional human rights bodies including the European Court of Human Rights, the Inter-American Commission on Human Rights, the Inter-American Court of Human Rights, and the East African Court of Human Rights.

Box 1.2. First international court or tribunal answer to the question ‘do countries have an obligation to protect the climate?’

The ITLOS request was designed with two primary objectives: to establish that the harmful effects on the oceans resulting from, or likely to result from, climate change due to anthropogenic greenhouse gas emissions into the atmosphere constitute ‘marine pollution’ under the 1982 United Nations Convention on the Law of the Sea (UNCLOS); and to clarify the specific legal obligations of states’ parties under UNCLOS in addressing the impacts of climate change on the marine environment.

Key advancements can be observed from the ITLOS opinion. First, ITLOS clarified that all anthropogenic greenhouse gas emissions constitute marine pollution, which has potentially far-reaching consequences (Voigt, 2024). Under UNCLOS, states must now take all necessary measures to prevent, reduce and control emissions. Additionally, states are obligated to protect and preserve the marine environment against the impact of climate change, maintaining and restoring ecosystem health and the natural balance of the marine environment. ITLOS thus established UNCLOS as a legal basis for obligations to address climate change and its adverse effects, alongside the United Nations climate treaties such as the UNFCCC and the Paris Agreement. However, ITLOS stopped short of detailing what measures a state with progressively ambitious NDCs would need to take under Articles 194.1 and 194.2 of UNCLOS (Voigt, 2024).

Second, ITLOS clarified that obligations under UNCLOS and the Paris Agreement are separate but mutually reinforcing (Peel, 2024). States have a set of obligations to protect the climate deriving directly from UNCLOS (namely under Articles 194, 207 and 212) irrespective of the Paris Agreement outcomes (Rocha, 2024). These obligations include adopting a regulatory framework to reduce emissions, effectively enforcing that framework, conducting Environmental Impact Assessments, implementing international rules and standards at the domestic level, fulfilling the obligation of global and regional cooperation with other states, and providing scientific and technical assistance to vulnerable states.

Third, ITLOS elaborated on the doctrine of states’ due diligence obligations, affirming that even if the primary obligation is difficult to define, it remains under some form of international judicial oversight (Rocha, 2024). The Tribunal confirmed that the standard of due diligence evolves over time as scientific knowledge advances and the risks associated with a particular activity become more foreseeable.

It is expected that the ITLOS opinion will inform other advisory opinions and impact on international legal understanding of climate-related obligations (Silverman-Roati and Bönnemann, 2024). However, this was quite a narrowly framed request, and questions regarding state responsibility and liability for acts and omissions that harm the climate system are yet to be answered. In particular, the legal consequences for injured and specially affected states, peoples and individuals are likely to be addressed by the ICJ, as the UN General Assembly’s request for an advisory opinion explicitly asks for this clarification (Wewerinke-Singh and Viñuales, 2024).

Ultimately, the ITLOS advisory opinion could serve to strengthen states’ duties to reduce greenhouse gas emissions and minimise the environmental harm resulting from climate change and will likely inform and impact international legal understanding of climate-related obligations.

International climate cases involving investment law and international trade

Another trend in international climate litigation that has garnered significant attention in recent years has been the growth of cases concerned with investment law – particularly investor-state dispute settlement processes – and international trade.

ISDS cases

Processes concerned with investment law provide opportunities for foreign investors to seek compensation in circumstances where a country unfairly prejudices their investments. Such proceedings are not judicial cases before courts, but arbitrations conducted before panels of arbitrators, and are often conducted under terms of confidentiality. Originally intended to provide confidence to investors looking to invest overseas, this system has been subject to criticism for the potential ‘regulatory chill’ it creates regarding environmental and public health policy (Tienharaa, 2017). One of the most controversial investment agreements from a climate change perspective is the Energy Charter Treaty, signed by more than 50 countries in Europe and Asia, which was designed to promote energy cooperation and provides significant protection for fossil fuel investments.

The Sabin Center Global databases currently list 19 ISDS cases, constituting about 30% of the international cases outside the EU, as shown in Figure 1.4. A larger group of approximately 70 ‘climate-related’ claims were recently analysed by Fermeiglia et al. (2024). Notably, arbitration requests by German energy companies RWE and Uniper against the Netherlands, regarding policies to prematurely close coal-fired power plants, were both discontinued in 2023 (Verbeek 2023; IISD, 2022). This development came in the aftermath of a ruling by the German Federal Court of Justice that cast doubt on the validity of arbitration claims between EU member states, and after the German government set conditions on Uniper as part of bailout agreements during the energy crisis triggered by Russia’s invasion of Ukraine.

It is worth noticing that governments are increasingly recognising the challenges posed by the current interpretations of investment treaties to climate policy and are starting to devise strategies to mitigate these issues (OECD, 2023). In a significant move, 11 EU Member States and the UK have withdrawn from the Energy Charter Treaty, with the EU poised to follow suit. Despite this, a ‘sunset clause’ remains in effect, permitting investors to seek arbitration for another 10 years (CAN Europe, 2024).

Trade disputes

A less well-studied area of international climate litigation has been trade disputes before the World Trade Organization (WTO) Dispute Settlement Body. At least three climate-related trade disputes have been recorded before this body (Setzer and Higham, 2022), and in March 2024 one of these received an initial ruling from the panel appointed to review the case. Trade disputes often arise when a country introduces a policy measure that may result in unequal access to markets in contravention of WTO rules. We consider these to be ‘climate related’ when the policy measure in question is justified on the basis that it forms part of the countries’ climate policy response. The case in question (DS-600) concerns complaints by Malaysia that the EU’s ban on the use of palm oil as a biofuel (implemented under the recast Renewable Energy Directive [RED II]) violates WTO rules. The panel decision confirms that elements of the implementation of the RED II framework do breach WTO rules, and it appears that the EU is unlikely to dispute this, as “[t]he matters identified by the panel are, to a very large extent, required anyway to be adjusted under EU law” (Directorate-General for Trade, 2024).

Plaintiffs and defendants: key actors in climate litigation

Most climate cases are filed by NGOs and individuals, but governments also bring cases

As documented in previous reports, most climate litigation cases recorded in the databases in recent years have been filed by NGOs or individuals, or a combination of these actors and others. This holds true for 2023, when more than 70% of all cases, both US and Global, involved either individuals, NGOs or both among the plaintiffs. This trend reflects an effort by civil society actors, some of which may otherwise be excluded from climate change decision-making (Kotze et al., 2023), to use the courts to raise concerns about climate action, and mirrors the rise in strategic climate litigation.

However, in the US, nearly 20% of cases filed in 2023 involved government actors among the plaintiffs. These are often subnational governments challenging federal climate policy decisions (for example, some of the cases challenging SEC's rule mentioned in Box 3.1 were filed by state governments), and subnational governments filing suits against oil and gas companies, as discussed in Part II. Different actors have turned to the courts elsewhere too, such as political parties and public prosecutors in Brazil (as noted above).

Cases filed by companies are common in the US, but such cases are also filed elsewhere

A significant number of climate change cases are filed by companies and trade associations. Thirteen per cent of all cases filed in 2023 were filed by these actors, with the vast majority of these filed in the US. This replicates a pattern from previous years where companies have also been responsible for a significant proportion of US cases. Many but by no means all of these cases can be understood as non-climate-aligned cases, which are discussed further in Part III. However, there are interesting examples of cases filed by companies that are trying to advance climate-friendly agendas such as seeking priority for renewable energy, and examples of companies seeking to use climate litigation as a strategy to achieve a commercial advantage. For example, in 2024 the Spanish renewable energy company Iberdrola sued Repsol, a major fossil fuel company, alleging that Repsol was involved in climate-washing (see *Iberdrola and others v. Repsol*). A small number of significant cases have also been launched by companies or on their behalf against the companies' directors. Such cases are discussed further in Section II.



Climate activists protest outside ING's head office in Amsterdam in April 2023, demanding the bank to stop financing the climate crisis.

Photo: Milieudefensie/Muzi Ndiweni

More cases continue to be filed against corporate actors

Despite significant interest from the media and academic communities in corporate climate litigation, historically, the majority of climate cases have been filed against governments (Setzer and Higham, 2021). This remained true in 2023, with just over 70% of all cases filed in this year involving government actors among the defendants and only 26% involving companies. However, evidence of divergence between the US and Global cases is becoming apparent. In the US, governments were among the defendants in nearly 85% of cases, with just 15% of cases involving corporate defendants. For Global cases, governments were involved as defendants in nearly 60% of cases, and 40% involved corporate actors among the defendants.⁶

This increase in the proportion of Global cases targeting corporate actors is accompanied by significant engagement with the question of corporate climate responsibility from both scholars and activists, with many new publications and projects focused on this issue. Among the most ambitious new initiatives are:

- The *Carbon Majors* dataset, initially released by Richard Heede in 2013, was rereleased in 2024 as an online platform with annual database updates, under a collaboration with InfluenceMap. The platform encompasses emissions data from 1854 to 2022, revealing a concentrated source of CO₂ emissions from global fossil fuel and cement producers tied to a small number of corporate and state-producing entities. Drawing from this data, a report by *Carbon Majors (2024)* suggests that 70% of the emissions since the Industrial Revolution can be attributed to 78 such entities, with just 19 of them responsible for half of these emissions. Furthermore, the report highlights that since the Paris Agreement, 57 corporate and state entities have contributed 80% of these emissions. Litigants have made wide use of this evidence of the significant role that a relatively small group of high emitters continues to play in driving climate change, and they will likely continue to use it when bringing cases against these actors.
- A project run by the British Institute for International and Comparative Law, which created a Global Toolbox on Corporate Climate Litigation (BIICL, 2024) using national reports from 17 countries, identifies legal pathways, challenges and opportunities for corporate climate litigation around the world, exploring causes of action, procedures and evidence, and remedies.
- Publications, toolkits and manuals from litigators involved in successful climate cases, such as the Milieudéfensie (Friends of the Earth Netherlands) report *Defending the Danger Line* (Cox and Riej, 2022), may potentially contribute to a further increase in the number of corporate cases being brought around the world. Milieudéfensie published that report after it won a landmark judgment from the Hague District Court in 2021 requiring Shell to increase its emissions reduction ambition (see *Milieudéfensie v. Shell*).

Companies from many sectors are now at risk of being taken to court over the climate

Our analysis reveals that between 2015 (the year the Paris Agreement was adopted) and 2023 around 230 strategic climate-aligned lawsuits have been initiated against companies and trade associations, with more than two-thirds of these cases emerging since 2020 (see Part II for discussion of strategic cases).

While cases against companies have traditionally focused on the fossil fuel sector (both producers and the combustion of fossil fuels in the energy sector), a notable development in recent years is the increased diversity of industries targeted. This trend continued into 2023, as illustrated in Figure 1.5. Legal challenges have been launched against businesses across various sectors, including airlines, the food and beverage industry, e-commerce, and financial services, in addition to the traditional focus on the fossil fuel sector.

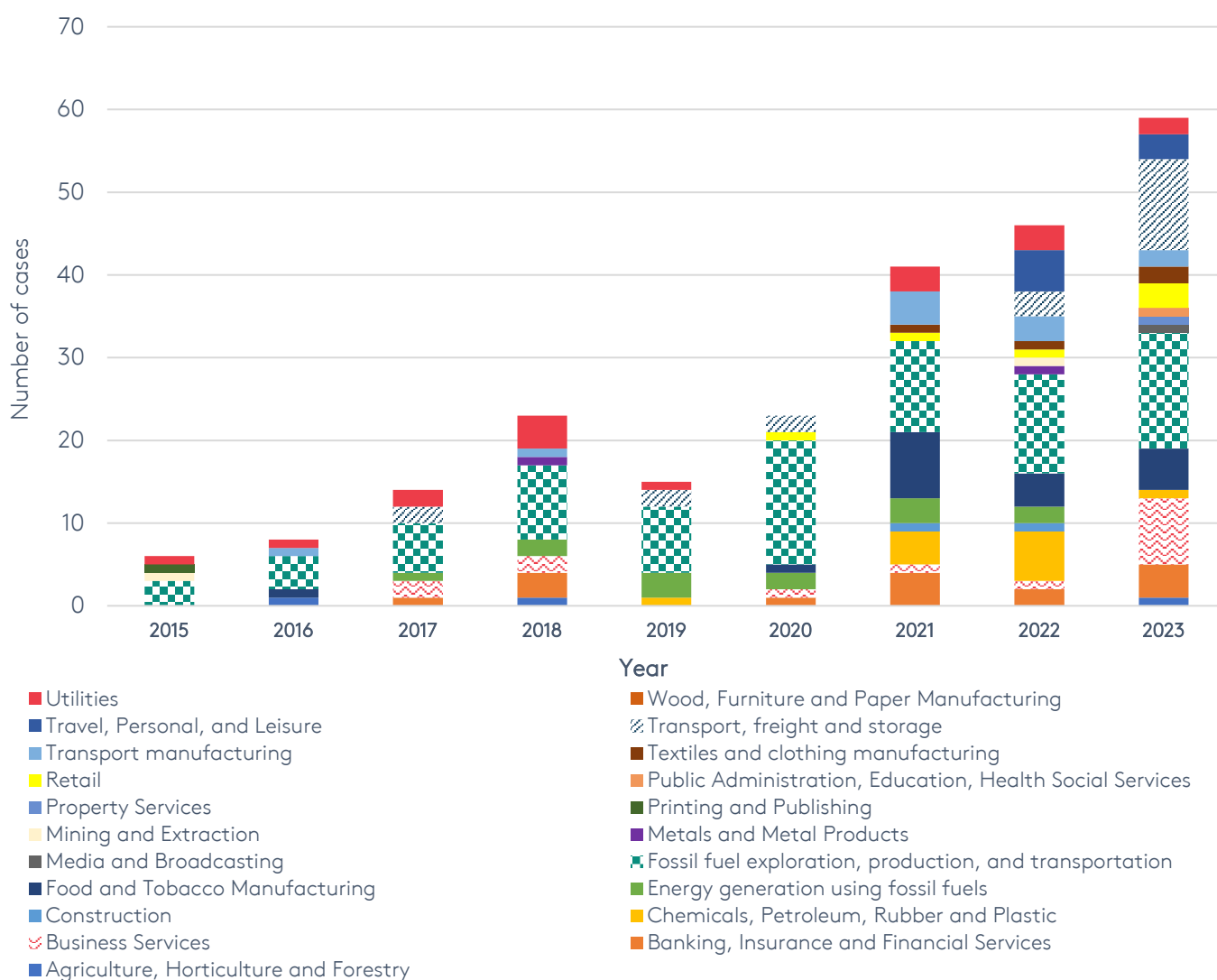
⁶ There is some overlap between these two groups of cases as some involve both government and corporate actors as defendants.

Part of this shift targets the professional and financial services that enable the work of fossil fuel companies. A notable lawsuit by Multnomah County in the US against leading entities in the fossil fuel industry also implicated the consulting firm McKinsey as a defendant, accusing it of facilitating the industry’s misinformation campaigns (*County of Multnomah v. Exxon Mobil Corp.*). Additionally, recent complaints have been lodged with regulatory bodies in the UK and the Netherlands against the *Financial Times* newspaper for its partnership with Saudi Aramco in creating content, alleging efforts to misrepresent the company’s environmental impact.

Another aspect of this trend involves new sectors that are users of fossil fuels or depend on fossil fuel use. Examples from the past year include climate-washing claims against airline companies. The UK advertising regulator, the Advertising Standards Authority (ASA), banned adverts from *Air France, Lufthansa and Etihad* due to concerns that they misled customers about the environmental impact of air travel. In 2023, an Austrian court ruled that *Austrian Airlines AG* misled the public when it published ads offering CO₂-neutral flights using 100% sustainable aviation fuel between Vienna and Venice.

Litigation has also expanded to companies for harmful climate impacts caused by sources other than fossil fuel production and combustion, such as deforestation, agriculture and associated food and beverage supply chains. For instance, the case *People v. JBS USA Food Co.* involved the New York State Attorney General suing the beef producer for allegedly making unsubstantiated claims regarding its ‘Net Zero by 2040’ commitment. Recent research suggests that a wave of ‘Methane Majors’ cases may be on the horizon (Bray and Poston, 2024).

Figure 1.5. Number of companies targeted in strategic climate-aligned cases by sector, 2015–2023



Underpinning some of these corporate climate cases is a mutually reinforcing relationship with evolving standards regarding responsible corporate conduct in the context of climate change (see Rajavuori et al., 2023). The update to the OECD Guidelines for Multinational Enterprises, published in 2023, illustrates this idea of increased expectations for corporate climate due diligence. The updated Guidelines – which are expected to inform corporate conduct and the development of mandatory regulations in OECD countries and beyond – impose far more explicit obligations on multinational companies regarding climate change than the previous 2011 edition (Aristova et al., 2024). Some aspects of the ‘soft law’ standards contained in instruments like the OECD Guidelines are now in the process of being hardened into mandatory requirements, at least for the largest companies operating within the EU.⁷

Of particular importance in this discussion are the EU’s new [Deforestation Regulation \(EUDR\)](#) and [Corporate Sustainability Due Diligence Directive \(CSDDD\)](#). The EUDR will impose due diligence obligations from 30 December 2024 requiring companies to undertake due diligence into the source of a range of commodities, including cattle, cocoa, coffee, palm oil, rubber, soya and wood, to ensure that they have not caused deforestation. The CSDDD was adopted by the European Parliament in April 2024 and Member States will have two years to amend their domestic legislation to comply with its requirements. The CSDDD requires large companies to conduct human rights and environmental due diligence. The directive aims to harmonise due diligence requirements across EU Member States and standardise responsible business conduct, building on previous national and EU-level regulations like France’s Duty of Vigilance Act and Germany’s Supply Chain Due Diligence Act.

While civil society groups have criticised the final text of the CSDDD, which now partially exempts financial institutions and applies to only one-third of companies that would have been captured in the original proposal (WWF, 2024), the law nonetheless has huge potential for impact, being the first piece of legislation across major economies to require companies to adopt and put into effect a transition plan to make their business model compatible with limiting global warming to 1.5°C under the Paris Agreement. Member States will have two years to amend their domestic legislation to comply with its requirements, which may create a period of some uncertainty for stakeholders. In the meantime, the law is likely to give rise to a new climate cases, as companies and civil society groups seek to clarify what new requirements entail in practice (Higham et al., 2023).

Direct judicial outcomes in climate cases

In the previous reports in this series, we have provided an assessment of the judicial outcomes of recorded Global cases. This analysis includes the preliminary outcomes in cases that have not yet reached a final verdict before an apex court, so is subject to change year on year as cases move through the courts.⁸ Historically, more than 50% of such cases have had outcomes favourable to climate action. Looking at the current global data, about 57% of decided cases have favourable outcomes. However, *this figure does not include the outcomes in US climate cases, which make up most of the cases filed*. While older analyses of US cases indicate that they were more likely to result in outcomes that hinder climate action or “favour antiregulatory” positions (McCormick et al., 2018), there has been no similar complete survey of US cases to draw on for more recent years.

This year, taking both US and Global cases together for the first time, we conducted new analysis to understand distinct patterns in the success of some of the different case strategies discussed in Part II below. The results of this analysis are presented in boxes through the text.

⁷ The OECD Guidelines themselves draw heavily on another soft law standard, the UN Guiding Principles on Business and Human Rights (see further Aristova et al., 2024).

⁸ See the Appendix for more detail on our methodology.

Part II. Climate-aligned strategic cases

In this part of the report we discuss key developments in climate-aligned strategic cases, focusing on cases filed or decided in 2023. We provide an update on figures for different types of cases filed since 2015, using the same typology of case strategies used in previous years, followed by more in-depth update on trends observed in the different types of cases.

Diverse case strategies in climate-aligned strategic cases

A main aim of this report series is to provide an idea of the ways in which the law and the courts are being used to advance different climate action agendas. To that end we classify cases as either strategic, semi-strategic or non-strategic (see Box 2.1). We then classify climate-aligned strategic cases into categories based on the types of strategies employed in the case (Setzer and Higham, 2022).

Box 2.1. Identifying strategic and semi-strategic cases

Identifying a case as strategic is no simple task, particularly when we have imperfect information about the intentions of the parties. As discussed in our 2023 report, we consider the following factors when making a determination:

- **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 NGOs and individual campaigners, but other plaintiffs include Members of Parliament, political parties, or government representatives. An NGO and its lawyers might work with communities to develop legal strategies around their concerns (Okoth and Odaga, 2021). The term ‘movement lawyering’ emphasises the importance of co-creating strategic litigation with affected communities at the centre (Cummings, 2017).
- **Identity of the defendants.** Strategic climate litigation has often targeted actors that make the largest direct contribution to the problem (e.g. governments that can legislate and the largest emitters of CO₂), and actors who mislead the public about their climate action or consideration of climate risks. Strategic litigation can also be brought against actors that are not so visible but are crucial for the functioning of the value chain for high emitting activities, such as the public authorities that grant the fossil fuel licences and permits, and the financial institutions that provide the necessary capital or insurance for high emitters to develop or pursue their core activities.
- **Aim of the litigation.** Strategic litigation aims to achieve broader societal impacts beyond the outcome of individual cases, looking at long-term policy and regulatory changes (Bouwer and Setzer, 2020). These cases often seek remedies that are broader than the interests of the individual litigants, to influence policy and regulatory frameworks (Peel and Markey-Towler, 2021). The goals and strategies of such litigation can vary significantly between jurisdictions in the Global South and more developed countries, often reflecting the political and legal landscapes shaped by national leaders (e.g. climate litigation during the Trump era in the US – see Gerrard and McTiernan, 2018; and during the Bolsonaro era in Brazil – see Tigre and Setzer, 2024).
- **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), and often complements efforts outside the courts. These efforts will be carried out by NGOs lobbying or pressurising legislators and policymakers, or sending letters to targeted companies or regulators, 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 sophisticated communications campaign are often another part of this larger puzzle.

Below we provide an update on the strategies identified in strategic and semi-strategic cases filed in 2023, which is summarised in Table 2.1, along with examples of important case developments. As there is significant overlap between strategies, and litigants may seek to use more than one strategy at once, the same case may be counted in several categories. A case is considered semi-strategic when it meets some of the criteria above, even where it may not meet all of them. This includes many ‘site-specific’ challenges to oil and gas projects or other potentially climate-damaging developments. The litigants in such cases are often local groups directly concerned with the impact on their local communities. However, the pleadings in such cases also often exhibit engagement with broader questions of climate policy. For example, in the case of *Frack Free Balcombe Residents Association v. Secretary of State for Levelling Up, Housing and Communities*, local community groups unsuccessfully objected to the approval of a permit allowing hydrocarbon exploration in an Area of Outstanding Natural Beauty (a specific designation under UK law) in West Sussex, South East England, on the basis of both the local impacts and the broader climate impacts.

By adopting this approach, we favour developments in novel and high-profile case types, cases that Bouwer (2018) referred to as the ‘sexy’ cases. However, it is important to note that in so doing we leave many important cases with significant potential consequences underexplored. Moreover, the typology of climate-aligned strategic cases described presents only one way of understanding the diverse kind of climate-aligned strategic cases filed in the past year and before. This typology also hides similarities that can be seen between cases employing different strategies.



Anti-fracking campaigners at a Cuadrilla drilling site in Balcombe, West Sussex, UK.
Photo: Sheila/Flickr.

Table 2.1. Types of climate-aligned case strategies and number of cases employing each strategy in 2023

Strategy and definition	Case numbers	Examples of cases illustrating recent developments
<p>Government framework cases: cases that challenge the ambition or implementation of climate targets and policies affecting the whole of a country's economy and society.</p>	<p>15 new cases filed in 2023</p> <p><i>110 such cases have been filed around the world since 2015, and these are among the highest profile of all cases.</i></p>	<p><i>VZW Klimaatzaak v. Kingdom of Belgium and Others</i></p> <p><i>Comunidad aborigen de Santuario de Tres Pozos et al v. Jujuy Province</i></p> <p><i>KlimaSeniorinnen v. Switzerland (ECtHR)</i></p>
<p>Integrating climate considerations cases: cases that seek to integrate climate considerations, standards, or principles into a given decision or sectoral policy, with the dual goal of stopping specific harmful policies and projects, and mainstreaming climate concerns in policymaking.</p>	<p>97 new cases filed in 2023</p> <p><i>By far the largest category of cases to date, cases employing this strategy are often overlooked in the literature on climate litigation.¹</i></p>	<p><i>Healthy Gulf v. Haland</i></p> <p><i>IDLADS v. MINAM (Enforcement Action for Guarantee Fund)</i></p>
<p>Polluter pays cases: cases seeking monetary damages from defendants based on an alleged contribution to harmful impacts of climate change.</p>	<p>5 new cases filed in 2023</p> <p><i>34 cases have been filed since 2015, most of them in the US.</i></p>	<p><i>Falys v. Total</i></p> <p><i>People v. Exxon Mobil Corp (California case)</i></p>
<p>Corporate framework cases: cases that seek to disincentivise companies from continuing with high-emitting activities by requiring changes in group-level policies, corporate governance and decision-making extending through the companies' operations.</p>	<p>3 new cases filed in 2023</p> <p><i>22 such cases have been recorded to date, all of them outside the US.</i></p>	<p><i>Smith v. Fonterra</i></p> <p><i>Falys v. Total</i></p>

Strategy and definition	Case numbers	Examples of cases illustrating recent developments
Failure to adapt cases: cases that challenge a government or company for failure to take climate risk into account.	8 new cases filed in 2023 <i>64 such cases have been recorded since 2015.</i>	<i>Healthy Gulf v. Secretary, Louisiana Department of Natural Resources</i> <i>Comité Dialogo Ambiental v. Federal Emergency Management Agency</i>
Transition risk cases: cases that concern the (mis)management of transition risk by directors, officers and others tasked with ensuring the success of a business. ²	1 new case filed in 2023 <i>Just 17 such cases have been recorded since 2015, but considerable growth is anticipated in this area, including growth in cases that are only semi-strategic or non-strategic in nature.</i>	<i>ClientEarth v. Shell Board of Directors</i> <i>Métamorphose v. TotalEnergies</i>
Climate-washing cases: cases that challenge inaccurate government or corporate narratives regarding contributions to the transition to a low-carbon future.	47 new cases filed in 2023 <i>More than 140 such cases have been filed to date, with numbers growing significantly in the last few years.</i>	<i>FossilVrij NL v. KLM</i> <i>ASA complaint on cruise operators by Opportunity Green</i>
Turning off the taps cases: cases that challenge the flow of finance to projects and activities that are not aligned with climate action.	6 new cases filed in 2023 <i>33 such cases filed since 2015 have been recorded to date.</i>	<i>Communications to Saudi Arabia, Japan, France, USA and the UK, and 13 financial institutions</i> <i>Jubilee v. EFA and NAIF</i>

Notes: 1. Due to time constraints it has not been possible to identify a complete list of ‘integrating climate considerations cases’ in the US and therefore we do not know the total number of all such cases filed since 2015 (see further the Appendix). However, we believe this to be the largest category of cases overall both in the US and elsewhere.
2. ‘Transition risk cases’ is a new category introduced since the 2023 report. It includes the vast majority of cases previously described as ‘personal responsibility’ cases, but excludes those cases concerned with the imposition of criminal responsibility on individuals with positions of power within governments or companies.

A. Government framework cases

Government framework cases are among the climate cases most frequently discussed by the media and academic literature. We define these as cases that challenge the ambition or implementation of climate targets and policies affecting the whole of a country's economy and society. They can be divided into two broad types: 'ambition cases', concerning the absence, inadequacy or design of a government's policy response to climate change; and '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, frequently with reference to the Paris Agreement. By focusing on the framework within which climate action should happen, litigants seek to have an impact on a broad range of operational decisions.

Rights-based arguments

Often, government framework cases are grounded in human rights arguments that are in turn based on international and regional treaties, constitutional rights and human rights enshrined in statute. Rights-based climate cases bring the vulnerabilities of individuals and communities to climate change impacts into the spotlight (Peel and Osofsky, 2020; Savaresi and Setzer, 2022; Rodríguez-Garavito, 2022; Kumar and Naik, 2024).⁹ The role of human rights has become more prominent with an intensification of adverse impacts of climate change (see also Box 2.7 in Part II E).

This year saw a major development in this line of cases, when the European Court of Human Rights (ECtHR) confirmed that government failure to act on climate change constitutes a violation of the European Convention on Human Rights in the case of *KlimaSeniorinnen and ors. v. Switzerland*. The decision was handed down in April 2024, alongside decisions in two other cases: *Carême v. France* and *Duarte Agostinho and Others v. Portugal and 32 Others* (see Box 2.2).

Other important developments in this category include *VZW Klimaatzaak v. Kingdom of Belgium and Others*, a case in which the Belgian Court of appeal ordered the federal government and the regional governments of Flanders and Brussels to reduce their greenhouse gas emissions by at least 55% compared with 1990 levels by 2030. After *Urgenda Foundation v. State of the Netherlands* and *Neubauer et al. v. Germany*, this is the third domestic case in which a court has confirmed that a government is required to achieve a minimum level of emissions reductions, a point now reaffirmed by the *KlimaSeniorinnen* decision.



Representatives from KlimaSeniorinnen outside the European Court of Human Rights in Strasbourg, France.
Photo: Miriam Künzle/Ex-Press/Greenpeace

⁹ The Climate Law Accelerator CLX database at NYU Law reports 301 climate-related human rights cases brought before national, regional and international courts from 2005 to 2023, indicating a diverse global litigation landscape. The University of Zurich's CRRP climate rights database also compiles cases, and currently includes 116 filings.

Box 2.2. Landmark decision of the European Court of Human Rights on states' obligation to take action on climate

In April 2024, the European Court of Human Rights delivered three pivotal rulings that significantly advanced the field of rights-based climate litigation. Among these, the decision in *KlimaSeniorinnen and Others v. Switzerland* was successful and emerged as particularly important. Conversely, the cases of *Carême v. France and Duarte Agostinho and Others v. Portugal and 32 Others* were declared inadmissible by the ECtHR, due to issues including 'lack of victimhood' (see Torre-Schaub, 2024 for a more in-depth analysis of *Carême* on this basis), failure to exhaust domestic remedies and finding that climate mitigation cases of this kind cannot be brought by individuals located extra-territorially (see Heri, 2024 for a more in-depth analysis of *Duarte Agostinho* on this basis). These outcomes highlight the procedural and substantive challenges inherent in climate litigation.

The ruling in *KlimaSeniorinnen* affirmed that climate change poses a direct and substantial threat to human rights and cemented the obligation of states under Article 8 of the European Convention on Human Rights (ECHR) to undertake effective climate action. The ruling established that Switzerland had failed to meet its greenhouse gas emission reduction targets, highlighting significant deficiencies in its regulatory framework.

The *KlimaSeniorinnen* ruling not only aligns with but also builds upon previous domestic judicial precedents, such as the landmark *Urgenda Foundation v. State of the Netherlands* case decision issued by the Hague District Court and subsequently affirmed by the Dutch Supreme Court. The *Urgenda* judgment required the government of the Netherlands to increase its emissions reduction targets to better align with the scientific consensus of the time. The Swiss decision goes further in that it requires states to develop emissions reduction pathways "with a view to reaching net neutrality within, in principle, the next three decades". Notably, the court confirmed the concept of 'carbon budgets' as an essential tool for states, mandating that these budgets clearly quantify allowable emissions over set periods to meet climate goals effectively (Hilson, 2024). This part of the judgment stipulates that states must also establish robust intermediate greenhouse gas reduction targets and regularly update these targets based on the latest scientific evidence.

The *KlimaSeniorinnen* ruling does more than reaffirm the judiciary's role in climate governance: it signals a growing judicial consensus on the necessity for robust legal frameworks to support effective climate action. Yet, substantial challenges remain in ensuring effective and consistent application across jurisdictions. Some researchers argue that the Court has only established a "minimum standard" (Milanovic, 2024) and question if it will prompt signatories to the ECHR to significantly tighten their climate laws (Abel, 2024). Additionally, it is crucial to assess whether the regulatory framework envisioned by the Court will drive countries to fulfil their legislative climate commitments effectively (Higham et al., 2024).

This judgment will likely influence future climate litigation and continue to shape the global discourse on environmental responsibility and human rights. By setting a precedent for courts worldwide in interpreting the human rights obligations of states regarding climate action, the *KlimaSeniorinnen* decision could inform the advisory opinions regarding states' legal obligations in the context of climate change discussed above, thereby highlighting the interconnectedness of human rights and environmental protection on a global scale.

New government framework cases grounded on human rights were filed in 2023 in Romania and Portugal, illustrating the expanding geographical reach of such litigation. In *Comunidad aborigen de Santuario de Tres Pozos et al. v. Jujuy Province* an indigenous community in the Argentinian province of Jujuy submitted a challenge to the new provincial constitution arguing that it is inconsistent with national climate goals and fails to include protection for public participation, ecosystems and future generations.

Not all framework cases rely on human rights

Reliance on human rights arguments in such cases is not universal. In Australia, where rights-based legal actions are constrained in both availability and scope, litigators have adopted alternative strategies. In the last year there have been hearings in the case of *Pabai Pabai v. Commonwealth of Australia*, a case that is grounded in Australian tort law. Litigators in Australia have also sought to adapt human rights arguments to be more suited to their context, including employing human rights as a lens for statutory interpretation and as a basis to identify violations of planning or environmental legislation (Preston and Silbert, 2023). This nuanced approach reflects the way in which legal advocates are navigating different judicial landscapes to address the climate crisis, while still drawing on transnational developments.

There are also prominent examples of litigation challenging the poor implementation of net zero legislation. These include the case of *R(oao Friends of the Earth) v. Secretary of State for Business Energy and Industrial Strategy* (the 'Net Zero Case'), brought by environmental organisations Friends of the Earth, ClientEarth and the Good Law Project against the UK government, for what they consider an inadequate climate action plan. The case follows a 2022 High Court decision secured by the same organisations. The first decision demanded that the government amend its net zero strategy, a set of policy measures intended to help it meet both the requirements of the UK's sixth carbon budget and the net zero 2050 target, because there was insufficient evidence to show that the strategy was likely to achieve the required outcomes. Once a new strategy was produced by the government, the NGOs argued that the revised plan replicated many of the previous flaws and failed to meet the obligations of the Climate Change Act, which requires the government to cut greenhouse gas emissions to net zero by 2050. In May 2024 this challenge was upheld, and the government has once again been required to revise the strategy.

The case of *R(Packham) v. Secretary of State for Energy Security and Net Zero and Secretary of State for Transport* also contests the UK's "new approach to Net Zero" announced in September 2023, which saw a roll-back of previously announced policy measures without any reference to whether and how this would impact on the government's ability to deliver against existing commitments. Similar patterns involving multiple or ongoing challenges to the implementation of net zero laws can be identified across various countries in Europe (see Higham et al., 2022; Merner et al., 2023).

The potential for an increase in litigation challenging the integrity, i.e. the clarity and substance, of government net zero targets is also gaining prominence (Maxwell et al., 2024). A principal concern centres on the opacity and lack of detail regarding the dependence on carbon dioxide removal (CDR) technologies in strategies to achieve net zero emissions. The argument that an excessive reliance on prospective CDR technologies to meet Paris Agreement objectives might contravene international law is gaining traction (Stuart-Smith et al., 2023). Germany and Portugal have adopted CDR targets separate to their emissions reduction targets in their national laws to address this, but most countries have not taken this approach.

This evolving landscape of government framework litigation underscores the critical role of the legal system in holding governments accountable and ensuring that net zero commitments are translated into meaningful action aligned with global climate goals. It also shows how important it is to resolve uncertainties regarding when it is appropriate to rely on carbon removals, and the degree to which these can be used to offset emissions where emissions reductions could have been achieved.

Box 2.3. Outcomes of government framework cases

Despite notable successes like those discussed above, the outcomes of government framework cases are mixed. Of the 110 government framework cases filed since 2015, around 60% have at least one judicial decision (including in some instances decisions on whether the case should be permitted to proceed to trial). Around one-third have outcomes positive for climate action, while two-thirds have had outcomes that are anticipated to be negative for climate action, at least from the perspective of the claimants arguing that existing action was insufficient.¹⁰

For example, in February 2024 Rome's Court ruled it lacked jurisdiction in a case against the Italian government, which was accused of inadequate CO₂ emissions reduction efforts. The court highlighted the complexity of climate policy, deeming it beyond judicial purview and best handled by political entities, directing specific grievances about Italy's National Energy and Climate Plan to administrative courts. This divergence reflects a different approach to judicial balancing between enforcing human rights-related legal obligations and respecting the legislative domain in climate governance.

However, these figures do not show the full extent of the impact these cases have had on climate action. For example, the unsuccessful cases include 12 similar cases filed against German subnational governments in the wake of the landmark decision of the German Federal Constitutional Court in *Neubauer et al. v. Germany*. These cases were all dismissed in a single decision by the Federal Constitutional Court. Nevertheless, there is evidence to suggest that the original *Neubauer* decision, which led to the amendment of the German Federal Climate Protection Act (*Klimaschutzgesetz*), has had a significant influence on action by these subnational governments (Averchenkova et al., 2024).

Among the significant decisions issued in 2023 was a trial court ruling from the US in the case of *Held v. Montana*, described as the "first big win" for the US youth-led climate litigation movement (Bookman, 2023). The case, which was filed in 2020, challenged the validity of the so-called 'MEPA Limitation' – which actively prevented the consideration of the impacts of greenhouse gas emissions in environmental reviews – on the basis that it was incompatible with the protection of the right to a healthy environment enshrined in the state's constitution. This case started life as a framework case with the plaintiffs seeking a broad remedial order that would require the voiding of the MEPA Limitation but also a court order requiring the state authorities to develop a broader remedial plan to reduce emissions.

While the case was decided on relatively narrow grounds, the decision could offer a model of the type of scientific arguments and evidence that can be used to overcome hurdles around standing and causation that have previously posed major challenges for similar cases (Bookman, 2023). But it should be noted that this was only a first instance judgment and the Montana Supreme Court is yet to consider an appeal from the defendant government.

This analysis highlights the challenges of any approach to evaluating the success of litigation as a strategy that is based on the overall number of direct outcomes rather than the influence of particular significant cases and their interaction with other cases and potential cases.

¹⁰ It is beyond the scope of this series of reports to assess whether the claimants' underlying claims were justified.

B. Integrating climate considerations into decisions

Cases that integrate climate considerations into decisions are by far the largest group of cases identified to date. We define these cases as seeking 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 into 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.

Some of the policies challenged in such cases can be very far reaching. For example, in 2023 a group of four cases were filed in Peru by the Institute for the Legal Defense of the Environment and Sustainable Development Association of Peru (IDLADS), which challenged the Ministry of Environment's failure to enforce four separate provisions of the Climate Change Act, including provisions requiring the establishment of a fund to promote climate action and new regulations on forest carbon credits. If such challenges are successful, they could have real-world impacts similar to the challenges to the UK's net zero strategy discussed above.

One of the key questions currently facing policymakers is the degree to which expansion in fossil fuel exploration and supply, or the development of new fossil fuel energy generation facilities, is consistent with the global goal of achieving net zero. Many cases concern the licensing or development of new fossil fuel production and fossil fuel electricity generation, often based on the inadequacy of environmental impact assessments.

The success of such cases can be hard to gauge – in some instances cases can delay a proposed project for long enough that the project is abandoned; in others an initial 'successful outcome' may simply result in the project proponents resubmitting an environmental impact assessment and receiving a further permit. Nevertheless, over time this strategy has led to some significant developments (see Box 2.4). It should, however, be noted that this is not the only case strategy that is being used to target new fossil fuel production and fossil energy generation (see also the discussion of polluter pays cases and climate-washing cases below).



The KlimaSeniorinnen (Senior Women for Climate Protection) vote to take their case to Switzerland's federal supreme court. Photo: Greenpeace/Piero Good

Box 2.4. Litigation against new oil extraction in Norway: hitting the target – eventually

The early climate litigation case of *Greenpeace Nordic Ass'n v. Ministry of Petroleum and Energy (People v. Arctic Oil)*, filed in 2016, contended that Norway's approval of new oil and gas exploration in the Barents Sea was illegal and in violation of Norway's Constitution Article 112, for neglecting the environmental impact of increased greenhouse gas emissions. The Norwegian Supreme Court, in 2020, did not overturn the decision but recognised the constitutional right to a healthy environment could lead to a review of government actions, including those affecting Norway from abroad.

In 2023 the same plaintiffs launched *Greenpeace Nordic and Nature and Youth v. Energy Ministry (The North Sea Fields Case)*, challenging the approval of three North Sea oil and gas fields for overlooking Scope 3 emissions – those that would result from the eventual burning of the oil by others – in their environmental assessments. In January 2024 the Oslo District Court ruled in favour, recognising the importance of including Scope 3 emissions in environmental impact assessments. Consequently, the state will have to redo its environmental assessment, taking into account the harm the new developments will cause to young people in Norway. This is likely the first example of litigation that has successfully addressed Scope 3 emissions in environmental assessments, a topic gaining traction in Europe.

Bouwer and Setzer (2020) call such litigation 'hit the target' cases, part of broader campaigns to influence decision-making. These cases exemplify how sustained litigation can effect change beyond a single lawsuit.

C. Polluter pays cases

Polluter pays cases are those seeking monetary damages from defendants based on an alleged contribution to harm caused by climate change. These cases seek either contributions to the cost of adaptation or compensation for loss and damage. They are often coupled with climate-washing arguments and/or corporate framework arguments.

Climate liability cases

The polluters pays cases that have received the most attention have been a series of 'climate liability lawsuits' filed by subnational governments in the US against the so-called Carbon Majors (see *Center for Climate Integrity, 2024*). Most of these suits, which seek to make fossil fuel companies responsible for the costs of climate change adaptation, make climate-washing arguments about the harm caused by the Carbon Majors' involvement in major disinformation campaigns. It is this alleged deceptive conduct by the defendants, rather than simply their manufacture of products, that forms the key legal basis for most of the claims.

Most of these cases moved a step closer to trial in 2023, when the US Supreme Court declined to hear arguments about whether the cases should proceed in state or federal court. Since then, the cases have been proceeding in state courts (*Setzer and Higham, 2023*). The defendant companies continue to argue that the cases should be dismissed, and the scope of the claims that are ultimately allowed to proceed may still be narrowed. For example, in January 2024 a court in Delaware limited the scope of a case brought by the state of Delaware to cover only greenhouse gas emissions from within the state. An initial decision by the Hawaii Supreme Court issued in October 2023 refusing to dismiss the plaintiffs' claims would have permitted a broader claim to proceed, but the defendant companies have now asked the US Supreme Court to review that decision.

Such appeals mean that it is likely to be many months if not years before any trial hearings take place. However, some of these cases are nonetheless starting to move into the 'discovery phase', which could see thousands of pages of internal documents released to the plaintiffs and the public and may in itself result in significant changes in political debate around the defendants, building on the momentum created by a Congressional report released in April 2024 that found that companies had engaged in "climate denial, disinformation, and doublespeak".

The date of the first trials remains uncertain but in the last year new plaintiffs have joined the cases. In September 2023 California became the largest subnational government to file a suit against five of the Carbon Majors (ExxonMobil, Chevron, BP, Shell and ConocoPhillips) and the American Petroleum Institute (API). As a state that has licensed the extraction and refining of billions of dollars' worth of oil in its history, California may face an uphill struggle in overcoming the typical arguments often made by the defendants in these cases that fossil fuel use is a broader "social issue" not confined to oil companies (Walker-Crawford, forthcoming). However, the state's strategy to overcome this appears to rely on focusing heavily on the need to hold the oil companies "accountable" for what the state's promotional materials describe as "decades of deception" (Governor's Office, State of California, 2023).

Two Tribal Governments, the Makah Indian Tribe and Shoalwater Bay Indian Tribe, also filed new suits against the same companies as California (the API is not included as a defendant), at the end of 2023. The tribes, which are both based in the Pacific Northwest, are specifically asking for costs associated with moving their communities to higher ground and creating defences against sea-level rise. The cases have been removed to federal court and a new jurisdictional battle is now underway. At least two other new suits have also been filed in 2024 so far, one by Chicago and one by Bucks County in Pennsylvania.¹¹

Cases outside the US

The US is not the only country in which polluter pays cases have been filed. In 2023 a third polluter pays case was filed in a European court. In *Falys v. Total*, a Belgian farmer is suing French energy giant Total for climate damages. The claimant intends to donate any damages to an environmental charity. This is the first such case filed in Europe involving a claimant from the Global North, with the other two, *Liluya v. RWE and Asmania v. Holcim*, both involving claimants from the Global South. A case filed in Ecuador also made arguments that a high emitting company should pay for local climate change adaptation costs, but this case was dismissed in 2021 (*Baihua Caiga et. al., v. PetroOriental S.A.*).

Other cases imposing damages or penalties based on emissions

It is worth noting that a second, distinct group of cases using the polluters pay principle exists in the database but is not counted in the figures discussed above. These cases do not centre on greenhouse gas emissions from companies but rather address illegal deforestation. However, they incorporate costs based on estimates of the greenhouse gas emissions created by the deforestation into the penalties. Such cases could have been successfully prosecuted even without explicitly mentioning 'climate change' or 'greenhouse gas emissions'. Although these are not claims seeking compensation specifically for the climate harm caused by the major carbon polluters, they can be seen as embodying the polluter pays principle, as they involve plaintiffs seeking payment for climate-related damages.

For instance, in *IBAMA v. Minerva Ribeiro de Barros e Genesisagro S/A*, Brazil's Federal Environment Agency (IBAMA) brought a lawsuit against a company accused of extensive illegal deforestation in the native Cerrado forest. IBAMA is requesting that the court compel the company to pay for the environmental damage caused, including damage from climate change. Similar cases have been filed by the Ministry of Environment in Indonesia (*Wibisana and Cornelius, 2020*). As these cases are filed by government agencies, the degree to which they fit the definition of 'strategic cases' is challenging to discern. Nonetheless, they are noteworthy because unlike the cases discussed above, they have already resulted in successful judgments holding companies financially responsible for specific contributions to emissions (*Moreira et al., 2024*).

¹¹ These cases are not included in the case counts in Table 2.1, which only covers cases up until the end of 2023.

Box 2.5. Outcomes of polluter pays cases

Early cases filed in the US before 2015 were unsuccessful (Ganguly et al., 2018) and the outcome of the second generation of climate liability suits discussed above remains uncertain. The polluter pays case that appears to be closest to a conclusion on the merits is the case of *Lluya v. RWE*, a German tort law case filed in 2015 by a Peruvian farmer from Huaraz, Peru, against RWE, Germany's largest coal-burning power company. It addresses the liability for climate damage in Peru caused by a melting glacier. The case has reached the evidentiary stage, with the court even making a fact-finding visit to Peru, but no verdict has yet been issued. The question of whether courts will ultimately order climate damages in any polluter pays cases therefore remains open.

D. Corporate framework cases

Even as the polluter-pays-style cases await outcomes, new strategies have emerged that take a different approach to holding companies to account for emissions. Corporate framework cases seek to disincentivise companies from continuing with high-emitting activities by requiring changes in group-level policies, corporate governance and decision-making extending through the companies' operations. These cases focus on company-wide policies and strategies and frequently draw on human rights and environmental due diligence standards, arguing that companies are failing to comply with positive duties to avoid interference with the rights of others. Cases are usually linked directly to the Paris Agreement goal of limiting warming to 1.5°C, or to the concept of net zero, which is closely linked to this goal.

Litigants often combine corporate framework arguments with polluter pays arguments. This is true in the case of *Falys v. Total*, noted as a new polluter pays case in the section above. In addition to requesting damages, Falys is seeking an injunction to order Total to reduce emissions. Like the polluter pays cases, the outcome of these cases before the courts remains uncertain (see Box 2.6).

Box 2.6. Outcomes of corporate framework cases

While there are some encouraging initial judgments and opinions in cases against large companies, challenging their lack of alignment with the Paris Agreement, there are also several cases that have been dismissed and others that are still pending. Positively for climate action, in the landmark judgment issued in 2021 in the case of *Milieudefensie v. Shell* the Hague District Court in the Netherlands ordered Shell to make rapid emission reductions across its entire operations (including Scope 3 emissions). Following the submission of an appeal by Shell, oral hearings took place in April 2024; a judgment is expected to arrive between four and 12 months after the hearings.

In February 2024 the New Zealand Supreme Court became the highest appellate court to make a judgment in a Paris-alignment corporate case when it overruled the Court of Appeal's previous decision to dismiss the case of *Smith v. Fonterra*. The case, brought by Māori leader Mike Smith, argues that under New Zealand tort law, a number of high emitting companies, including dairy giant Fonterra, owe a novel climate-related duty of care that requires them to rapidly reduce emissions. The New Zealand Supreme Court held that there is at least a case to be made and remitted the case to the trial court. This will now be the first Paris-alignment corporate case involving a potential new duty to be heard by a common-law court.

While the decision is in no way indicative of the ultimate decision on the case's merits (Hook et al., 2021), it may suggest that courts are becoming increasingly willing to seriously engage with such cases. However, not only are cases with positive outcomes still subject to change as they proceed through the courts, but they must also be viewed in the context of several cases having had negative outcomes. Of the most significant of the latter, three cases filed in Germany filed in 2021, two against car manufacturers and another against a gas company, were dismissed soon after they were filed. At least two of these dismissals have been confirmed by appellate courts to date.

E. Failure to adapt cases

According to the classifications developed by the Sabin Center, of the more than 2,500 climate change cases worldwide, only 205 touch on the issue of adaptation, most of which have been brought in US and Australian courts.¹² One of the reasons for this relatively small number of cases is that climate litigation that touches on adaptation is difficult to define (Donger, 2022), and adaptation-related litigation may engage less explicitly with climate change than mitigation cases, thus falling outside the scope of the databases. While many climate cases require scientific evidence, adaptation cases also face additional requirements on this front, as they need to demonstrate not only the impacts of climate change to date, but also projections of future impacts in specific locations. A significant proportion of adaptation litigation also includes ‘failure to adapt’ cases, which can be defined as cases that challenge a government or company for failing to take climate risks into account (see also UNEP, 2023).

Cases may allege either that a government or company has a responsibility to introduce adaptation measures, or that a government or company has failed to introduce adaptation measures that they should have introduced, causing reasonably foreseeable harm for which the plaintiff must be compensated.¹³

The most obvious type of ‘failure to adapt’ case consists of litigation seeking the enforcement of existing adaptation law or policy.

This type of litigation involves legal action aimed at enforcing already established adaptation laws or policies within various countries. The case of *Northwest Environmental Defense Center v. Federal Emergency Management Agency*, for example, challenged the implementation of a national flood insurance programme in Oregon, US, on the basis that it had “incentivised” developments in flood-prone areas that had put both people and ecosystems at risk; in essence, this therefore constitutes a ‘failure to adapt’ case.¹⁴

In another recent case, Friends of the Earth supported two members of the public in filing a lawsuit against the UK government over its Third National Adaptation Programme (NAP3). Kevin Jordan, facing coastal erosion risks to his home in Norfolk on the East coast, and Doug Paulley, who is vulnerable to extreme heat due to medical conditions, are seeking recognition from the court that NAP3 is not fit for purpose and must be improved. They argue that it lacks ambition and specificity, fails to assess climate change risks adequately, and overlooks the unequal impact on protected groups, thus failing to protect various human rights (see *R(Friends of the Earth Ltd, Mr Kevin Jordan and Mr Doug Paulley v. Secretary of State for Environment, Food and Rural Affairs)*). Recent research by the Grantham Research Institute highlights that while NAP3 recognises the risks to human health from extreme heat, it fails to offer actions of sufficient scale and urgency to significantly improve heat preparedness (Howarth et al., 2024). Increasingly, we are seeing the physical and mental health impacts of climate change becoming the focus of litigation – as both the scientific evidence and people’s lived experience of those impacts develop (see Box 2.7).

A small handful of cases can be observed that seek to enhance the recognition and protection of climate-induced migrants before distinct international, regional and national jurisdictions. Serraglio et al. (2024) note that strategic rights-based litigation could enhance the visibility of these migrants, encouraging long-term legal developments. For instance, the Constitutional Court of Colombia recently addressed internal displacement caused by environmental and climate factors in *Bohorquez and Mendonza v. DPS et al.* The plaintiffs, displaced when the Bojabá River flooded,

¹² This classification does not include a series of cases filed in the US under the Endangered Species Act that concern whether or not individual species should be subject to endangerment findings given the impact of climate change on their habitats. Such cases are currently treated as a unique category in their own right but given the importance of scientific evidence regarding the physical impacts of climate change and the need to respond to these, they should be understood as closely related to other adaptation cases.

¹³ This definition excludes several adaptation-relevant cases, including cases brought by companies or individuals who suffer loss as a result of adaptation measures by others (e.g. restrictions on water use prevent them from operating a business-as-usual scenario). It also excludes cases concerning who should pay the costs of future adaptation actions, which are instead included in the polluter pays category (e.g. damages cases brought by cities and states in the US, as discussed further below).

¹⁴ We have classified this case as both a green v. green trade-off case and a climate-aligned case, as it challenges inadequate adaptation measures. Similar cases have been recorded in the US in previous years.

sought the same level of aid as those displaced by armed conflicts. The court ruled that the state must not only draft adaptation and development plans but also establish early warning systems, planned relocation mechanisms and an administrative registry to safeguard the rights and address the vulnerabilities of displaced persons.

These cases highlight the challenges in enforcing adaptation responsibilities and the potential for legal action to stimulate policy implementation and governance reform on difficult issues, despite political and financial constraints. They illustrate growing attempts to enforce national and international adaptation obligations, despite the challenges posed by the broad and sometimes vague provisions of international environmental law, such as those outlined in the Paris Agreement. Additionally, legal actions seeking migration status for individuals displaced by climate change highlight the intersection of adaptation and human rights, reflecting the complex landscape of adaptation litigation. There is clearly a need for a greater focus on adaptation litigation. This is especially important in the Global South, where the burden of climate impacts and adaptation is greatest.

Box 2.7. Health impacts of climate change becoming the focus of litigation

Questions concerning the physical and mental health impacts of climate change are increasingly being emphasised with varying importance in cases brought by elderly and youth plaintiffs against governments. This is distinct from litigation concerning health impacts associated with climate-harmful activities – for example, contributions of a coal-fired power plant to air pollution and therefore to respiratory illnesses.

Before it was escalated to the ECtHR, the Swiss Federal Supreme Court had dismissed the *KlimaSeniorinnen v. Federal Department of the Environment Transport, Energy and Communications (DETEC) and Others* case, partly because it found the heat stress-related claims by the plaintiffs to be insufficiently specific (Harvey, 2021). For the proceedings before the Grand Chamber, the applicant association gathered detailed submissions from its members on how climate change, particularly heatwaves, impacted their health and daily activities. Presented evidence showed that older women are disproportionately affected by heatwaves. The ECtHR recognised that Article 8 is applicable not only when actual damage to health or wellbeing occurs but also when there is a significant risk of such effects, provided there is a sufficiently close connection with the applicant's enjoyment of rights under Article 8 (paragraph 437).

Less often, but also increasingly, climate litigation cases have dealt with the mental health risks of climate change. In *Held v. Montana*, the Judicial District Court recognised that the plaintiffs' mental health injuries stemming from the effects of climate change on Montana's environment, including feelings such as loss, despair and anxiety. This represents the first time an American court found that climate anxiety is an injury that can be examined in a court of law (Tims, 2023). The decision also traces a well-defined causal pathway from Montana's authorisation of fossil fuel projects to the concrete injuries suffered by the plaintiffs. In the South African case '#CancelCoal litigation' (*Africa Climate Alliance v. Minister of Natural Resources and Energy*) the claimants have also introduced evidence about the impacts of climate change on their mental as well as physical health.

F. Transition risk cases

The question of how companies and financial institutions (and their directors and trustees) should or should not be managing the risks associated with climate change and the transition to net zero remains a highly contested topic. The question of how to manage transition risk has so far manifested most commonly in climate-washing claims (discussed below), some of which dig into the degree to which commitments to climate goals are actually being operationalised. However, this year, for the first time, we decided to isolate climate-aligned cases focused explicitly on this topic as cases involving a new strategy type (the 'transition risk'). While we had previously considered such cases as a sub-set of 'failure to adapt' cases – where the failure was to adapt to the new social and political dimensions of the climate transition rather than to the physical impacts associated with

global temperature rise – we have since concluded that transition risk litigation is drawing sufficient attention and interest that it requires discussion as a category in its own right.

These cases concern the (mis)management of transition risk by directors, officers and others tasked with ensuring the success of a business. Like the Paris-alignment corporate cases, they are concerned with the degree to which corporate policies align with climate goals, but unlike the previous category they are (at least *prima facie*) concerned more with the impacts on the company and its finances created by misalignment rather than on the external impacts on the climate and communities.

An example of a transition risk case filed in 2023 is *Métamorphose v. TotalEnergies*, in which shareholders in Total sued the company for, they argued, unlawfully distributing dividends based on incorrect accounting around stranded assets. The shareholders say the company has failed to adequately account for the depreciation of its assets due to the increasing cost of carbon, and that it has failed to consider the impacts of its Scope 3 emissions.

Interest in transition risk cases continues to grow, despite the fact that one of the seminal strategic cases in this category, *ClientEarth v. Shell Board of Directors*, was dismissed in very unfavourable terms (and with a punishing costs order) by the UK High Court last year (*Setzer and Higham, 2023*). In that case, ClientEarth brought a derivative claim against failure by the members of the Board to implement policies that would enable it to meet the goals of its own energy transition strategy (i.e. its net zero commitment). As *Carnwath (2024)* has written, the dismissal of the case without trial represents a “missed opportunity”. The case, if it had proceeded, would have provided a valuable chance to examine the operation of the relevant provisions of the UK’s Companies Act and a reference point for what exercising reasonable care, skill and diligence should look like in the face of a decision to align with the global objectives of the Paris Agreement, a critical question for the current era. However, while that opportunity for clarification in court may have been lost, the issues raised in the case are far from buried.

In the months following the proceedings in the ClientEarth case, there were several new developments that point to the ongoing evolution of the legal context around transition risk. The first is itself a new case. In December 2023 the Polish energy company Enea decided to sue several of its former directors who had supported the company’s investments into the controversial and ultimately cancelled Ostroleka C coal fired power station project. The plans for a coal project were abandoned in the face of difficulties finding financing and eventually a gas project was substituted (*S&P Global Platts, 2020*).

An Enea resolution concerning the case states that the former directors had failed to exercise sufficient due diligence regarding the project, leading the company to lose more than US\$160 million. The decision to file the lawsuit obtained the support of 87% of Enea’s shareholders at the company’s extraordinary general meeting.

The Ostroleka C case follows years of campaigning against the power station by civil society groups. These campaigns have included several previous examples of ‘hit the target’ litigation, filed and supported by ClientEarth among others, including litigation over a shareholder resolution questioning the financial viability of the project. This litigation, and the political controversy over the project, should have acted as a red flag to the directors that the project might end up as a ‘stranded asset’ but they chose to proceed with their investments regardless.

This is not the first ‘backward-looking’ case about whether a drop in company value can be attributed to poor management and communication of climate risks associated with new fossil fuel investments (the case of *Ramirez v. Exxon Mobil* in the US is an earlier example; see also *Setzer and Higham, 2023* for further discussion and examples). Given the volume of civil society campaigns against new fossil fuel projects, and more than 30 ‘hit the target’ cases focused on projects around Europe, the Enea case also seems unlikely to be the last. The question is how the Polish courts will treat this issue, and whether the outcomes in the case might inform a better understanding of prudent climate risk management in the broader European context. This line of cases is also likely to inform the development of new litigation outside the climate space, on the subject of biodiversity risk assessments and strategic decision-making (see Box 2.8).

Box 2.8. A legal duty to manage nature and biodiversity risks?

One of the consequences of the legal controversy surrounding prudent management in the face of climate risk has been a fresh focus on other types of environmental risk, particularly nature and biodiversity risks. In March 2024, a legal opinion, commissioned by the Commonwealth Climate and Law Initiative and Pollination, was published in the UK. The opinion argues that UK-based directors can and must consider nature-related risks arising from dependencies and impacts on nature in the course of their duties. The opinion contains considerable reference to the line of cases discussed above.

G. Climate-washing cases

Climate-washing cases, which challenge inaccurate government or corporate narratives regarding contributions to the transition to a low-carbon future (Benjamin et al., 2022), have been one of the major growth stories of the last few years. These cases might 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'. Some cases concern the degree to which misinformation campaigns seeking to discredit climate science, or failure to disclose known risks, have contributed to harm caused by climate change.

Climate-washing litigation continues to be a focal point in climate litigation. There has been a surge in such cases from a mere handful in 2017 to over 140 globally at present. This marks a critical shift in the battle against climate misinformation. Unlike other forms of litigation that primarily focus on companies, cases of this type can already be shown to have a significant success rate (see Box 2.9).



Supporters celebrating after Fossilvrij's win against KLM.
Photo: Hermen van de Waal/Fossilvrij NL

Box 2.9. Outcomes of climate-washing cases

Decided climate-washing cases have mostly yielded positive outcomes to date (see [Velez Echeverri et al., 2024](#)). More than half of the nearly 140 reviewed climate-washing cases from 2016 (the filing date of the earliest case identified) to the present have reached official decisions; 54 of these 77 cases (i.e. 70%) have concluded in favour of the claimant.

While many recorded climate-washing cases involve investigations by regulators and complaints before quasi-judicial bodies, there were important victories in courts in 2023 too. First, the District Court of Amsterdam decided on the case of *Fossielvrij NL v. KLM*, deeming its sustainability advertising illegal. Although the Court upheld the claim, there are limits to the remedy. No injunction was issued against the company as the advertisements were no longer in use, and no award for damages as there is no evidence of consumers still making decisions based on the advertising campaign. Shortly after, Australia's Federal Court ruled that *Vanguard Investments Australia's* claims about an ethical bond were false and misleading.

However, the impact of successful climate-washing cases on the broader goal of achieving net zero emissions and enhancing climate governance warrants careful consideration. While the legal dismantling of false advertisements and claims is a positive step and is symbolically significant, its direct contribution to reducing carbon emissions or achieving substantive climate action goals remains uncertain.

Successful litigation serves as a deterrent against misleading practices and reinforces the importance of transparency and accountability. But it also highlights the need for systemic change in corporate behaviour, regulatory frameworks and public awareness to achieve meaningful progress towards global climate objectives.

Climate-washing cases have often centred on claims around the climate neutrality of particular products and services, with several claims relating to transport. In *ASA complaint on cruise operators by Opportunity Green*, the latter, an NGO, filed a complaint against a series of cruise ship operators over "the cruise industry's systemic misleading advertising of fossil LNG as a 'green' fuel". This case follows a series of cases against airlines focused on misleading advertising around sustainable aviation fuels and forest-based offsetting schemes, keeping transport firmly in the spotlight. For example, consumers in California sued Delta Airlines over its "carbon neutrality" claims, based in part on concerns about the additionality and impermanence of forest carbon credits (*Berrin v. Delta Air Lines Inc.*). Although several of the plaintiffs' arguments were dismissed in April 2024, an argument has been allowed to proceed that says the airline's conduct might violate California's Consumers Legal Remedies Act because the airline knew or ought to have known that the claims of its carbon credit suppliers were inaccurate. This case is part of a new trend of cases and investigations that challenge the integrity of climate change solutions, highlighting the potential for corruption in the development of such projects. This phenomenon is further discussed in a recent report published by the Grantham Research Institute and DLA Piper ([Chan et al., 2023](#)).

Several cases employ novel arguments and legal frameworks that could be influential in combating climate-washing from varied perspectives. Of particular note, two current climate-washing cases that focus on the Brazilian Amazon utilise climate-washing arguments, among others, in cases that fundamentally concern the rights of communities. The first, the case of *Amorema and Amoretgrap v. Sustainable Carbon and others*, filed in Brazil, accuses companies of trading carbon credits in the Amazon as 'social carbon credits' without ensuring actual benefits to communities. The claimants allege misuse of community names, images and cultural heritage, and accuse the entities of misrepresenting their socio-environmental responsibility, thereby inflicting material and moral damage on local communities.

The second, the case of *Comissão Pastoral da Terra and Notre Affaire à Tous v. BNP Paribas*, filed in France, criticises bank BNP Paribas's due diligence processes for failing to prevent human rights violations, specifically in its financial dealings with Marfrig, a major beef producer implicated in land-grabbing and deforestation in the Amazon.¹⁵

These cases shed light on the nuanced and context-specific impacts of climate-washing, which not only mislead the public about companies' environmental practices but can also conceal grave human rights abuses. The differing legal approaches and jurisdictions involved highlight the diverse legal strategies that need to be accounted for in our understanding of climate-washing litigation.

Turning off the taps cases

Cases that challenge the flow of finance to projects and activities that are not aligned with climate action have continued to increase in number and diversity. Turning off the taps cases may be filed against public or private financial institutions, or a combination of the two. 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.

One of the significant cases of 2023 is *Jubilee v. EFA and NAIF*, in which an Australian NGO filed a claim in Australia's federal court seeking to force government bodies that subsidise fossil fuel use to disclose full impact assessments of those investments. Similar disclosure claims have been successful in the past, sometimes leading to negotiated outcomes with the defendants. In the absence of such a negotiated outcome, it is possible that the claim may be followed by more substantive challenges to the agencies' policies. It should be noted that substantive challenges to effective government subsidies of fossil fuels and taxation regimes favourable to fossil fuels have been dismissed in the past. One example is *R(oao Cox & Others) v. Oil and Gas Authority & Others ('Paid to Pollute case')* in the UK, and another is an Austrian case, *In Re Tax Benefits for Aviation*, challenging a taxation regime that the claimants alleged favoured airline travel over train travel, which was also dismissed in 2023.

In 2023 a group of UN experts issued communications to several governments about the responsibilities of the financial backers of the oil company Saudi Aramco under the UN Guiding Principles on Business and Human Rights (UNGPs).¹⁶ The communications are a response to a 2021 legal complaint made by ClientEarth that accused Aramco of committing climate-related violation of international human rights law and implicating its financial supporters for enabling its detrimental environmental impact. The UN experts expressed concerns over Aramco's potential to undermine the Paris Agreement and the human rights threat posed by climate change, also suggesting that the financial institutions supporting Aramco's expansion might be violating international human rights norms and standards. ClientEarth has now sent follow-up communications directly to the financial institutions in question.

In another non-judicial example of a case aimed at stemming the flow of finance to fossil fuel companies, the East African Crude Oil Pipeline (EACOP) planned by TotalEnergies in Uganda has been put under pressure by Inclusive Development International and 10 Ugandan and Tanzanian organisations filing a complaint with the American National Contact Point (NCP) against insurance broker Marsh. They accuse Marsh of violating the OECD guidelines with regard to respect for human rights and the environment. This is just one of several cases targeting the EACOP, with other cases filed directly against Total in France and a case filed by the East African Court of Justice, illustrating the way in which litigators often find multiple avenues to challenge the same contentious activities. Interestingly, in November 2023 the Court of first instance of the East African Court of Justice dismissed the case challenging the pipeline on the basis that it should have been filed earlier. The applicants have said they intend to appeal the decision.

¹⁵ This case also includes turning off the taps and corporate framework arguments.

¹⁶ The communications concern the following financial businesses: JP Morgan, Citi, HSBC, SMBC, Crédit Agricole, Morgan Stanley, BNP Paribas, Goldman Sachs, Mizuho, Société Générale and EIG Global Energy Partners. The communications and the original complaints also concern the obligations of Saudi Aramco itself.

Part III. Developments in cases not aligned with climate goals

The majority of the climate cases captured in the databases – and the majority that make headlines around the world – are cases that seek to hold governments and companies accountable for inadequate action and ambition in tackling the climate crisis. However, it is crucial to recognise that not all cases are aligned with climate goals. Courts may also be used as a venue for advancing agendas that seek to delay or derail climate action, as this section discusses.

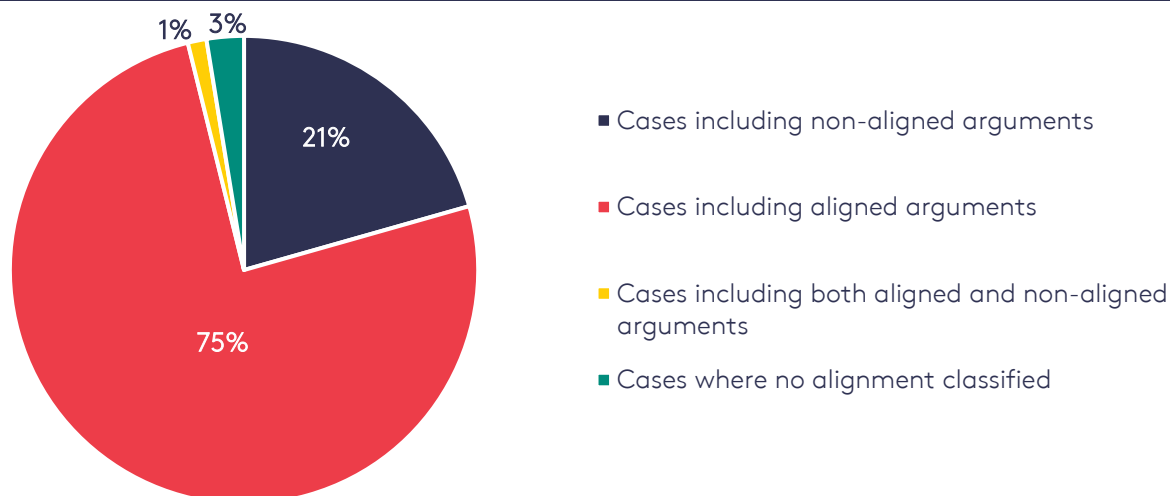
At times, actors involved in such cases appear to be intentionally seeking to use legal tactics to obstruct climate action; this is a well-documented phenomenon in the case of some industry groups (Nosek, 2020; Mijatović, 2023; Dutta, 2020). These cases can be understood as a form of ‘strategic’ litigation and have often been referred to as ‘anti-climate’ litigation (Hilson, 2010) or increasingly as ‘backlash’ litigation (UNEP, 2023). In this section we elaborate on the two most prominent types appearing among cases filed in 2023, identified as ‘ESG backlash cases’ and ‘strategic litigation against public participation’ (see below for definitions).

However, a climate-related case not directly aimed at advancing climate goals is not necessarily ‘anti-climate’ in motivation, and indeed may not be a strategic case at all. Instead, some cases challenge how climate action is designed, rather than opposing the need for such action. Many of these cases can be understood as ‘just transition litigation’ (Savaresi and Werewinke-Singh, 2024), cases filed by individuals, communities or labour groups seeking to challenge climate action or policies because they consider them a threat to their individual circumstances, directly risking their livelihood.

A related trend is emerging in the form of cases involving apparent trade-offs between the need to protect biodiversity and projects or policies that are introduced on climate grounds. We label these ‘green v. green trade-off’ cases. While many such cases raise legitimate concerns, there is also a risk that both these types of cases may be encouraged or instrumentalised by those seeking to delay climate action. Drawing the line between the various types of non-climate-aligned cases is therefore a challenging exercise, particularly in the absence of detailed information about the motivations of various parties.

Nearly 50 (21%) of the more than 230 recorded cases filed in 2023 included non-aligned arguments (see Figure 3.1). The overwhelming majority of these were filed in the US.

Figure 3.1. Cases involving aligned and non-aligned arguments filed in 2023



Note: In some cases, multiple claimants file different challenges to the same regulation, some arguing that it does not address climate enough and others arguing that it goes too far. Such cases may be bundled together into one case that therefore involves both climate-aligned and non-climate-aligned arguments (e.g. *Center for Biological Diversity v. EPA*, which involved challenges to new EPA fuel standards for road vehicles from both environmental and industry groups). Similarly, cases may make just transition arguments and also climate-aligned arguments.

ESG backlash cases

A major trend in non-climate-aligned cases in the US in recent years has been the rise of so-called backlash litigation, which sees tactics used by litigants in climate-aligned cases turned against them. Litigation, particularly around transformative social issues such as climate policy, often provokes a backlash, a phenomenon well-documented across various fields of socio-legal scholarship. Historical analyses on racial equality (Klarman, 2004) and on LGBT rights (Keck, 2009) illustrate that legal decisions can spark significant opposition, which sometimes strengthens the movements they intend to counteract. Paradoxically, this type of backlash can lead to increased mobilisation and support for the causes at the heart of the litigation (see Setzer et al., 2024). This understanding of backlash within the socio-legal context emphasises the importance of fostering greater public participation in policymaking and combatting misinformation. By engaging the public more directly and clarifying the facts around contentious policies, it may be possible to mitigate the negative effects of backlash (Almeida et al., 2023).

One of the key focuses for US backlash litigation has been the phenomenon of ESG (environmental, social, governance) investing. In 2023 there were significant cases alleging breaches of fiduciary duties related to the integration of climate risk into financial decisions. One notable case is *Spence v. American Airlines, Inc.*, where the plaintiff accused American Airlines of breaching fiduciary duties under the Employee Retirement Income Security Act (ERISA) by prioritising ESG goals over financial returns. In February 2024 a Texas federal court allowed this lawsuit to continue, denying the airline's motion to dismiss. Another case, *Wong v. New York City Employees' Retirement System*, involves plaintiffs alleging that fund managers compromised their fiduciary duties by integrating climate change considerations into their investment decisions, seeking damages for losses attributed to such policies.

Another approach is observed in *State ex rel. Skrmetti v. BlackRock, Inc.*, where Tennessee Attorney General Jonathan Skrmetti filed a consumer protection lawsuit against the asset manager BlackRock. Unlike the broader claims of fiduciary breaches and antitrust violations, Skrmetti's lawsuit specifically targets alleged consumer confusion over BlackRock's simultaneous pursuit of maximising investment returns and minimising environmental impact. This use of consumer protection law raises parallels with cases brought by cities and states against the Carbon Majors and may be adopted by other state governments that oppose ESG investment practices. In March 2024, for example, Mississippi issued a legal order against BlackRock aimed at stopping alleged "fraudulent action" by the company and imposing a multimillion-dollar administrative penalty over its ESG investment policies. This approach seems to pivot from direct legal confrontations over the obligations of financial actors to allegations of consumer protection violations, highlighting the evolving nature of legal strategies in the face of politically sensitive investment practices.

This ESG backlash litigation in the US contrasts with cases elsewhere in the world, such as the UK case of *McGaughey v. USS* which brought a derivative action against the directors of a pension fund for failing to consider climate risks, and the 2023 case in South Korea of *SFOC et al. v. Minister of Health and Welfare*, filed by environmental NGOs against the National Pension Service, which seeks to compel the disclosure of a coal divestment plan announced by the service in 2021. These cases demonstrate what is already becoming a significant divergence between the US and other jurisdictions regarding the management of climate risks (see also Gordon, 2023). It is also notable that although there have been climate-aligned transition risk cases in the US in the past, no new cases filed in 2023 have yet been included in the databases.¹⁷

This divergence between the US and other jurisdictions extends to regulatory approaches. While the EU and other regions are introducing laws aimed at channelling investments into greener initiatives, the US faces significant hurdles to introducing such regulations, as illustrated by legal challenges such as those against the U.S. Securities and Exchange Commission's new rule on climate-risk reporting (see Box 3.1).

¹⁷ We are aware of a whistle-blower complaint filed to the Securities and Exchange Commission by the NGO Mighty Earth against the meat processing company JBS accusing it of deceiving investors by making unsubstantiated sustainability commitments.

Box 3.1. The new SEC rule on climate-related disclosures and its challengers

In March 2024 the Securities and Exchange Commission (SEC) in the US introduced significant updates to its disclosure regulations, requiring both US and international companies to report extensive climate-related information. The updates mandate disclosures on material climate-related risks, governance and risk management processes, Scope 1 and Scope 2 greenhouse gas emissions (if material), and any voluntary climate goals and transition plans. The detailed rules span nearly 900 pages and were approved after considerable public debate and more than 24,000 comment submissions.

The aim was to enhance transparency regarding the climate-related impacts of corporate activities but the new rules faced immediate legal challenges from diverse stakeholders including environmental groups, oil companies, the U.S. Chamber of Commerce and state attorneys general. Nine cases were filed within 10 days of the rules' adoption and were consolidated in the Eighth Circuit Court of Appeals. In April 2024 the SEC suspended the implementation of the rules pending completion of the judicial review but stated that it remains committed to defending their legality. The agency argues that the rules are within its statutory authority and are essential for providing investors with critical information on climate-related risks.

This ongoing litigation underscores the deep divisions regarding the role of regulatory bodies in integrating climate considerations into financial reporting and is one venue for broader debate in the US over climate policy and regulation.

Strategic litigation against public participation (SLAPP) cases

SLAPP suits are lawsuits brought against activists and others who speak out about matters of public interest and they often relate to climate change and the environment. In general, the objective of SLAPPs is not to obtain redress but to intimidate and silence the target of the SLAPP while exhausting their resources (Manko, 2022). SLAPPs are frequently an abuse of the legal process that involves expensive and meritless litigation by wealthy companies against more resource-constrained civil society groups, and in the context of climate change can be used to harass an opponent and prevent climate activism and public participation, putting at risk the possibility of a just transition (Kaminski, 2022).

There were several SLAPP cases filed in 2023, including by Shell in the UK and Total in France against Greenpeace and other NGOs (the French case has since been dismissed). In both countries the NGO had been involved in or supportive of litigation against the companies, although the SLAPP suit against Shell appears to be focused on a protest staged by Greenpeace activists rather than on issues to do with the litigation. Requests for mediation, which appear to be a precursor to another SLAPP case, were also filed by Eni against activist groups bringing litigation against the company in Italy.

In January 2024 Exxon also took the unusual step of filing litigation against two shareholder activist organisations, Arjuna Capital and Follow This, which had sought to file a shareholder resolution urging Exxon to adopt a more rapid emissions reduction trajectory. Despite relatively low support for the resolution, Exxon opted to bypass the U.S. Securities and Exchange Commission's no-action process for shareholder resolutions and instead file a lawsuit in Texas to prevent the proposal from going to a vote.

Given the availability of alternatives, the relatively low levels of support for the resolution among shareholders, and the fact that the resolution was actually withdrawn after the complaint was first filed, it is reasonable to consider Exxon's decision to litigate as intended to deter the defendants and other shareholders from similar interventions in future, and this is thus another example of litigation that shares many of the hallmarks of a SLAPP suit.

SLAPPs have been brought in "every major region in the world", according to the Business and Human Rights Resource Centre (2021).

Although relatively few such cases are recorded in the databases, it is clear that SLAPPs are one of several legal tactics used by the fossil fuel industry to try to deter its opponents (Nosek, 2020). Focusing on the US, *EarthRights International* (2022) reported that it had identified 152 cases in the past 10 years in which the fossil fuel industry had allegedly used SLAPPs to try to silence critics. The cases filed against Greenpeace and others in the past year share many similarities with these earlier cases, which have already contributed to proposals for anti-SLAPP legislation within the EU.

Just transition cases

The term 'just transition case' describes a suit brought on behalf of groups or individuals who are negatively affected and structurally disadvantaged by the transition to a low-carbon future. Often, such cases rely on human rights grounds. Scholarly understanding of the phenomenon of just transition litigation is still developing, having first been identified by Savaresi and Setzer in 2022 and further elaborated in a multi-authored working paper (Savaresi and Werewinke-Singh, 2024). The majority of cases identified to date have focused on issues related to climate change mitigation measures, and most of the analysis of these cases on those where the central issue is climate mitigation measures such as renewable energy projects or mining for critical minerals (Savaresi and Werewinke-Singh, 2024; Tigre et al., 2023). For example, in *Regional Government of Atacama v. Ministry of Mining*, the regional government of Atacama sued the Chilean government for a decision to issue a call to increase lithium production in the region without public consultation. Lithium is a key component of many of the technologies required for a low-carbon transition.

In 2023 several new just transition cases were filed, including cases focused on climate change adaptation measures. These include a communication by a group of UN Special Rapporteurs to the French government concerning the development of 'mega-basin' projects (which store water for use in large-scale agriculture and thus can be considered climate change adaptation measures but have impacts on small-scale farming and biodiversity). An earlier communication issued by a group of UN Special Rapporteurs to Pakistan in 2022 (*Communication to Pakistan concerning the ongoing forced evictions and home demolitions along Karachi's waterways [nullahs]*) was also recently added to the database. The communication raised concerns over the execution of Pakistan's strategy of demolishing buildings along waterways in Karachi, an adaptation measure aimed at reducing the devastation caused by flooding related to climate change. The plaintiffs raised a perceived failure to consult the people whose homes and livelihoods were being destroyed and failure to provide adequate compensation and redress to those affected, despite a domestic court order requiring respect for human rights when carrying out demolitions.

Green v. green cases

Another important type of non-climate-aligned case that has emerged in recent years is what can be understood as green v. green litigation; i.e. cases in which there is a trade-off between climate and biodiversity or other environmental aims. Common focuses of these cases are challenges to climate mitigation-related projects such as renewable energy projects on the basis that they may have negative impacts on biodiversity. The Indian Supreme Court case of *M.K. Ranjitsinh* mentioned in Part I of the report is a good example of such a case: it originated in concerns about the impact of overhead power cables on the Great Indian Bustard before eventually becoming a case about the need to balance climate action with other conservation measures when the government argued that the power transmission lines were a crucial part of India's climate change response.

Like 'just transition' cases, these cases cannot be understood as straightforwardly anti-climate action: they challenge the way in which actions to address the climate crisis are being designed rather than the need for such actions in the first place.

Our review of 2023 cases revealed at least four such cases filed in the US, such as the case of *Save Long Beach Island v. U.S. Department of Commerce*, in which an environmental group challenged the authorisation for an offshore wind project arguing that it would impact North Atlantic and humpback whales.

The complainants argued that the project’s climate change mitigation benefits would be small and offset by the negative impact on the whale population, which has “immense carbon sequestration capacity”. The project at issue in this case is just one of nearly 300 contested renewable energy projects across the US, which are opposed by many local groups and governments on a variety of grounds (Eisenson, 2023). The means by which such projects are contested takes many different forms, including comments at public hearings and letter writing campaigns, and not every contested project results in litigation.

Opposition to many offshore wind projects has been organised by an ‘anti-offshore wind network’ of groups operating across multiple US states on the East Coast, according to a recent report by the Brown Climate and Development Lab (Slevin et al., 2023). The report states that the network, which often employs misinformation, includes a complex array of participants, from grassroots organisations motivated by conservation concerns to organisations and individuals whose past involvement with climate change denial is well-documented (ibid.). Understanding this movement and its motivations is crucial to understanding the emergence of green v. green cases – particularly since information from the National Oceanic and Atmospheric Administration (NOAA, part of the US Department of Commerce) suggests that there is no rigorous scientific research behind the claims that offshore wind projects constitute a significant threat to whale populations (NOAA, 2024).



The Indian Supreme Court case of *M.K. Ranjitsinh* sought to protect the endangered Great Indian Bustard from overhead power lines.
Photo: Inside Indian Jungles/Flickr

Part IV. Impacts and future trends

The diverse impacts of climate litigation include both *direct impacts* resulting from a court order or change in the law (the outcome of the case, as discussed in Part I and throughout Part II), and *indirect impacts*. Indirect impacts occur beyond the courtroom, may be fairly distant from the original litigation in time and space, and may be present even while the litigation is ongoing or when the litigation is unsuccessful before the judge.¹⁸ In this section we discuss the way in which different actors are engaging with climate litigation to generate impacts beyond the courtroom, before moving on to a discussion of possible future trends in climate litigation. We note that future climate cases, which build on and learn from the existing body of cases, can also be understood as among the indirect impacts of litigation.

Impacts beyond the courtroom

Courts as influential actors in climate policy and governance

The role of courts in climate litigation often raises a discussion around the dynamic between judicial authority and the principle of separation of powers. Traditionally, courts have been conservative, focusing mainly on ensuring government compliance with statutory mandates rather than dictating specific policy outcomes (Nedevska, 2021). However, it is also possible to observe that courts, together with the burgeoning international climate litigation movement, are increasingly influential in evolving earth system-oriented approaches to global climate law and governance (Kotze et al., 2023). This influence extends beyond merely impacting the legislative and executive branches, reshaping power dynamics at local, national and international levels among government bodies and civil society. Courts play a crucial role in establishing accountability, redefining power relations, addressing vulnerabilities and injustices, broadening the scope and effectiveness of international climate law, and incorporating the latest climate science to resolve legal disputes.

The recent European Court of Human Rights rulings, particularly in the *KlimaSeniorinnen* case, exemplify a balanced approach to power distribution. The Court underscored that Articles 2 and 8 of the European Convention on Human Rights require states to achieve climate neutrality by 2050, allowing states considerable discretion in how they meet this obligation. The court gave states a narrow margin of appreciation in terms of what they must achieve, setting out minimum standards for regulatory frameworks on climate change based on science and international practice, but it gave a wide margin of appreciation for the policy measures to be used to achieve the emissions reductions required. These rulings emphasise the necessity for states to develop and execute emission reduction strategies informed by the best available science and principles of intergenerational equity, with responsibilities spanning all government branches. Nonetheless, the Court also delineated the limits of judicial interference in areas traditionally reserved for political decision-making. Although it was met with some criticism (see Blattner, 2024 for a summary), including in the dissent of judge Eicke, the Court achieved a nuanced stance that affirms that while courts should not prescribe specific climate policies, they must ensure that government actions are consistent with established climate goals and broader obligations for climate neutrality. This strategic positioning underscores the essential role of courts in climate litigation, balancing respect for democratic processes with the protection of fundamental rights affected by climate policies. The ECtHR's decisions thus highlight the judiciary's critical oversight role in holding governments accountable to both their international and domestic climate commitments.

However, courts' influence in climate policy and governance is not restricted to their rulings. Decisions to hold public hearings and facilitate public engagement in climate cases further demonstrate courts' proactive engagement in these pivotal issues (see Box 4.1). There is evidence that climate litigation – including these unusual measures by judges – does have an influence on dominant narratives around climate change and climate governance in many different contexts (Averchenkova et al., 2024; Peel et al., 2022).

¹⁸ See Setzer and Higham, 2023; Peel and Osofsky, 2015; Peel et al., 2022; Setzer and Higham, 2022; Bouwer and Setzer, 2020.

Box 4.1. Public hearings as a platform for dialogue and fostering public understanding of climate change

An increasingly common feature of climate litigation cases is the willingness of the courts to take unusual measures to facilitate public engagement with hearings and evidence. Public hearings play many different roles in climate cases (Medici-Colombo and Ricarte, 2024). Hearings facilitate the introduction of complex scientific evidence, enabling judges to better understand technical aspects and resolve any doubts directly. They also provide a platform for civil education, fostering evidence-based debates and enriching discussions within the courtroom.

The last decade has seen numerous examples of courts and tribunals actively promoting public engagement with climate science through the course of proceedings, ranging from the efforts of actors like the Philippines Commission on Human Rights in its National Inquiry on Climate Change to a US District Court hearing a case brought by San Francisco and Oakland against five major oil companies in 2017. That trend continued in 2023, with unusual public hearings in four constitutional cases in South Korea, and the Inter-American Court of Human Rights holding exceptional hearings in Barbados in April 2024 and in Brazil in May 2024, rather than hearing arguments concerning the request for an advisory opinion from its usual location in Costa Rica.

While holding public hearings is one way for courts and climate litigation to influence public debate on climate change, it is not always straightforward to understand the impacts of climate cases once the hearings are over and the judgment is delivered. Even when litigation achieves courtroom success, its effectiveness in driving substantive policy change can be limited and it requires long-term evaluation (Setzer et al., 2024). Ashgar Leghari's reflections on his landmark climate litigation case in Pakistan, decided in 2015, illustrate this complexity (Kaminski, 2024). The legal victory in this case initially catalysed the creation of a national climate framework and the court sought to ensure ongoing action by imposing the novel remedy of convening a committee of officials overseen by the court to monitor the government's progress on implementing the judgment. However, momentum dwindled after key judicial figures, such as Justice Syed Mansoor Ali Shah, moved on to other roles and were no longer involved in implementing the case's outcomes. A standing committee on climate change set up to replace the original committee in 2017 has yet to meet. Over time, Leghari has come to view litigation as just one component of a broader strategy needed for environmental advocacy. He emphasises that while legal action is vital, it must be part of a multifaceted approach that includes significant policy shifts and investments in climate adaptation and resilience to achieve comprehensive and lasting change. This perspective underscores the complex interplay between legal victories and their practical impacts on climate policy.

Legislators are introducing legislation related to issues raised in climate litigation

Previous work has considered the interaction between climate litigation and the development of legislation, particularly in the context of human rights (see Rajavuori et al., 2023). Evidence also suggests that government framework cases, for example, have led both directly and indirectly to reforms to climate framework laws in Ireland and Germany (Averchenkova et al., 2024). In 2023 it seems that the idea that polluters should be made to pay their fair share of the costs of dealing with damage caused by climate change also gained traction in different fora, including in legislatures.

Despite the creation of a Fund for responding to loss and damage, announced at the COP28 UN climate conference in December 2023, the question of who pays for loss and damage due to climate change, and of the costs of climate change adaptation, remains politically charged.

In the context of climate litigation, loss and damage is typically associated with transnational litigation – the idea that countries or companies in the Global North should be held liable for the damage that climate change, to which they have contributed the most, is causing in the Global South (Wewerinke-Singh and Salili, 2020; Bouwer, 2020; Toussaint, 2020; Kodiveri et al., 2023).

However, the US climate liability cases discussed above also increasingly concern questions about loss and damage – even if they are not always framed as such. In a case filed by Multnomah County, Oregon, for example, the plaintiffs are arguing that a set of named companies should pay US\$50 million in actual damages sustained after the 2021 heat dome in the US, and a further US\$1.5 billion in future damages.

Such cases may already be contributing to shifts in the political conversation, at least in some parts of the US. For example, Vermont’s legislature has given final approval to the Climate Superfund Act (S.259), a bill that has garnered widespread support in both the House of Representatives and the Senate. If enacted, this groundbreaking legislation would impose strict liability on major oil and gas companies for carbon pollution, similar to the federal Superfund program’s approach to hazardous waste. Vermont’s bill proposes a one-time fee on fossil fuel companies responsible for over 1 billion metric tons of greenhouse gas emissions in the past 30 years. The responsibility for identifying the liable companies, determining the amount each owes, and calculating Vermont’s costs related to climate recovery and adaptation falls to the state’s Agency of Natural Resources and the state treasurer. Legal scholars have expressed their readiness to defend the bill’s legality and constitutionality if it is challenged, as seems likely. Similar legislation in New York passed the Senate but stalled in the Assembly, while Massachusetts, Maryland, and California have also introduced comparable bills targeting climate costs recovery from the oil and gas industry (see Lockman and Shumway, 2024 for an analysis of differences).

The idea behind such legislation is not entirely new. A bill containing similar concepts was proposed in the Philippines in late 2023 (see Bradeen et al., 2023), and scholars and activists were discussing the idea of “climate compensation acts” nearly a decade ago (Gage and Wewerinke-Singh, 2015). Nonetheless, the fact that such a bill has now reached this late stage of the legislative process is remarkable. It also raises pressing questions about equity. Why should US states be able to make US companies liable for paying for the costs of climate-related losses while communities in the Global South would have a far more challenging time trying to enforce any legislation that sought to do the same? As Lyster (2015) has argued, the solution may lie in a Global “Fossil Fuel-Funded Climate Disaster Response Fund”, an idea that may gain increasing currency in international negotiations as the challenges of leaving such question to litigation become more evident.¹⁹

Financial regulators advancing new understanding of climate litigation and financial risk

It is not just the courts and lawmakers that are contributing to the phenomenon of climate litigation creating impacts outside the courtroom. Many actors in the world of finance have also started to engage with climate litigation to understand its impact on both individual companies and the wider economy. For example, the Network for Greening the Financial System (NGFS) has been at the forefront of these efforts through its publication of two pivotal reports on climate-related litigation. Its first report underscores the urgent need for a more nuanced understanding of the risks these lawsuits pose (NGFS, 2023a). The subsequent report examines the micro-prudential supervision of financial risks associated with this increase in climate-related litigation (NGFS, 2023b). Together, these documents emphasise the need for central banks and supervisory authorities to enhance their capacity for assessing and mitigating the financial sector’s vulnerability to such legal challenges.

Adding a notable voice to the discussion, Frank Elderson, an Executive Board member of the European Central Bank and former Chair of the NGFS, addressed the issue in a speech he delivered in September 2023 titled ‘Come hell or high water’. Elderson highlighted the dire consequences that climate and environment-related litigation could have on the banking sector, stressing the importance of preparedness and adaptation in the face of these evolving risks.

¹⁹ The new EU Commissioner on Climate Action, Wopke Hoekstra, has indicated that a fossil fuel levy to pay for loss and damage is something he is willing to discuss with international partners (see [https://www.europarl.europa.eu/RegData/etudes/BRIE/2023/754186/IPOL_BRI\(2023\)754186_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2023/754186/IPOL_BRI(2023)754186_EN.pdf)).



ClientEarth's legal team outside the courtroom at the Royal Courts of Justice, London, for their transition risk case against Shell. See section F in Part II for more details on this case. Photo: ClientEarth

However, current methodologies for assessing climate risk still fall short in accurately representing the scale and distribution of climate-related financial risks (Wetzer et al., 2024). Organisations including the International Sustainability Standards Board and the NGFS still tend to amalgamate legal risk in this context with 'transition risk', even though others have argued that it should be considered a distinct category of risks (Carney, 2015). This perspective is increasingly challenged by the growing body of evidence that demonstrates climate litigation is not a peripheral concern but a central risk that necessitates comprehensive evaluation and action. As legal action over climate issues gains momentum, central banks and financial regulators are being compelled to reconsider their strategies for risk assessment and management, marking a significant shift in how the financial sector responds to the challenges posed by climate change.

(Re-)Insurers re-evaluating risk management strategies in the face of litigation risk

Climate litigation presents a growing challenge for the insurance and reinsurance sectors, introducing multiple dimensions of risk, including operational, investment and direct legal challenges (Golnaraghi et al., 2021; Doering et al., 2023; Brook et al., 2023). Firms within these sectors are increasingly confronted with potential financial losses stemming from climate-related lawsuits, either through direct suits tied to their corporate activities and those of their clients, or through regulatory actions. The escalating focus of regulators, shareholders and investors on the risks associated with climate litigation underscores the importance for insurers and reinsurers to assess and understand their framework but also necessitate a forward-looking strategy to mitigate potential exposures.

Analysis of the impact of climate litigation on the insurance market has become more robust and detailed, reflecting the sector's growing understanding of this trend. The Bank of England's climate stress-test in 2021 revealed a general struggle among insurers to accurately gauge their susceptibility to climate litigation risks. Further emphasising this concern, Canada's federal insurance regulator in 2023 highlighted the importance of preparing for climate-related claims under liability policies, cautioning that insurers, along with their directors and officers, could face liabilities for neglecting these risks. This evolving regulatory landscape points to a critical need for insurers to re-evaluate their risk management strategies.

The potential for climate litigation to impact various policy lines – including commercial general liability, directors and officers (D&O) policies, and environmental liability, among others – signals a broad spectrum of risk. A survey conducted with insurance industry practitioners concluded that climate change is one of the most urgent risks facing the insurance industry, particularly because of the cost and pricing challenges it presents as an underwriting risk, and the threat it poses to insurance companies' own operations (CSFI, 2023). The development of modelling tools, as outlined by Lockman (2023), aims to equip insurers and reinsurers with the means to better understand and prepare for the way litigation may amplify these risks.

Litigation risk is just one of the many climate-related risks that insurers need to grapple with now and in the coming years. Currently, the lack of significant financial losses from court cases to date may be hindering the levels of engagement with the phenomenon by the industry, but this is unlikely to persist indefinitely.

Legal associations and lawyers are grappling with their role

Legal associations such as the UK Law Society are issuing targeted guidance to help legal organisations align their operations with net zero targets and are advising solicitors on how to integrate the physical and legal risks of climate change into their client advisories.

Lawyers also have substantial ethical agency. According to Vaughan (2023), legal professionals' ethical responsibilities not only permit but at times necessitate an active and ethically responsible approach towards mitigating environmental harm. The risk of litigation for consulting, advisory and legal services is also increasing. These sectors may confront legal challenges for not adequately considering 'advised emissions', i.e. the emissions associated with the guidance they provide to their clients.

Future trends

One of the documented outcomes of successful – and even unsuccessful – climate cases to date has been the filing of further climate cases, often involving processes of significant international exchange between lawyers and courts in different jurisdictions (Affolder and Dzah, 2024; Ganguly et al., 2018). Here, we examine three additional areas where the seeds of existing cases in a small handful of jurisdictions may start to inform future trends at the global level.

Post-disaster cases – the rights and wrongs of recovery?

As the number of climate-related disasters increases year on year, so too does the need to make good decisions about how to respond to such disasters. Given differing political viewpoints on what shape a 'good' recovery might take, this looks set to become a site of significant contestation in the courts. An early example of a 'post-disaster' case is the case of *Comité Dialogo Ambiental v. Federal Emergency Management Agency*, filed in the US in 2023 challenging the Federal Emergency Management Agency's handling of the disaster recovery effort following hurricanes in Puerto Rico. The plaintiffs argue that in their planning for the recovery the defendants had failed to consider reasonable alternatives to reconstructing Puerto Rico's existing fossil fuel-based power infrastructure, and that this reconstruction limits resilience and 'locks in' years of future reliance on climate-damaging power supplies.

The case has some parallels with a communication issued by a group of UN Special Rapporteurs to Colombia in 2022 that raised concerns about human rights violations associated with failures in Colombia's response to the humanitarian and environmental crisis suffered by the Afro-descendant Raizal people of the islands of Vieja Providencia and Santa Catalina, after category 4 and 5 hurricanes Eta and Iota. Among the concerns raised was the fact that the housing built after the hurricanes was insufficiently resilient to future climate-related disasters. The communication followed an earlier judgment issued by the Colombian Constitutional Court.

Climate litigation using the ‘ecocide’ concept and other forms of criminal law is likely to grow

New ecocide legislation is being adopted in several countries. For example, the [new Belgian Criminal Code](#) approved in February 2024 made Belgium the first country in the EU to recognise ecocide as an international crime, alongside war crimes, genocide, crimes against humanity and crimes of aggression. The new Belgian law also recognises that businesses’ actions are ultimately carried out by individuals, directors and other executives, who may be punished with imprisonment of up to 20 years; countries liable for ecocide might have to pay a fine of up to €1.6 million. Meanwhile, proposals to adopt related concepts such as a “crime of environmental destruction” into international law continue to gain momentum (IUCN, 2024).

Also in February 2024, the European Parliament adopted a [new EU directive](#) containing an extended list of environmental crimes. Environmental crimes committed by individuals and company representatives may be punishable with imprisonment depending on how long-lasting, severe or reversible the damage is. In addition, natural persons who commit such crimes may be required to restore the environment (if the damage is reversible) or to compensate for the damage. They might also face fines proportionate to the gravity of the conduct, and other ancillary sanctions may be imposed.

While it is not always obvious how these developments around ecocide apply in the climate context, we can already see the ways in which debates about the role of criminal law in environmental protection are appearing in the context of climate litigation. Several efforts have been made to involve the International Criminal Court in climate issues, including most recently in a [letter](#) issued by the World Council of Churches to the Assembly of State Parties to the International Criminal Court arguing that the Rome Statute, the foundational treaty establishing the court, should be amended to include crimes relating to climate disinformation promoted by corporate actors (see also *The Planet v. Bolsonaro and NZ Students for Climate Solutions and UK Youth Climate Coalition v. Board of BP*). Such efforts may not prove fruitful, but it is likely that the convergence between the debates on ecocide and on climate responsibility may become increasingly close to one another in future years.

Environmental litigation and climate litigation will reinforce each other in new cases

Strategies in climate cases are increasingly likely to be transferred to and integrated into other types of environmental cases, such as cases involving plastic pollution. Plastic litigation is evolving as awareness grows of the full lifecycle of plastic. These legal actions often address the environmental harm caused by plastic production, use and disposal, highlighting the significant carbon footprint associated with the lifecycle of plastics, from fossil fuel extraction to product manufacturing and waste management. As plastics are primarily derived from petrochemicals, litigation in this area intersects with climate change by challenging the expansion of plastic production facilities, alleging violations of environmental laws, or seeking to hold companies accountable for plastic-related pollution, including greenhouse gas emissions.

Additionally, there is an increasing emphasis on the concept of extended producer responsibility, pushing for laws and policies that require producers to be responsible for the entire lifecycle of their products, including disposal and recycling, to mitigate environmental and climate impacts. For example, 175 states agreed to develop a legally binding agreement on plastic pollution by 2024, prompting a major step towards reducing emissions from plastic production, use and disposal (UNEP/EA.5/Res.14, of 2 March, 2022). As public and legal scrutiny of plastics’ environmental impact intensifies, plastic litigation might become part of broader climate litigation efforts.

At the same time, rights-based environmental cases are likely to continue leveraging climate arguments, and vice-versa. In March 2024 for the first time the Inter-American Court of Human Rights held a state responsible for violating the right to a healthy environment and the impact this has on the guarantee of other rights (*La Oroya v. Peru*).

The case was brought against Peru for human rights violations due to pollution from a metallurgical complex affecting 80 residents in La Oroya. Although climate change was not central to the dispute, the Court acknowledged that “States have an enhanced duty of protection towards children against health risks caused by the emission of polluting gases that contribute to climate change.” In the judgment, the Court ordered the State of Peru to adopt comprehensive reparation measures for the damage caused to the population of La Oroya.

We anticipate that other important developments in environmental cases will also inspire developments in climate cases (see Box 4.2).

Box 4.2. From environmental group claims to climate group claims?

There is building momentum for group litigation against multinationals in English courts, especially concerning environmental disasters. The UK Court of Appeal listed the trial of *Município de Mariana v. BHP*, concerning the collapse of the Fundão dam in Brazil in 2015, to take place in October 2024. The case will be the largest opt-in group action to be brought before the English courts with an excess of 700,000 plaintiffs seeking up to £36 billion to compensate for alleged damage to their homes and livelihoods.

This litigation follows the precedents set by the Supreme Court in the *Vedanta* and *Okpabi* cases, enabling foreign litigants to sue England-domiciled parent companies for overseas environmental damage.

The outcome of this appeal could redefine the landscape of environmental damage redress, potentially encouraging more group litigation against multinational companies in English courts. The eagerly awaited decision may reach beyond the plaintiffs of the Fundão disaster to set a broader precedent for future ESG and climate litigation, particularly against major emitters, highlighting the English courts’ role in the global fight against environmental damage.

Conclusion

The field of climate litigation continues to grow and diversify but the number of new cases filed each year may be stabilising. The slowdown could be due to a shift towards fewer, more strategic cases – but it may be temporary. We are yet to see many cases employing corporate framework strategies and polluter pays strategies achieve final resolution. If these cases succeed in key jurisdictions, it is likely that they will inspire similar cases. Additionally, new case strategies may evolve rapidly, as has been the case with climate-washing cases.

Despite the apparent stabilisation in new case filings, significant divergence within climate litigation persists. The US remains distinct in several ways, not only in the number of cases filed, but also in trends within cases, such as a higher prevalence of non-climate-aligned strategies and relatively fewer cases against companies, though the absolute number of corporate cases in the US remains significant. Another distinctive feature of the US is the way in which recent cases focused on climate-related financial risk have largely been non-climate-aligned, challenging the consideration of such risks, which is out of step with trends elsewhere in the world. This divergence might indicate future changes in the broader field, as US litigation often sets precedents for strategies adopted globally. Trends such as the growth in ESG backlash litigation might spread to other jurisdictions. However, it is possible that the main drivers for this type of litigation, which include the polarisation in the politics of subnational governments – might be unique to US circumstances.

Overall, whether climate litigation is advancing or hindering climate action remains difficult to determine. Some types of cases, such as government framework cases, have already had lasting impacts on domestic climate governance. However, the long-term implications of other case types, such as climate-washing cases, remain unclear, despite the relatively high levels of ‘successful’ cases in courtroom terms. Both types of cases can and must be understood as part of the wider constellation of climate cases. This broader phenomenon continues to drive shifts in thinking and behaviour among many stakeholder groups, ranging from the courts and the legal profession to legislators and regulators, financiers and insurers. Understanding the nuance and scope of these changes remains an urgent challenge.

Appendix: Methodological notes

Data collection

Information about the cases discussed in this report was primarily derived from the Sabin Center databases. Data was downloaded from the US database on 4 April 2024 and from the Global database on 10 May 2024. Both databases have been updated since then. More detail on the data collection methodology can be found on the [About page of the Sabin Center's climate case charts](#).

In the course of drafting the report and updating case classifications we sometimes identified updates to cases and new cases not yet included in the databases. Information about these updates has been provided to the Sabin Center and will be added to the databases in due course.

At the time of release of our 2023 report, the Sabin Center's Global Climate Litigation Database contained more than 750 cases. Since then, more than 170 new cases have been added to the Global dataset. Many of the cases added were filed in years prior to 2023. Readers should, therefore, bear in mind that the figures presented in this report are likely to be an underestimate of cases from around the world as previously overlooked cases continue to be identified.

At the time of our data download for the 2024 report, the Sabin Center's US Climate Litigation Database contained over 1,745 case bundles. In some instances, a case bundle may contain information about more than one complaint when these are filed on the same subject matter and have been consolidated before a court. For example, the case of *Western States Trucking Association Inc. v. EPA* involves six separate challenges to the Environmental Protection Agency's (EPA) decision to grant a waiver of Clean Air Act pre-emption, allowing the California's Air Resources Board to introduce new emissions standards for heavy-duty vehicles. These challenges are filed by a range of plaintiffs including trade associations, states and campaign groups. A similar case involving multiple complaints which have since been consolidated is the case of *Center for Biological Diversity v. EPA*, which involves nine separate challenges to new EPA rules on renewable fuel standards, some filed by environmental associations and others by companies, and trade associations or industry bodies. This case is counted once in the overall case count but is also counted in both the climate-aligned and non-climate-aligned categories.

Approach to case classification

When classifying cases for these reports we primarily base our findings on the Sabin Center's case summaries. In cases where it is challenging to make a determination about a case based on the information available in the summaries, we also review the full case documents in the databases and/or media reports. Some classifications will be assigned based on review by one member of the research team. However, where there is uncertainty about a classification, this case is reviewed and discussed in detail by the authors before a final determination is made.

Classification of strategies

Many of the classifications in Part II of this report – for example, determination of whether to classify a case as strategic – are based on informed, subjective assessments. Case assessments may also be made on imperfect or incomplete information, particularly about the parties' intentions. For example, we may define a case as strategic based on the evidence of the plaintiffs' behaviour (e.g. issuing press releases about the case) and the claimant type (e.g. a case filed by an NGO or community group with a mission and purpose to protect the environment is likely to form part of a broader advocacy strategy on the part of the NGO). This does not mean that the plaintiffs themselves would necessarily describe the case as 'strategic'.

Classifying a case as 'strategic' or 'non-strategic' also does not imply a judgement of one being better or more impactful than the other. Cases brought to achieve a relief that will apply to an isolated situation without the intention of influencing the broader debate (i.e. non-strategic) can be as (or more) important as cases that actively seek the realisation of broader changes in society (i.e. strategic litigation).

Courts will not always 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. In some cases, the strategic nature of the case may have positive impacts on the way the court determines the issues, and in others, as in the case of *ClientEarth v. Shell*, it may be weighed against the plaintiffs by the courts (see [Setzer and Higham, 2022](#)).

Given that our identification of different strategy types in this report is sometimes based on only partial data, 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.

Where data on the strategies employed in cases filed in 2023 is compared to data from previous years, the figures for earlier cases are based on a comprehensive review of the global dataset. However, since the US dataset is considerably larger and US cases have not been evaluated in depth in previous reports, we have adopted an alternative approach to providing historical comparison data for the US. This approach has varied between case categories:

- For government framework cases, the comparison data is derived from the dataset used for a previous report on this subset of cases, which included US cases ([Higham et al., 2022](#)). This dataset has been updated based on a thorough review of more recent cases.
- For corporate framework, transition risk, climate-washing and polluter pays cases, comparison data has been derived from a review of a dataset of corporate cases filed since 2015 developed by the authors.
- For the turning off the taps and failure to adapt cases, which involve both cases against corporate actors and cases against government actors, a dataset of historical comparison cases was developed for this report using the case categorisation on [climatecasechart.com](#) and search and filter options on the database.
 - To identify failure to adapt cases filed between 2015 and 2023, we first developed a dataset including all cases with the word 'adaptation' in any part of their classification on the Sabin Center's website. This dataset included 94 cases. Each case was then reviewed to determine whether it fell within the definition of failure to adapt.
 - For turning off the taps cases, historical comparison cases were identified by searching key terms such as 'public finance', 'bank' and 'export finance'. We also conducted a manual review of all cases in the Securities and Financial Regulation Archives on [climatecasechart.com](#). Few cases seeking to force financial decision-makers to incorporate climate in decision-making were identified in the data from 2015–2023, although several cases challenging the relevance of climate to such decision-making were identified. A series of cases involving import-export finance institutions was also identified, but these all predated 2015.
- Due to the sheer volume of data, we have been unable to quantify the number of 'integrating climate considerations' cases in the US for this year's report. However, we believe this number to be very large.

Classification of outcomes

When reviewing our classification of 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. This is particularly likely to happen 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, 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 may nonetheless advance an issue of fact or law that may have positive impacts on subsequent litigation. For example, in the case of *Sacchi et al. v. Argentina*, the case has been classified as having an unfavourable outcome 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.