

LET THE COURTS DECIDE?

The Potential and Limitations of Climate Litigation from
a Democracy Perspective



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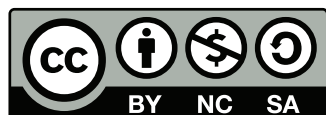


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Abbreviations

CENACE	National Centre for Energy Control
CIEL	Center for International Environmental Law
ECHR	European Convention on Human Rights
ECJ	European Court of Justice
ECtHR	European Court of Human Rights
EIA	Environmental impact assessment
GFCC	German Federal Constitutional Court
GHG	Greenhouse gas
IACHR	Inter-American Court of Human Rights
IBAMA	Brazilian Institute of Environment and Renewable Natural Resources
ICJ	International Court of Justice
IIED	International Institute for Environment and Development
IPCC	Intergovernmental Panel on Climate Change
IRP	Integrated Resource Plan
ISDS	Investor–state dispute settlement
ITLOS	International Tribunal for the Law of the Sea
NDC	Nationally determined contribution
NERSA	National Energy Regulator of South Africa
NGO	Non-governmental organization
PISFCC	Pacific Islands Students Fighting Climate Change
RICO	Racketeer Influenced and Corrupt Organizations Act
SLAPP	Strategic lawsuit against public participation
UNCLOS	United Nations Convention on the Law of the Sea
UNFCCC	United Nations Framework Convention on Climate Change

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EXECUTIVE SUMMARY

As climate policies around the world continue to fall short of commitments and legal obligations, climate litigation is becoming increasingly relevant for international environmental law and climate action.¹ Since the late 1980s, individuals, communities and public authorities have sought legal avenues to hold governments and private actors accountable for their climate actions—or lack thereof—resulting in roughly 3,000 climate-related cases worldwide, with a clear surge since the adoption of the Paris Agreement in 2015. This report shows how climate litigation can provide significant complementary value to political, diplomatic and activist approaches to address and respond to climate change, insofar as it promotes accountability, focuses on human rights, contributes to visibility and democratic debate, and inspires climate ambition.

International IDEA defines democracy as ‘popular control over public decision-making and decision-makers, and equality between citizens in the exercise of that control’. International IDEA’s Global State of Democracy framework measures the quality of democracy through four interrelated categories—Representation, Rights, Rule of Law and Participation—each encompassing key democratic functions such as elections, access to justice, judicial independence, gender equality and civic engagement. Building on that foundation, this report explores how climate litigation interacts with—and tests—democratic attributes. It asks whether litigation enhances representation and accountability, strengthens rights protection and equality, upholds the

This report shows how climate litigation can provide significant complementary value to political, diplomatic and activist approaches to address and respond to climate change.

¹ International IDEA’s Democracy Tracker monitors and documents global developments in democracy. News and events related to climate justice and climate action can be explored here: <<https://www.idea.int/democracytracker/searchable-archive?tag=992,465>>, accessed 8 October 2025.

rule of law and judicial independence, and expands opportunities for participation and civic voice in climate governance.

Starting with interviews with leading scholars and practitioners in the introduction, the threads running through the report show how litigation has become a key arena for shaping climate governance. The introduction explores the rise of climate science and its role in supporting the growth of climate litigation, the expansion of legal approaches and strategies, as well as the emergence of 'backlash cases' and countersuits. Tracking the widening cast of plaintiffs, defendants and venues, it provides an overview of landmark judgments that are shaping the current legal landscape.

Subsequent chapters pick up these threads through the lens of democratic governance, asking why climate litigation matters for democratic participation and climate justice. Chapter 2 charts the global trends in climate cases and maps them onto democratic functions—separation of powers, access to justice and rights protection. Chapter 3 probes European judgments to ask what conceptions of democracy and democratic legitimacy courts rely on when they compel—or resist—stronger climate action. Chapter 4 turns to the Global South, highlighting how litigation is reshaping participation, accountability and power imbalances both within countries and transnationally. Finally, Chapter 5 assesses effectiveness: when, where and how does going to court actually curb emissions or bolster democratic legitimacy, and where does it stall or backfire? Throughout, the authors ask a common question: how can courts remain a constructive lever for climate action without undermining the democratic processes on which their own legitimacy depends?

The report concludes that climate litigation both shapes and is shaped by democracy in many ways.

The report concludes that climate litigation both shapes and is shaped by democracy in many ways. It can deepen democracy and support the rule of law by fostering transparency, accountability and science-based decision making, as well as widening access to justice, embedding human rights-based approaches and providing a forum to balance the power of governments, corporations and communities. Yet recourse to a courtroom is no panacea: over-reliance on judges risks political backlash and can strain the separation of powers. In addition, countersuits or arbitrations can be pursued with the intention of intimidating regulators and environmental activists, deterring bolder climate policies and saddling critics with overwhelming legal costs. Further, if court rulings are ignored or not adequately implemented, democratic

disillusionment can grow as a result. Understanding and managing these dual potentials is essential for litigation to remain an effective tool to address climate change and a valuable complement to democratic governance and decision making, while affirming that democracy is both a precondition for, and indeed an outcome of, effective climate action.

Chapter 1

INTRODUCTION

Alister Doyle

1.1. WHAT IS CLIMATE LITIGATION AND WHY DOES IT MATTER FOR DEMOCRACY?

In 1989, environmental lawyer Ralph Cavanagh argued against a rollback of fuel-efficiency standards for cars in a US federal court in Washington, DC, warning that unchecked fossil-fuel use could trigger ‘devastating and irreversible climate changes’ (Cavanagh 2023). Two of the three judges dismissed his plea as conjuring up an improbable ‘environmental nightmare’ (*City of Los Angeles v National Highway Traffic Safety Administration* 1990). Though the case failed, it is now widely recognized as the starting point of modern climate litigation.

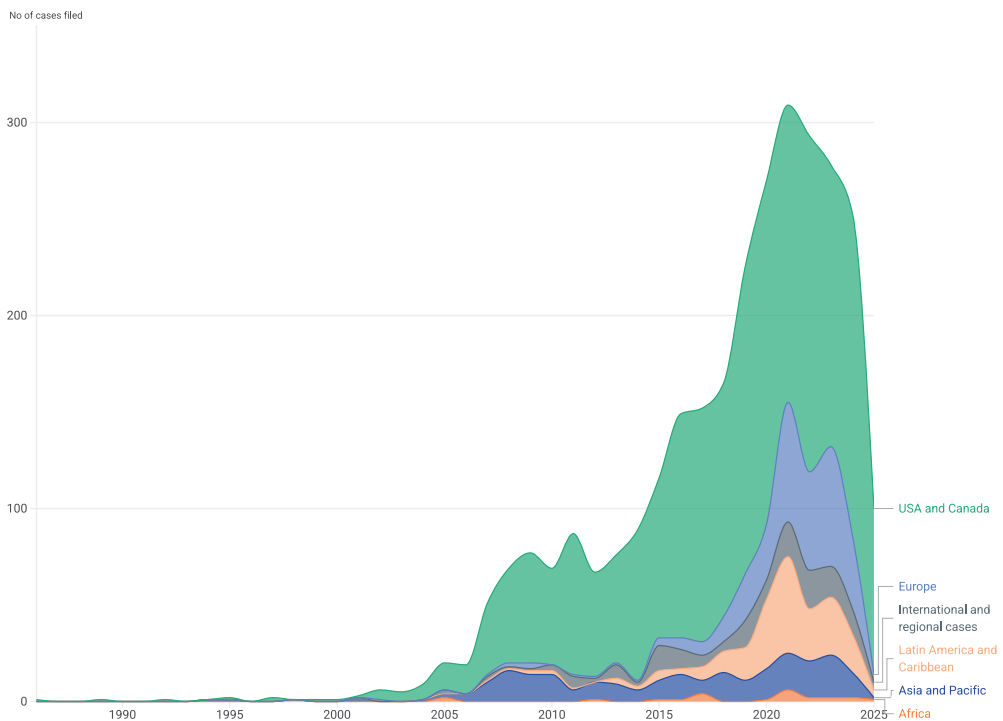
Three and a half decades later, Cavanagh’s ‘nightmare’ is becoming a reality. The year 2024 was the warmest year on record since the 19th century, and carbon dioxide emissions from burning fossil fuels rose to a new record high. Average global surface temperatures were about 1.55°C above pre-industrial levels, raising concerns about potential impacts (WMO 2025). The United Nations’ Intergovernmental Panel on Climate Change (IPCC) estimates that greenhouse gas (GHG) emissions would need to be cut by 43 per cent from 2019 levels by 2030 to keep the 1.5°C target of the Paris Agreement alive (IPCC 2022a). Yet current national pledges put the world on track for around 2.7°C of warming by 2100, making the 2020s a ‘decisive decade’ for action (Climate Action Tracker 2024).

Now retired, Cavanagh shared his opening remarks in the case, and predicted that ‘future generations will be astonished’ that fossil fuel

standards could be set without considering risks of global warming, ranging from disruptions to rainfall to rising sea levels (Cavanagh 2023). Since the 1980s, the number of climate-related lawsuits has increased dramatically—more than doubling worldwide since 2017. Courtrooms around the world now host arguments over intergenerational justice, corporate liability and responsibility for climate harms. Judges are grappling with questions that strike at the heart of democratic governance and decision making: Who decides how the burdens of climate change are distributed—and on what basis? Where does judicial oversight end and policymaking begin in climate governance? Are courts fulfilling their democratic mandate by articulating specific emissions-reductions standards for governments, or overstepping it? Do domestic courts have a responsibility to address climate harms that cross borders? And can the law, as decided and shaped through democratic institutions, evolve fast enough to meet the urgency and scale of the climate crisis?

Courtrooms around the world now host arguments over intergenerational justice, corporate liability and responsibility for climate harms.

Figure 1.1. Number of climate cases filed by year



Source: Sabin Center for Climate Change Law, Columbia Climate School at Columbia Law School, 'Global Climate Litigation Database [until July 2025]', <<https://climatecasechart.com>>, accessed 1 August 2025.
Note: Created with flourish.studio.

This report explores how the once-novel argument that states have a legal obligation to prevent and address climate change has evolved into a crowded global docket. It also examines why what happens in the courtroom matters for both climate action and democracy.²

1.2. THE GLOBAL PROLIFERATION OF CLIMATE LITIGATION

It is necessary, initially, to define what counts as climate litigation. As famously observed, ‘there are as many understandings of what counts as “climate change litigation” as there are authors writing about the phenomenon’ (Setzer and Vanhala 2019: 3). This report adopts as a baseline the definition used by the Sabin Center for Climate Change Law’s Global Climate Change Litigation Database (n.d.), which includes ‘cases that raise material issues of law or fact relating to climate change mitigation, adaptation or the science of climate change’; defining the scope of ‘climate litigation’ is in many ways an art, meaning some cases inevitably fall through the cracks. An important shortcoming of this definition is that it excludes cases that do not explicitly raise issues of climate change but may still have profound implications for it. This is particularly evident in the Global South, where litigants may frame claims in terms of environmental harm or pollution, even where the projects at issue—such as mining or fossil fuel developments—are significant sources of GHG emissions. Another category which can escape the definition is the growing number of cases brought in the name of ‘loss and damage’, particularly relevant in the Global South and in Small Island Developing States. It is therefore worth acknowledging that the inclusion or exclusion of such cases can influence both the apparent scale and the geographic distribution of climate litigation worldwide.

It is also important to bear in mind that there is no single, canonical definition or taxonomy of climate litigation. In this report—and in this chapter—different authors adopt slightly different criteria and categories to reflect their analytical lenses and aims.

With these definitional considerations in mind, it is still clear that climate litigation has skyrocketed this century, especially as governments fall short of goals they set under the 2015 Paris Agreement to limit global warming (UNFCCC 2015). Nearly two-thirds of cases have been filed since 2015, with a cumulative total of

2 For a comprehensive review of the relationship between climate change and democratic governance, see Lindvall (2021).

Box 1.1. Defining the Global South

The term 'Global North' is used in this report to refer to countries that industrialized early (some of which were significant colonizing powers) and which now tend to have higher than global average economic wealth (including many European countries, the United States and Australia, for example). The term 'Global South' is used to refer to countries that industrialized more recently, which may have been subject to colonial rule and which tend to have lower than average economic wealth (including, for example, many African, Latin American and Pacific nations). This categorization is crude and it should be emphasized that it is important not to overlook the particular cultural, social, economic and historical contexts of each nation.

This report uses the phrase 'Global South' to refer to countries connected by shared histories of colonial domination, including in regions of Africa, Asia, Latin America and Oceania. The use of the term 'South' does not refer to countries below the equator but to politically, economically and culturally marginalized peoples (see Mignolo 2011; Dados and Connell 2012). As Nour Dados and Raewyn Connell put it, the use of the term "Global South" marks a shift from a central focus on development or cultural difference toward an emphasis on geopolitical relations of power' (2012: 12). More than a synonym for 'underdeveloped' or 'low-income' countries, the term 'Global South' foregrounds the historical legacies of colonialism and its consequences—creating unequal global conditions in terms of standards of living, access to resources and, indeed, experiences of climate impacts. This, however, must not be taken to mean that actors from the Global South are passive victims waiting for the support of the Global North. Instead, the Global South is a critical site where 'new visions for the future' are emerging and solidarities are formed (Mignolo 2011: 3).

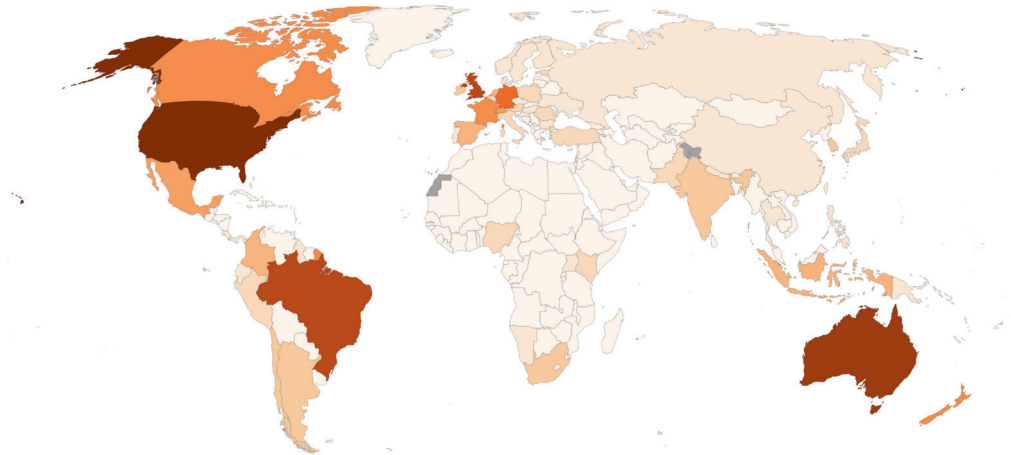
(Box reproduced from Curato et al. 2024)

3,096 as of June 2025. In turn, nearly two-thirds of that figure—1,984 suits—originated in the United States, far ahead of other countries such as Australia (161), Brazil (88), Canada (38), Germany (65) and the United Kingdom (150). An important caveat lies in acknowledging that these numbers may in part reflect those jurisdictions with better data collection infrastructure. The peak year for filings was 2021, and scholars suggest it is too early to tell whether the decline in recent years may represent a new trend, lags in reporting or a plateau, or simply reflects a shift to fewer, stronger claims based on recent judicial precedents (Setzer and Higham 2025).

Sarah Mead, Co-Director of the Climate Litigation Network (a project of the Netherlands-based non-profit Urgenda Foundation), said a slight dip was unsurprising after decades of rising cases: 'These climate cases are hard. The legal field is wanting to get it right, waiting for judgments that can provide building blocks for future litigation' (Mead 2024).

It is too early to tell whether the decline in recent years may represent a new trend.

Figure 1.2. Map of global climate litigation



Note: Darker colour indicates higher number of cases.

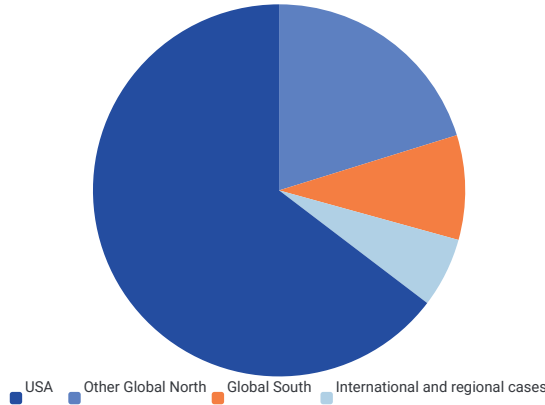
Source: Sabin Center for Climate Change Law, Columbia Climate School at Columbia Law School, 'Global Climate Litigation Database [until July 2025]', <<https://climatecasechart.com>>, accessed 1 August 2025.

Similarly, the Center for International Environmental Law (CIEL) argues that the number of *active* disputes, rather than raw annual filings, provides a better barometer. Many cases are dismissed for procedural reasons, for example, lack of standing or difficulties establishing causation (see Chapter 2). 'A case once filed is a massive amount of work,' said Carroll Muffett, former President and CEO of CIEL. 'The number of active cases is huge, and that number is continuing to grow' (Muffett 2024).

The USA remains the epicentre of global climate litigation, accounting for 164 of the approximately 226 new suits filed worldwide in 2024—more than the rest of the world combined. This dominance reflects its status as the world's biggest economy, the top producer of oil and second-largest GHG emitter behind China. And its population of 340 million, about 4 per cent of the global population, is responsible for 15 per cent of global GHG emissions (Ritchie and Rosado 2022). Kelly Matheson, Deputy Director of Global Climate Change Litigation at Our Children's Trust, observed that the USA 'is the nut that needs to be cracked. It's the elephant in the room' (Matheson 2024).

The large share of climate litigation in the USA also reflects its litigious culture and mirrors the country's shifting political winds. Litigation surged during Donald Trump's first presidency (2017–2021)

Figure 1.3. Distribution of global climate litigation



Source: Sabin Center for Climate Change Law, Columbia Climate School at Columbia Law School, 'Global Climate Litigation Database [until July 2025]', <<https://climatecasechart.com>>, accessed 1 August 2025.

Note: Image created with flourish.studio.

as non-governmental organizations (NGOs) and states challenged his administration's policies to promote fossil fuels and roll back Obama-era climate regulations (President Obama's administration was a key architect of the Paris Agreement). A review by the Sabin Center found that 89 per cent of 378 lawsuits filed in that period sought to strengthen climate protection or weaken climate deregulation efforts, while the other 11 per cent were intended to increase or support climate deregulation efforts (Silverman-Roati 2021).

In 2021, Democratic President Joe Biden re-entered the Paris Agreement and pledged to halve US emissions from 2005 levels by 2030 (The White House 2021). But the pendulum has swung again: on 20 January 2025 President Trump returned to office, immediately declared a 'national energy emergency', reinstated his 'drill, baby, drill' slogan, ordered federal agencies to 'unleash American energy', and withdrew from the Paris Agreement for a second time. His new executive orders also directed agencies to halt enforcement of many existing climate regulations and to fast-track oil and gas leases on federal land. As a result, plaintiffs are again resorting to the courts—both to defend Biden-era rules and to contest the latest deregulatory moves. At the same time, several aspects of democratic governance, including rule of law, have come under pressure during the second Trump administration. This could potentially affect the outlook for

Climate litigation is expanding geographically and thematically, drawing on an ever-broader range of arguments.

climate litigation, depending on whether US institutions will prove resilient in the coming months and years (International IDEA 2025).

Beyond the USA, climate litigation is expanding geographically and thematically, drawing on an ever-broader range of arguments: human rights, constitutional guarantees of a healthy environment, the rights of children, women and Indigenous peoples, and the interests of future generations (see Chapters 4 and 5). Claims alleging corporate disinformation and greenwashing (i.e. misleading claims about how environmentally friendly a company's products or practices are) are also reaching courts. Still, climate change litigation (as opposed to environmental litigation) has yet to gain a foothold in much of the Global South. Brazil is a notable exception, with 81 filings, many contesting right-wing President Jair Bolsonaro's rollback of Amazon rainforest protections. Bolsonaro's successor, President Luiz Inácio Lula da Silva, reinstated the Amazon Fund in 2023, pledged to end illegal deforestation nationwide by 2030 and has already overseen an estimated 30 per cent drop in Amazon tree loss in 2024—the steepest annual decline in nearly a decade.

In contrast, China, the world's largest GHG emitter, has only three cases listed in the Sabin database. One such case, brought by the Friends of Nature Institute in 2018, challenged the Ningxia state grid for failing to meet a requirement to purchase electricity from wind and solar energy (*The Friends of Nature Institute v Ningxia State Grid* 2018). In 2023, a court dismissed most of the Friends of Nature Institute's claims. According to Sarah Mead, 'Litigation is deliberately more focused on developed economies,' citing their historical responsibility for stoking climate change since the Industrial Revolution (Mead 2024). Resources also matter—almost 90 per cent of cases filed since mid-2022 outside the USA were brought by NGOs, which often lack the financial and legal resources, especially in the Global South, to bring lawsuits to challenge governments or companies (Setzer and Higham 2023).

The risks and the democratic promise of litigation are two sides of the same coin. Courts can compel transparency, amplify marginalized voices and enforce rights. But judges are also wary of encroaching on policy, the domain of elected legislators and—particularly—the government. Moreover, litigation is far from a one-way street used by NGOs to exert pressure on governments and companies. Increasingly, firms, government actors and conservative NGOs are also filing 'backlash' suits, fearing climate actions will jeopardize their earnings (UNEP 2023). As Michael Burger, Executive Director of the Sabin Center at Columbia Law School, puts it, 'Courts cannot solve the

problem. But they are a key lever ... to force those with power and those with authority to take the requisite action. I think of it as a key component of a functioning democracy, rather than the get-out-of-jail-free card' (Burger 2024).

Similarly, Catherine Higham of the Grantham Research Institute on Climate Change and the Environment at the London School of Economics said that court cases are not a silver bullet to solve the planet's problems by bypassing the legislative and executive branches. 'Climate litigation is one part of a series of things that might, cumulatively, shift the dial on whether or not fossil fuel investments continue, and they continue to be seen as a profitable thing' (Higham 2024). In other words, while courts can be an important tool to compel governments to fulfil their legal and constitutional obligations, they cannot solve the problem of climate change alone, nor can they absolve others (legislators, regulators or corporations) of their responsibility to act.

Judges are also wary of encroaching on policy, the domain of elected legislators and—particularly—the government.

1.3. THE PARALLEL RISE OF CLIMATE LITIGATION AND CLIMATE SCIENCE: THE EVIDENTIARY BACKBONE OF CLIMATE LITIGATION

Climate change disputes do not reach judgment simply because a wrong exists; someone first must approach a court and persuade the judge that the case belongs there. Two interlocking tests decide that threshold question in most jurisdictions: standing (does the claimant have a sufficient interest?) and causation (can the harm be adequately and fairly traced to the defendant(s)?) (see Chapter 2). For decades, those twin filters limited most climate grievances to the courthouse steps, but today, the evidentiary gap that once frustrated plaintiffs in climate change cases is closing fast. In 1995, the IPCC first tentatively stated, in a fiercely debated 12 words, that 'the balance of evidence suggests a discernible human influence on global climate' (IPCC 1995). In 2021, the IPCC upgraded that to: 'It is unequivocal that human influence has warmed the atmosphere, ocean and land' (IPCC 2021). The IPCC's scientific conclusions are endorsed by governments—from members of the Organization of the Petroleum Exporting Countries (OPEC) wary of an abrupt shift from oil, to small island states at risk of rising seas—and the IPCC's findings often form the evidentiary bedrock of climate lawsuits (for example, the Hague District Court cited IPCC findings as determinative fact in both *Urgenda* and *Milieudefensie v Shell*).

The IPCC's scientific conclusions are endorsed by governments.

In 2004, a landmark scientific study showed that GHG in the atmosphere had at least doubled the likelihood of the deadly heatwave that had reportedly killed more than 70,000 people in Europe the previous year (Stott, Stone and Allen 2004), the hottest summer in Europe since at least 1540 (UNDRR 2010). Another study by scientists in the World Weather Attribution (WWA) research group estimated that human-induced climate change added about USD 4 billion to the damage caused in 2019 by Typhoon Hagibis in Japan (Li and Otto 2022). In Norway, Belgian scientist Wim Thiery testified before the Oslo District Court in a case challenging the development of three oil and gas fields off Norway. He told the court that the combustion of fossil fuels from these fields would be enough to bring one extra heatwave during the lifetime of more than 300,000 of the estimated 130 million children born worldwide in 2020 (Thiery 2024). The ability to quantify such ‘fractional warming’ is transforming courtroom argument, such as in the groundbreaking case of *Luciano Lliuya v RWE AG* (see Box 1.2).

Extending the potential for litigation, scientists are now working to link individual extreme events to GHGs. Until recent years, scientists maintained that it was hard, even impossible, to tie single heatwaves, droughts, floods or storms to climate change, and that the evidence was too vague to underpin legal claims for compensation. But scientists are gradually gathering statistical evidence of how GHGs create a ‘new normal’ of extreme weather that increases the chances of extreme weather events, especially heatwaves and downpours (WMO 2023). Researchers liken the new climate to a casino with loaded dice: sixes (extreme heat, floods) still occur by chance, but an increase in GHGs doubles or triples the odds.

Yet caveats remain—attribution works best where weather records are long, such as in Europe and North America, while many African and Pacific states lack such baselines. It is hard to gauge whether a powerful storm in Ghana, for instance, was supercharged by climate change if there are no records to show if similar events happen once a decade, once a century or once a millennium. Joyce Kimutai, a climate scientist at Imperial College London and a negotiator for Kenya at UN Climate Change Conferences (COPs), emphasized in an interview the challenges faced by communities in the Global South in producing attribution studies. She noted that some delegates at UN COPs questioned the obligation to pay for damages without clear attribution to climate change. In response she cautioned: ‘That can be a very dangerous way of looking at things, especially for the most vulnerable communities which cannot produce an attribution study,’ and added that ‘a community in Mozambique should not have

to produce an attribution study if they are affected by storm surges’ (Kimutai 2024).

Judges may also be cautious about adopting the mounting scientific evidence in the courtroom when the issue is politically charged. During her 2020 confirmation hearing for the US Supreme Court, for instance, Judge Amy Coney Barrett declined to comment on climate change, saying ‘I will not express a view on a matter of public policy, especially one that is politically controversial’ (Coney Barrett 2020), prompting Greta Thunberg to retort on X that climate science, like gravity, is not an opinion (Thunberg 2020). Carlos Manuel Rodríguez, a former Costa Rican environment minister and lawyer who is CEO of the Global Environment Facility, observed that many benches still lack climate-law training, making them poorly equipped to deal with mounting litigation. Nonetheless, the evidentiary foundation keeps building, and with it the possibility of holding emitters to account (Rodríguez 2024).

Judges may also be cautious about adopting the mounting scientific evidence in the courtroom when the issue is politically charged.

1.4. STATE ACCOUNTABILITY: CONVERTING CLIMATE GOALS INTO JUSTICIABLE DUTIES

This mounting scientific evidence enables litigants to join the dots between states’ pledges under international climate frameworks, domestic laws and fundamental human rights guarantees. Long-term legal frameworks are particularly important for holding successive governments accountable for a state’s climate obligations. In democratic systems where governments often operate on short-term electoral cycles, strategic climate litigation also serves as a critical democratic corrective—pressing authorities to account for long-term harms and global commitments. But courts do more than enforce laws—they also enrich democratic discourse by embodying deliberative and participatory principles. When judges invoke scientific evidence, interpret human rights guarantees expansively and require governments to publicly justify the adequacy of their climate action, they enhance the transparency, accountability and rationality of democratic decision making. Litigation further creates a parallel channel of civic engagement, especially for those—such as youth or future generations—who are excluded or under-represented in traditional political processes (see Chapters 3 and 4).

The legal obligations of states regarding climate action arise from a tapestry of international agreements, domestic legislation and

Box 1.2. Can an individual company be blamed for melting glaciers in Peru?



Photo: Lake Palcacocha, Peru, by Alister Doyle.

In 1941, Lake Palcacocha—situated beneath dazzling white glaciers high in the Andes Mountains in Peru—burst its banks. A cataclysmic flood of ice, rocks and mud swept onto the city of Huaraz more than 20 km down the valley, killing at least 1,800 people (Stuart-Smith et al. 2021).

Fearing a new disaster from the lake, swollen by a melt of the Cordillera Blanca, Peruvian farmer and mountain guide Saul Luciano Lliuya went to court in Germany in 2015 to sue German power producer RWE over its GHG emissions, which he claimed were contributing to the thaw.

Backed by NGO Germanwatch, Luciano Lliuya said RWE was partly to blame for the risks of a new outburst flood from the remote, milky blue lake (Germanwatch n.d.). Plaintiffs claimed that RWE, Germany's largest utility founded in 1898, was responsible for 0.47 per cent of all carbon dioxide in the global atmosphere by burning fossil fuels at its power stations. He argued that RWE should pay EUR 17,000—0.38 per cent of the estimated cost of a new dam—and other measures to prevent floods from Palcacocha that could sweep down onto his home and family.

RWE, which says its business aligns with goals under the Paris Agreement, asserted that the argument had no merit (RWE 2025). A court in Essen agreed with RWE in 2016, saying it was impossible to link emissions by coal-fired power plants in Germany to the thaw of glaciers on the other side of the world (*Luciano Lliuya v RWE AG* 2016). Although the case was ultimately dismissed in 2025, it was still an important development, with the court affirming in principle that large emitters could be held proportionally liable for transboundary climate harms when an imminent danger is proven.

constitutional provisions.³ A foundational element is the United Nations Framework Convention on Climate Change (UNFCCC), adopted at the 1992 Earth Summit in Rio de Janeiro. The UNFCCC set a non-binding goal for developed nations to limit their GHG emissions to 1990 levels by 2000, a target that was not achieved. Building upon this, states adopted the Kyoto Protocol in 1997, introducing binding emissions reduction goals on almost 40 industrialized nations to cut emissions by an average of 5 per cent from 1990 levels during the first commitment period of 2008–2012 (UNFCCC 1997). While some nations met their Kyoto targets, global emissions kept rising. Canada withdrew from the Protocol, while Japan and Russia declined further commitments.

In the face of ongoing compliance challenges, the global community tried a different approach. Rather than requiring countries to meet binding targets, countries would set and then report on their own determined targets. This ‘bottom-up approach’ was adopted under the Paris Agreement in December 2015, with an overriding goal of limiting the average rise in global surface temperatures to ‘well below’ 2°C above pre-industrial temperatures, with efforts towards a more ambitious 1.5°C ceiling. Under the Agreement, each country must submit a national climate plan, known as a nationally determined contribution (NDC), to be ratcheted up every five years. Although the Agreement has a ‘transparency framework’ to support governments, it operates ‘in a facilitative, non-intrusive, non-punitive manner’. The Paris Agreement’s lack of precise obligations has spurred litigation to clarify individual state (and private-sector company) responsibilities.

In a landmark decision on defining a country’s ‘fair share’ of cuts in emissions, the Dutch Supreme Court in 2019 ruled that the Netherlands was obliged to cut emissions by 25 per cent from 1990 levels by 2020, a deeper cut than the 17 per cent planned (*State of the Netherlands v Stichting Urgenda* 2019). It was the first time that a court ordered a government to cut emissions (Spier 2020), with the court citing ‘the risk of dangerous climate change that can also seriously affect the residents of the Netherlands in their right to life and well-being’ enshrined in the European Convention on Human Rights (ECHR). Roger Cox, a Dutch lawyer for Urgenda, declared litigation ‘our best hope of averting dangerous climate change and breaking the status quo in the energy world’ (Revolution Justified n.d.). The *Urgenda* case has since inspired other cases around the globe, including in Belgium, India, Mexico and New Zealand.

The legal obligations of states regarding climate action arise from a tapestry of international agreements, domestic legislation and constitutional provisions.

³ International IDEA’s *Environmental Protection in Constitutions Assessment Tool* provides thorough information on how constitutions can help protect the environment, see Hickey (2025).

The court ordered the establishment of a commission to speed up action—an innovative remedy in climate litigation.

In another significant state-liability case, the Lahore High Court in 2015 made history by ruling that the state was failing to do enough to combat global warming under a 2012 National Climate Change Policy and a 2014–2030 Framework for Action. The court held that ‘[t]he delay and lethargy of the State in implementing the Framework offends the fundamental rights of the citizens which need to be safeguarded’, vindicating farmer Asghar Leghari’s claims. Leghari, who has since become a lawyer, argued that the right to life enshrined in the Pakistani Constitution was at risk from a lack of action on issues ranging from safeguarding water supplies to developing heat-resistant crops. The court ordered the establishment of a commission to speed up action—an innovative remedy in climate litigation (*Leghari v Federation of Pakistan* 2015).

In yet another landmark case invoking both constitutional guarantees and international climate pledges, a group of young people in Germany successfully argued that the government’s plans to cut emissions were insufficient and violated fundamental rights under the Constitution, which includes a responsibility of care for future generations (*Neubauer v Germany* 2021). Plaintiff Luisa Neubauer, a climate justice advocate, said Germany’s plans to cut emissions by 55 per cent from 1990 levels by 2030 were insufficient under the Paris Agreement. The Federal Constitutional Court ordered the legislature to toughen goals, partly to avoid passing too onerous a burden onto future generations, prompting an upgrade to an economy-wide emissions reduction target of at least 65 per cent by 2030 and at least 88 per cent by 2040 (OECD 2022).

Not all cases seek sweeping policy overhauls. As Chapter 5 explains, climate litigation can be broadly grouped into four categories: (a) international cases; (b) systemic cases challenging national policies or laws; (c) project-based cases targeting specific approvals or authorizations; and (d) litigation against private companies. Many entries in the Sabin database fall into the more routine project-based or private actor categories—for example, a 2024 challenge to the US Fish and Wildlife Service’s decision not to list the Black Creek crayfish as an endangered species in northeastern Florida, with plaintiffs seeking greater protection because of rising sea levels and severe weather (*Center for Biological Diversity v US Fish and Wildlife Service* 2024). Likewise, in 2023 the Australia Institute, a Canberra think tank, alleged that a government-backed trademark system for businesses aiming for net zero emissions is too lax, making it misleading and deceptive under consumer law (*Australia Institute v Climate Active/ ACCC (Carbon-Neutral-Claims Complaint)* 2023).

1.5. PRIVATE-SECTOR LIABILITY: HOLDING CORPORATIONS RESPONSIBLE

Litigants are increasingly focusing on the responsibility of private corporations for environmental degradation, as well as business models that anchor the fossil fuel economy. In 2021, in the first major corporate climate ruling, the Hague District Court ordered Shell to cut emissions by 45 per cent across its entire value chain by 2030. The case was brought by NGO Milieudefensie, Friends of the Earth Netherlands, and other environmental groups, who successfully argued that the company should align its business with the goals of the Paris Agreement, even though the Paris Agreement was signed and ratified by governments, not companies. Shell appealed, contending that ‘by focusing on one company, and only on the supply of energy rather than the demand for it, the ruling is ineffective and even counter-productive ... the court is also asking Shell to reduce emissions significantly faster than the European Union, which has one of the most ambitious pathways in the world’. In November 2024, the Court of Appeal agreed that Shell owes a duty of care under Dutch civil law to protect citizens from climate harm, yet it overturned the specific 45 per cent figure. Milieudefensie has launched an appeal to the Supreme Court. Meanwhile Shell weakened its own target: it will now aim for only a 15–20 per cent cut in the net carbon intensity of its products by 2030 compared with 2016, down from a 20 per cent goal. Amid record USD 28 billion profits for 2022, rival BP also rowed back on plans to curb oil and gas output and carbon emissions.

In 2023, California’s attorney general sued ExxonMobil, Shell, Chevron, ConocoPhillips and BP, as well as the American Petroleum Institute, for concealing the dangers of the GHGs released when using their products (*California v ExxonMobil* 2023). California Governor Gavin Newsom summed up the situation thus: ‘For 50 years, Big Oil has been lying to us—covering up the fact that they’ve long known how dangerous the fossil fuels they produce are for our planet’ (Newsom 2023). The American Petroleum Institute criticized the case as meritless, stating that ‘climate policy is for Congress to debate and decide, not the court system’. The California case alleged that the oil majors followed the tobacco industry’s playbook, minimizing the risks of their products and wrongly describing their fossil fuels as ‘low-carbon’, ‘clean’, ‘green’ and ‘emissions-reducing’ (Skibell 2023). The case survived the defendants’ motion to dismiss in 2024, moving to the merits stage. It is one of roughly 30 similar lawsuits filed in the USA since the early 2000s—including the landmark case of *Native Village of Kivalina v ExxonMobil Corp*—that

Litigants are increasingly focusing on the responsibility of private corporations for environmental degradation.

have sought to hold fossil fuel companies liable for misinformation and climate change-related harms.

Inspired by Luciano Lliuya's case in Peru, a group of islanders in Indonesia filed suit in 2022 against Swiss cement maker Holcim in Swiss courts, alleging that its emissions make up 0.42 per cent of global industrial carbon dioxide emissions and that it should pay to help avoid increasingly severe floods (*Asmania v Holcim* 2022). 'It gets worse every year. Because of climate change the sea levels are rising, and during storms our flat island has become increasingly flooded,' Friends of the Earth quoted plaintiff Pak Arif as saying when it launched the case in 2023 (FOEI 2023). They also want Holcim to cut emissions by 43 per cent from 2019 levels by 2030. Holcim said it was committed to combating climate change and that, in a defence often used by companies, it did not believe that 'court cases focused on single companies are an effective mechanism to tackle the global complexity of climate action' (Financial Times 2022).

**16 municipalities
in Puerto Rico are
seeking damages from
oil companies.**

Other novel strategies are emerging when it comes to seeking accountability for climate change: 16 municipalities in Puerto Rico are seeking damages from oil companies under the Racketeer Influenced and Corrupt Organizations Act (RICO) (*Municipalities of Puerto Rico v ExxonMobil* 2022). The municipalities say the oil companies were partly to blame for the devastating 2017 hurricanes Irma and Maria that killed 4,500 people, according to one estimate, and caused hundreds of billions of dollars in damages (Welton et al. 2020). They said the oil companies then colluded to cover up their responsibility. 'The Defendants wrongfully and falsely promoted, campaigned against regulation of, and concealed the hazards of using their fossil fuel products,' the municipalities said, invoking the RICO law, typically used against drug smugglers or the mafia. They said the oil companies and their co-venturer carbon majors were responsible for 40 per cent of all global industrial GHG emissions from 1965 to 2017, and that these emissions had aggravated the 2017 hurricane season. Defendants, including ExxonMobil, Shell, Chevron, BP and ConocoPhillips, said in a joint submission calling for a dismissal in 2023: 'No federal court has ever found such a far-fetched theory to state a claim for relief. This Court should not be the first' (Mindock 2023; *Municipalities of Puerto Rico v ExxonMobil* 2022).

In consumer-protection actions, the UK's Advertising Standards Authority ruled in 2020 that budget airline Ryanair Ltd had placed misleading advertisements claiming to be Europe's 'Lowest Emissions Airline'. The Advertising Standards Authority banned the ads, partly because Ryanair was only comparing itself with four other

major airlines, rather than the dozens of carriers operating in Europe, where it did not top rankings for carbon efficiency (*ASA Ruling on Ryanair Ltd t/a Ryanair Ltd* 2019). And in 2025, Parents for Climate reached a settlement with EnergyAustralia to secure an apology for 400,000 customers and a public acknowledgment that carbon offsets do not undo the damage caused by burning fossil fuels—marking a significant legal milestone in the fight against corporate greenwashing (Morton 2025).

Given the power, resources and interests of major companies, it is perhaps not surprising that under threat from ever-tougher demands for climate action, businesses—especially fossil fuel producers—are also turning to courts to argue that they are being unfairly targeted and to secure rulings that they hope will provide a green light for their actions, such as more exploration for oil and gas.

1.6. BACKLASH AND THE BATTLE FOR CORPORATE ACCOUNTABILITY

Strategic lawsuits against public participation (SLAPPs) seek to intimidate activists, and investor–state dispute settlement (ISDS) arbitrations threaten governments with multibillion-dollar awards. ISDS is meant as a safety net to protect foreign investors against expropriation of assets without proper compensation and to guard against discrimination (Columbia Center on Sustainable Investment 2021). Companies need assurances that investments abroad—from hotels and banks to oil and gas refineries—will not be seized or penalized if a foreign government suddenly turns hostile. But ISDS is often secretive, keeping climate issues out of public court, and can undermine ambitious climate policies. The IPCC warned in 2022 that fossil fuel companies might use ISDS to block legislation aimed at phasing out their assets (IPCC 2022b), and Nobel Prize-winning economist Joseph Stiglitz has dubbed such tactics ‘litigation terrorism’ (Malo 2019). According to the UN Conference on Trade and Development, as of August 2025 more than 1,000 ISDS treaty-based cases have been concluded, ranging from disputes over gold mines to real estate. Of the total, 399 have been decided in favour of the state, and 301 in favour of an investor (UNCTAD n.d.).

A study led by Kyla Tienhaara, of Queen’s University in Canada and the Global Development Policy Center, Boston University, predicts a surge in ISDS claims if governments adopt more stringent climate measures, ‘particularly if those policies directly affect fossil-fuel

Strategic lawsuits against public participation (SLAPPs) seek to intimidate activists.

investors'. Expensive awards 'could lead to states pulling out of climate commitments and rolling back regulations out of fear of more ISDS cases', according to the study (Tienhaara et al. 2022).

Cases from around the world show how ISDS and SLAPPs are being deployed against climate and environmental action. In *Rockhopper v Italy* (2022), an arbitration panel unanimously ordered Italy to pay British oil and gas company Rockhopper Exploration Inc. EUR 190 million in compensation for denying it a concession for offshore drilling after Italy's parliament banned drilling near the coastline. The panel said Italy had breached its obligations under the Energy Charter Treaty, which was set up after the Cold War to protect investors and to integrate the former Soviet Union and eastern European countries into global energy markets (Rockhopper Exploration 2022). The case highlighted another likely trend in climate litigation when big payouts are possible— financing by investors on a 'no win, no fee' basis. Rockhopper said that it expected 20 per cent, or close to EUR 40 million, of the award would be received by a 'specialist arbitration funder' that it did not name. The award was annulled for reasons unrelated to the substance of the case in June 2025.

German company RWE filed suit in 2021, alleging that the Government of the Netherlands's plan to phase out coal by 2030 violated the Energy Charter Treaty. The case was dismissed in 2025, yet it nonetheless establishes that a company's fractional contribution to global emissions *can* ground liability—provided plaintiffs can prove a clear and imminent risk. Separately, after the *Urgenda* judgment compelled production cuts, the Government of the Netherlands agreed in 2023 to compensate RWE EUR 312 million for coal restrictions applied from 2022 to 2024. Energy Minister Rob Jetten explained the payment as necessary to implement the *Urgenda* ruling (Jetten 2023). Similar tensions have played out in Latin America: in *Eco Oro Minerals v Colombia*, a Canadian mining company sought close to EUR 700 million in compensation under the Canada-Colombia Free Trade Agreement after the government restricted mining in an area of ecological importance. The tribunal accepted that Colombia's shifting policies created uncertainty but in 2024 ultimately refused to award compensation, finding the company had not proven it could have secured the permits to mine (ICSID Case No. ARB/16/41, Decision, 9 September 2021). In *Bear Creek Mining v Peru*, the tribunal awarded a Canadian company USD 18 million after Peru revoked a silver mining concession in response to mass protests over environmental and social harms (*Bear Creek Mining v Republic of Peru*, ICSID Case No. ARB/14/21, Award, 30 November 2017).

Alongside ISDS, companies have also turned to domestic courts to stifle opposition. In South Africa, titanium mining firms launched defamation suits against lawyers and community activists. The Constitutional Court in 2021 recognized these as abusive SLAPP tactics, warning that such cases threaten free expression and civic participation (*Mineral Sands Resources (Pty) Ltd v Reddell*). In 2024, ExxonMobil sued in Texas to block shareholder resolutions from Arjuna Capital and Follow This, accusing them of pursuing climate goals ‘for the sole purpose of attacking ExxonMobil from within’—the so-called ‘Goldilocks Trojan Horse’ strategy (Follow This n.d.; *ExxonMobil Corp. v Arjuna Capital, LLC* 2024). ExxonMobil, wary of future proposals, maintained the action even after investors withdrew earlier resolutions. Follow This insists its shareholder advocacy aims to align oil companies with the Paris Agreement: ‘We have the power to change oil companies from within—as shareholders. Follow This unites responsible shareholders to push Big Oil to go green.’

Companies have also turned to domestic courts to stifle opposition.

1.7. THE RIGHTS-BASED TURN—YOUTH, INDIGENOUS PEOPLES AND FUTURE GENERATIONS

A new wave of claimants—children, teenagers, Indigenous communities and their allies—has used climate litigation as a mechanism for securing fundamental rights and intergenerational justice. Their cases do not just ask courts to provide a judicial remedy to climate harms. They also demand answers to a deeper democratic question: Whose voices matter when the consequences of today’s policies will fall heaviest on those who cannot yet vote (or are not yet born) and those who have long been marginalized?

Young people are increasingly leading lawsuits. As the IPCC starkly illustrated in 2023, a child born in 2020 is likely to endure far more extreme heat, floods and food-system shocks than someone born in 1950 or 1980—even if the world cuts emissions sharply. That generational burden animates the strategy of Our Children’s Trust, which in 2011 filed or supported petitions in 49 US states to mark Mother’s Day and now steers landmark actions such as *Juliana v United States* and *Held v State of Montana* (see Box 1.3).

The Paris Agreement itself nods to a human rights paradigm, urging parties to respect ‘the rights of Indigenous peoples, local communities, migrants, children ... and intergenerational equity’. European youth have seized that language: In *Duarte Agostinho v Portugal and 32 Others*, six Portuguese teenagers asked the European

Whose voices matter when the consequences of today’s policies will fall heaviest on those who cannot yet vote?

Box 1.3. Youths win constitutional battle in Montana



Photo: Plaintiffs in *Held v Montana*. Our Children's Trust #youthvgov, 'Our Children's Trust: Breaking News from Montana to Juliana', YouTube, 11 June 2023, <https://youtu.be/NpdtFH0_wBg>, accessed 15 October 2025.

'Grace feels fearful due to the glaciers disappearing from a state she loves ... Mica has experienced a sense of loss from having to stay inside due to wildfire smoke ... Olivia expressed despair due to climate change.'

Grace, Mica and Olivia were among a group of US youth plaintiffs who won a landmark ruling in Montana in 2023 (*Held v State of Montana*) that the state's rules for approving new oil and gas development projects violated a constitutional 'right to a clean and healthful environment'. The plaintiffs had argued that Montana's laws and policies were worsening the impacts of climate change, melting glaciers and stoking wildfires with its emissions, estimated at 166 million tonnes a year, or equivalent to those of a country such as Argentina, the Netherlands or Pakistan.

Andrea Rodgers, Deputy Director of US Strategy at Our Children's Trust, the non-profit group that brought the case, hailed the ruling as a historic precedent.

'Our ultimate mission is to have the right to a life-sustaining climate system established and protected and enforced by courts in all jurisdictions around the world,' she said in an interview.

Box 1.3. Youths win constitutional battle in Montana (cont.)

It was the first time that a youth-led climate constitutional case won in court in the USA, and may act as a possible template. Five other states—Hawaii, Illinois, Massachusetts, New York and Pennsylvania—have similar constitutional guarantees of a healthy environment.

In a 103-page ruling, Montana Judge Kathy Seeley struck down revisions to the Montana Environmental Policy Act (MEPA) that barred the state from considering the impacts of climate change in deciding whether to approve fossil fuel projects. She said that the MEPA violated environmental guarantees in the 1972 state Constitution.

Seeley quoted extensively from the testimony of plaintiffs, including Kathryn Grace Gibson-Snyder, aged 16 when the action was filed, Mica K. (11) and Olivia Vesovich (16). Seeley agreed that children were especially vulnerable to smoke from wildfires or to a loss of ice and snow for everything from skiing to Indigenous culture.

‘This ruling is absurd,’ Emily Flower, a spokeswoman for the Attorney General, was quoted as saying (Hanson and Brown 2023). ‘Montanans can’t be blamed for changing the climate.’ She called Seeley ‘an ideological judge who bent over backward to allow the case to move forward’. In December 2024, the Montana Supreme Court upheld the district court ruling.

Court of Human Rights (ECtHR) to rule that heatwaves and wildfires already threaten their rights under article 2 (life), article 3 (freedom from inhuman treatment) and article 8 (private and family life), as well as the right to be free from discrimination on grounds of their age (article 14).

Unusually, the court allowed the case to proceed without exhausting domestic remedies. The youths’ application in 2019 argued there was no time for national appeals amid what leading scientists call ‘an existential threat to civilization’. They maintained European states owe a duty to intensify climate action, since rising heatwave risks will escalate throughout their lifetimes—and over the lifetimes of any children they may have. However, in September 2024 the ECtHR declared the case inadmissible, partly because the plaintiffs had failed to exhaust domestic remedies.

Indigenous communities, often on the front line of both climate change effects and efforts at mitigation and adaptation, have long paired environmental stewardship with legal activism. The 2005 Inuit petition to the Inter-American Commission on Human Rights—alleging US emissions were ‘destroying the Arctic environment’ and upending a centuries-old culture—was an early milestone linking

Indigenous communities have long paired environmental stewardship with legal activism.

climate harm to human-rights violations. The petition said the USA—at that time, along with Australia, the only major developed nations that had not ratified the UN's 1997 Kyoto Protocol—should adopt binding cuts in GHG emissions. Although the Commission declined to proceed, the filing 'is considered to be the first case focusing on the human rights dimensions of climate change', according to a study by Shalini Iyengar at Yale University (Iyengar 2023). It is 'notable for its explicit articulation of the ways in which the lives of Inuit peoples were being impacted by climate change'.

Globally, momentum is building. In 2022 the UN General Assembly formally recognized a 'right to a clean, healthy and sustainable environment', giving litigants a new hook in both domestic and international forums (UNGA 2022).

1.8. INTERNATIONAL FORUMS OF CLIMATE LITIGATION: AN EVOLVING CONVERSATION BETWEEN COURTS

Climate litigation transcends national borders. Christina Eckes, in the process of preparing Chapter 3, noted that that 'because of the truly global nature of the climate crisis, similar issues arise in climate litigation all over the world'. Legal arguments, judicial reasoning and strategic innovations travel. They are invoked, adapted and refined across continents and legal systems, with lawyers invoking the latest persuasive judgment and judicial reasoning to bolster their arguments. Increasingly, courts cite foreign judgments and international law not only for persuasive authority but as part of their democratic and justificatory mandate—to offer reasoned decisions that acknowledge the shared global nature of the climate crisis. Key European decisions—such as *Urgenda v Netherlands*, *Neubauer v Germany*, and *KlimaSeniorinnen v Switzerland*—have become reference points worldwide.

But the influence is not one-directional. Eckes also points to how jurisdictions in the Global South often lead normative innovations, invoking rights of nature (Colombia, Ecuador), articulating duties to future generations (Pakistan, Philippines), or recognizing Indigenous environmental stewardship (Peru). The process is one of mutual learning, not mere replication. A striking example is the *South Korean Youth Climate Case* decided by the Constitutional Court in August 2024. A coalition of young climate activists challenged the inadequacy of their nation's emissions reduction law, which lacked

any binding framework beyond 2030. The court ruled in favour of the youth claimants, with its reasoning building on different elements previously developed in the *Neubauer* and *KlimaSeniorinnen* cases. Similar to the former, the Constitutional Court stated that the lack of a post-2030 target breached the state's constitutional duty to protect its citizens from the adverse effects of the climate crisis. It affirmed that the state has a constitutional duty to protect current and future generations from the adverse effects of the climate crisis, while legislators retain discretion on how to meet climate goals—but found that failure to legislate for the period 2031–2049 was unjustifiable; and that future targets must be grounded in climate science, international norms and fair share principles reflecting South Korea's global responsibility (Phillips 2024).

Other international forums have also been approached to provide authoritative guidance on states' climate obligations. In 2024–2025, three international tribunals issued advisory opinions clarifying that climate obligations are substantive, enforceable and rooted in both international law and human rights.

In May 2024, responding to a request from a group of small island states, the International Tribunal for the Law of the Sea (ITLOS) issued a landmark advisory opinion clarifying states' obligations under the United Nations Convention on the Law of the Sea (UNCLOS) on protecting the marine environment from climate change, including ocean warming, sea-level rise and acidification. The Tribunal unequivocally recognized anthropogenic GHG emissions as marine pollution under UNCLOS, obligating states to take all necessary measures—guided by the best available science and principles of equity—to prevent, reduce and control such emissions, with developed nations bearing a greater responsibility in assisting developing countries.

A year later, in May 2025, following a request from Chile and Colombia in 2023, the Inter-American Court of Human Rights (IACHR) issued Advisory Opinion OC-32/23 on *Climate Emergency and Human Rights*. The Court affirmed an autonomous right to a healthy environment—including a stable climate—and declared that climate inaction can violate rights to life, health, equality and non-discrimination under the American Convention on Human Rights, especially for women, children, Indigenous peoples and future generations. The court recognized the rights of nature, urged states to broaden standing, relax burdens in proving causation and guarantee access to justice, and highlighted the democratic role of

The process is one of mutual learning, not mere replication.

environmental defenders. The process itself was inclusive, involving 263 amicus briefs and hearings across the Americas.

Potentially most powerful for shaping global climate litigation was the request by the UN General Assembly to the International Court of Justice (ICJ), the world's highest court, to clarify states' obligations in relation to climate change (UNGA 2023). The case attracted over 100 state and intergovernmental submissions, creating an unprecedented forum for global deliberation. As articulated by Professor Eckes, 'Only before the ICJ, different from all other national and regional jurisdictions, can the most vulnerable states make their voices heard.' In July 2025, the ICJ affirmed that climate change presents 'an urgent and existential threat' and that states have binding obligations under international law to take climate action, rooted in the UNFCCC, Paris Agreement, human rights treaties and customary international law. The court further confirmed that failure to strengthen climate policies in line with the best available science could trigger state responsibility, potentially giving rise to reparations. This landmark opinion is expected to have huge potential for future litigation, particularly in shaping arguments on state responsibility and reparations, and will influence political discussions on loss and damage, obligations to regulate private companies and the design of future climate governance frameworks.

**Advisory opinions
can progressively
clarify and reinforce
obligations.**

This sequential development shows how advisory opinions can progressively clarify and reinforce obligations, creating a layered jurisprudence that will likely reinforce the authority of domestic courts and broaden the democratic space for climate accountability. A further evolution of this trend is unfolding in Africa. In May 2025, a new case was filed before the African Court on Human and Peoples' Rights by the Pan-African Lawyers Union (PALU) and several civil society groups, asking it to clarify states' obligations to address climate change under the African Charter. The African Court's eventual opinion could add another regional layer, addressing unique vulnerabilities and reinforcing the binding duty of climate action across states in all continents.

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Chapter 2

CURRENT GLOBAL TRENDS IN CLIMATE LITIGATION

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Cases have taken root in new jurisdictions which have their own unique characteristics and approaches.

Over recent decades, the climate litigation landscape has evolved considerably. Climate-related lawsuits have continued to proliferate, more than doubling in number globally since 2017 (UNEP 2023). In addition, cases have taken root in new jurisdictions which have their own unique characteristics and approaches, with climate litigation increasingly unfolding in the Global South (Setzer and Higham 2025: 15; see Chapter 4). This chapter explores new and emerging trends in climate litigation and explains how these trends are relevant for democracy and how they may impact democratic institutions and processes.

This chapter uses a broad definition of ‘climate litigation’, including cases that rely directly on climate law, science and policy, as well as those that impact climate law and policy or climate justice—even if climate is not the primary focus (McKenzie et al. 2024). This chapter begins with a typological perspective, identifying trends in who is bringing cases and why. It then provides a broad overview of climate litigation-related issues that intersect with concerns that are relevant for democracy, before exploring some of the most direct impacts on democracy and its core institutions.⁴

Four broad categories of climate-related litigation have been identified. In line with this definition, cases in each category include those brought by civil society as well as those initiated by public

⁴ For a comprehensive overview of the nexus between climate change and democratic governance, see Lindvall, D., *Democracy and the Challenge of Climate Change*, International IDEA Discussion Paper 3/2021 (Stockholm: International IDEA, 2021), <<https://doi.org/10.31752/idea.2021.88>>.

entities, such as subnational governments or regulatory bodies (Setzer and Higham 2025: 17–18).

The first category encompasses cases against a state which challenge the national climate policy. These cases are often referred to as examples of ‘systemic’ climate litigation because they challenge the national laws that provide the overall framework for climate-related action within a given jurisdiction (Mead, Fantozzi and Maxwell 2024). Examples include the *Urgenda Foundation* cases in the Netherlands and *VZW Klimaatzaak v Belgium*. In these instances, civil society and NGOs seek to hold their own governments accountable for failure to meet the state’s international climate-related obligations. They do so by challenging the state’s actions (or inaction), often claiming that national climate laws or the state’s long-term emission reduction targets are insufficient to meet the goals of the Paris Agreement.

The second type of climate-related litigation can be referred to as project-based litigation, in which plaintiffs challenge the authorization of a specific project that could lead to increased emissions or ineffective adaptation to climate change. One notable example is *EarthLife Africa Johannesburg v Minister of Environmental Affairs*, in which the approval of a new coal-fired power plant development was challenged because it had failed to consider the project’s climate-related impacts. Cases concerning expansions or additions of new airport runways, such as *In re Vienna-Schwechat Airport Expansion* (2017) and *R v Heathrow Airport Ltd* (2020), which are considered at odds with emissions reductions targets, are another example of project-based climate litigation.

A third type of climate litigation involves private actors. Increasingly, climate litigation targets corporations on the basis of their contribution to climate change, often invoking rights-based claims (Savaresi and Setzer 2022). The recent appellate court decision in *Milieudefensie v Royal Dutch Shell plc* (see Chapters 1 and 5) demonstrates increased scrutiny of private actors’ obligations to protect the public from the impacts of climate change. This category extends beyond such ‘systemic cases’ against private actors—it also includes legal challenges and public investigations into specific climate-related corporate responses or communication strategies, for example, alleging misleading climate claims (Setzer and Higham 2025: 40). Conversely, there has also been an increase in cases that are aimed at balancing climate change responses with other social and business interests (‘just transition’ litigation) or even to hinder

or deter more ambitious climate action (Setzer and Higham 2025: 42–46).

There has been a particular increase in the USA in so-called ‘backlash cases’ aimed at challenging or rolling back climate-related regulations. Examples of this type of case include *Wong v New York City Employees’ Retirement System* and *Spence v American Airlines, Inc*, where plaintiffs alleged that fund managers breached their fiduciary duties by taking climate considerations into account or prioritizing environmental, social and governance (ESG) goals instead of focusing solely on maximizing financial returns. Alongside these backlash cases, another form of strategic litigation—known as SLAPPs—is being deployed, primarily by the fossil fuel industry, to deter opposition to its operations. SLAPP cases typically aim to intimidate, silence and bankrupt the targets of the lawsuit. In a recent example of this type of litigation, in March 2025 a US court awarded a Texas-based oil and gas company USD 660 million against an NGO that had participated in protests against the construction of an oil pipeline (*Energy Transfer LP v Greenpeace International* 2025). A monetary award of this size risks having a chilling effect on free speech and the right to protest.

The final type of climate case is climate-related legal actions in international and regional forums. Recent advisory opinions, such as the 2024 advisory opinion of the ITLOS and the 2025 opinions of the ICJ and the IACHR, signal growing interest in clarifying states’ domestic and international climate obligations. Although these opinions are not directly binding, they are certain to impact climate litigation in the future (see, e.g., McKenzie 2024).

In addition to the growing number of cases, the increased diversity among claimants is also notable (Setzer and Higham 2025: 17–18). While in 2018 corporations were by far the most represented group of plaintiffs (Nachmany and Setzer 2018: 5), today individuals and NGOs file the majority of all climate cases (Setzer and Higham 2025: 17). There is a growing trend towards youth-led climate litigation against governments and, increasingly, corporations, with young activists arguing that insufficient climate action threatens intergenerational equity (Sulyok 2024). In the Global South, legal challenges are often led by vulnerable communities, Indigenous groups and civil society organizations (see Chapter 4). Many of these cases are grounded in human rights and constitutional arguments. For example, in *Held v State of Montana*, a group of 16 young claimants successfully argued that the US state of Montana had violated their constitutional right to a clean and healthy environment by permitting fossil fuel

Table 2.1. Types of climate litigation

Type	Description	Primary targets	Examples
Systemic litigation	Challenges national climate policies or laws, often asserting that the state's climate targets or actions are insufficient to fulfil international obligations (e.g. Paris Agreement).	National governments (executive and legislative acts)	<i>Urgenda Foundation v Netherlands</i> <i>VZW Klimaatzaak v Belgium</i> <i>Neubauer et al. v Germany</i>
Project-based litigation	Challenges authorization or approval of specific projects that increase emissions or inadequately address climate adaptation.	Government agencies or corporations behind the project	<i>EarthLife Africa Johannesburg v Minister of Environmental Affairs</i>
Litigation involving private actors	Holds private companies accountable for their contributions to climate change, or, conversely, involves corporate actors resisting or diluting climate actions. On one hand, claimants (including shareholders and communities) sue corporations for insufficient action, negligence, or misinformation on climate change. On the other hand, industries have begun launching 'backlash' lawsuits to halt climate regulations or deploying SLAPP suits to silence climate activists.	Private corporations (as defendants in accountability cases); and government regulators or activists (as targets in backlash/SLAPP cases brought by companies)	<i>Milieudefensie et al. v Royal Dutch Shell plc</i> <i>ClientEarth v Shell Board of Directors</i>
International and regional forums	Legal actions in international or regional forums seeking clarification of states' climate obligations under international law. These include advisory opinions and transnational human rights claims. While decisions here are often non-binding, they can strongly influence national litigation and policy by defining states' duties on climate change.	States (via international/regional courts)	<i>Advisory Opinions from the International Tribunal for the Law of the Sea (2024), the International Court of Justice (2025), Inter-American Court of Human Rights (2025)</i> <i>Daniel Billy et al. v Australia (UN Human Rights Committee)</i>

Source: Compiled by the authors.

development ‘without considering its effect on the climate’ (*Held v State of Montana* 2024; OHCHR 2023). Similar youth-led cases have been filed in Canada, Colombia, Germany, India and South Korea, as well as before the ECtHR (against 33 European governments).⁵

Thus far, most climate-related lawsuits have been directed at national governments (Setzer and Higham 2025: 18). However, while governments remain the primary targets of climate litigation, one notable phenomenon is the rise in climate litigation against private corporations (Hösli 2021), including high-profile cases against fossil fuel giants like Shell (*Milieudefensie v Shell* 2021; *ClientEarth v Shell* 2023). Lawsuits against corporations have surged in the last few years, reflecting a growing awareness around the private sector’s role in contributing to, or potentially mitigating, climate change.

The nexus between climate change and human rights has steadily emerged as a defining trend of climate litigation (Peel and Osofsky 2018; Savaresi and Setzer 2022). Rights-based lawsuits against both governments and corporations have been expanding, partly driven by momentum from cases such as *Milieudefensie v Royal Dutch Shell plc* (Setzer and Higham 2025: 48). This trend is likely to continue, providing potential claimants with legal avenues to hold both governments and private actors accountable (see, e.g., Wewerinke-Singh 2023).

2.1. RELEVANCE TO DEMOCRACY

Many of the observable trends in climate litigation are directly relevant for democracy. The clearest issues that arise from climate litigation are the separation of powers, access to justice, and the protection of constitutional and human rights.

2.1.1. Separation of powers

The judiciary has emerged as a key player in addressing the climate crisis (Kotzé et al. 2023). While some courts have demonstrated their increasing willingness to take a more active and forward-looking role, this trend raises questions with respect to the doctrine of separation of powers (see Chapter 3). This holds that the main branches of democratic government (executive, legislature and judiciary) are—and should remain—independent of each other, with distinctly separate

⁵ *La Rose v Her Majesty the Queen* (2023); *Future Generations v Ministry of Environment* (2018); *Neubauer v Germany* (2021); *Ridhima Pandey v Union of India* (2017); *Do-Hyun Kim v South Korea* (2024); *Duarte Agostinho v Portugal and 32 Others* (2024).

functions. States frequently invoke this doctrine in climate litigation when they argue that courts should not engage in functions reserved for the legislative or executive branches of government, such as policymaking (Schoukens 2024).

The landmark 2015 case *Urgenda Foundation v State of the Netherlands* illustrates the tensions that can arise with respect to the separation of powers doctrine (Eckes 2021; Colby et al. 2020). In *Urgenda*, the claimants argued that the state's policy to reduce GHG emissions fell short of what was legally required to protect residents from dangerous climate change under articles 2 and 8 of the 1950 ECHR. The case eventually made its way to the Supreme Court, which ordered the state to set a specific, more stringent target to meet its international climate-related obligations, although it left the state to determine itself how this result could be achieved. The judgment has received significant attention because the emission reduction target ordered by the court (at least 25 per cent by the end of 2020) did not originate from any existing law. Instead, it was derived from the court's own assessment of the state's climate-related commitments, as well as from other international rules and scientific reports that are not legally binding.

In the lower courts, the Government of the Netherlands had raised the objection that target-setting by the court was in violation of the principle of separation of powers, claiming the court was venturing into the realm of policymaking reserved for the executive and legislative branches. In response, however, the District Court highlighted the judiciary's democratic legitimacy, deriving its authority 'based on democratically established legislation ... which has assigned [judges] the task of settling legal disputes' (*Urgenda v State of the Netherlands* 2015: para. 4.97). The District Court also highlighted that an issue merely having a political implication does not negate the courts' legal duty to protect citizens' constitutional rights—which is an inherent component of upholding the rule of law (*Urgenda v State of the Netherlands* 2015: para. 4.98). On appeal, the Dutch Supreme Court confirmed that it is the courts' duty to ensure the protection of the public's legal rights, and that this duty empowers courts to order the state to comply with the law as interpreted by courts (*State of the Netherlands v Stichting Urgenda* 2019: paras 8.2.1, 8.3.3).

The *Urgenda* decisions set a significant precedent with respect to judicial intervention on climate change, demonstrating the active role that can legitimately be played by the judiciary, even in the presence of concerns over the separation of powers, when the protection

The Government of the Netherlands had raised the objection that target-setting by the court was in violation of the principle of separation of powers.

of rights—another crucial element of democracy—is at issue (Schoukens 2024).

In *VZW Klimaatzaak v Kingdom of Belgium*, the Belgian Court of First Instance found, in its 2021 judgment, that the separation of powers doctrine limited the court's power to prescribe a specific emissions reduction target, despite concluding that the government had failed to adopt appropriate and legally binding emissions reduction measures (*Klimaatzaak v Kingdom of Belgium* 2021: section 2.3.2). However, in 2023, the Court of Appeal reversed this stance, stating that prescribing a target was permissible, provided the choice of suitable measures to achieve the target was left to other branches of government (*Klimaatzaak v Kingdom of Belgium* 2023: paras 293–94).

A complete lack of judicially enforced boundaries would render the state's constitutional obligation to protect the public against climate harms utterly devoid of substance.

Likewise, in the 2021 case of *Neubauer v Germany*, the German Federal Constitutional Court affirmed that, while specific measures or targets should not be set by the judiciary, a complete lack of judicially enforced boundaries would render the state's constitutional obligation to protect the public against climate harms utterly devoid of substance (*Neubauer v Germany* 2021: para. 207).

The US federal court case *Juliana v United States* addressed similar concerns. The Oregon District Court found that the 'political question doctrine'—a judicial principle precluding courts from deciding issues properly in the domain of the legislative or executive branches—did not negate the court's capacity to assess the constitutionality of legislative and executive climate action (*Juliana v United States* 2016; *Juliana v United States* 2023: 35, 48–49). Instead, the court found that it is within the role of the judiciary to determine whether the state, by its action or its inaction on climate change, has violated plaintiffs' constitutional rights. Ultimately the Ninth Circuit reversed, holding that the plaintiffs lacked legal standing to pursue the issue (primarily on the grounds that the claimed injuries could not be addressed by the court). Since the ruling was on standing, the court avoided a full constitutional or separation of powers analysis on whether a court's review of federal policies and practices related to fossil fuel production and GHG emissions would be in danger of veering into the political functions of other branches, contravening the political question doctrine (*Juliana v United States* 2020).

These cases highlight that climate litigation increasingly forces courts to navigate the delicate balance between respecting institutional boundaries and upholding fundamental rights. While governments often invoke the separation of powers to argue for

judicial restraint, courts across jurisdictions have clarified that when legal or constitutional rights are at stake, judicial review is not only permissible but required. This underscores the judiciary's role in reinforcing democratic accountability and ensuring that long-term, rights-based climate governance does not fall through the cracks of political inaction or become trapped in institutional gridlock. In carrying out this role, courts strengthen democracy not by overstepping their mandate, but by fulfilling it (see Chapter 3).

2.1.2. Access to justice

While the principle of separation of powers highlights institutional checks between the branches of government, another critical aspect of democracy concerns who can bring such cases to court in the first place. Access to justice and public participation are thus complementary pillars for advancing climate justice (see Chapter 3). Access to justice is often discussed in terms of legal standing, meaning that a party has sufficient connection to the issue to bring a claim to court. Yet, legal standing is only one component of securing access to justice, which also includes—among others—affordability and funding (fees, legal aid, costs), availability of appropriate forums, timeliness of proceedings, inclusive participation (e.g. the provision of translation services or personal protections if needed), effective remedies and enforcement mechanisms. Nevertheless, legal standing remains a gateway criterion for climate litigation, if not the sole determinant of meaningful access to justice.

Although the rules differ from country to country, typically, someone bringing a legal action needs to have experienced a direct, individualized harm, attributable to the acts (or omissions) of the defendant, which the court can remedy by granting the requested relief (Beers 1986; Doremus 2010). In climate cases, establishing legal standing can be extremely difficult given the complexities of climate change and its effects, which are often indirect and cumulative (Erinosho 2024). Restrictive standing rules can be a barrier to the public's access to justice in climate-related litigation, hindering democratic participation through the courts. For example, in *Carvalho v European Parliament and Council of the European Union*, the European Court of Justice (ECJ) found that current standing rules required the applicants to be individually affected in a manner that differentiated them from the general public (*Carvalho v European Parliament and Council* 2021: paras 35–50). This effectively barred the applicants from the ECJ under its current standing rules, because climate change affects broad groups of people rather than select individuals who have been impacted in uniquely distinct ways.

Another critical aspect of democracy concerns who can bring such cases to court in the first place.

More progressive approaches to legal standing rules include countries that allow for public interest litigation by representatives of harmed individuals, '*actio popularis*', permitting any person to sue on behalf of the public interest. In some jurisdictions, particularly in South Asia, courts have linked litigation under the 'public trust' doctrine (which holds that natural resources such as air and water are held in trust and must be protected by the state for the benefit of the common good) with more flexible standing rules, allowing citizens or NGOs to sue to protect natural resources without needing to show individualized harm. But in other jurisdictions, the public trust doctrine provides the substantive basis for environmental claims but does not itself relax standing requirements for direct, personal harm in order to bring a lawsuit (Erinosho 2024: 65–66).

Some jurisdictions embrace broader access. Kenya's Constitution (article 70) allows for any person to institute proceedings in court to enforce the right to a clean and healthy environment without demonstrating incurred loss or suffered injury. Where restrictive rules remain in place, NGOs and civil society organizations play a critical role in climate litigation: they can contribute expertise and resources to individual claims, and in many systems, they enjoy standing rights of their own. Even jurisdictions that have relatively inclusive rules on legal standing might impose other barriers to participation. For example, in the UK, high litigation costs and a narrow standard of review (i.e. significant deference given to the government action, tribunal or lower court decision that is being challenged) may still deter claimants.

In *Urgenda*, the NGO 'Urgenda Foundation' was granted standing to bring the case, while the individual co-claimants did not meet the threshold (*Urgenda v State of the Netherlands* 2015: paras 4.108–09). In *Klimaatzaak*, by contrast, both the NGO and the 58,000 co-claimants were found to have adequate standing to bring the claim forward, benefiting from special standing provisions for NGOs alleging environmental harms under Belgian law (*PP and PSLV v Gewestelijk Stedenbouwkundig Inspecteur and M vzw* 2013). However, *Friends of the Irish Environment v Ireland* shows that NGOs are not always successful in claiming standing. In this case, the Irish Supreme Court ruled that the NGO did not have the requisite standing to bring a legal action to defend constitutional and human rights that it did not possess as a non-human entity. Anything else, the Court found, 'would amount to an unjustifiable extension of standing rules' (*Friends of Irish Environment v Ireland* 2020: para. 72).

An interesting human-rights-based approach to giving future generations a voice in legal proceedings comes in the form of ombuds institutions. Led by the efforts of the Hungarian Office of the Commissioner for Fundamental Rights, the recent Budapest Declaration on the Role of Ombuds Institutions in Protecting the Needs of Future Generations (the Declaration 2024) provides ombuds institutions with guidance on how they can effectively advocate for future generations, including investigating complaints, participating in legislative processes and, crucially, taking action to intervene in legal proceedings. Mandates and explicit powers to represent and act on behalf of future generations vary by jurisdiction, and the Declaration has so far only been signed by ombuds from four countries. While this approach does not give direct standing in court proceedings to future generations, the goal is to broaden access to justice for them by proxy.

International treaties like the Aarhus Convention (in Central Asia, Europe and parts of Africa) and the Escazú Agreement (in Latin America and the Caribbean) have also played an important role in safeguarding democratic principles by expanding standing rules and access to justice in climate matters. The Belgian Court in *Klimaatzaak* relied on the Aarhus Convention to confirm the claimants' standing (*Klimaatzaak v Kingdom of Belgium* 2021: 51–52). The Dutch court in *Urgenda* also cited it to emphasize the requirement that courts 'shall provide adequate and effective remedies, including injunctive relief as appropriate, and be fair, equitable, timely and not prohibitively expensive' (*State of the Netherlands v Stichting Urgenda* 2019: para. 5.9.2; Aarhus Convention, article 9.4). The Escazú Agreement, adopted in 2018, includes provisions intended to guarantee effective access to justice in environmental matters. It includes broad legal standing provisions highlighting intergenerational equity, non-discrimination and the rights of vulnerable groups. Arguably, these provisions are sufficient to resolve many of the standing challenges found in climate-related litigation (Medici-Colombo and Ricarte 2024: 160–81). The twin cases of *Julia Habana v Mexico* (2022) and *Nuestros Derechos al Futuro y Medio Ambiente Sano v Mexico* (2022) illustrate this. Traditionally, standing rules in Mexico limit legal action in environmental matters to individuals with a personal, qualified legal interest or to legally established NGOs (Rosales 2021). Under these rules, the first case (of 214 young people) was dismissed on standing grounds, as the Court did not find that they had demonstrated personal, qualified and legally relevant interests (*Julia Habana v Mexico* 2021). Arguably, young people will be more directly impacted by climate change and its effects in the future, but traditional standing rules are not forward-looking. This is where agreements like

An interesting human-rights-based approach to giving future generations a voice in legal proceedings comes in the form of ombuds institutions.

Another common barrier of access to justice in climate litigation is establishing causation.

the Escazú Agreement can bridge the gap in access to justice left by traditional standing rules.

Another common barrier of access to justice in climate litigation is establishing causation. In most legal cases, including in climate-related litigation, plaintiffs in civil cases must prove a direct connection between the alleged action (or inaction) by the defendant and the alleged harm (Otto et al. 2022: 738). Given the diffuse, global and cumulative nature of climate change, proving this causal connection has historically been challenging (Erinosho 2024: 72). There are many different causation tests and, depending on the legal system, plaintiffs must prove that they meet this test (Stuart-Smith et al. 2021: 6–10). Examples include the requirement to prove the following: that ‘but for’ the defendant’s action (or omission), the harm would not have happened; that the defendant materially contributed to the harm; that the damage complained of is the natural and probable consequence of the defendant’s actions or inaction; and that damage was reasonably foreseeable—or a similarly direct causal connection (Mulheron 2020: 409; Lunney, Oliphant and Nolan 2017).

Attribution science—by which emissions can be scientifically attributed to an identifiable source—is becoming much more granular and specific, and increasingly able to link emissions with specific harms (Saad 2023; Ekwurzel et al. 2017). In *Lliuya v RWE AG* (2015) (see Chapter 1), a Peruvian farmer argued that the operations of the defendant, RWE (a German energy company), account for 0.47 per cent of the emissions that led to the climate change impacts faced by his community. The case was initially dismissed when the District Court found it would be impossible to determine the exact historic contribution of the defendant’s emissions, and to distinguish those from other emitters (*Lliuya v RWE* 2016). However, on appeal, the Higher Regional Court allowed the case to proceed, acknowledging that a private company could potentially be held liable for its proportional contribution to climate-related damages, provided that the necessary causal link is established by evidence (*Lliuya v RWE* 2017). Despite an unprecedented site visit by the court and a 2023 report confirming that glacier melt had enlarged the lake to 34 times its original size, court-appointed experts estimated only about a 1 per cent risk that a flood from this lake would reach Lliuya’s home in the next 30 years. The Higher Regional Court found this risk was too remote to make the sufficient temporal connection (the *imminence* requirement) under German civil law. Crucially, however, the judgment affirms the principle that an individual company could bear proportionate liability in tort law for transboundary climate

harms when plaintiffs establish both a fractional emission share and an imminent risk (Bönnemann and Tigre 2025).

In this framework, it has been argued that applying the precautionary principle, another crucial legal concept in environmental law, can prove useful in shifting the burden of proof in climate litigation: courts could accept that, despite scientific uncertainties, climate-related threats are serious and significant, and the defendant must instead prove that their actions (or their inactions) do not contribute to such a risk of harm (Omuko 2016: 67). The precautionary principle, now embedded in many domestic legal systems via environmental protection statutes, essentially calls for ‘anticipatory preventive action’ to prevent foreseeable damage even in the face of scientific uncertainty, requiring decision makers to anticipate all risks regardless of such uncertainty (De Sadeleer 2002). For instance, in *Gippsland Coastal Board v South Gippsland SC* (2008), the Victorian Civil and Administrative Tribunal accepted general evidence that sea level rise and other related extreme weather events result from climate change and, applying the precautionary approach, found that this was enough to prove a reasonably foreseeable risk of damage in a coastal region. This was enough for the Tribunal to withdraw consent for a residential development in the Gippsland coastal region.

Together, legal standing and causation define who can access the courts and under what conditions—making them central to democratic participation through the judiciary. Restrictive doctrines can exclude vulnerable groups (and future generations) from defending their rights and interests, while more inclusive approaches—supported by international agreements, institutions and evolving legal concepts like the precautionary principle—open new pathways for climate justice. Ensuring fair and meaningful access to the courts is essential for protecting rights, rebalancing power and shaping long-term, equitable climate governance.

Together, legal standing and causation define who can access the courts and under what conditions.

2.1.3. Rights-based litigation

Despite evolving standing rules to ease the challenges of access to justice and public participation, significant barriers remain. In this respect, one of the more direct pathways to judicial review of any harm faced by the public is to invoke fundamental, constitutional and human rights as the basis of legal action.⁶ Rights-based climate litigation entails climate-related lawsuits that invoke or rely at least

⁶ For a thorough overview of how constitutions can help protect the environment, see International IDEA's *Environmental Protection in Constitutions Assessment Tool* (Hickey 2025), <<https://doi.org/10.31752/idea.2025.17>>.

in part on human (and/or constitutional) rights. Typically, these cases are brought by individuals or groups of individuals who seek to hold government institutions, public authorities and, to a growing extent, private actors accountable for taking insufficient action on climate change (Savaresi and Setzer 2022). Rights-based litigation has increased significantly since the adoption of the Paris Agreement (Setzer and Higham 2025: 48) and can be seen as an important part of the effort to bridge accountability and enforcement gaps in both national and international law (Savaresi 2021). The duty of a state to take meaningful action on climate change directly implicates one of the foundations of a democratic government: to protect the rights of its citizens (UNGA 2019). As suggested by a set of plaintiffs in the German *Neubauer* case, inaction on climate change ‘threatens to call into question the legitimacy of the State itself’ (*Neubauer v Germany* 2020 Complaint: p. 102). In this case, the Federal Constitutional Court (Bundesverfassungsgericht) was tasked with determining whether the German national climate law and related policies adequately addressed climate change through emissions reductions plans. The court found that the state’s duty to protect fundamental rights enshrined in the country’s Basic Law does extend to climate change. In other words, the court found that the ongoing climate crisis triggers the state’s obligations to protect fundamental rights, such as the right to life and physical integrity, health and property—not just for present but also for future generations (*Neubauer v Germany* 2021: paras 99, 144, 148, 149).

A focus on the rights of future generations is also at the heart of the 2018 Colombian case *Future Generations v Ministry of Environment*. The court found that environmental degradation is directly linked to an impairment of fundamental rights, and triggers the state’s obligation to protect those rights. More specifically: ‘The increasing deterioration of the environment is a serious assault to current and future life and all other fundamental rights; it gradually depletes life and all rights related to it’ (*Future Generations v Ministry of Environment* 2018: 10). This case is one of the first to explicitly connect a state’s duty to protect existing constitutional rights to its obligation to take action on climate change, showing how powerful rights-based claims can be in establishing state accountability (Mead, Fantozzi and Maxwell 2024: 88).

In the 2018 *Shrestha* case in Nepal, the Supreme Court found that government inaction on climate change is incompatible with its duty to protect the constitutional right to live with dignity, the right to a clean environment and the right to food (*Shrestha v Office of Prime Minister* 2018). The court specified that the threat posed by climate

change, to both current and future generations, directly triggers the state's constitutional duty to protect citizens and their rights to a clean environment and to conservation under the Constitution (*Shrestha v Office of Prime Minister* 2018: 3). Similarly, the Federal Supreme Court of Brazil in 2022 found that '[t]here are no human rights on a dead or sick planet' and that any government action or omission that is contrary to its duty to 'protect and restore the environment' triggers a direct violation of the rights protected in the Brazilian Constitution (*PSB v Brazil (on deforestation and human rights)* 2022: 17, 20, 30, 36).

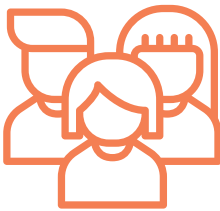
The Federal Supreme Court of Brazil in 2022 found that '[t]here are no human rights on a dead or sick planet'.

While human rights law is traditionally applied to protect individuals from harmful interference by states and government institutions, the horizontal effect of human rights means that human rights obligations also apply to private actors whose actions threaten to violate these rights. Rights-based arguments therefore increasingly bind private actors too, playing a significant role in climate litigation. In *Milieudefensie v Shell*, the Court emphasized that 'business enterprises should respect human rights', meaning 'they should avoid infringing the human rights of others and should address adverse human rights impacts with which they are involved' (*Milieudefensie v Shell* 2019: para. 4.4.15). Likewise, the Philippines Human Rights Commission, in its National Inquiry on climate change and the human rights duties of private actors, has concluded that private corporations can be held morally and legally accountable for their contributions to climate change, even where they are not direct parties to human rights treaties (Commission on Human Rights of the Philippines 2022). While the Commission's report lacks binding legal force, it does strengthen the case for corporate climate accountability in climate-related litigation.

Even where a court ultimately decides that a case does not rise to the level of rights violations, human and constitutional rights are a necessary and useful benchmark to review decisions taken by national authorities and private entities alike. In the *Arctic Oil* case, the Norwegian Supreme Court determined that the constitutional right to a healthy environment could be used as a benchmark in its review of decisions taken by a public authority, even when the decisions had already been reviewed and approved by the legislative branch of government (*Greenpeace Nordic and Nature and Youth Norway v Norway* 2020). In the case, the Court found that manifest violations of the constitutional duty to protect citizens' rights was the appropriate threshold for review, but that such a threshold was not met in this case (*Greenpeace Nordic and Nature and Youth Norway v Norway* 2020: para. 142).

Rights-based climate litigation reinforces the democratic function of the judiciary by ensuring that climate inaction is addressed not only as a policy failure but as a potential violation of fundamental rights. By invoking constitutional and human rights, courts are increasingly establishing clear boundaries for both public and private actors—strengthening accountability and embedding long-term justice in climate governance.

Figure 2.1. The rights-based turn: Plaintiffs, rights and typical outcomes



Plaintiffs	Rights invoked	Outcomes
• Young people • Indigenous groups • NGOs	• Life • Health • Healthy environment • Future generations • Property	• Injunction • Damages • Policy revision • Legal amendment

Source: Compiled by the authors.

2.2. THE IMPACT OF CLIMATE LITIGATION ON DEMOCRACY

This chapter has shown how different types and trends of climate litigation can be distinguished and how they raise certain issues of relevance for democracy. On this basis, the following section digs deeper on how climate litigation can contribute to shape democracy, its institutions and processes, in both immediate and long-term, systemic ways.

While some immediate impacts—such as an increased burden on the Government of the Netherlands to justify new reduction targets

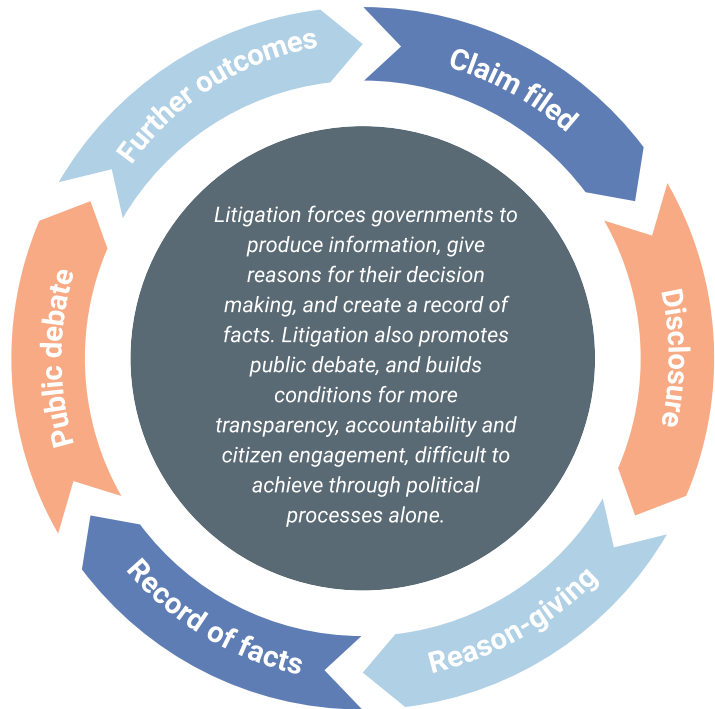
following the *Urgenda* case (2019)—can be causally linked directly to climate lawsuits, others, particularly longer-term effects, are more difficult to trace. For instance, while the *Neubauer* case (2021) led to legislative improvements in Germany, its broader potential to integrate under-represented voices into democratic discourse is more difficult to establish. In other instances, correlations between climate litigation and changes in democratic processes can be observed, such as enhanced participation in specific climate policy decision making (see *Leghari v Pakistan* 2015 or *Future Generations* 2018). While rights-based climate litigation has advanced powerful normative claims, it also faces distinct limitations. Courts may be constrained in the remedies they can award, and judicial processes often lack follow-up mechanisms that may be found in regulatory or ombuds procedures. Yet, by framing climate harm as a rights violation, such claims can be highly effective in driving regulatory change—shifting narratives, clarifying legal obligations and prompting policy reforms. However, they are not a substitute for broader governance.

2.2.1. Immediate impacts

One of the most important effects of climate litigation is that public and private actors are forced into a forum of accountability, where as part of the process they are required to disclose their policies, clarify facts and contexts, and justify their positions. In this sense, litigation can be an effective tool to counter secrecy, regardless of whether the plaintiffs ultimately prevail (Rose, Mladenova and Newman 2024: 29). For instance, in *Juliana v United States* (2024), though the court ultimately ended the case, determining that only political action could redress the matter, the government was compelled to provide detailed documentation and justification of its climate policies, giving the claimants access to significantly more information than before. Similarly, in *Greenpeace v Instituto Nacional de Ecología y Cambio Climático* (2022), the Mexican state had to explain how the revised NDC represented meaningful progression over its predecessor. The legal process thus created a level of accountability that might not have emerged through political channels alone. In South Africa's *#CancelCoal* case, the government was required to explain how it involved civil society groups in a decision-making process (*Africa Climate Alliance v Minister of Mineral Resources & Energy* 2024). Outside of such lawsuits, large corporations are typically only required to meaningfully engage with such questions when explicitly mandated by law. The procedural standards in legal proceedings usually demand comprehensive and truthful disclosures, requiring actors to respond to objections and further inquiries. In this sense, climate litigation generates a degree of accountability towards civil society that is difficult to achieve through political processes alone.

Litigation can be an effective tool to counter secrecy, regardless of whether the plaintiffs ultimately prevail.

Figure 2.2. Impacts of climate litigation: Driver of transparency, reason-giving and debate



Source: Developed by the authors.

Another immediate effect of certain climate lawsuits is their ability to amplify the voices of marginalized individuals and groups that are typically under-represented in political discourse (see Kotzé et al. 2023). Through litigation, these groups can articulate their needs and demands in ways that compel state and private actors to listen. In this sense, climate litigation complements and corrects other democratic participation processes that often leave under-represented groups behind—particularly communities greatly affected by climate change but with little say in shaping governmental or corporate responses to it (see Chapter 4). For instance, it is questionable whether a Peruvian farmer could otherwise make himself heard by one of Europe’s largest energy companies, as is the case in *Lliuya v RWE AG*. Similarly, in a country like Germany, where the median age of the population is 45 (Destatis 2025), the ability of younger and, especially, future generations to effectively articulate

their concerns in the political process is questionable (*Neubauer v Germany* 2021). In court, the degree of impact on affected parties plays a central role, whereas in political processes, it often receives less attention. The 2022 case of *Daniel Billy v Australia* before the UN Human Rights Committee allowed a minority population from the Torres Strait Islands to publicly discuss the importance of threatened ancestral lands for their cultural practices and traditions. Thus, climate lawsuits do not replace political processes but rather complement them by introducing perspectives that might otherwise be neglected or unheard.

Additionally, courts can also directly improve democratic processes by ordering the establishment of decision-making procedures or bodies that include marginalized voices. The Lahore High Court ruled in *Leghari v Pakistan* (2015) that the Pakistani Government had failed to adequately implement established climate change policies, violating citizens' fundamental rights. The court ordered the establishment of a Climate Change Commission composed of government officials, scientists and civil society representatives to ensure that climate policies were implemented effectively and inclusively (*Asghar Leghari v Federation of Pakistan* 2015). After the successful realization of its tasks, the court later replaced the Commission with a Standing Committee on Climate Change to liaise between the court and executive and to monitor implementation progress (*Asghar Leghari v Federation of Pakistan* 2018). In the *Future Generations* case, the Colombian Constitutional Court mandated the creation of an Intergenerational Pact for the Life of the Colombian Amazon, which explicitly included Indigenous peoples, youth and other under-represented groups (*Future Generations v Ministry of Environment* 2018).

Finally, climate litigation also influences legislation and policies by identifying gaps or shortcomings in existing legal frameworks to ensure they remain responsive to societal and scientific developments. Courts may require the government to revise or strengthen climate laws (*Friends of the Irish Environment v Ireland* 2020), or address the absence of specific climate policy targets, as seen in *Neubauer v Germany* (2021). In other instances, climate litigation can indirectly influence legislative or regulatory reform. For example, a case like *ClientEarth v Shell* (2023) may prompt legislators and regulators to introduce legal requirements that strengthen corporate board accountability for climate risks—measures courts might avoid due to judicial restraint. ClientEarth, as a shareholder, had filed a derivative action against Shell's board, alleging breaches of directors' duties under the UK Companies Act 2006 for failing to

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Climate litigation also influences legislation and policies by identifying gaps or shortcomings in existing legal frameworks.

adopt and implement a climate risk management strategy aligned with the Paris Agreement. Similarly, the ECJ's dismissal of the *Carvalho* case highlighted procedural barriers to addressing climate-related claims at the EU level (*Carvalho v European Parliament and Council* 2021), prompting public and expert discussions on the adequacy of existing legal mechanisms, such as strict procedural standards regarding standing of individuals (Winter 2023).

Beyond spurring legal reforms, climate litigation can also promote enforcement of existing climate legislation. Many countries have adopted climate framework laws which establish core climate policy objectives and targets. However, these overarching frameworks require consistent and effective oversight and implementation in public and private settings (Averchenkova et al. 2024). Courts engaged in climate litigation contribute to this enforcement by interpreting specific legal instruments in terms of these broader legislative commitments. In *EarthLife Africa Johannesburg v Minister of Environmental Affairs* (2020), a South African court assessed fossil fuel infrastructure expansion against the country's emission reduction targets. Despite the absence of explicit legislative provisions mandating the consideration of GHG emissions, the court ensured implementation of the state's climate commitments in practice.

Climate litigation addresses structural power imbalances, ensuring powerful entities are held accountable to smaller stakeholders.

2.2.2. Systemic and long-term impacts

Beyond immediate effects, climate litigation is also catalysing broader systemic shifts in democratic governance. By offering a mechanism to challenge powerful government and corporate actors, climate litigation addresses structural power imbalances, ensuring powerful entities are held accountable to smaller stakeholders. For instance, in *Lliuya v RWE*, although the case was ultimately unsuccessful, a Peruvian farmer's ability to utilize attribution science to challenge a major corporation's emissions demonstrates the possibility of individuals holding powerful actors to account, promoting even cross-border democratic equity. Cases like *Greenpeace Netherlands and Citizens of Bonaire v The Netherlands* (2024) further demonstrate how vulnerable communities, like those living on small (and disappearing) islands, can use legal mechanisms to hold states accountable for inadequate climate action. In another case, the applicants in the Torres Strait Islanders case before the UN Human Rights Committee argued that Australia's failure to protect them from rising seas violated their human rights. The Committee agreed, setting a precedent that climate inaction can constitute a human rights violation, which in turn strengthens legal avenues for other vulnerable communities (*Daniel Billy v Australia* 2022). Similarly,

in the *Neubauer* case, individuals from outside Germany, specifically from Bangladesh and Nepal, sought stronger climate commitments from Germany in relation to the protection of their fundamental rights. Their complaints were ultimately found inadmissible because the German Basic Law does not extend to persons outside Germany's jurisdiction (*Neubauer v Germany* 2021: para. 78). In the *Carvalho* case, individuals from Fiji and Kenya, as well as an association representing Indigenous youth, sought a ruling from the ECJ that the EU climate policy was insufficient to protect their rights outside of the EU (*Carvalho v European Parliament and Council* 2019). That case was also dismissed as inadmissible on standing grounds. Nevertheless, taken together, these cases highlight how climate litigation is increasingly invoked to address cross-border power imbalances. Transnational litigation could, for example, lead to more participation of Global South communities in investment decisions taken by Global North companies (e.g. *Bille and Ogale Group Litigation* 2023).

The rise in lawsuits against corporations and private sector projects strengthens accountability and equality before the law as core elements of democratic rule of law by empowering individuals and civil society groups to challenge corporate climate policies. Cases like *Milieudefensie v Shell* (2021) and *Sharma v Minister for the Environment* (2021) not only illustrate the courts' role in accountability but also demonstrate how they can impose preventative measures. Though later overturned (*Milieudefensie v Shell* 2024; *Sharma v Minister for the Environment* 2022), these two cases showcased how courts can impose concrete legal obligations to prevent foreseeable harm. This trend underscores the growing role of climate litigation as a democratic corrective against inadequate corporate climate action and as a mechanism for advancing global climate justice.

Another key systemic impact of climate litigation is its role in institutionalizing long-term climate policymaking and enforcing epistemic democracy (see also Chapter 3). Climate litigation compels political systems to adopt more forward-looking and science-based climate policies (UNEP 2023). Cases aimed at integrating climate considerations into decision making represent the largest category of climate litigation (Setzer and Higham 2026: 6). These cases include systemic litigation targeting national climate commitments, such as *Thomson v Minister for Climate Change Issues* (2017), in which a court in New Zealand acknowledged that the government had failed to adequately review its 2050 emissions reduction target in light of the latest IPCC findings. They also encompass project-focused cases, such as *EarthLife Africa Johannesburg v Minister of Environmental*

Another key systemic impact of climate litigation is its role in institutionalizing long-term climate policymaking and enforcing epistemic democracy.

Affairs (2017), where the South African court ruled that climate change impacts must be considered in environmental assessments for new coal-fired power stations. A landmark example of this trend is the ECtHR's decision in *KlimaSeniorinnen v Switzerland* (2024), which reinforced a direct judicial pathway for driving climate action by requiring states to set and follow a specific national carbon budget (see Chapter 3). Finally, the growth and diversification of cases against private actors (Setzer and Higham 2025: 6, 18), including cases such as *Milieudefensie v Shell* (2021) or *Notre Affaire à Tous et al. v Total* (2022), effectively extend this shift towards compelling science-based and long-term planning to the private sector.

These lawsuits seeking stringent and consistent long-term planning in climate policy exert systemic pressure on both public and private actors, requiring them to integrate long-term climate objectives into policy and investment decisions. By doing so, they help ensure a degree of consistency across multiple generations of policymakers, rather than limiting climate action to short-term political cycles or financial planning horizons. This shifts decision making from reactive crisis management to preventive, long-term climate planning, reinforcing the idea that climate policies should be scientifically grounded, legally binding and not subject to political fluctuation.

Over time, this strengthens democratic climate governance, making it more resilient to political opportunism and short-term economic pressures while prioritizing the rights of both present and future generations.

2.3. CONSIDERATIONS FOR DEMOCRACY

Climate-related cases continue to grow in number, type and geographic reach. Novel legal arguments and new claimants are now evident, with an increase in young people and other marginalized groups using the courts to amplify their demands where other platforms are unavailable. In the Global North, climate cases have predominantly focused on existing climate commitments, ensuring that states remain accountable to legally binding targets. In the Global South, litigation often serves a different function: compelling governments to take action where policies are absent (see Chapter 4; Lin and Peel 2024). The latter is an under-researched area that has important implications for both the continued evolution of climate litigation globally, and the expansion of our understanding on how climate litigation impacts on democracy.

Climate litigation brings up important issues of relevance for democracy. Chief among them is concern about the separation of powers, in which courts must examine and clarify the extent to which their power conflicts with the mandate and powers of the legislative and executive branches of government. An important constant here is courts reaffirming their democratically legitimate function: interpreting or applying the law, in which the legality and constitutionality of state action is examined.

Issues around access to justice and public participation are increasingly relevant for democracy, as can be seen by the fact that more young people and other marginalized groups are turning to the courts for recourse, including across borders. Climate-related litigation brings with it unique barriers of access to justice due to the diffuse, transboundary and generation-spanning timeline of climate change and its impacts. Climate cases highlight a deeper intergenerational democratic deficit, as younger and future generations—those most affected by the climate crisis—often lack meaningful representation in political decision-making processes shaped by present-day majorities. Traditional rules around who may bring a case and how the causal connection between emissions and harm can be proved might not be fit for purpose for climate-related cases. Many legal systems are continuing to develop and evolve to overcome these barriers, including international agreements focused on public participation and access to justice like the Aarhus Convention and the Escazú Agreement, as well as the efforts by ombuds institutions to increase representation of otherwise voiceless communities. Rights-based climate litigation, another important issue of relevance to democracy, directly considers democratic principles and the protection of constitutional rights. It can reveal inequities in access to justice and information, as well as enabling participation in public discourse on climate policy.

The impact of these cases and climate litigation in general on democracy, its processes and its institutions can be observed across two timeframes. Immediate impacts include increased accountability to—and participation of—the public in issues of concern relating to climate change, its mitigation and adaptation thereto. Requiring public disclosure of information through court proceedings can bring more transparency to actions by state organs and corporations, highlighting legislative responsibilities to take action on climate change and the regulation of corporate interests.

Issues around access to justice and public participation are increasingly relevant for democracy.

In the longer term, systemic impacts on democracy include rebalancing power asymmetries.

In the longer term, systemic impacts on democracy include rebalancing power asymmetries, particularly when it comes to resources and access to information. Climate-related litigation can have the important systemic impact of producing policy shifts towards more forward-looking and science-based decision making, thus affecting the approach a state takes to tackling climate change and its many deleterious impacts. However, climate-related litigation can also produce unintended effects. Recent withdrawals from net zero alliances by major financial institutions—potentially due to fears of exposure to climate litigation—suggest a chilling effect on voluntary ambition (McKenzie, Wegener and Hadzilacos 2025). Furthermore, climate policy-related arbitration claims under the Energy Charter Treaty, such as *RWE v Netherlands*, have been used as ways to penalize states for phasing out coal, possibly deterring strong climate policy responses.

Overall, it is clear that climate litigation is a growing and important phenomenon from a democratic perspective. Current global trends in climate litigation demonstrate that the issues raised in these cases are, on balance, more beneficial than they are problematic for the continued evolution of democratic systems of government. Indeed, climate litigation has become a potentially powerful pathway for furthering democracy in an increasingly volatile climate.

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Chapter 3

STRATEGIC CLIMATE LITIGATION IN EUROPE: WHAT CONCEPTION(S) OF DEMOCRACY IN JUDICIAL REASONING?

Christina Eckes

At present, it seems that states in Europe, and arguably beyond, struggle to overcome resistance to the legal and regulatory interventions needed to tackle the climate crisis (see, e.g., Lindvall 2021; Mohin 2024; Weise 2025). Democratic states can only do what is needed to avert this ‘existential threat’ if they possess a sufficient degree of social legitimacy: that is, the extent to which the general public and other stakeholders accept and support the introduction of specific policies (Aureli 2023).⁷ While social legitimacy is distinct from democratic legitimacy, which traditionally derives from elections and adherence to democratic processes, the two are closely connected. Both rest on widespread public acceptance and support for legal norms. Moreover, self-government—a key component of democratic governance—ultimately depends on strong social legitimacy, as it underpins citizens’ willingness to implement and adhere to legal norms in practice (Lafont 2020; Lindvall 2021).

This chapter explores how strategic climate litigation both reflects and challenges the boundaries of democratic and social legitimacy. By examining how courts justify their interventions in climate policy (and thus democratic decision making), it asks which conceptions of democracy are invoked or reinforced by judicial reasoning. To frame the analysis, the chapter first outlines four distinct, though often overlapping, conceptions of democracy: representative, participatory, deliberative and epistemic. Each emphasizes different elements of decision making—majoritarianism, citizens’ actual preferences, consensus and reason, and problem-solving capacity and expertise—respectively. These elements influence how courts formulate and

⁷ See e.g. the *KlimaSeniorinnen Schweiz* ruling, paras 421 and 451, which illustrates how seriously courts take democratic legitimacy of climate policies.

justify their decisions in climate cases and the democratic principles they invoke. This chapter therefore also explores the legitimacy claims advanced by courts in climate judgments, and how these claims relate to—and potentially recalibrate—different conceptions of democracy. Judicial decisions not only inform citizens about what climate policies must include, but also co-shape how people think about their democratic legitimacy. They explain, for example, what role judicial review plays in the democratic process, where powers are separated between different branches. Political actors and the public also judge substantive legal obligations and climate policies, at least in part on the democratic conceptions advanced by courts.

The examination is limited to cases aiming to compel states to adopt more ambitious climate targets or policies, rather than implementation and adaptation cases or cases against companies.⁸ These types of cases, ‘general emission reduction cases’ (also referred to as ‘systemic cases’ in Chapter 2), where courts are asked to direct elected representatives in parliament to adopt more stringent climate measures, are traditionally seen as democratically most problematic. However, similar legitimacy claims are made by the judiciary in other cases, underscoring the broader discursive effects of landmark rulings, including potentially beyond Europe.

Democracy is not a single, monolithic concept.

3.1. DIFFERENT CONCEPTIONS OF DEMOCRACY

Democracy is not a single, monolithic concept.⁹ When politicians, judges or scholars make claims about democratic legitimacy, they have some underlying conception(s) of democracy in mind, but they rarely clearly articulate the foundations of their assumptions. However, the value that they attach to the different elements of democratic decision making—majoritarianism, citizens’ actual preferences, consensus and reason, and problem-solving capacity and expertise—can be traced in their arguments. Prioritizing one of these elements over the others reveals an individual’s particular conceptions of democracy and, as a result, their understanding of the role of judicial review—the process by which courts examine the actions of the executive, legislature and administrative bodies of the state to determine their constitutionality. Often, the different elements complement and work alongside each other, but sometimes they are

⁸ See University of Amsterdam’s ongoing research on the democratic consequences of all these categories of cases: <<https://climatelitigation.uva.nl>>.

⁹ International IDEA defines democracy as popular control over public decision making and decision makers, and equality between citizens in the exercise of that control.

in tension. All of them are present in the legal orders of European states and in the EU.

3.1.1. Four conceptions of democracy

The first and most dominant conception is *representative democracy*, which is the familiar model in which the people govern through elected representatives. In this conception, legitimacy arises from following proper procedures of majority decision making by those representatives, rather than from the substantive outcomes of decisions (Urbinati 2012). In its pure form, representative democracy provides only the blunt tool of periodic elections to express general discontent with elected officials, rather than allowing challenges about specific policies. Proponents of this view often favour legislative supremacy and are suspicious of any limitation on the majority's power, fearing that it undermines the representative principle.

Participatory democracy has gained traction in recent years. It aims for broader or deeper citizen participation that goes beyond periodically casting a vote in elections (Pateman 2012). Legitimacy, in this view, comes from having *actual opportunities for citizens to have a say in decision making* beyond periodic elections, including via referendums, town halls and participatory budgeting. At the same time, preferences voiced via participatory mechanisms do not need to be justified. Irrational and unreasoned opinions stand on the same footing as well-reasoned and considered views.

Deliberative democracy conceives legitimate governance as arising from *reasoned public discussion* and the exchange of arguments (Goodin 2008). Deliberative democracy has become popular in the climate space, not least through the wave of climate citizen assemblies in Europe (Curato et al. 2024). Deliberative democracy focuses on procedural conditions that allow for free and open communication (Habermas 1996: 307–8). However, it is not enough that a decision has formal majority support: the decision must be arrived at through a process of deliberation that could earn the 'reasoned assent' of the community (Fishkin 2009: 13–14; Lafont 2006: 3–26). Deliberative democracy has been criticized for potentially empowering further those who are already empowered by failing to sufficiently consider that not everyone can participate in the deliberation on equal footing—for example, because of differences in resources or social marginalization (Fraser 1985).

Finally, the conception of *epistemic democracy* prioritizes the *quality of outcomes*. Epistemic democrats evaluate democratic

procedures against their ability to ‘track the truth’, or at least yield effective, beneficial outcomes for the common good (Holst and Molander 2019). In this context, some theorists emphasize the collective intelligence that can be derived from broad citizen participation— that is, the wisdom of the many—while others rely on specialized, expert or elite governance (Palumbo 2024: 81–123). Unlike purely procedural views (which care only that the decision was made fairly, regardless of outcome), epistemic theories hold that a decision-making process is democratically legitimate only if it tends to produce substantively ‘good’ epistemic outcomes oriented towards addressing social problems (Cohen 1986; Estlund 2008; Schwartzberg 2015; Brennan 2016). If institutions consistently fail to address the concerns of citizens and solve their problems, however, then the democratic system cannot be said to deliver self-government.

Table 3.1. Conceptions of democracy

Conception of democracy	Explanation	Examples
Representative	Citizens elect representatives who decide by majority rule.	Direct elections of national parliaments.
Participatory	Citizens engage in decision making directly beyond voting.	Referendums; town halls; participatory budgeting.
Deliberative	Decisions are reached through reasoned public debate.	Climate citizen assemblies; deliberative polls.
Epistemic	Emphasizes ‘truth-tracking’ through expert or collective wisdom.	Policies informed by scientific consensus (e.g. IPCC reports).

Source: Developed by the authors.

The modern democratic ideal is simultaneously representative, deliberative and inclusively participatory, and also produces outcomes that are substantively ‘good’ (Lafont 2020). Yet these elements are difficult to achieve together in practice. For example, equal participation lowers the quality of deliberation, while meaningful deliberation and participation often involve only those who are already motivated and interested, which can conflict with the goal of political equality (Fishkin 2009).

In reality, all democracies rely on a blend of elements for their legitimacy, meaning that none is characterized by majoritarian vote alone. All European constitutions acknowledge that democracy requires more than pure majoritarianism. The EU, for instance, has set out formal commitments in the four categories of democracy—representative,¹⁰ participatory,¹¹ deliberative¹² and epistemic democracy¹³—in particular through articles 9 and 10 of the Treaty on European Union, which reference fundamental principles and the functioning of the EU's institutions. Similarly, all EU member states and member states of the Council of Europe are committed to liberal representative democracy, meaning that, while they support majority rule and hold elections for representatives to parliament and other political offices, they do not accept majoritarianism as the sole measure of democratic legitimacy (see conceptually Hayek 1960; on liberal democracy in Europe, see Coman and Brack 2025). Increasingly, many of these countries have introduced participatory and deliberative elements to engage individuals more directly in governance and public decision making.¹⁴

These countries also commit to the rule of law, requiring that fundamental rights are protected as an integral part of democracy. The ECHR, as interpreted by the ECtHR, attaches great value to fundamental rights—such as freedom of thought, expression, assembly and association, along with the rights to private life and

10 See the Consolidated Version of the Treaty on European Union [2012] OJ C326/13, e.g. in 'the principle of the equality of ... citizens, who shall receive equal attention from [the EU] institutions, bodies, offices and agencies' (article 9), '[t]he functioning of the Union shall be founded on representative democracy' (article 10(1)), and '[c]itizens are directly represented at Union level in the European Parliament' and 'represented in the European Council by their Heads of State or Government and in the Council by their governments' (article 10(2)). For example, in the commitment to expertise in the Commission and the preparatory bodies of the Council and the establishment of scientific advisory bodies.

11 See the Consolidated Version of the Treaty on European Union [2012] OJ C326/13, e.g. in principle: '[e]very citizen shall have the right to participate in the democratic life of the Union' (article 10(3)), reflected also in the European Citizen Initiative (ECI) that allows one million citizens to request the Commission to make a legislative proposal, which is but one example (article 11(4)).

12 See e.g. in the way the European Parliament works as a true forum of debate, without strict party discipline and with standing committees consisting of party representatives presenting, after intense political exchanges, reports and recommendations to the plenary (members of parliament are divided up among 20 standing committees specializing in different policy areas).

13 See e.g. in the commitment to expertise in the Commission and the preparatory bodies of the Council, and the establishment of scientific advisory bodies (see both national scientific bodies on climate change and the European Scientific Advisory Body on Climate Change, endorsed and established, respectively, under Regulation (EU) 2021/1119 of the European Parliament and of the Council of 30 June 2021 establishing the framework for achieving climate neutrality and amending Regulations (EC) No 401/2009 and (EU) 2018/1999 ('European Climate Law').

14 See e.g. the EU citizen initiative; referendums; and consultations. For example, the successful and popular project of setting up citizens' assemblies or mini-publics in Ireland has increased the popularity of this form of strengthening deliberative elements in European democracies.

access to justice—that contribute to the quality and robustness of democracy (ECHR articles 6, 8, 9, 10, 11; see also Costa 2008). The ECtHR treats democracy and the rule of law as two guiding concepts or ‘central values’ that can be derived from the Convention as a whole (see, e.g., *Broniowski v Poland* 2004: para. 184; *Engel v The Netherlands* 1976: para. 69; see also Lautenbach 2013: 11–13). With this understanding, the rule of law forms a foundation for democratic governance as well as a necessary limitation on majority rule.

A continuous point of disagreement in the academic debate is the role of judicial review in ensuring a robust democracy.

3.1.2. From democracy to judicial review

A continuous point of disagreement in the academic debate is the role of judicial review in ensuring a robust democracy (for a critical stance, see, e.g., Waldron 1999, 2006; Tushnet 2000; Bellamy 2007; for a view of judicial review as part of democracy, see, e.g., Dworkin 1981; Kumm 2008, 2010; Lever 2009). Some, like Matthias Kumm, argue that judicial review is a foundational institutional commitment of liberal-democratic constitutionalism, comparable to the right to vote, as it enables citizens to challenge burdens imposed by public authorities on individuals. From this perspective, judicial review compels governments to participate in a process of reasoned engagement (Kumm 2008). Others, such as Cristina Lafont, argue along similar lines that democratic legitimacy requires a legal right for citizens to contest political decisions. This right is seen as a mechanism of ‘communicative power’, allowing individuals to trigger political deliberation on fundamental rights and demand justification from authorities (Lafont 2020). Both are proponents of the democratic merit of judicial review and emphasize capacity as a tool for citizen participation in democratic discourse. Opponents reject this contribution to the democratic process, often from a perspective of representative democracy, and emphasize that any such privileged participation undermines the formal equality of voting.

Scholars who defend the democratic merit of judicial review emphasize that it institutionally realizes deliberative and participatory elements integral to democratic legitimacy, complementing the representative majoritarian elements of constitutional democracies. The justificatory feature of judicial review (discussed further below) is not based on equal representation but rather on the assessment of an independent body of whether sufficient reasons have been provided for restricting individual rights. Judicial review is not based on comprehensive reasons—including idiosyncratic reasons with particular emotional and political salience to specific constituencies—but solely on reasons pertaining to the constitutionality or legality of an act or omission by public authorities.

An important preliminary point in this discussion is the tendency of legal scholars to focus on case law, often considering court decisions as the final, authoritative word on a matter. When reflecting on the democratic merit of judicial review, this perspective is too narrow. It is crucial to consider the function of judicial review within the broader political process and to capture and assess the consequences ‘beyond the courtroom’ (Lafont 2020: 225; see also McCann 1994). When litigants challenge the constitutionality or legality of public acts or omissions in court, they open an institutional channel for input into the debate, usually with the additional aim of initiating further deliberation. In addition, the claims that judges make about the relevance of the different elements of democracy feed into ongoing societal and institutional exchanges. Besides the substantive issues, these exchanges negotiate the roles and comparative relevance of directly elected representatives, judges, expert bodies, actual preferences voiced by citizens and reasonable consensus established in deliberative processes.

Judicial decisions, particularly in strategic litigation in the public interest—litigation pursuing broader (political) interests beyond the parties’ own rights and obligations—do not mark the final settlement of a broad and contested issue. The judgment settles the specific dispute in the proceedings, that is, the rights and obligations of the parties. However, the broader political issues are unlikely to be conclusively settled or even potentially open to final settlement. Even where a court rules in final instance or a lower court’s decision is not appealed, it determines the legal interpretation of a specifically defined contentious issue within that court’s jurisdiction. Yet, judicial decisions do not and cannot end the broader, often complex and contextual political debate. On the contrary, strategic litigation is usually but one contribution to an ongoing societal debate, which aims to engage citizens beyond the legal process (Kovács, Luckner and Sekula 2022). It may contribute to agenda setting (Wonneberger and Vliegthart 2021), structuring the discourse around rights and ‘constitutionalizing’ the political debate (Lafont 2020: 228; Rodríguez-Garavito 2011).

Strategic litigation is usually but one contribution to an ongoing societal debate.

3.2. STRATEGIC CLIMATE LITIGATION IN EUROPE

Strategic climate litigation is flourishing worldwide—including in Europe—as a particular form of participating in societies’ democratic quest to transition away from dependence on fossil fuels (Setzer and Higham 2023). As of 31 August 2024, European national courts have

issued at least 13 rulings on general emission reduction cases: 7 (partially) successful and 6 unsuccessful.¹⁵ One case before the ECJ was unsuccessful in two instances,¹⁶ and the ECtHR has issued one ruling and two inadmissibility declarations.¹⁷

3.2.1. National courts

A survey of landmark climate cases reveals four overarching categories, each carrying its own implications for the relationship between democratic decision making and judicial review. Two general emission reduction cases stand out: *Urgenda* in the Netherlands and *Klimaatzaak* in Belgium (see also Chapter 2). These constitute the first category of cases where national courts imposed minimum substantive emissions reductions. This form of judicial intervention can appear in tension with the majoritarian decision making emphasized in representative democracies (see below). In such cases, courts set a minimum bar for necessary state action, which is binding on all state institutions, including directly elected national bodies. *Urgenda* was the first successful general emission reduction case against a state. Initiated in 2013, it was based on the unwritten duty of care under Dutch tort law, in combination with articles 2 (right to life) and 8 (right to private and family life) of the ECHR. On

15 **Successful:** Rechtbank Den Haag [Court of First Instance, The Hague], 24 June 2015, AB 2015/336 (*Urgenda*, First Instance); Hof Den Haag [Court of Appeals, The Hague], 9 October 2018, JB 2019/10 (*Urgenda*, Court of Appeal); *State of the Netherlands v Stichting Urgenda* [2019] ECLI:NL:HR:2019:2007 (*Urgenda*, Supreme Court). *VZW Klimaatzaak v Kingdom of Belgium* [2021] 2015/4585/A (*Klimaatzaak*, Court of First Instance). Cour d'Appel Bruxelles [Court of Appeals Brussels] (2nd ch.), 30 November 2023, J.L.M.B. 24/045 (Belgium) (*Klimaatzaak*, Court of Appeal). *Neubauer v Germany* [2021] 1 BvR 2656/18, 1 BvR 96/20, 1 BvR 78/20, 1 BvR 288/20, 1 BvR 96/20, 1 BvR 78/20 (*Neubauer*). *Friends of the Irish Environment CLG v The Government of Ireland, Ireland and the Attorney General* [2020] IESC 49 (*Irish Climate Case*). *Notre Affaire à Tous v France* [2021] Nos. 1904967, 1904968, 1904972, 1904976/4-1 (*L'Affaire du Siècle*); *Commune de Grande-Synthe v France* [2021] No. 427301 (*Grande Synthe I*); *R v Secretary of State for Business Energy and Industrial Strategy* [2022] EWHC 1841 (Admin) (*Net Zero Strategy*). After the successful challenge, the government adopted a new climate strategy, which was challenged again in 2023: *R (Friends of the Earth Ltd) v Secretary of State for Energy Security and Net Zero*; *ClientEarth v SSESNZ*; *Good Law Project v SSESNZ* (challenges to the Carbon Budget Delivery Plan)—Climate Change Litigation (<<https://www.climatecasechart.com>>). *R (Plan B Earth) v Prime Minister*, Court of Appeal, 18 March 2022, CA-2021-003448, Order made by the Rt. Hon. Lord Justice Singh.

Unsuccessful: Czech Supreme Court, *Klimatická žaloba ČR v Czech Republic* [2023] 9 As 116/2022 – 166 (*Klimatická žaloba*, Supreme Administrative Court). *Nature and Youth Norway v Norway* [2020] HR-2020-24720P (*Natur og Ungdom*); Bundesgericht, *KlimaSeniorinnen Schweiz v Federal Department of the Environment, Transport, Energy and Communications* [2020] 1C_37/2019 (Bundesgericht, *KlimaSeniorinnen*); *Plan B Earth v Prime Minister* [2021] EWHC 3469 (Admin), judgment of 21 December 2021 (*Plan B Earth*); and *Greenpeace v Spain I*, STS 3556/2023 – ECLI:ES:TS:2023:355, judgments of 24 July 2023. *A Sud v Italy*, first instance, 26 February 2024.

16 ECJ, Case T-330/18 *Carvalho v EP and Council* EU:T:2019:324; upheld on appeal by Case C-565/19 *Carvalho v EP and Council* EU:C:2021:252 (The People's Climate Case).

17 ECtHR, *KlimaSeniorinnen*. ECtHR 9 April 2024, ECLI:CE:ECHR:2024:0409DEC000718921 (*Carême v France*)—lack of victim status; ECtHR 9 April 2024, ECLI:CE:ECHR:2024:0904DEC003937120 (*Duarte Agostinho v Portugal and 32 Others*)—non-exhaustion of domestic remedies and lack of extraterritorial jurisdiction.

appeal, the courts elaborated on this duty of care, ultimately requiring a minimum emissions reduction of 25 per cent by the end of 2020. This requirement was based on fundamental rights read in light of climate science and international commitments of the Dutch state. The plaintiffs in the Belgian *Klimaatzaak* drew on *Urgenda* as their blueprint and based their claim on civil liability in combination with articles 2 and 8 of the ECHR. In first and second instances, the courts established both civil liability and a violation of the plaintiffs' ECHR rights. In its 2023 ruling, the Court of Appeal set a minimum requirement for Belgium of 55 per cent emissions reduction by 2030.¹⁸ The case is currently pending on final appeal before the Court of Cassation. *Klimaatzaak* extensively referenced and cited *Urgenda* and *Neubauer* (discussed below).

In a second category of cases, courts imposed a duty on governments to develop national reduction targets that meet certain substantive benchmarks for protecting current and future generations. Leading examples are *Neubauer* (2021) in Germany and *KlimaSeniorinnen* (2024) before the ECtHR (see also Chapter 2). Unlike the above cases that set a percentage emissions reduction which must be met, the second category of rulings is less prescriptive and therefore less problematic for majoritarian decision making by directly elected representatives. While *Urgenda* concerned the rights of all Dutch citizens, the entry point of the analysis by the German Federal Constitutional Court (GFCC) in *Neubauer* was the alleged violation of the rights of 45 *individual persons* from Bangladesh, Germany and Nepal (the constitutional complaints of two public interest organizations were dismissed as inapplicable). However, by relying, among other things, on a state objective under article 20a of the German Constitution to protect the environment, the GFCC established a general future-oriented, intergenerational duty to protect life and physical integrity. In other words, the Court took a future-oriented policy perspective and mandated legislative action to establish clearer and more detailed reduction targets.

A third category of cases asks courts to evaluate and sometimes invalidate executive action specifying climate targets within a national legal framework. The *Irish Climate Case* in Ireland, *Net Zero Strategy* in the UK and *L'Affaire du Siècle* in France all fall within this category. The number of such cases is likely to increase with the adoption of more stringent and detailed national legal frameworks that set out procedural and substantive obligations for state actors. From a representative perspective, prioritizing majoritarian decision

The second category of rulings is less prescriptive and therefore less problematic for majoritarian decision making by directly elected representatives.

¹⁸ This minimum is the EU reduction target, see Eckes (2024a) for a criticism of the use of EU law.

making, this category of cases is the least problematic. National legal frameworks are adopted by parliaments. The more detailed these obligations are, the more limited the interpretational work of judges when they establish and enforce precise obligations, usually vis-à-vis the executive. In the 2020 *Irish Climate Case*, the Supreme Court invalidated the Irish Government's 2017 National Mitigation Plan on narrow legal grounds. The court found that the plan lacked sufficient detail on how Ireland would achieve its long-term climate goals, rendering it non-compliant with the Climate Action and Low Carbon Development Act 2015 and meaning that government was exceeding its legal authority (acting ultra vires). In the UK's *Net Zero Strategy*, the High Court upheld the challenge to the UK Government's climate strategy for 2033–2037, ruling that the minister had failed to consider key factors mandated by the national Climate Change Act 2008. Both cases also questioned the epistemic basis for the executive actions, noting that insufficient or misrepresented factual basis had informed decision making. In *L'Affaire du Siècle*, the court agreed with plaintiffs' claims relating to France's failure to comply with the path that it had set itself in national legislation. The court rejected the plaintiffs' claims relating to the international climate regime, restricting its ruling to the state's failure to meet its obligation under national law.

**Member states
successfully used EU
law in these cases as a
shield against alleged
obligations under
human rights and
international climate
law.**

The final category comprises different types of unsuccessful cases. These cases typically combine claims found in the first three categories, but where the litigants did not prevail—often also because the courts exercised judicial restraint grounded in separation of powers considerations. While these rulings did not compel state action, they nonetheless participate in the democratic process by articulating, rejecting or reframing legal arguments and sometimes by inviting further contestation. However, for those who reject the democratic legitimacy of judicial review of government actions, unsuccessful cases are usually seen as less problematic. Examples are the Czech case of *Klimatická žaloba*, *Greenpeace v Spain* and *A Sud v Italy*, as well as *Nature and Youth Norway v Norway* and *KlimaSeniorinnen* in Swiss national courts. In the unsuccessful Czech and Spanish cases, as well as the already inadmissible Italian case, national courts did not rule on the merits because they considered the issue of emissions reductions to be governed by EU law (Eckes 2024a). Member states successfully used EU law in these cases as a shield against alleged obligations under human rights and international climate law. In *Nature and Youth Norway*, the Norwegian Supreme Court rejected the applicants' assertion that the state had to consider extraterritorial downstream emissions when issuing extraction permits. Finally, in *KlimaSeniorinnen*, Swiss courts denied the applicant association standing without further justification. This

case then became the first climate case decided by an international court when the ECtHR gave its ruling on 9 April 2024.

3.2.2. Regional courts

The two regional European courts, the ECJ and the ECtHR, have taken very different positions in climate litigation that demands general emissions reductions. In *Carvalho*, the ECJ dismissed a direct challenge of EU climate policies based on the restrictive standing requirements established in its settled case law. However, the distinctiveness requirement—that applicants need to demonstrate they are uniquely affected—is widely criticized as overly formalistic and ‘paradoxically denying legal protection when harm is serious and wide-spread [sic]’—as is precisely the case in the climate emergency (Winter 2023: 92). This has, thus far, blocked the ECJ from being used as an institutional venue to enter the democratic debate on how to deal with the climate crisis.

In *KlimaSeniorinnen*, by contrast, the Grand Chamber of the ECtHR found Switzerland in violation of articles 8 and 6 of the ECHR for failing to sufficiently protect its citizens from the climate crisis and unduly denying an association access to court. This landmark judgment can hardly be overestimated in terms of its impact on the judicial discourse in Europe: *KlimaSeniorinnen* is likely going to be used as a point of legal reference in every ongoing and future general emission reduction case in Europe.

Verein KlimaSeniorinnen and four of its members challenged the alleged failure of Switzerland’s federal government to adopt a regulatory framework to develop adequate climate protection policies. They argued that elderly women are particularly severely affected by climate impacts such as heatwaves. In a novel interpretation of the standing requirements under the ECHR, the court granted the association victim status and standing to represent the human rights claims of elderly women as a particularly vulnerable group but denied standing to the four women individually (for a more detailed presentation of the case, see Eckes 2025). On the same day, the ECtHR dismissed *Duarte*, ruling—among other things—that individuals may not bring climate cases to the Strasbourg Court against a state of which they are neither a citizen nor a resident. This jurisdictional limitation, excluding extraterritorial claims, protects the democratic exchange within a polity from external interference (Eckes 2024b, 2025). However, it also artificially limits the context in which justice claims about a problem requiring truly global collective action can be pursued (see below).

Climate-related targets and policies emerge through multiple political processes at the subnational, national, regional and international levels.

3.2.3. Europe's multi-level, multi-actor 'repeat game'

Judicial rulings are just one—albeit authoritative—contribution to the ongoing institutional and societal quest for an adequate response to the climate crisis. In Europe's multilayered legal landscape, climate-related targets and policies emerge through multiple political processes at the subnational, national, regional and international levels. These processes produce decisions on emission reduction allocations among sectors and regions, and set out the implementing measures necessary to achieve such reductions.

Courts intervene in this policy cycle only intermittently and only on the specifically framed, procedurally circumscribed legal issues before them—those set by each dispute's formally agreed temporal and jurisdictional boundaries, and by its personal limits, that is, the specific parties who will be legally bound by the judgment. A judgment therefore represents a single intervention in this continuous process of decision making and implementation. Certain public actors may be legally bound to give effect to that ruling; others may use it as leverage in deliberation. Even if a ruling fixes a national reduction target by a certain date, it leaves open the critical choices of how such a reduction will be achieved, which sectors will bear the earliest cuts, what role negative emissions or overseas offsets may play and how financial investment should be managed, among numerous other issues.

This highlights the ongoing cyclical nature of democratic decision making: judicial decisions in climate litigation are not and cannot be the final word on climate action. Even constitutional or final rulings cannot settle once and for all issues as complex and long term as what a state must do to address the climate crisis. The political and legal evaluation of such a complex long-term issue also depends on facts that continue to change as time passes, including technological developments and scientific insights, and hence requires continuous evaluation and interpretation by all state actors, including the parliament and the judiciary. More importantly, the act of imposing a higher target alone does not settle much. Rather, it pressures the lawmaker to develop an actual climate policy, with concrete measures in specific sectors.

In sum, political processes of representation, participation, deliberation and justification—taking into account developing scientific insights—form one uninterrupted stream. Court decisions are one attempt to channel, funnel or dam this stream. Climate litigation functions less as an end point and more as one turn in a recurring, multi-actor 'repeat game'. Assessing the democratic

implications of climate rulings therefore requires looking beyond the settling of the specific issue and appreciating the larger, ongoing dialogue between institutions and society.

3.3. DEMOCRATIC LEGITIMACY CLAIMS MADE IN CLIMATE LITIGATION

Analysing the text of climate judgments reveals the range of claims that judges use to justify their decisions. These legitimacy claims also show how judges hold differing assumptions about the relevance and value for democracy of the various elements of decision making—majoritarianism, participation, deliberation and epistemic outcomes.

First, judges in climate litigation cases have highlighted the shortcomings of representative majoritarian politics and emphasized the role of judicial review in ensuring that the democratic process does not become distorted by its own limitations. Explicitly, courts set out their roles—for example, in: *Urgenda*, where the Dutch Supreme Court stresses that courts are mandated to review the lawfulness of public climate (in-)action; *Neubauer*, contrasting the short-term nature of politics with the judiciary's ability to give weight to principled long-term considerations; and *KlimaSeniorinnen*, where the ECtHR highlights not only its own role in ensuring Convention compliance but also the role of national courts in the democratic decision-making process.

Climate litigation exposes structural weaknesses in the legislative process that can lead to inadequate representation. In *Neubauer*, the GFCC explained how and why politics fails to adequately address the climate crisis. It emphasized how the 'democratic political process is organized along more short-term lines based on election cycles, placing it at a structural risk of being less responsive to tackling the ecological issues that need to be pursued over the long term' (*Neubauer* 2021: para. 205). Similarly, the ECtHR in *KlimaSeniorinnen* noted that 'the intergenerational perspective underscores the risk inherent in the relevant political decision-making processes, namely that *short-term interests* and concerns may come to prevail over [the] pressing needs for sustainable policy-making, rendering that risk particularly serious and *adding justification for the possibility of judicial review*' (para. 420 [emphasis added]).

Judges hold differing assumptions about the relevance and value for democracy of the various elements of decision making.

In the *Irish Climate Case*, courts rejected the government's attempt to postpone political responsibility for emissions reduction by proposing an insufficiently specific plan that first allowed emissions to increase. The Supreme Court was not convinced by the government's claim that potential future technologies allowing large-scale carbon capture and storage could justify delay (para. 6.43). Instead, it specifically ruled that the public needs to be able to understand 'whether the types of technology considered in the [Irish National Mitigation] Plan are appropriate and likely to be effective' (para. 6.47). The above indicates that courts take issue with the lack of consideration of the long-term future in the state's arguments, as well as reliance on uncertain technologies.

A well-known problem in many democracies is political short-termism tied to election cycles, with limited or no representation of citizens' long-term interests. In the context of the climate emergency, these shortcomings become pathologies (Kuh 2019; more generally on political pathologies, see Ely 1980: 103). There is a fundamental—and arguably unprecedented—structural contradiction between the will to continue polluting and the need to eventually mitigate the resulting harm. This disconnect plays out in both time and space: emissions released anywhere on the planet worsen the climate crisis everywhere, and warming caused by today's emissions will reach well into the future. In this context, short-term political thinking, which caters only to those within the boundaries of specific constituencies, is unable to grapple with the truly global and time-delayed nature of the climate crisis.

3.3.1. Effective rights protection through organizational representation

Many people today feel that state institutions do not represent them or their interests. Furthermore, those who are under-represented in politics often suffer more from climate impacts and also from mitigation policies.

In *KlimaSeniorinnen*, the ECtHR recognized the importance of public interest organizations in defending the rights of affected groups. The court built on its earlier jurisprudence to 'tailor' its standing requirements to allow public interest organizations that are not direct victims to represent the interests of individuals, including without 'specific authority' to act. This highlights the importance of public interest organizations as a conduit for representing rights and interests otherwise neglected in climate policymaking. The court acknowledges that effective minority representation is conceivable for those not in the numerical majority. The reasoning is based on

both practical and principled considerations: it emphasizes the need for effective protection via organized representation, while also maintaining docket control and the quality of the legal and factual arguments brought about by organized representation.

This position contrasts with jurisdictions in which only individuals who are directly affected can enforce their rights and interests. A prominent example is Germany. This contrast also came to the fore in the *Irish Climate Case*, where the NGO bringing the claim could challenge the legality of the executive climate plan implementing national law, but the claim itself could not rely on human rights (Adelmant, Alston and Blainey 2021).

3.3.2. 'Background' norms and limits on majoritarian decision making

All climate cases are rooted in the judicial interpretation of a range of legal sources—international, regional and national laws. These laws are all adopted, ratified or at least endorsed by the directly elected political institutions of the state, including human rights treaties and global climate governance under the UNFCCC. Critics who claim that judicial decisions undermine majoritarian rule, and who argue that the former (unduly) limit the scope of the latter, usually fail to acknowledge that court decisions apply norms that stem from majoritarian decision making.

In many climate cases, applicants ask judges to consider 'background' norms such as principles of international, human rights or tort law, arguing that the legal framework created by the national and EU legislature is not exhaustive, and it does not exclude more far-reaching obligations emerging from these background norms. Human rights, the duty of care under tort law, as well as legally binding and even non-legal norms—including the UNFCCC—together create a net of general (background) norms that reflect fundamental, democratically legitimized choices on how to account for and balance interests and rights. The judge's role is to reconcile, interpret and apply all relevant norms, or, if this proves impossible, declare a conflict of norms and draw conclusions on which norms should prevail. It is also the role of the judge to develop particular obligations from general norms where specific regulation fails to do so.

In line with this point, the ECtHR asserts in *KlimaSeniorinnen* that 'democracy cannot be reduced to the will of the majority of the electorate and elected representatives, in disregard of the requirements of the rule of law' (para. 412). In *KlimaSeniorinnen*, the ECtHR points out that the 'remit of domestic courts and the Court is

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therefore complementary to those democratic processes’ (para. 411). The ECtHR in *KlimaSeniorinnen* emphasized: ‘Even if in the longer term, climate change poses existential risks for humankind, this does not detract from the fact that in the short term the necessity of combating climate change involves various conflicts, the weighing-up of which falls ... within the democratic decision-making processes, complemented by judicial oversight by the domestic courts and this Court’ (para. 421).

Notably, the ECtHR does not say that legislatures have the exclusive prerogative to determine mitigation objectives. Rather, it describes a democratic process in which each and every institution, including national and regional courts, has a distinct role and makes distinct contributions. In broad terms, the court confirms that the legislature must reconcile the broad range of interests affected by the climate crisis and its mitigation and that the judiciary must oversee this process due to its mandate to uphold the Convention (ECtHR) and national (constitutional) law. Thus, the court emphasizes both the relevance of majoritarian decision making by political representatives and the judiciary’s role in ensuring that this majoritarian decision making remains democratic.

When the ECtHR notes that ‘the Court’s competence in the context of climate-change litigation cannot, as a matter of principle, be excluded’ and that ‘the question is no longer whether, but how, human rights courts should address the impacts of environmental harms on the enjoyment of human rights’ (para. 451), it could have referred to numerous rulings of domestic courts accepting jurisdiction for general emission reduction cases. It homed in on *Urgenda*, in which the Dutch Supreme Court concluded in 2019 that: ‘The Dutch Constitution requires the Dutch courts to apply the provisions of this convention ... in accordance with the ECtHR’s interpretation of these provisions. This mandate to the courts to offer legal protection, even against the government, is an essential component of a democratic state under the rule of law’ (para. 261).

Judicial proceedings offer a form of participation that goes beyond formal equal representation in elections.

3.3.3. Participation and representation through courts

Judicial proceedings offer a form of participation that goes beyond formal equal representation in elections. This may raise concerns of over-representation of litigants’ concerns, as voiced by opponents of judicial review. Litigants, however, do not decide the outcome of a case (see also Lafont 2020). Bringing a climate case only means that they present their demands in a public and legally structured process and ask the judge to decide whether their demands are justified under the law. Judicial review is a necessary element of participation

in democratic decision making for at least two reasons. First, while political discussion can include a wide range of arguments that may sometimes distract from constitutional issues, judicial review puts constitutional, rights-based arguments front and centre. Second, because the rights-relevant consequences of a law or policy may not have been transparent when the law or policy was adopted, judicial review channels the rights-relevant aspects into the decision-making process (Lafont 2020).

In general emission reduction cases against states, the criticism that judicial review creates inequalities by over-representing the perspective of the litigants does not hold. These cases concern the whole economy. While the transition away from fossil fuel dependence has winners and losers, deeply distributive decisions on which sector needs to reduce how much and by when are not decided in these cases. Because of the scope of the contested issue and because of the cyclical nature of the political process, decisions in this type of climate litigation start, rather than end, the political debate on issues such as how to reduce emissions and at what speed, and who needs to be making reductions most quickly.

Several groups merit special attention when discussing the possibility of participation in democratic decision making via climate litigation. One such group is foreigners—geographical outsiders who do not have voting rights. For example, in the case of *Neubauer*, plaintiffs from Bangladesh and Nepal—and in the *People's Climate Case* before the ECJ, plaintiffs from Fiji and Kenya—attempted to have their grievances heard (Kotzé 2021). Generally, standing before courts is not limited to citizens, meaning that in some instances foreigners are in a stronger position to advocate for their rights and influence the development of laws through the judicial process than via the political process.

Another group of voteless claimants in climate litigation are minors and future generations. In Europe, *Neubauer* is the leading case on the rights of future generations. In this decision, the GFCC interpreted constitutional rights as intertemporal guarantees of freedom. It concluded that lack of action in the short term necessarily requires more stringent action in the long term, which irreversibly diminishes the freedoms of 'future generations – those who will be most affected – [but] naturally have no voice of their own in shaping the current political agenda' (*Neubauer* 2021: para. 205). Therefore, the burden of emissions reductions must be distributed fairly over time. Similar claims have been made on behalf of unborn children and future generations in cases like *Urgenda*, *Nature and Youth Norway*,

Those who ‘stand to be most affected’ do not hold institutional positions proportionate to their numbers and form a considerable share of the claimants in climate litigation.

Klimaatzaak and the *People’s Climate Case*. Even in *KlimaSeniorinnen*, which focused on the rights of older women, the ECtHR emphasized that the applicant association also represented future generations and that sharing the intergenerational burden lies at the core of climate-related responsibilities.

A third, more diverse group includes those who, while not voteless, remain under-represented: young people who are no longer minors, citizens from minority backgrounds, women and the elderly. These cohorts, described by courts as those who ‘stand to be most affected’ and are ‘at a distinct representational disadvantage’, do not hold institutional positions proportionate to their numbers and form a considerable share of the claimants in climate litigation.

While good reasons may justify the exclusion of the first two groups from voting in general elections, judicial intervention to protect their legal rights—for example, international human rights—appears appropriate for all three groups to counterbalance absent or disproportionately limited political representation, and, hence, consideration in policymaking of their distinct positions and vulnerabilities to harms as a result of failure to take adequate climate action.

3.3.4. Enhancing deliberation

While equality and justice considerations in general policymaking may be better deliberated in parliament than in court, climate litigation has been crucial in identifying the rights-relevance of the climate crisis. It has further made responsibilities in the climate crisis a constitutional issue, not because of but despite the deep disagreements among citizens on what should be done to tackle it.

An illustrative example of how litigation can enhance the quality of democratic decision making is *KlimaSeniorinnen*. Closing the door on arguments justifying lowering national emissions reduction targets, the ECtHR shifts the debate to how climate change mitigation can be reasonably achieved. The court justifies the limited margin of discretion for national governments in setting emission targets based on ‘the nature and gravity of the threat and the general consensus as to the stakes involved’ (*KlimaSeniorinnen* 2024: para. 67). The court’s justification therefore underscores the exceptional nature of the climate crisis, together with the consensus about its impacts and the acceptance of related political and legal obligations.

It is the core role of the judiciary within a system of separated powers to require the state to explain how its actions or omissions limit and

potentially interfere with rights—in view of the state’s own formal and informal commitments, and factual assessments by state bodies and scientists. Justifying their rights-relevant actions in courts (both domestic and international) is the process that democratic states have agreed to follow in their constitutions or under international law as part of upholding the rule of law. This process not only is procedural but also necessitates establishing and justifying actions on the basis of substantive criteria (see Forst 2007). Therefore, the court’s specific contribution to deliberative democracy lies in holding political institutions to account for their binding and non-binding obligations, as a way of ensuring public safety via fundamental rights in light of scientific evidence—including by reducing those institutions’ ability to water down the objectives of climate policy.

Furthermore, the ECtHR promoted transparency and publicity in Switzerland’s carbon budgeting process by clarifying that merely estimating the country’s remaining carbon budget was not sufficient (*KlimaSeniorinnen* 2024: paras 569–70). In essence, the court rejected the idea that percentage-based reduction targets for future years (like 2030 or 2040) could be used for estimates, concluding that an effective climate regulatory framework required precise quantification of the state’s fair share carbon budget. This clarity enables civil society actors and academics to engage with and join in the deliberative process regarding climate policies.

Finally, litigants in climate cases, even if they are not successful, exercise their ‘right to receive explicit, reasoned justification’ for why their rights were not violated or why the public action is not unconstitutional (Lafont 2020: 211). This point also emphasizes how unsuccessful cases can nonetheless contribute to political deliberation in the longer run. Arguments that may first have failed in their original framing still allow citizens to ‘gain traction within each other’s views and transform them over time’ (Lafont 2020: 214).

3.3.5. Epistemological outcomes—bringing back science

Another important role of courts in climate litigation is to ensure that governments do not merely pay lip service to climate issues. This ‘climate-washing’ occurs when authorities acknowledge the problem and claim to be taking sufficient action to tackle it, yet their efforts fall short when measured against scientific evidence. In line with this, the ECtHR emphasizes that the regulations and measures that states put in place must be ‘[i]n line with the international commitments undertaken by the member States, most notably under the UNFCCC and the Paris Agreement, and the *cogent scientific evidence* provided, in particular, by the IPCC’ (*KlimaSeniorinnen* 2024:

The court’s specific contribution to deliberative democracy lies in holding political institutions to account for their binding and non-binding obligations.

Another important role of courts in climate litigation is to ensure that governments do not merely pay lip service to climate issues.

para. 546 [emphasis added]). This emphasis on science is vital for building public trust: in the Organisation for Economic Co-operation and Development's 2024 Survey on Drivers of Trust in Public Institutions, evidence-based decision making and the ability to ensure intergenerational equity were singled out as the two most relevant factors to establish trust in public institutions (OECD 2024). These two trust-building factors are supported by climate litigation.

In fact, all the international political and legal commitments of the defendant states—on which climate litigation relies—can only become actionable when interpreted through the lens of established climate science. The IPCC reports on the global state of the climate crisis constitute the foundational evidence in climate litigation, often complemented with country-specific studies. The IPCC's summaries for policymakers are unanimously endorsed by states, which, on the one hand, bolsters their democratic support and, on the other, makes them relatively 'conservative', leading to the exclusion of controversial points and more extreme projections. In other words, the process excludes outliers and extremes, gravitating towards the lowest common denominator.

Notable cases such as *Urgenda* and *Klimaatzaak* relied heavily on different IPCC assessment reports. *Neubauer* relied on the assessments of national scientific advisory bodies, which are based on IPCC reports (Neubauer 2021: paras 28, 36, 216–47). *KlimaSeniorinnen* used the IPCC reports to establish the 'facts concerning climate change' and the effects of climate change for the enjoyment of rights guaranteed under the ECHR. For its assessment of the adequacy of Swiss climate actions, the court relied on expert submissions of the parties (*KlimaSeniorinnen* 2024: paras 64–120).

Without detailed and reliable science that is politically accepted, the creation of the prevailing legal norms in these landmark cases would not have been possible. In all these cases, science forms an essential element in establishing the justification and substance of states' prevailing duty to take adequate climate action. The strong reliance on expertise suggests a technocratic justification for establishing baseline mitigation norms: namely that in the climate crisis, some expert knowledge needs to be placed beyond the reach of political majority decisions (see Bookman 2024).

3.4. CONSIDERATIONS FOR DEMOCRACY

Europe is a hot spot of strategic climate litigation, including general emission reduction cases against states. Many cases have been successful, and courts have not only imposed the obligation on defendant states to reduce emissions by a substantive minimum amount, quantify fair share carbon budgets and set up an effective legal framework for emissions reductions, they have also enforced national climate laws against executives. Some cases have been unsuccessful. However, in *KlimaSeniorinnen*, the ECtHR decided in favour of the applicants in the first climate case that was escalated to the transnational level. Other cases that were rejected by national courts are still pending in Strasbourg.

In all these instances, courts made numerous legitimacy claims regarding their own role in the democratic process. National courts and the ECtHR confirmed the value of the judiciary's contributions to democracy and by doing so made clear that democracy is more than majoritarian decision making. This reflects the constitutional consensus in Europe that emphasizes not only the commitment to the rule of law but also that participatory and deliberative elements should be part of a functioning and truly representative democracy. While some emphasize that judicial review limits majority self-governance, courts have largely relied on a conception of democracy that considers the role of courts to be important in making self-governance possible, namely by allowing participation and representation via channels other than elections.

By allowing applicants to make their case and demand legal justification, the courts illustrated the limitations of representative democracy that are particularly relevant under the exceptional challenges of the climate crisis. They also reasoned in ways that enhanced the standing of deliberation within domestic decision making. By holding states to their international legal commitments, courts pushed the discussion on climate targets and policies away from the 'whether', and towards the 'how'.

Scientific consensus confirms that the climate crisis is causing and will continue to cause great harm. Courts have likewise confirmed that these harms amount to serious fundamental violations to the most basic rights, such as the right to life and bodily integrity. If these points are accepted, judicial interventions that focus the democratic process on *how* (rather than *whether*) to deal with mitigation, adaptation and compensation should be seen as a contribution to the quality of democratic decision making. None of these interventions

The courts illustrated the limitations of representative democracy that are particularly relevant under the exceptional challenges of the climate crisis.

prevented a debate on the equity and fairness of climate policies or determined how the involved interests should be balanced, deferring this to political decision-making processes within domestic institutional structures.

Importantly, when thinking about the democratic consequences of climate litigation, it should be noted that judges do not have the last word in settling any general controversial issue. Policymaking is a cyclical process: judges settle an individual case at a certain time, considering the applicable norms at that point. Of the examined cases, *Neubauer* and *Urgenda* in Germany and the Netherlands show that court decisions in climate litigation are not and cannot be the final destination, but only one stopover with an influence on the ongoing journey towards net zero.

Further investigation is needed into which aspects of climate litigation in Europe are replicable in non-European jurisdictions, and how litigation in Europe can be influenced by developments elsewhere. For the moment, it can be concluded that such potential exists and that a growing number of cases worldwide confirming the obligation of states to avert dangerous climate change are likely to reassure individual judges, within and outside Europe, in their duty to set the legal boundaries needed in functioning democracies.

At the same time, climate litigation in Europe is developing as a distinctive body of case law due to the multilayered nature of the legal landscape, in which both EU law and the ECHR are joined reference points. Interpretations on how to apply the different layers of law influence, and are replicable in, other cases. Rulings of the ECtHR, for instance, enjoy exceptional authority on human rights matters.

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Chapter 4

CLIMATE LITIGATION AND DEMOCRACY IN THE GLOBAL SOUTH

Maria Antonia Tigre

This chapter provides a broad overview of climate litigation in the Global South, examining its evolution and growing significance in a region disproportionately affected by the impacts of climate change. It highlights the pivotal role that climate litigation plays in advancing environmental justice and democratic engagement, particularly for communities and individuals whose voices are often marginalized in traditional decision-making processes. Drawing on existing scholarship and recent publications,¹⁹ this chapter explores how litigation has evolved in the Global South, emphasizing how its rise signals a more equitable and inclusive approach to global climate governance.

Moreover, this chapter positions climate litigation as an exercise in democracy. It argues that litigants—often vulnerable communities, Indigenous groups and civil society organizations—use courts to hold governments and corporations accountable for their environmental responsibilities, asserting their rights within democratic frameworks. Climate litigation empowers these actors to challenge the systemic inequities that make them more susceptible to climate risks, actively engaging democratic processes to protect both present and future generations. This reflects a form of legal resistance and a reaffirmation of democratic principles, where the rule of law is mobilized to safeguard public and environmental welfare (see, e.g., Maine-Klingst, Tigre and Ott 2024).

¹⁹ This chapter extensively draws on the author's previous work, in particular Burger and Tigre (2023); Tigre and Barry (2023, 2025); Murcott and Tigre (2024); Tigre (2024b); Tigre, Murcott and Samuels (forthcoming 2025). Unless otherwise stated, legal documents referenced in this chapter can be accessed via the Sabin Center for Climate Change Law's Climate Change Litigation Databases [n.d.].

By introducing these themes, the chapter sets the stage for a deeper exploration of the Global South's legal landscape, underscoring the importance of this research in understanding how climate litigation can bridge democratic participation, legal innovation and environmental protection across diverse legal traditions and sociopolitical contexts.

4.1. A CLOSER LOOK: WHAT DOES CLIMATE LITIGATION IN THE GLOBAL SOUTH LOOK LIKE?

This section illuminates the specific characteristics and dynamics of climate litigation in the Global South,²⁰ providing a detailed analysis of how it has developed from 1995 to 2024. By mapping the progression of cases across various regions, the section offers a comprehensive view of the trends in geographical distribution and key jurisdictions where climate litigation has taken root. It also compares the evolution of climate litigation in the Global South with developments in the Global North, offering insights into disparities in case numbers, legal outcomes and overall impact.

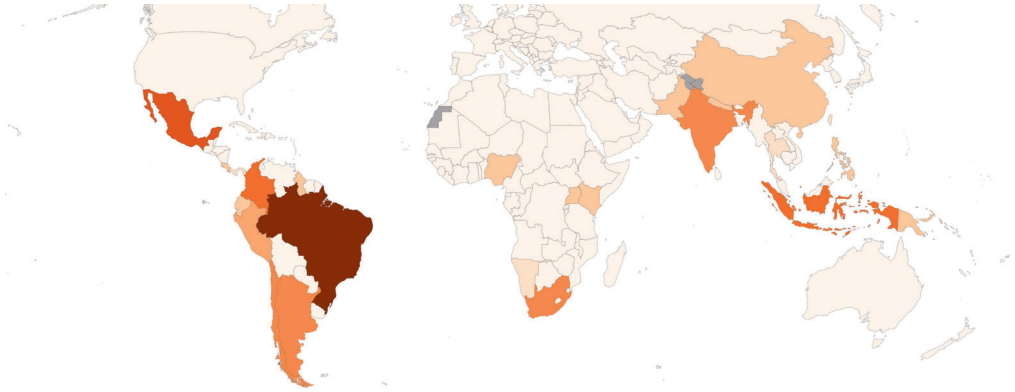
The global distribution of climate litigation cases reveals a stark divide between the Global North and Global South.

The global distribution of climate litigation cases reveals a stark divide between the Global North and Global South, with the latter seeing a notable increase in litigation activity in recent years. As of August 2025, the Sabin Center's Global Climate Change Litigation Database had tracked 3,112 climate cases. Based on the Sabin Center's methodology, 'climate change litigation' includes cases that raise material issues of law or fact relating to climate change mitigation and adaptation, or to the science of climate change (Sabin Center for Climate Change Law n.d.). Such cases are brought before a range of administrative, judicial and other adjudicatory bodies. Global South cases, totalling 299, amount to 9.6 per cent of the climate cases included in the database. Climate litigation has been recorded in 23 jurisdictions across the Global South, as displayed in the map in Figure 4.1.²¹

20 For a critical conceptualization of the formula 'Global South' and its relevance to climate litigation, see Murcott and Tigre (2024), see also Box 1.1: Defining the Global South.

21 It is important to note, however, that cases in the Global South are often framed in terms of local environmental harms, land use disputes or development challenges, even when they have major climate-related implications. This framing means that the number of 'climate' cases captured by the database may not capture the true scope of litigation relevant to climate change in these jurisdictions.

Figure 4.1. Regional distribution of climate litigation in the Global South

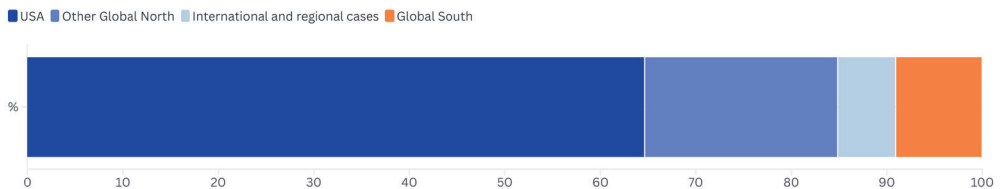


Source: Sabin Center for Climate Change Law, Columbia Climate School at Columbia Law School, 'Global Climate Litigation Database [until July 2025]', <<https://climatecasechart.com>>, accessed 1 August 2025.

Note: Darker colour indicates higher number of cases.

The USA dominates the global climate litigation landscape, accounting for 63.9 per cent of the total cases. The rest of the Global North—including Canada, European nations, Australia and New Zealand, and some Asian countries such as Japan and South Korea—makes up 20.2 per cent of the total. International or regional courts and tribunals, including advisory opinions and proceedings before UN treaty bodies, contribute 6.3 per cent.

Figure 4.2. Climate cases distribution by region

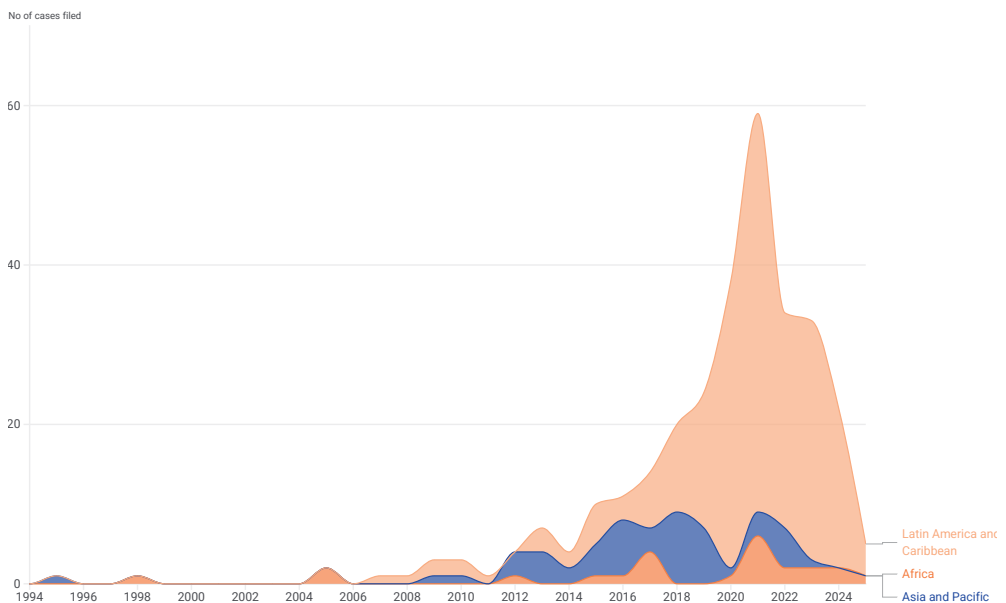


Source: Sabin Center for Climate Change Law, Columbia Climate School at Columbia Law School, 'Global Climate Litigation Database [until July 2025]', <<https://climatecasechart.com>>, accessed 1 August 2025.

Note: Image created with flourish.studio.

Early climate litigation activity in the Global South was limited to a few cases filed in the 1990s and early 2000s. It was not until after 2015—marked by the signing of the Paris Agreement—that significant developments in climate litigation emerged in the Global South. The years 2020, 2021 and 2022 witnessed the highest number of cases, with 36, 54 and 34 cases filed, respectively. These cases largely reflected the increasing mobilization around climate justice, particularly centred around local and regional environmental concerns.

Figure 4.3. Development of case filings in climate litigation in the Global South



Source: Sabin Center for Climate Change Law, Columbia Climate School at Columbia Law School, 'Global Climate Litigation Database [until July 2025]', <<https://climatecasechart.com>>, accessed 1 August 2025.

Note: Image created with flourish.studio.

4.2. REGIONAL BREAKDOWN

Latin America has emerged as the leader in Global South climate litigation, accounting for 74.5 per cent of Global South climate-related cases (see, e.g., Auz 2022; Tigre, Urzola and Goodman 2023; Tigre et al. 2023). The most significant contributors are Brazil (45 per cent), Mexico (8 per cent) and Colombia (6 per cent), with Argentina,

Chile, Ecuador, Guyana and Peru also showing significant activity. The growth in litigation from Latin America and the Caribbean began after 2017, with 2020 seeing the highest number of filings. Key regional themes include the protection of vulnerable ecosystems and communities, challenges to permitting procedures (i.e. environmental permits to authorize a polluting project, or the environmental impact assessment that is part of a permitting analysis) and demands for accountability in climate-related damages, especially concerning deforestation and its links to carbon sinks.

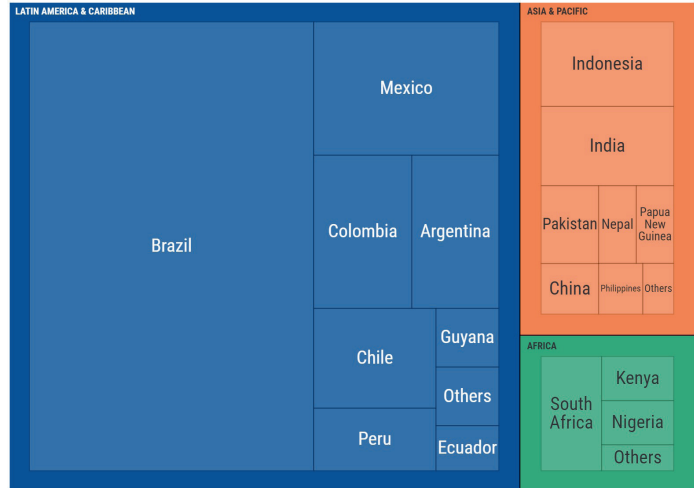
The Asia-Pacific region has also seen a rise in climate litigation, accounting for 18.7 per cent of cases filed in the Global South.²² Countries such as Indonesia (5.6 per cent), India (4.8 per cent) and Pakistan (2.2 per cent) are among the key contributors. Other jurisdictions like China, Nepal, Papua New Guinea, the Philippines, Taiwan and Thailand show emerging activity. In Asia, cases frequently focus on environmental permits and environmental impact assessments (EIAs), climate impacts of industrial projects and the protection of carbon sinks. The region is particularly vulnerable to climate-related disasters, forest fires, flooding and the destruction of biodiversity, which fuel legal claims related to mitigation and adaptation efforts. The ongoing tension between development and climate action remains a dominant feature of the litigation landscape in this region.

Climate litigation in Africa accounts for 6.7 per cent of the cases from the Global South, with South Africa (3.7 per cent), Nigeria (1.1 per cent) and Kenya (0.7 per cent) among the most active jurisdictions.²³ Other countries, including Namibia and Uganda, have fewer cases. Africa's litigation landscape primarily addresses the challenges of climate adaptation, a just transition to low-carbon economies and the protection of communities disproportionately affected by climate change. Many African cases focus on permitting and EIAs for coal extraction, consultation of impacted communities and alignment with international and constitutional climate commitments. The region also sees litigation centred on enforcing international and national climate policies and challenging the adequacy of governmental climate action measures.

²² For more on climate litigation in Asia, see, e.g., Eales et al. (2020); Lin and Kysar (2020). For an overview of the nexus between climate change and democracy in Asia-Pacific, see Tham (2023); Kenny and Runey (2023, 2025).

²³ For more on climate litigation in Africa, see, e.g., Kotzé and du Plessis (2020); Bouwer and Field (2021); Bouwer et al. (2024).

Figure 4.4. Regional distribution of Global South cases



Source: Savin Center for Climate Change Law, Columbia Climate School at Columbia Law School, 'Global Climate Litigation Database [until July 2025]', <<https://climatecasechart.com>>, accessed 1 August 2025.

Many countries in these regions are not significant GHG emitters but bear the brunt of climate change's effects.

4.2.1. Regional contexts and influence on litigation

Unique economic, political and environmental contexts shape the regional distribution of climate litigation. In the Global South, climate litigation often intersects with broader issues of environmental justice, human rights, and economic development. Many countries in these regions are not significant GHG emitters but bear the brunt of climate change's effects, such as extreme weather events, rising sea levels and ecosystem destruction. This creates a compelling case for climate litigation, particularly in holding governments and corporations accountable for their contributions to the crisis.

In contrast, litigation in the Global North tends to focus more on mitigation efforts—particularly the alignment of national policies with the long-term goals of the Paris Agreement. This includes tackling GHG emissions reduction and ensuring the transition to renewable energy sources. In the Global South, litigation often involves a broader array of issues, including Indigenous rights, the rights of nature and the protection of vulnerable communities and ecosystems.

The increase of climate litigation in the Global South indicates a shifting focus towards climate justice—the demand that those most affected by climate change (who have often contributed minimally to causing the crisis) receive the support, protection and redress they deserve. The regional variation in the focus and tactics of climate litigation demonstrates how these legal efforts are tailored to address local realities, making them essential mechanisms for achieving globally equitable and sustainable climate outcomes.

4.2.2. Hotspots of justice: Unpacking jurisdictions with more than 10 cases

As of 2025, Brazil has the highest number of cases in the Global South, with 121 cases.²⁴ Brazil's climate litigation landscape has evolved significantly since its first climate case in 1996, with cases spanning various categories, including climate accountability, deforestation, corporate liability, civil liability for climate damages and climate risk assessment. Most climate cases target the government, often challenging inaction or regulatory rollbacks—particularly under former President Bolsonaro's administration—and seeking enforcement of existing climate laws. Increasingly, political parties and civil society organizations are using litigation to uphold constitutional environmental rights, highlighting the judiciary's role in safeguarding democratic principles. Although cases against the private sector are still emerging, they signal a growing trend towards corporate accountability. Most cases focus on land-use changes or the forestry and energy sectors, reflecting Brazil's primary sources of GHG emissions. Despite the surge in filings, few cases have yet been decided: the impacts of these cases will therefore become clearer in the coming years.

Second in terms of number of cases, climate litigation in Mexico is driven mainly by NGOs challenging government policies on climate and energy, with cases primarily targeting the federal government's approach to emissions reductions and invoking the constitutional right to a healthy environment.²⁵ Among the 22 cases here, most lawsuits focus on energy policies that plaintiffs argue violate international commitments or hinder the transition to renewable energy. Another litigation category involves disputes over the constitutionality of subnational 'green taxes' on emissions based mainly on separation of powers arguments, with courts issuing mixed rulings on their legality. These cases illustrate the judiciary's role in shaping climate policy and enforcing constitutional rights, reflecting

The regional variation in the focus and tactics of climate litigation demonstrates how these legal efforts are tailored to address local realities.

²⁴ For more on climate litigation in Brazil, see, e.g. Tigre and Setzer (2023); Tigre (2024a); de Andrade Moreira et al. (2024a, 2024b).

²⁵ For more on climate litigation in Mexico, see, e.g. Rosales (2021).

At the international level, Colombia has played a significant role in advancing climate law through advisory opinion requests to the IACHR.

both the opportunities and limitations of legal routes for climate action within Mexico's democratic framework.

Third, climate litigation in Colombia is driven primarily by individuals, including those from Indigenous communities, who are seeking to enforce environmental rights. Most cases target the government.²⁶ Legal actions in the 16 climate cases contained in the Sabin Center database focus on three key areas: ensuring compliance with climate commitments, protecting carbon sinks like the Amazon and páramos (alpine tundra ecosystems specific to the region), and addressing climate adaptation challenges (mainly related to water scarcity). Courts have recognized the constitutional right to a healthy environment, and landmark decisions have declared ecosystems to be legal subjects, reinforcing governmental obligations to protect them. However, enforcement remains a challenge: litigation often seeks to compel implementation of existing laws. At the international level, Colombia has played a significant role in advancing climate law through advisory opinion requests to the IACHR. It has also faced backlash litigation from investors challenging environmental regulations.

Fourth, climate litigation in Indonesia is primarily driven by the Ministry of Environment and Forestry, which has filed cases against national corporations for environmental harm, particularly related to forest fires, deforestation and harm resulting from environmental impact assessments.²⁷ Among Indonesia's 15 cases, many plaintiffs seek compensation for the loss of carbon sinks and GHG emissions, with courts often awarding significant damages. While most cases involve government action against corporations, there are also lawsuits challenging inadequate EIAs for fossil fuel projects, and one high-profile case brought by youth plaintiffs alleging human rights violations due to insufficient climate action. These cases highlight the roles of the government and judiciary in enforcing environmental laws and shaping climate policy, reflecting the ongoing tension between economic development and environmental protection in Indonesia.

Fifth, with 14 cases, climate litigation in Argentina is primarily driven by citizens, NGOs and advocacy groups. Most cases challenge government actions, while some target corporations.²⁸ Climate litigation falls into two main categories: cases focused on protecting

²⁶ For more on climate litigation in Colombia, see, e.g. del Pilar García Pachón, Vilorio and de la Rosa Calderón (2021); Urzola and Castellanos (2023); de la Rosa Calderón (2024).

²⁷ For more on climate litigation in Indonesia, see, e.g. Sulistiawati (2023); Cornelius (2024).

²⁸ For more on climate litigation in Argentina, see Medici-Colombo and Berros (2023).

vulnerable ecosystems, such as wetlands and salt pans, and project-based cases that question the environmental and climate impacts of specific developments. Many lawsuits seek to enforce Argentina's climate commitments and ensure compliance with national and international environmental standards. However, despite a growing number of cases, as of March 2025 Argentina has yet to see a final decision that explicitly addresses climate change.

When considering India, despite the size of the population, the presence of environmental tribunals and strong environmental jurisprudence, climate litigation in the country remains relatively modest, with 13 cases (primarily focused on environmental permits and climate action policies rather than direct climate claims).²⁹ Most cases are brought by NGOs against the government and have been heard by the National Green Tribunal rather than the Supreme Court. This specialized court focusing on environmental cases provides speedier and more focused adjudication of cases, with an expert composition of judges and experts with backgrounds in law, science and the environment. Litigation often challenges inadequate EIAs, failures in implementing climate policies and obligations related to the government's promotion of renewable energy. Courts have recognized principles like intergenerational equity, the right to a clean environment and the impact of GHG emissions. Still, their rulings tend to defer to the executive government for policymaking (see Chapter 3 for comparison with Europe). Recent decisions have begun acknowledging climate change as a constitutional concern, reflecting an evolving judicial approach to climate governance within India's democratic framework.

Furthermore, Chile's emerging climate litigation landscape underlines the potential for environmental governance to reinforce democratic principles.³⁰ With 12 cases filed since 2016, litigation, often brought by local communities and labour unions against state-led enterprises, has primarily centred on just transition and energy sector permitting. These cases demonstrate how public participation in environmental decision making helps to create more inclusive policies by ensuring that marginalized voices are heard. Research has shown that when communities have a say in decisions affecting them, the outcomes are more equitable and sustainable, thus enhancing environmental justice (Berry et al. 2019; Reed 2008). Supreme Court decisions have recognized the government's obligations to consult workers in decarbonization efforts and to incorporate climate considerations

Courts have recognized principles like intergenerational equity, the right to a clean environment and the impact of GHG emissions.

²⁹ For more on climate litigation in India, see, e.g. Ghosh 2021; Gill and Ramachandran (2021); Chaturvedi (2022).

³⁰ For more on climate litigation in Chile, see, e.g. Sarriego (2021); Villa (2024).

into EIAs. As litigation evolves, it serves as a democratic mechanism for holding state institutions accountable in upholding Chile's climate policies.

Finally, climate litigation in South Africa primarily challenges environmental permitting and impact assessments, with most cases focusing on energy projects such as coal-fired power plants, fossil fuel exploration and natural gas facilities.³¹ With 10 climate cases, courts have recognized the significance of climate considerations in EIAs and have ruled in favour of plaintiffs in several key cases, reinforcing constitutional rights related to the environment, consultation and intergenerational equity. Litigation has also shaped energy policy, as seen in cases contesting coal projects and which push for increased renewable energy procurement. While the judiciary has been receptive to climate arguments, litigation remains crucial for holding the government accountable to its climate commitments, reflecting broader democratic struggles over environmental governance and the country's energy future.

4.3. CASE STUDIES IN CLIMATE LITIGATION IN THE GLOBAL SOUTH

This section explores representative examples of climate cases from various jurisdictions in the Global South, emphasizing the role of courts in tackling climate change, the diverse legal strategies used, and the effects of these rulings on both national and international levels. By examining cases from Brazil, India, Mexico, Nepal, and South Africa, this section demonstrates the variety of legal approaches and how climate litigation has influenced government policies, corporate action, and broader climate governance across regions.

4.3.1. *#CancelCoal* case: *Africa Climate Alliance v Minister of Mineral Resources & Energy* (South Africa)

The *#CancelCoal* case, or *Africa Climate Alliance v Minister of Mineral Resources & Energy* 2024, was presented in November 2021 by the Africa Climate Alliance, Vukani Environmental Justice Movement in Action and GroundWork Trust, with legal representation from the Centre for Environmental Rights. These NGOs challenged the South African Government's decision to include 1,500 MW of new coal-fired power in the 2019 Integrated Resource Plan (IRP), arguing that the

31 For more information on climate litigation in South Africa, see, e.g., Field (2021); McConnachie (2023); Chamberlain and Fourie (2023); Murcott and Vinti (2024).

decision violated constitutional rights. The respondents included the Minister of Mineral Resources and Energy, the National Energy Regulator of South Africa (NERSA), the Minister of Forestry, Fisheries and the Environment, and the President. The Minister of Electricity was added as a fifth respondent in April 2024.

The applicants contended that the coal expansion plan contravened multiple constitutional rights, including the right to a healthy environment (section 24), the rights to life (section 11), dignity (section 10) and equality (section 9), the rights to healthcare, food and water (section 27), and the best interest of the child (section 28). They provided expert evidence demonstrating that coal-fired power generation is a major contributor to climate change, public health risks and environmental degradation, disproportionately affecting children and future generations. The applicants further argued that the government failed to conduct specific impact assessments on children's rights, to explore cleaner energy alternatives or to ensure adequate public participation in decision making. Finally, modelling costs of different energy sources showed that adding coal to the energy mix would make energy more expensive in South Africa. The plaintiffs sought a court order to invalidate the part of the revised IRP that allows for the procurement of new coal-fired power and the minister's decision, with NERSA's approval, to authorize the use of new coal-fired electricity.

The petition included affidavits of children and youth affected by climate change, showing how the challenged decision materially affected their lives. It also relies on South Africa's 'fair share' to collectively reduce GHG emissions to achieve the long-term temperature reduction targets of the Paris Agreement, which aim to limit global warming to 1.5°C.

On 4 December 2024, the High Court of South Africa ruled that the government's plan to procure 1,500 MW of new coal-fired power was unconstitutional, unlawful and invalid. The court found that the government had failed to fulfil its constitutional and statutory obligations by neglecting to assess the decision's impact on children's health and well-being, failing to evaluate the feasibility of high-efficiency, low-emission coal technologies and disregarding its obligation to ensure transparent and participatory decision making. The court also determined that the record provided no evidence of adequate consideration of coal power's environmental and health impacts, particularly on children. The government's argument that South Africa's energy crisis required new coal power was dismissed due to the availability of viable and less harmful renewable energy

The government's argument that South Africa's energy crisis required new coal power was dismissed due to the availability of viable and less harmful renewable energy alternatives.

alternatives. The court ordered the Minister of Mineral Resources and Energy and NERSA to pay the applicants' legal costs, including the fees for two counsels.

This ruling is a landmark victory for climate justice and democratic accountability in South Africa. It underscores the government's constitutional duty to prioritize environmental sustainability, intergenerational equity and the protection of vulnerable communities. The judgment reinforces that energy policy decisions must align with constitutional rights and environmental obligations rather than short-term economic or political considerations. Further, the decision highlights the importance of procedural, as well as substantive, obligations related to climate change. By emphasizing public participation and the rights of children, the case sets a crucial precedent for future climate litigation, ensuring that energy transitions are both just and legally accountable. The *#CancelCoal* case demonstrates how strategic litigation can be vital for enforcing government accountability and advancing a sustainable, rights-based approach to climate governance.

4.3.2. *Shrestha v Office of the Prime Minister (Nepal)*

On 23 August 2017, Padam Bahadur Shrestha, an environmental public interest lawyer, filed a petition before the Supreme Court of Nepal seeking a writ of mandamus (a judicial remedy) to compel the government to enact a new climate change law (*Shrestha v Office of the Prime Minister*). He argued that the Environmental Protection Act of 1997 was inadequate as it lacked provisions for climate change mitigation and adaptation and that Nepal's Climate Change Policy of 2011 had not been effectively implemented. The petitioner claimed that the government's failure to address climate change violated fundamental constitutional rights, including the rights to a dignified life and a clean and healthy environment, access to basic healthcare and food security. Additionally, he asserted that Nepal's inaction contravened its international obligations under the UNFCCC, the Kyoto Protocol and the Paris Agreement.

On 25 December 2018, the Supreme Court of Nepal ruled in favour of the petitioner, affirming that climate change mitigation and adaptation were essential to protecting fundamental rights. The court held that the absence of a climate-specific legal framework impaired the petitioner's constitutional rights and breached Nepal's obligations under both domestic and international law. The court emphasized that article 51(g) of the Constitution required the government to protect the environment and ensure intergenerational climate justice. As a remedy, the court issued a writ of mandamus ordering the

government to enact a comprehensive climate change law, reduce fossil fuel consumption, promote low-carbon technologies and establish scientific and legal mechanisms to compensate those harmed by environmental degradation. Pending the enactment of the new law, the government was directed to implement Nepal's existing Climate Change Policy (2011), the National Adaptation Programme of Action (2010) and the Framework on Local Adaptation Plans (2011).

The decision was a landmark victory for climate justice and democracy, underscoring the role of courts in compelling governments to fulfil their environmental and human rights obligations. Despite contributing minimally to global GHG emissions, Nepal is among the world's most climate-vulnerable nations, facing heightened risks of landslides, monsoons and glacial lake overflows. This ruling reinforced the principle that states must proactively address climate change to safeguard the rights of present and future generations. By linking climate action to constitutional rights, the Supreme Court set a critical precedent that has already influenced climate litigation in South Asia and beyond. In Nepal itself, the Environment Protection Act of 2019 and the Forests Act of 2019 were both enacted following the ruling, demonstrating the tangible impact of judicial intervention in shaping national climate policy.

4.3.3. *IBAMA v Dirceu Kruger (Brazil)*

The *IBAMA v Dirceu Kruger* case represents a landmark moment in Brazil's climate litigation history. The Brazilian Institute of Environment and Renewable Natural Resources (IBAMA), Brazil's environmental protection agency, filed a Public Civil Action against Dirceu Kruger, a cattle rancher responsible for the illegal deforestation of 5,600 hectares in the state of Amazonas. The lawsuit, filed on 12 September 2023, sought accountability for the environmental and climate damage caused by Kruger's activities, which included illegally clearing land with chainsaws, setting fires and converting forested areas into pasture for cattle grazing. IBAMA argued that these actions contributed significantly to GHG emissions, intensifying the climate crisis and violating Brazil's commitments under the Paris Agreement. The lawsuit relied on scientific studies to quantify the climate damage, estimating that deforestation resulted in approximately 901,600 tonnes of carbon dioxide emission. Based on the social cost of carbon, IBAMA calculated the financial compensation at BRL 292,118,400.00 (equivalent to USD 50,553,509.622), requesting that these funds be directed to the National Climate Change Fund.

The Supreme Court of Nepal ruled in favour of the petitioner, affirming that climate change mitigation and adaptation were essential to protecting fundamental rights.

On 12 July 2024, the court issued a decision granting key elements of IBAMA's emergency relief requests. The ruling froze Kruger's assets up to the requested amount, ordered him to implement carbon sinks to offset the environmental harm and suspended his access to government financing and tax benefits. Additionally, the court prohibited him from engaging in any business transactions involving the deforested properties, selling or leasing agricultural products, or acquiring equipment used for deforestation. The court emphasized that illegal deforestation has lasting consequences, causing intergenerational climate damage that cannot be fully remedied. While the initial petition was partially dismissed, the court proceeded with the claims for environmental compensation, financial reparations for the social cost of carbon and disgorgement of illicit profits.

IBAMA v Dirceu Kruger sets a crucial precedent for environmental democracy in Brazil.

An early case in what has become an important trend in deforestation litigation, *IBAMA v Dirceu Kruger* sets a crucial precedent for environmental democracy in Brazil by reinforcing the judiciary's role in holding environmental offenders accountable. By recognizing climate damage as a distinct legal harm and quantifying it through established scientific methodologies, the court's decision strengthens the enforceability of climate laws. The ruling also underscores the binding nature of Brazil's international climate commitments and the state's duty to ensure compliance. Beyond imposing financial penalties, the case advances the environmental law polluter-pays principle: that those responsible for environmental degradation must actively contribute to ecological restoration. The decision signals a broader shift towards litigation as a tool for enforcing climate policies, deterring illegal land use and protecting the Amazon's vital carbon stocks. It also demonstrates that courts can compel actors who profit from environmental destruction to contribute to climate mitigation efforts, thereby upholding the rights of present and future generations to a stable climate and healthy environment.

4.3.4. *MK Ranjitsinh v Union of India (India)*

In a landmark decision, the Supreme Court of India in *MK Ranjitsinh v Union of India* recognized the constitutional right to be free from the adverse effects of climate change. This case, initially filed in 2019, sought judicial intervention to protect two critically endangered bird species, the Great Indian Bustard and the Lesser Florican, from habitat destruction caused by overhead power lines. The petitioners argued that the continued installation of high-voltage transmission lines posed a significant threat to the survival of these species, necessitating urgent conservation measures. The Indian Government, as the defendant, opposed these restrictions, citing the country's

renewable energy commitments and international obligations under the Paris Agreement.

The legal battle stemmed from an earlier Supreme Court ruling in April 2021, which imposed a broad prohibition on overhead power lines across approximately 99,000 km² of critical Great Indian Bustard habitat. The 2021 judgment mandated the conversion of existing power lines to underground transmission, recognizing the existential threat these structures posed to the birds. However, the Ministry of Environment, Forests, and Climate Change, along with the Ministry of Power and the Ministry of New and Renewable Energy, later sought a modification of this ruling. The government contended that the blanket restrictions severely hindered India's energy transition away from fossil fuels, impacting national electricity infrastructure and contradicting its commitments to reduce carbon emissions.

Faced with competing environmental imperatives—the conservation of a critically endangered species and the imperative to mitigate climate change through renewable energy—the Supreme Court was tasked with crafting a balanced approach. The court acknowledged India's constitutional commitments under articles 48A and 51A, which emphasize environmental protection as both a state obligation and a fundamental duty of citizens. It then connected these principles to the fundamental rights enshrined in articles 21 and 14, asserting that the right to a clean environment and the right to be free from the adverse effects of climate change are integral to the constitutional guarantees of life, personal liberty and equality before the law. At the same time, commentators have noted that, while the court's language of balance is rhetorically powerful, it provides little practical guidance for reconciling biodiversity protection with the demands of renewable energy expansion.

The 2024 ruling partially modified the 2021 judgment, limiting the undergrounding requirement to approximately 13,163 km² of priority Great Indian Bustard habitat, subject to feasibility determinations by a seven-member expert committee. The court recognized that overhead transmission lines were not the sole threat to the Great Indian Bustard, nor was undergrounding universally feasible. Acknowledging the ecological importance of both biodiversity conservation and climate action, the court emphasized the necessity of a holistic approach which aimed to balance the two priorities. Instead of a complete prohibition, the ruling proposed allowing renewable energy expansion while pursuing habitat protection through alternative conservation measures such as monitoring Great Indian Bustard movement, restoring grasslands and managing

predator populations. Critics, however, argue that these measures remain insufficient to ensure the long-term survival of the Great Indian Bustard and reflect a broader development model in which large-scale renewable energy projects often override local ecological and community concerns.

This decision advances environmental democracy by embedding climate rights within the broader framework of constitutional protections.

This decision advances environmental democracy by embedding climate rights within the broader framework of constitutional protections. By explicitly recognizing the human right to be free from climate change's harmful effects, the court reinforced the judiciary's role in safeguarding environmental justice. Moreover, it demonstrated the importance of participatory governance, requiring scientific expertise and stakeholder engagement in policy decisions that affect conservation and climate goals. Nonetheless, given India's long-standing struggles with pollution and ecological degradation despite decades of environmental jurisprudence, some observers remain sceptical about whether judicial declarations will translate into meaningful change. Nevertheless, the ruling serves as a critical precedent for future cases navigating the complex interplay between biodiversity preservation, climate commitments and sustainable development in India and beyond.

4.3.5. *Greenpeace Mexico v Ministry for Energy (on the National Electric System policies) (Mexico)*

In 2020, Greenpeace Mexico filed a landmark constitutional challenge against two policies issued by the Mexican Government that prioritized fossil fuels over renewable energy, in violation of the country's climate commitments under the Paris Agreement (*Greenpeace Mexico v Ministry for Energy (on the National Electric System policies)*). The two policies, one issued by the National Centre for Energy Control (CENACE) and the other by the Ministry of Energy, limited the operation of renewable energy sources like wind and solar power, citing the Covid-19 pandemic as the justification for these measures. Greenpeace argued that the policies infringed upon Mexicans' right to a healthy environment and violated both domestic constitutional rights and international climate commitments.

Greenpeace filed the case before Mexico City's Second District Administrative Court, seeking a declaration of unconstitutionality. The court issued a preliminary injunction in June 2020, temporarily halting the effects of the contested policies. In November 2020, the court ruled that the policies were unconstitutional, citing several legal grounds. The court found that the authorities behind the policies—CENACE and the Ministry of Energy—lacked the competence to enact sweeping changes to the country's energy market. It also ruled

that the policies violated both the constitutional right to a healthy environment and Mexico's obligations under the UNFCCC, the Kyoto Protocol and the Paris Agreement.

The ruling emphasized that the policies posed significant risks to environmental health, as they promoted fossil-fuel-based energy production, which generates higher levels of GHG emissions, thus exacerbating climate change. The court invoked several key legal principles, including *in dubio pro natura*, which prioritizes environmental protection in cases of doubt, and the non-regression principle, which ensures that environmental protections cannot be undone. The court also affirmed that the policies contradicted the right to sustainable development and the obligation to preserve natural resources for future generations.

Despite Greenpeace's initial victory, the decision was reversed on appeal on procedural grounds due to the expiration of the regulations. While the appeal's outcome reflected a procedural shift rather than a substantive repudiation of the legal arguments, the case highlighted the ongoing challenges of climate litigation in securing long-term environmental protections. Nonetheless, it marked a critical advancement in environmental democracy by reinforcing the need for judicial oversight in holding governments accountable for their actions, particularly when those actions threaten to undermine international climate obligations and human rights.

The case is a crucial reminder of the courts' role in safeguarding environmental rights and advancing the transition to renewable energy. It underscores the importance of upholding constitutional protections, ensuring public participation and recognizing the global imperatives of climate action. In the context of climate litigation, it also illustrates the tension to be found when progressive legal decisions come up against the limitations posed by shifting government policies.

The court invoked several key legal principles, including *in dubio pro natura*, which prioritizes environmental protection in cases of doubt.

4.4. EMERGING TRENDS IN CLIMATE LITIGATION IN THE GLOBAL SOUTH

Emerging trends from the analysis of climate litigation in the Global South highlight essential developments and shifts in the legal, political and social landscape. These trends reflect how litigation is increasingly used to challenge governments and corporations, to push for more ambitious climate policies and to address environmental injustices. The following trends emerge from the case

studies and the broader context of climate litigation in the Global South and are discussed in detail in this section: (a) constitutional challenges and rights-based litigation; (b) litigation as a tool for strengthening climate governance; (c) litigation focused on fossil fuel dependency; (d) expansion of defendants beyond governments; (e) increasing regional diversity in litigation; and (f) the role of international frameworks in domestic litigation.

4.4.1. Constitutional challenges and rights-based litigation

One significant trend observed in climate litigation in the Global South is the consistent use of arguments based on human rights. Many climate cases leverage fundamental and constitutional rights to challenge government action or inaction that is exacerbating climate change.³² For instance, in South Africa, the *#CancelCoal* case relied on the right to life, dignity, equality and a healthy environment enshrined in the South African Constitution. Similarly, the *Ranjitsinh* case invoked the right to life under India's Constitution, emphasizing the right of individuals to live in a healthy environment. In *Gbemre v Shell Petroleum Development Company Nigeria Ltd* the Nigerian Federal High Court anchored its decision in human rights law, finding that the corporations' gas flaring violated petitioners' fundamental rights to life and dignity, as well as the right to a clean, poison- and pollution-free environment.

These cases underscore the increasing recognition by courts that climate change poses a significant threat to fundamental human rights, including the right to a healthy environment, the right to life, the right to health and the right to an adequate standard of living. *Ranjitsinh* went a step further when the Supreme Court recognized the right to be free from the adverse impacts of climate change, marking a significant expansion of constitutional protections. As a consequence of this recognition, courts in the Global South increasingly acknowledge that governments have positive duties not only to prevent environmental harm but also to actively protect citizens from the foreseeable consequences of climate change, including rising sea levels, extreme weather events and health crises linked to pollution and temperature changes. This legal recognition creates a foundation for holding governments accountable and ensuring that they implement climate policies in line with their constitutional obligations.

32 International IDEA's *Environmental Protection in Constitutions Assessment Tool* (Hickey 2025) provides thorough information on how constitutions can help protect the environment, <<https://doi.org/10.31752/idea.2025.17>>.

Furthermore, recognition of intergenerational justice is becoming an important feature of climate litigation in the Global South, following the early environmental case of *Oposa v Factoran* from the Philippines. Cases such as the *#CancelCoal* case highlight the concern for children and future generations, who will bear the brunt of the climate impacts. Climate litigation in this context is framed not only as a protection of current rights (of the elderly, adults, youth and children) but also as a safeguard for the rights of future generations. In *Ramchandra Simkhanda v Nepal Government, Office of the Prime Minister and Council of Ministers*, the Supreme Court of Nepal blocked a proposed road project that ran through a park, ruling that the park should be protected for present and future generations based on constitutional rights. The Colombian case *Future Generations v Ministry of the Environment* specifically challenged the government's failure to reduce deforestation in the Amazon rainforest on behalf of present and future generations, aiming to ensure compliance with a net zero deforestation target (see de la Rosa Calderón 2024).

In these cases, courts are increasingly recognizing the long-term impacts of today's climate choices, and the responsibility to ensure a liveable planet for future generations is gradually becoming an integral part of judicial reasoning in relation to climate change. Intergenerational justice emphasizes that the harm caused by inaction on climate change disproportionately affects vulnerable communities, including children, Indigenous peoples and marginalized groups, who are the least accountable for the crisis—yet most affected by it. This trend highlights a growing concern—particularly critical for the Global South—about protecting these communities from the worst impacts of climate change.

4.4.2. Litigation as a tool for strengthening climate governance

Climate litigation in the Global South is increasingly recognized as a powerful tool for strengthening climate governance, whether through pushing for the adoption or strengthening of climate laws and policies—or for their stricter enforcement. While climate governance often encompasses formal mechanisms, such as laws, treaties, policies and regulations, litigation is influencing how climate decisions and climate implementation actions address climate change on a broader level through the enforcement of climate obligations, the clarification of legal duties, the legal development of climate norms, strengthened transparency and oversight, and empowering new actors in decision making. Addressing gaps in climate governance is particularly crucial in countries with weak regulatory frameworks or where political inertia has delayed meaningful climate action. For example, in *Shrestha v Office of the*

Furthermore, recognition of intergenerational justice is becoming an important feature of climate litigation in the Global South.

Prime Minister, plaintiffs challenged the government to take climate action by enacting stronger laws and policies. In *Future Generations v Ministry of the Environment*, youth plaintiffs pushed for enforcement of policies that would address deforestation in the Amazon rainforest, an essential carbon sink.

As global pressure to address climate change increases, some governments have sought to roll back their climate policies.

Another significant trend in climate litigation in the Global South is using legal avenues to resist government backsliding on climate commitments. As global pressure to address climate change increases, some governments have sought to roll back their climate policies, undermining progress towards achieving international commitments. A prominent example is *Greenpeace Mexico v Ministry for Energy (on the National Electric System policies)*, where plaintiffs challenged regressive energy policies that threatened renewable energy targets in the country. Similarly, in *PSB v Brazil (on Climate Fund)* political parties challenged inaction by the Bolsonaro administration—known for its anti-climate stance—in allocating funds from the national Climate Fund established to support climate change mitigation and adaptation projects. The Brazilian Supreme Court ruled that the executive branch could not simply choose to ignore the law and fail to allocate these funds as required. By ruling against the government's inaction, the court emphasized that national legal frameworks and commitments cannot be sidelined due to transient political ideologies or a lack of political will.

As international climate agreements set ambitious global objectives, such as those in the Paris Agreement, there is increasing recognition of the need for national policies to align with these aims. Plaintiffs are turning to the courts more frequently to compel national governments to fulfil their international obligations by translating global climate commitments into concrete domestic policies. This trend reflects the growing significance of accountability mechanisms for climate policies, with litigation functioning as a tool to hold governments responsible for their role in addressing the global climate crisis. Legal challenges are being utilized to advocate for stronger national climate policies and ensure consistency with international climate goals, such as limiting global warming to 1.5°C.

It is important, in this context, to note that a successful court ruling does not necessarily mean it will be successfully implemented. For instance, in *Shrestha v Office of the Prime Minister*, the petitioner filed for contempt of court in 2022 as the government had failed to comply with the 2018 Supreme Court ruling (Aawaaj News 2023). In other cases, such as the *#CancelCoal* case or *IBAMA v Dirceu Kruger*, less is known about the outcomes (or lack thereof), as lack

of transparency and limited available evidence remains a major challenge in many jurisdictions. Nevertheless, by leveraging litigation as a mechanism for oversight, climate activists and civil society organizations are influencing climate governance, ensuring that national policies address the urgency and scale of the climate crisis. These trends highlight the growing role of civil society as a watchdog, especially by enabling marginalized voices to shape climate priorities. As climate litigation continues to evolve, its influence on strengthening the institutional frameworks for addressing climate change is likely to grow, bridging the gap between national and international climate goals and advancing the global effort to mitigate and adapt to climate change.

4.4.3. Litigation focused on fossil fuel dependency

One of the main types of climate cases, in both the Global North and South, relates to legal challenges against new fossil fuel projects, particularly coal and other polluting energy sources. Cases like the *#CancelCoal* case in South Africa exemplify this shift, where plaintiffs are contesting proposed coal developments by highlighting the justification—or lack thereof—for continuing investments in fossil fuels, given the availability of cleaner, renewable alternatives. These legal actions aim to halt the expansion of fossil fuel infrastructure, stressing that the future of energy production must prioritize renewable energy sources to meet global climate goals and mitigate the severe impacts of climate change. Such litigation emphasizes the role of courts in facilitating the transition away from fossil fuels and advancing the global shift towards a low-carbon economy. Similar cases have been heard in several other Global South countries, including Argentina (*Greenpeace Argentina v Argentina*), Ecuador (*Baihua Caiga v PetroOriental SA*) and Kenya (*Save Lamu v National Environmental Management Authority*).

These cases often rely on health and environmental harms associated with existing fossil fuel operations, in addition to climate-related arguments. For instance, in the *#CancelCoal* case, expert testimony provided crucial evidence linking the operation of coal-fired power plants to adverse health outcomes, including respiratory diseases. It highlighted the environmental risks posed by such energy production methods. This emphasis on health impacts strengthens the case for reducing fossil fuel dependency and points to the disproportionate burden placed on vulnerable communities, often situated in areas heavily reliant on polluting industries.

These cases demonstrate how fossil fuel projects exacerbate public health crises and contribute to environmental degradation, presenting

A successful court ruling does not necessarily mean it will be successfully implemented.

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a compelling argument for prioritizing renewable energy alternatives. Thus, climate litigation is emerging as a crucial mechanism for those who advocate for public health and environmental protection while striving for a fossil-fuel-free future.

4.4.4. Expansion of defendants beyond governments

Climate litigation in the Global South has also traditionally included cases against private actors, such as individuals and corporations. This reflects a broad understanding of the multifaceted and complex nature of climate harm and the need to hold a broader spectrum of responsible parties accountable. The *IBAMA v Dirceu Kruger* case in Brazil is a landmark example, where a private individual was sued by the federal environmental protection agency for illegal deforestation that significantly contributed to climate change. Fossil fuel companies are among the most-targeted defendants in corporate climate litigation. This includes the 2005 Nigerian case *Gbemre v Shell Petroleum Development Company Nigeria Ltd* and the 2021 South African *Sustaining the Wild Coast NPC v Minister of Mineral Resources and Energy*, among others. These cases recognize that corporate activities, especially in sectors such as fossil fuels, agriculture and deforestation, fuel the climate crisis. Expanding climate litigation to encompass corporate defendants creates a wider legal net to catch all entities responsible for environmental harms.

Climate litigation in the Global South has witnessed a significant increase in regional diversity.

4.4.5. Increasing regional diversity in litigation

Climate litigation in the Global South has witnessed a significant increase in regional diversity, with cases emerging from various geographical contexts throughout Africa, Asia and Latin America. This expansion reflects a growing recognition of climate litigation as a valuable tool for addressing the unique vulnerabilities and disparities affecting different regions. In Africa, for instance, where many countries are grappling with severe droughts, floods and rising sea levels, courts are beginning to acknowledge the profound impact of climate change on local communities. Similarly, Latin America and South Asia have become hotbeds of climate litigation, with plaintiffs using the courts to hold governments accountable for environmental degradation by industries that cause deforestation and reduce carbon sinks, as well as their failure to meet climate commitments. It is probable that more countries, especially in the Caribbean and Pacific Islands, will soon experience their first climate cases in these areas. This growth is attributed not only to the extensive publicity that climate cases garner, which creates a wave of public awareness and inspiration across borders, but also to stronger and more diverse studies in climate science, as well as enhanced judicial capacity and training in climate law among lawyers and judges.

Naturally, the legal strategies employed in climate litigation vary significantly across regions, reflecting each area's specific concerns, priorities and legal systems. In Latin America, for example, many climate cases focus on environmental degradation—mainly deforestation—and its link to broader climate change impacts. In contrast, South Asia has seen a rise in cases like *Shrestha v Office of the Prime Minister* in Nepal, which seeks legislative reforms to address climate change through stronger national climate laws and policies. Cases in Africa often involve the fossil fuel and mining industries. While there are exceptions—and it is impossible to slot all regional cases into a single category—the differences in legal strategies illustrate the adaptability of climate litigation, with each region customizing its approach to tackle specific local and regional climate challenges. The growing diversity of climate litigation reflects a global acknowledgment of the unequal impacts of climate change and the innovative, region-specific judicial strategies that communities in the Global South are adopting to address climate issues.

4.4.6. Role of international frameworks in domestic litigation

The role of international climate frameworks in domestic litigation is particularly evident in cases where courts recognize the binding nature of global climate commitments. In many cases across the Global South, plaintiffs invoke treaties such as the Paris Agreement to challenge government policies that fail to align with international climate goals. In *Greenpeace Mexico v Ministry for Energy (on the National Electric System policies)*, for instance, plaintiffs argued that Mexico's energy policies contradicted its obligations under the Paris Agreement, highlighting the growing use of international law to shape domestic climate governance. Similarly, in *Shrestha v Office of the Prime Minister*, the plaintiffs relied on Nepal's climate commitments to push for stronger national legislation, reinforcing the trend of domestic courts acting as enforcers of global climate commitments.

A landmark example of this trend is *PSB v Brazil (on Climate Fund)* in Brazil, in which the Supreme Court recognized the Paris Agreement as a human rights treaty, meaning that it has direct constitutional effect in Brazilian domestic law. This ruling strengthened the legal basis for holding governments accountable for climate inaction, particularly when political decisions undermine international commitments. It also underscored the direct link between climate governance and fundamental rights by affirming the Paris Agreement's status as a human rights treaty, setting a precedent for future litigation to bridge domestic legal frameworks with international climate justice principles.

In many cases across the Global South, plaintiffs invoke treaties such as the Paris Agreement to challenge government policies.

4.5. CONSIDERATIONS FOR DEMOCRACY

Climate litigation in the Global South is an evolving and powerful tool to address government inaction, corporate misconduct, and broader climate and environmental justice issues. The trends emerging from these cases reflect the growing recognition of constitutional rights in the context of climate change, the expansion of litigation to include corporate accountability, and the increasing role of courts in enforcing national and international climate commitments. This wave of climate litigation is reshaping national climate policies and contributing to a global movement towards more just and effective climate governance.

These developments raise questions about the conception of democracy that is being advanced.

At the same time, these developments raise questions about the conception of democracy that is being advanced. From a representative–majoritarian perspective, court interventions may appear to override elected governments’ discretion and thus sit uneasily with democracy when it is understood narrowly as majority rule. Yet, as covered in Chapter 3, modern democracy cannot be reduced to majoritarianism alone: it also often encompasses participatory, deliberative and epistemic elements. Climate cases in the Global South frequently engage these broader dimensions of democracy by: (a) providing forums where marginalized communities, youth and Indigenous peoples—often under-represented in electoral politics—are heard; (b) requiring governments to justify their climate policies in reasoned, transparent terms; and (c) integrating scientific expertise and long-term considerations into decision making. In this sense, litigation may be less a distortion of democracy than a corrective that reinforces its more inclusive and forward-looking dimensions.

Looking ahead, it is likely that climate litigation will expand into jurisdictions where it has not yet emerged, particularly in the Caribbean and Pacific Islands. These regions face acute climate vulnerabilities, and as awareness of legal avenues for climate accountability grows, courts may become increasingly engaged in adjudicating climate-related claims. Additionally, the recently issued advisory opinions before the ICJ, the IACHR and the ITLOS will play a critical role in shaping the trajectory of climate litigation worldwide. By providing authoritative guidance on state obligations under international law, they will influence domestic courts and strengthen judicial capacity by establishing legal standards that can be applied across different jurisdictions. As courts increasingly rely on these precedents, greater consistency may be seen in climate-related rulings, reinforcing the role of the judiciary in advancing climate justice and holding governments and corporations accountable.

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Chapter 5

CLIMATE LITIGATION: DOES IT WORK?

Alister Doyle and Sam Bookman

Approximately 3,000 climate lawsuits have been filed worldwide since the first cases in the 1980s, according to databases run by the Sabin Center for Climate Change Law at Columbia Law School. The sheer volume of cases might suggest that climate litigation is a powerful force for holding governments and companies to account for human-caused global warming. There is certainly reason to believe this is the case. The UN's IPCC, whose scientific findings are endorsed by governments, stated in its latest assessment report in 2022 that 'there is now increasing academic agreement that climate litigation has become a powerful force in climate governance' and that litigation can be used 'to constrain both public and private entities, and to shape structural factors ... such as the beliefs and institutions around climate governance' (IPCC 2022: 1377). However, the IPCC itself added a big caveat: 'While there is evidence to show the influence of some key cases on climate agenda-setting, it is still unclear to what extent climate litigation actually results in new climate rules and policies' (IPCC 2022: 1377).

In countries with robust legal protections and independent judiciaries, litigation might provide a vital backstop in holding governments to account for enacting policies. It can supplement government action, or act as a catalyst or corrective where ordinary political processes fail to produce ambitious climate policies, or where governments do not follow through on their commitments. Litigation can also challenge private companies' practices and specific high-emitting projects, or their approvals.

However, litigation falls short of the hopes of those who see it as a tool to enforce the achievement of the goals set in the 2015 Paris

Agreement. Cases against corporations are even more challenging: to date, only one court has ordered a company to reduce its GHG emissions, a decision that was ultimately reversed on appeal (*Milieudefensie v Shell*).

Overall, it is hard to judge exactly how far litigation has contributed to curb the rise of global GHG emissions.

Overall, it is hard to judge exactly how far litigation has contributed to curb the rise of global GHG emissions to help avert climate change and to what extent it might do so in the future. Few court rulings, for instance, contain clear orders for measurable reductions in emissions, the 2020 *Urgenda* case in the Netherlands being among the rare exceptions (see also Chapters 1, 2 and 3). Most cases focus on more traditional environmental law challenges to government rules and regulations, such as licences for fossil fuel operators, or corporate policies—a strong but not revolutionary tool. There are also ‘backlash’ cases, in which oil and gas producers, for instance, dispute the imposition of new climate regulations that they say unfairly target their business.

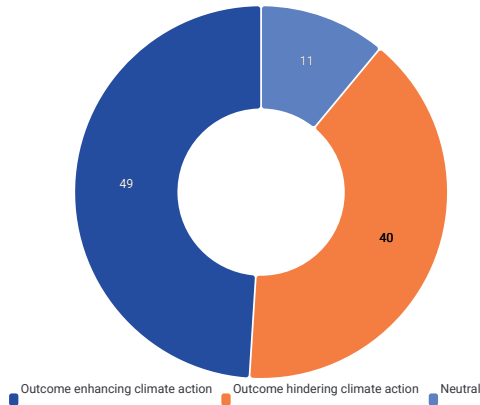
One of the difficulties in assessing the impact of climate litigation is defining the term ‘success’. What does it mean for a case to succeed and how can it be measured?

5.1. HOW TO MEASURE SUCCESS

One simple measure is to analyse whether those climate cases that are filed are likely to win in court. On this metric, many cases do succeed. According to a 2023 study conducted by the Grantham Research Institute on Climate Change and the Environment at the London School of Economics, of the 549 climate-related cases filed outside the USA with an interim or final decision, 55 per cent ‘had outcomes favourable to climate action’. Of the remainder, 34 per cent were unfavourable, another 9 per cent neutral, with the rest settled or withdrawn (Setzer and Higham 2023). Nearly half of all climate cases continue to prevail even at the highest judicial level: out of 250 climate-related cases worldwide that had reached a supreme, constitutional or other apex court and received a ruling by the end of 2024, 49 per cent produced outcomes that enhanced climate action, 40 per cent did not, and the remaining 11 per cent were neutral (Setzer and Higham 2025).

As the report’s authors acknowledge, however, that 55 per cent finding ‘only tells part of the story’. In some cases, courtroom victories lead to clear remedies and outcomes, but other rulings

Figure 5.1. Climate litigation results



Source: Setzer, J. and Higham, C., 'Global Trends in Climate Change Litigation: 2023 Snapshot', Grantham Research Institute on Climate Change and the Environment, and Centre for Climate Change Economics and Policy, London School of Economics and Political Science, June 2023, <<https://www.lse.ac.uk/granthaminstitute/publication/global-trends-in-climate-change-litigation-2023-snapshot>>, accessed 16 May 2025.

Note: Outcomes of climate-related cases that had reached a supreme, constitutional or other apex court worldwide and received a ruling by the end of 2024 (including the USA). Image created with flourish.studio.

in favour of climate action have more uncertain long-term consequences. Court decisions that require governments to meet overall targets, or introduce economy-wide plans and policies, rely on those governments to effectively implement these remedies. 'We know that some things are changing, but ascribing that to particular emissions reductions is quite hard,' Catherine Higham, one of the authors of the London School of Economics study, said in an interview (Higham 2024).

In more detail, many factors contribute to assessing whether a case has been 'successful'. Ultimately, climate litigants want to see progress on climate change. This fundamentally boils down to: reductions in GHG emissions or protection of carbon sinks (mitigation); better investments in preparing for the effects of climate change (adaptation); or compensation for those affected, or likely to be affected, by climate change (loss and damage). But precisely how a court's decision leads to one of these outcomes is a complex question.

Many factors contribute to assessing whether a case has been 'successful'.

For instance, a court's decision might lead to mitigation or adaptation, through either direct or indirect consequences. Direct consequences refer to whether the litigants succeed in court and receive a remedy (such as an order requiring a change in a government's policy). Indirect consequences might include galvanizing public opinion, building a stronger movement or incentivizing changes in government or corporate behaviour, even if such changes are legally required. It could also include inspiring other litigants in the same country or elsewhere to bring similar cases. Consequences might also be negative: the parties might lose their case in court, for example, or the case could inspire political and public backlash.

There may sometimes be trade-offs or ethical questions about the relationship between direct and indirect consequences. This includes the relationship between the case at hand and other cases or the wider movement. For instance, in 2015 Peruvian farmer Saul Luciano Lliuya sued German power producer RWE (see Chapter 2) with the unprecedented legal argument that emissions from its coal-fired power plants in Europe are thawing glaciers in the Andes and contributing to the risk of deadly floods. Even though the case was ultimately unsuccessful, it has already inspired similar arguments on transboundary accountability for climate impacts.

Carroll Muffett, former President and CEO of CIEL, said that for lawyers, the gauge of success should be how well they serve existing clients, rather than focusing on possible future side effects: 'Ultimately the measure for a lawyer is "do you make the lives of your clients better?"'. Still, in his opinion there has also been huge progress in climate litigation. 'The first waves of defences brought by many countries and companies—the idea that these questions were non justiciable, that they are too complex, that they are political questions or the courts don't have jurisdiction—have fallen, again and again, and that is an extraordinary measure of progress, of success' (Muffett 2024). Furthermore, climate cases are increasingly supported by a range of transnational NGOs, such as Muffett's CIEL, ClientEarth and the Climate Litigation Network, which aim not only to win the case before them, but also to generate impact and momentum across cases and jurisdictions.

Different types of cases have different objectives and measures of success. Requests for advisory opinions from international bodies can bring international attention to an issue, raise its profile, and bring together groups and countries from around the world, but decisions in such cases are non-binding and there are limited means for enforcing them. By contrast, a case brought before a local

environmental tribunal challenging the approval of a specific mine or power plant may be considerably more limited in scope, but have a much more straightforward pathway to enforcement if the challenge succeeds in court.

In evaluating the success of climate litigation, it can therefore be helpful to consider each type of claim, and the different measures of success or failure. Four types of cases are set out below: international cases, systemic cases, project-based cases and litigation against private companies.

Different types of cases have different objectives and measures of success.

5.2. INTERNATIONAL CASES

International cases are brought before international or regional courts and tribunals. This can include regional human rights courts (such as the ECtHR or IACHR) and UN bodies (such as the ICJ or Human Rights Committee). One of the most striking examples of how international litigation can reframe climate obligations comes from a group of Pacific Island law students whose campaign eventually led to an advisory opinion from the ICJ (see Box 5.1).

International courts have several advantages. Most importantly, their decisions are addressed to many, if not all, countries. Because climate change is a global problem, it is important that different countries operate within a framework of similar actions and obligations. Cases such as the request for an advisory opinion from the ICJ (instigated by PISFCC, as discussed in Box 5.1) can harmonize different sets of legal rules across countries and fields of law, while reinforcing the obligation of countries to take more ambitious climate action. The Pacific Island students' successful drive for an ICJ advisory opinion could influence global climate policies elsewhere, and the ICJ opinion is one of several sought or received from international or regional courts, with similar opinions also delivered by ITLOS and the IACHR.

The Pacific Island students' successful drive for an ICJ advisory opinion could influence global climate policies elsewhere.

Furthermore, some international cases are more targeted: they challenge the decisions or actions of particular states. When countries' own governments and courts are unwilling to act, international bodies might be able to pressure those governments to do more. In the *Teitiota* case, for example, lawyers were able to shine a light on New Zealand's reluctance to accept the effects of climate change as a reason for seeking refugee status. In another case, *Daniel Billy v Australia* (2022), Indigenous Australians successfully

Box 5.1. Pacific Island students lead campaign to the world's highest court



Note: Climate justice advocates celebrate the release of the advisory opinion of the ICJ.

Photo: Pacific Islands Students Fighting Climate Change, Facebook, 29 July 2025, <<https://www.facebook.com/photo/?fbid=787147907047476&set=a.207169111712028>>, accessed 20 August 2025.

In 2019, at the outset of a campaign to raise climate change before the world's highest court for the first time, a group of law students at the University of the South Pacific had a problem: they were broke.

Their newly founded group, Pacific Islands Students Fighting Climate Change (PISFCC), wanted to print a colourful two-metre-long banner with the students' logo—against a background of blue waves breaking onto a golden beach as a symbol of the risks of rising sea levels—to help recruit new members. But the students at the university, whose main campus is in Fiji with the law school 1,000 km away in Vanuatu, lacked the FJD 80 (USD 35) needed to print it.

'We didn't have any money so we hustled our friends for loose coins to pay for a banner,' said Cynthia Houniuihi of the Solomon Islands, President of the PISFCC from 2022 to 2025, and who was in the third year of a four-year law degree when she worked to get the campaign going. The students eventually scraped together the cash for what became an iconic banner (Houniuihi 2024).

Based on their campaign, the Government of Vanuatu secured backing from other Pacific Island nations and brought to the UN General Assembly the request to seek an advisory opinion by the ICJ in The Hague about states' obligations to fight climate change. In March 2023, the UN General Assembly endorsed the proposal with a resolution adopted by consensus and hailed by the UN Secretary-General António Guterres, who said: 'Such an opinion would assist the General Assembly, the UN and Member States to take the bolder and stronger climate action that our world so desperately needs' (Vanuatu ICJ Initiative 2023, UN 2023).

Box 5.1. Pacific Island students lead campaign to the world's highest court (cont.)

On 23 July 2025, that request made history. The ICJ delivered its advisory opinion—the first time the world's highest court had spoken directly on climate change. The court affirmed that states have binding obligations under international law to prevent dangerous global warming and to protect the rights of present and future generations. It held that the 1.5°C temperature limit under the Paris Agreement must guide states' actions, and that major emitters in particular must take ambitious measures consistent with science. It ruled that international law already requires states to prevent transboundary environmental harm, to act with due diligence and to cooperate, drawing not only on the Paris Agreement but also on environmental treaties, UNCLOS and human rights law.

The court further clarified that these obligations are owed to the international community as a whole, and that breaches can trigger state responsibility—including reparations, such as compensation or guarantees of non-repetition, where a causal link to harm is established. Fossil fuel extraction and licensing, or a failure to regulate private actors, could all amount to internationally wrongful acts. For the students who had scraped together coins for a banner, the opinion represented a turning point: a legal recognition that inaction is not just dangerous but unlawful.

Houniuihi put the students' success down to a 'stubborn optimism', and to inspiration by their lecturer (who had urged them to find a bold cause) and by a failed, similar effort by Palau, which had sought ICJ advice about climate change a decade earlier. Beyond the breakthrough of raising climate at the ICJ, they also gained wide media coverage of the risks of climate change, especially for developing nations.

She added that she hoped the ICJ would give a 'progressive opinion' to spur action and safeguard human rights. She said that during her lifetime, sea-level rise had already encroached on beaches on the island where she grew up, forcing today's children to play elsewhere. And she said she had treasured close contact with nature; for instance, going fishing on coral reefs: 'When I have kids, I want them to have a similar childhood.'

challenged Australia's failure to protect their communities against rising sea levels. And in *KlimaSeniorinnen* (see Chapter 3), Swiss activists secured a ruling that their country's actions to reduce GHG emissions were insufficient. In this way, international forums can provide an outlet where domestic avenues are closed.

Still, international cases have risks and drawbacks. Although some bodies—most notably the ECtHR—have formal monitoring and follow-up procedures, most international courts and tribunals have few direct mechanisms to enforce their decisions. In the current global political environment, some countries might find it politically acceptable or expedient to reject the findings of international

courts. Australia, for example, has rejected the UN Human Rights Committee's decision in *Daniel Billy v Australia* (ClientEarth 2023). Similarly, the Swiss Parliament sharply criticized the decision in *KlimaSeniorinnen* (International Commission of Jurists 2024), though it now claims that its climate framework already complies with the judgment (Kaminski 2025). In March 2025, the Council of Europe rejected Switzerland's request to close the case, instead instructing Switzerland to present an implementation plan in another review session (KlimaSeniorinnen Switzerland and Greenpeace Switzerland 2025). Still, with few enforcement mechanisms available, international courts and tribunals generally rely on good faith commitments by national governments—commitments that are increasingly hard to come by in an era marked by challenges to multilateralism and increasing isolationism. Meaningful follow-up may also fall to those national courts and administrative bodies that are willing and able to translate and implement international judgments domestically.

Another risk is that international courts may not be sufficiently ambitious.

Another risk is that international courts may not be sufficiently ambitious. For example, in its 1996 advisory opinion on the legality of nuclear weapons, the ICJ stopped short of a clear 'Yes' or 'No' response, stating that the 'threat or use of nuclear weapons would generally be contrary to the rules of international law applicable in armed conflict, and in particular the principles and rules of humanitarian law' (ICJ 1996: 44). However, it added that the court could not definitively determine the legality of nuclear weapons in extreme self-defence scenarios where a state's survival was at stake. That disappointed some governments, who had hoped for a clear ruling opposing all weapons of mass destruction.

'While ICJ advisory opinions are not binding, they can be instrumental in the development of international law,' wrote in 2024 Margaretha Wewerinke-Singh, Associate Professor of Sustainability Law at the University of Amsterdam. 'A positive advisory opinion on climate change could potentially spur more climate ambition from governments by clarifying legal obligations under existing international treaties, like the UN Charter, the UN Climate Convention, the Paris Agreement, and the UN Convention of the Law of the Sea, as well as human rights treaties, and under customary international law' (Wewerinke-Singh 2024).

Wewerinke-Singh points out a key problem with existing international law: countries have signed up to a range of obligations that could be relevant to addressing the climate crisis. But they are fragmented across a range of different treaties and bodies of law, making it

difficult to establish a clear set of tangible obligations. One of the benefits of transnational litigation at courts such as the ICJ is that these obligations can be harmonized and clarified, extending beyond the narrow scope of the case itself. However, Wewerinke-Singh cautions that a vague opinion could slow momentum for tackling what the UN General Assembly referred to as ‘an unprecedented challenge of civilisational proportions’. According to Wewerinke-Singh: ‘An unhelpful opinion would leave the whole world at continued risk without a clear legal pathway to address the climate crisis in accordance with international law.’

In this regard, experts at the International Institute for Environment and Development (IIED) observed that an advisory opinion should also address ‘legal contradictions that are holding back action on climate change’. They noted that fossil fuel companies can seek compensation under international trade treaties if governments impose tougher climate rules to comply with the Paris Agreement, under instruments known as investor–state dispute settlement (ISDS). Camilla More, an IIED climate change researcher, wrote:

We’re tackling the climate emergency too slowly, and some of the reasons are obvious. Investment treaties, though, are not always widely known about despite the very real problems they cause governments trying to transition away from fossil fuels. ... Individuals, especially young people, are increasingly looking to the courts for leadership on this crisis. Deep reform is needed to align investment treaties with the Paris Agreement goals and in delivering its opinion on climate obligations, the ICJ has an important role to play in getting this started.
(IIED 2023)

5.3. SYSTEMIC CLIMATE LITIGATION

Another type of case—sometimes described as ‘systemic climate litigation’—challenges a government’s overall climate policies on mitigation or adaptation. Litigants typically focus on major policy measures, such as a government’s overall target for reducing GHG emissions, or failures to properly invest in climate adaptation. The IPCC (2022: 1376) has observed that systemic climate litigation ‘has been a growing trend since the first court victories in the *Urgenda* case in the Netherlands and the *Leghari* case in Pakistan in 2015’. These pioneering rulings demonstrated how courts can

compel governments to strengthen national climate policies: in the Netherlands, by ordering deeper emissions cuts, and in Pakistan, by requiring implementation of an existing climate policy that had not been put into practice. Together, *Urgenda* and *Leghari* helped spark a wave of systemic litigation worldwide, setting the stage for further landmark judgments (see Box 5.2).

Systemic litigation offers multiple routes to potential success. Its direct consequences might include binding targets and directives that governments must comply with. Where a decision comes from a country's supreme or constitutional court, a single judgment might act as a catalyst or leverage point, with potential consequences being seen across the national government and influencing decision making in a wide range of contexts. Systemic litigation might also lead to the recognition of new legal obligations, such as constitutional or human rights related to climate change. In some cases, judges might order ongoing enforcement or oversight measures, which can increase the likelihood of compliance with these decisions.

Beyond the courtroom, systemic litigation can also reframe climate change obligations as rights or legal obligations, rather than optional policies.

Beyond the courtroom, systemic litigation can also reframe climate change obligations as rights or legal obligations, rather than optional policies, which enables civil society to put more pressure on governments to take action. Facing threats of litigation or evolving policy and governance norms, agencies and private companies might also change their behaviour to anticipate or avoid future court decisions. In this respect, high-profile litigation can attract significant media attention and help to build and galvanize a movement for social change.

In a 2023 case partly inspired by *Urgenda* (*Klimaatzaak*, see Chapters 2 and 3) the Brussels Court of Appeal ordered the Belgian state to cut emissions by 55 per cent by 2030, a deeper reduction than had been previously planned. The non-profit group behind the claim, *Klimaatzaak*, also cultivated public awareness: its action was backed by more than 70,000 co-claimants and supporters. Serge de Gheldere, who brought the Belgian case to court, said he had long advocated for a 'carrot' approach of encouraging decarbonization, but grew frustrated and 'realised it was time for a stick, something to jolt the system into action'. He drew parallels with past, successful campaigns in the fields of asbestos, environmental pollution, tobacco and civil rights (de Gheldere [TEDx Talks] 2024).

Another example is the US case of *Juliana v United States* (see Chapter 2). In 2015, a group of 21 young people filed a federal climate

Box 5.2. Historic Dutch case—chain reaction or overrated?



Photo: Celebrations in court after the *Urgenda* ruling. Urgenda/Chantal Bekker, accessed 20 August 2025.

In a standout success for the power of climate litigation, the Dutch Supreme Court in 2019 obliged the Netherlands to do more to combat global warming (*Urgenda v State of the Netherlands* 2019). It ordered the government to cut emissions by 25 per cent by 2020 from 1990 levels, as a fair share for action under the Paris Agreement, toughening the government's planned 17 per cent reduction target. It was a victory for the Urgenda Foundation, a branch of Friends of the Earth, which had sued the state (Urgenda Foundation n.d.).

The ruling was 'the first to impose a specific emissions reduction target on a state', the IPCC wrote. Since the first judgment by a lower court in favour of Urgenda in 2015, the IPCC stated (2022: 1376) that 'significant changes in the climate policy environment have been reported, the results of which have included the introduction of a Climate Act and the decision to close all remaining coal fired power plants by 2030'.

This is an example of a small but growing number of court rulings that have forced governments to change climate laws or policy. Such cases can lead to significant measurable reductions in GHG emissions. The order in the *Urgenda* case works out as an extra reduction of 33 million tonnes of GHGs—roughly equivalent to the annual emissions of a nation such as Cuba or Malawi. The emissions goal following *Urgenda* is 165 million tonnes in 2020, rather than 198 million—

Box 5.2. Historic Dutch case—chain reaction or overrated? (cont.)

down from 220 million in 1990. Statistics Netherlands said the 2020 target was fractionally overachieved, with a 25.5 per cent cut—helped by factors including the closure of a coal-fired power plant at Hemweg in 2019 instead of in 2024, reductions in economic activity linked to the Covid-19 pandemic and reduced demand for natural gas for heating in a relatively warm year (CBS 2022).

The impact of the case was significant. It led, for instance, to higher budget spending on climate measures in the Netherlands and prompted a plan for a coal phase-out by 2030. Additionally, the case was cited in more than 1,200 documents from the Tweede Kamer, the lower house of parliament, according to a 2022 study. The 2022 government budget, for instance, refers to climate policy measures for ‘further implementation of the *Urgenda* judgment’.

But some believe that the *Urgenda* case is overrated. ‘*Urgenda* has not led to enhanced climate action; if anything, it has impeded such action,’ wrote Benoit Mayer, Professor of Climate Law at the School of Law at the University of Reading, in the *Journal of Environmental Law*. The core of Mayer’s argument is that the Netherlands has likely achieved the mitigation goal set out in the *Urgenda* decision, but largely due to temporary circumstances unrelated to the court’s decision (such as a decrease in transport emissions due to Covid-19 and the market-driven transition from coal to natural gas). Furthermore, Mayer argues, *Urgenda* may have displaced some Dutch emissions abroad (Mayer 2023a).

Mayer argues that a new Dutch tax on the import of foreign waste, enacted since *Urgenda*, led to imports of waste from the UK being buried in the UK rather than incinerated in the Netherlands. Over time, such landfills may emit more GHGs than the Dutch incinerators, adding to global warming overall, and more than offsetting benefits from the closure of the Hemweg power plant and other measures introduced after the *Urgenda* decision.

lawsuit against the USA, alleging that climate change was a violation of their constitutional rights to life, liberty and property. Successive US governments have opposed the case as a misguided overreach of the judiciary. Kelly Matheson, Deputy Director of Global Climate Litigation at Our Children’s Trust, which filed the suit, accused US governments under both Democratic and Republican leadership of: ‘delay, kill and silence tactics ... And every single time the young people have overcome those tactics there’s been some kind of win’ (Matheson 2024).

The case also shows how dissenting opinions by judges can keep a case in the public spotlight even after a loss. The US Court of Appeals for the Ninth Circuit ruled by a 2–1 margin in 2020 that the plaintiffs lacked standing to proceed, but that ruling is often remembered because of a blistering dissent by judge Josephine Staton. She wrote:

In these proceedings, the government accepts as fact that the United States has reached a tipping point crying out for a concerted response—yet presses ahead toward calamity. It is as if an asteroid were barreling toward Earth and the government decided to shut down our only defences Seeking to quash this suit, the government bluntly insists that it has the absolute and unreviewable power to destroy the Nation. My colleagues throw up their hands, concluding that this case presents nothing fit for the Judiciary. (United States Court of Appeals for the Ninth Circuit 2020: 32–33)

Juliana is also a cautionary tale for would-be litigants hoping for quick wins after the Paris Agreement injected urgency into climate policies. In her dissent, Staton noted that from 1863, when US President Abraham Lincoln issued the Emancipation Proclamation declaring enslaved people free, it took almost a century before a 1954 Supreme Court judgment, *Brown v Board of Education*, outlawed racial segregation in US public schools. Despite the public awareness and movement-building generated by the *Juliana* case, its overall impact remains unclear.

While US climate policy made considerable progress under President Biden (before major retrenchment under the current administration), much of this was due to broader political organizing, rather than pressure from litigation. Whether cases such as *Juliana* gave impetus to such organizing is an open question, but the case is clearly a manifestation of the zeitgeist.

Systemic litigation can also have drawbacks. Courts, citing concerns about the separation of powers or the lack of clear legal standards, might be nervous about intervening in complex government decisions. In this way, systemic litigation might generate a negative precedent that lets government off the hook. And even where litigation is formally successful, there are major challenges in implementation (for example, see *Urgenda*, Chapters 2 and 3 and Box 5.2). A judge's order requiring a high-level percentage cut in GHG emissions, for example, requires a lot more work before it becomes a reality. Governments will have to identify how that cut is to be achieved, through what measures and in which economic sectors. Keeping governments accountable to such targets is a challenging task. Emissions might ultimately end up being offshored to other countries, and accounting for cuts in emissions requires an enormous amount of information and technical expertise.

Judicial decisions might bypass the more difficult, detailed work of crafting legislation or undermine the collaborative spirit needed to negotiate international agreements.

There may be some broader dangers in placing too much faith in courts. Judicial decisions might bypass the more difficult, detailed work of crafting legislation and regulations to address climate change, or undermine the collaborative spirit needed to negotiate international agreements. Ultimately, courts cannot address climate change by themselves. Still, supporters of climate litigation argue that litigation is a complement to, rather than a substitute for, these other regulatory pathways. Rather than undermining it, litigation might ‘catalyse’ domestic and international law-making (Bookman 2023).

Whether systemic litigation is successful will depend on several factors. It will depend on having the right legal framework—a ‘hook’ under national constitutional, administrative or human rights law for being able to successfully argue that a government has a formal legal obligation to be more ambitious on climate change. It will also require a legal culture among lawyers and judges that makes such arguments acceptable. In many instances, legal work will need to be accompanied by the organizing of movements outside the courtroom to give the case a national profile and demonstrate the urgency of the issue.

Where cases formally succeed, significant follow-up work will still be necessary. Governments will need the capacity and political will to implement the decision across vast bureaucracies. Civil society will need the expertise and popular support to monitor the government’s progress and return the case to court if necessary. Where all these conditions are present, systemic litigation might be a powerful tool to hold governments to account and have a catalytic effect on policy (e.g. the Irish Government rewrote its Climate Action Plan within nine months of a Supreme Court defeat; Germany’s legislature amended its Climate Act four months after *Neubauer*). Where they are not present, climate activists might still use litigation to raise awareness and build a movement for change. The benefits, however, might be less clear-cut.

Much climate litigation is far more mundane, deprived of headline-grabbing cases that seem to promise a shortcut for climate action.

5.4. PROJECT-BASED CASES

It is possible that high-profile, systemic cases such as *Juliana* and *Urgenda* are misleading points of reference. Much climate litigation is far more mundane, deprived of headline-grabbing cases that seem to promise a shortcut for climate action.

'A lot of people think about climate cases as being the *Urgenda*, Our Children's Trust, carbon major types of lawsuits – those are a very, very small number,' said Michael Burger, Executive Director of the Sabin Center. 'The vast majority of climate lawsuits in our databases, both in the USA and at the global level, involve much more conventional types of litigations around environmental impact assessment, air pollution control, land use, forestry and those sorts of things' (Burger 2024).

Kim Bouwer of Durham University also argues that debate is overly skewed towards high-profile cases and that people should have more realistic expectations for what she refers to as the 'unsexy future' of climate change litigation. The 'glamour' of the *Urgenda* case, she wrote, 'contributed to the expectation that litigation of this nature might "save the world"—for a while, everybody wanted an *Urgenda*' (Bouwer 2020: 25). She also wrote: 'Simply put, it is time to get down to the nitty-gritty. What is necessary, at domestic scales or lower, is very specific and focused litigation that challenges barriers to and supports the enablement of the promised contributions of state and non-state actors to the overall climate change response' (Bouwer 2018: 505).

This smaller-scale litigation often targets specific policies or projects with a high level of GHG emissions. Furthermore—and especially in the Global South—these projects also have significant local impacts. Fossil fuel power plants, for example, emit pollutants that are globally responsible for hundreds of thousands of deaths every year (Lelieveld et al. 2023). Focusing on the local effects of fossil fuels addresses these impacts, while also addressing global climate change. It can also mean that cases have a higher chance of success: even if countries have not enacted laws regulating carbon emissions, almost all have laws dealing with human health and air pollution. Challenging a well-established licensing or permitting system is a powerful tool for lawyers. By showing that a company or government hasn't properly 'done their homework', lawyers have been able to overturn permits granted to power plants, mines, oil wells and fossil fuel transportation infrastructure.

One of the reasons such impacts can be described as 'unsexy' is that they are often related to complicated local disputes. Contrary to many systemic cases, project-based cases are grounded in technical environmental law and relate only to relatively isolated, localized issues. This means they may not gain the same level of public or scholarly attention, and might be less useful for activists seeking to build a nationwide or international movement. There are

Even technical and complicated battles around permits can have powerful indirect consequences.

also concerns that their impact is limited: even if a single project is successfully challenged, it may simply be re-sited, or another project might take its place.

However, these aspects of localized litigation should not be overstated. Even technical and complicated battles around permits can have powerful indirect consequences beyond the courtroom, particularly for local communities. Effective movement lawyers will work alongside communities directly affected by emissions or pollution such as, for instance, coal power plants and oil refineries. In *GroundWork Trust*, for example, lawyers from South Africa's Centre for Environmental Rights worked with local communities to successfully argue that the government was not sufficiently regulating the deadly effects of coal-fired power plants in the country's Highveld region. The court ordered the government to prepare regulations that would address not only the local effects of air pollution, but—by reducing reliance on coal—also the country's emissions as a whole (*GroundWork Trust v Minister of Environmental Affairs* 2022). The remedies awarded in such cases will often be more traditional and easily implemented, thus increasing the likelihood that the case will have direct impacts (Mayer 2023b).

Finally, sometimes the line between localized, project-based litigation and systemic litigation is not so clear-cut. In the UK, for example, a complicated local dispute about permits for four new oil wells rapidly escalated to a Supreme Court decision that reshaped national permitting laws. In a landmark 2024 judgment, the UK Supreme Court issued a decision that will require government agencies to consider climate impacts in a very wide range of permitting decisions—much broader than the area of the original dispute. The case, *Finch v Surrey County Council*, has already led to changes in procedure and several other fossil fuel project approvals being cancelled, showing how cases that start off by addressing local problems can quickly provide impetus for systemwide change (Reuters 2024; Beaubouef 2025; Horton and Elgot 2025). A similar trajectory can be seen in Norway, where local environmental groups challenged licences for new Arctic oil and gas exploration, arguing that the government's approvals violated constitutional rights to a healthy environment and failed to account for the full climate impact of Norway's exports. Although the plaintiffs lost three consecutive rounds of litigation between 2017 and 2020, the Norwegian Supreme Court's reasoning opened a new pathway by confirming that downstream emissions from exported oil and gas must be considered in project approvals. Building on this foothold, the same groups secured a victory in 2024 when a court invalidated licences for three North Sea oil and gas fields on climate

grounds—although the ruling is still under appeal. What began as a narrowly framed licensing dispute thus evolved into a legal avenue with potentially systemic consequences, much like the expansion of permit-based arguments in the UK’s *Finch* case (see Box 5.3).

Box 5.3. Can one win eclipse three losses in Norway?



Photo: Plaintiffs in the Oslo District Court, by Rasmus Berg, Greenpeace International.

A campaign against oil drilling in Norway highlights how litigation can drag on for years, but that plaintiffs can exploit apparent losses to build momentum for other cases. From 2017 to 2020, a coalition of environmental groups seeking to halt new exploration for oil and gas in the Arctic lost three successive court cases, but now claim overall success after a win in a related lawsuit in 2024.

‘We have been doing this for a long time – and it had been loss, loss, loss and then we win,’ said Frode Pleyrn, Head of Greenpeace Norway, which worked with the Nature and Youth Group on the Arctic cases. ‘The most recent win has done much more good than previous climate litigation’ (Pleyrn 2024).

The green coalition originally, and unsuccessfully, said that awards of 10 exploration licences in the Arctic Barents Sea to companies including Equinor and Chevron violated constitutional rights to a healthy environment and Norway’s pledges under the Paris Agreement. The final 2020

Box 5.3. Can one win eclipse three losses in Norway? (cont.)

Supreme Court ruling in that case seemed to consolidate the oil companies' future in the Arctic by sanctioning future drilling in the fragile environment, a stinging setback for the 'keep-it-in-the-ground' campaign. Crucially for the plaintiffs, however, a section of the ruling opened a new avenue for anti-oil litigation.

The Supreme Court ruling said the state, in considering new oil and gas projects, should take account of the impact on the environment in Norway of emissions from the use of its oil and gas exports when burnt abroad. Until then, decisions about new projects were limited to the GHG emissions during production in Norway. Production accounts for only about 5 per cent of emissions, with 95 per cent coming from the end use of oil and gas in everything from power plants to factories—the vast majority of which are burning Norwegian oil abroad. The court ruled that these emissions from consumption, after entering the atmosphere, come back to affect Norway.

In January 2024, Greenpeace and its partners won a separate case in which the Oslo District Court invalidated licences for three North Sea oil and gas fields for failing to take account of the emissions from consumption abroad (Greenpeace International 2024). An appeals court overturned the ruling in October 2024, but the Supreme Court disagreed and sent the case back to the appeals court in 2025.

On another front, the Arctic oil case is also pending in the ECtHR. The campaigners say Arctic oil and gas exploration violates the right to life and right to respect for private and family life under the ECHR, which the Norwegian Government denies.

5.5. LITIGATION AGAINST PRIVATE COMPANIES

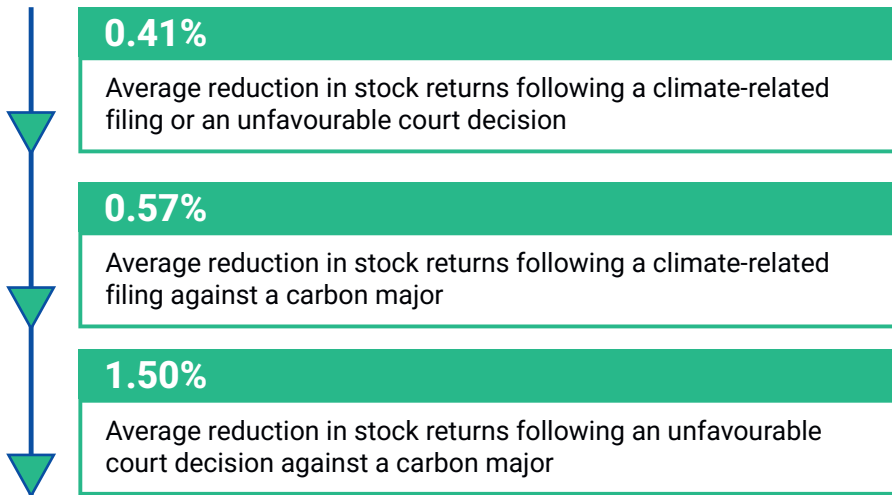
Most climate litigation to date has targeted governments, but a growing volume of cases targets private companies, relying on a wide range of different legal strategies.

One way of judging the impact of climate litigation on companies is how far lawsuits affect their share prices. In the industrial sectors of energy, utilities and mining, carbon majors are increasingly targeted by litigants trying to accelerate a shift towards renewable energies such as wind and solar power. Researchers have found that 'firms experience, on average, a 0.41% fall in stock returns following a climate-related filing or an unfavourable court decision' (Sato et al. 2024: 1461).

The largest stock market responses were found for cases filed against Carbon Majors, reducing firm value by -0.57 per cent following case filings and by -1.50 per cent following unfavourable

judgments, the report said. ‘We conclude that lenders, financial regulators, and governments should consider climate litigation risk as a relevant financial risk in a warmer future.’ (Sato et al. 2024: 1461)

Figure 5.2. Average reduction in share price for oil majors after unfavourable judgment



Source: Sato, M., Gostlow, G., Higham, C., Setzer, J. and Venmans, F., ‘Impacts of climate litigation on firm value’, *Nature Sustainability*, 7 (2024), pp. 1461–68, <<https://doi.org/10.1038/s41893-024-01455-y>>.

On 26 May 2021, for instance, a Dutch court ordered Shell to cut its emissions by 45 per cent from 2019 levels by 2030. This included emissions from use of its oil and gas—deeper reductions than the company itself had planned. Shell’s share price closed flat that day, lagging 0.7 per cent behind gains in the broader European energy sector (Bousso, Meijer and Nasralla 2021). Since the ruling, Shell has moved its headquarters to London from The Hague—potentially complicating the reach of Dutch law—while stating that the move was unrelated to the climate lawsuits. Even though the 2021 ruling was successfully appealed, the Appeal Court made it clear that Shell and other European corporations *do* owe climate obligations under existing law. The NGO bringing the case, *Milieudefensie*, is now taking the case to the Dutch Supreme Court.

In 2021, both ExxonMobil and Chevron suffered shareholder rebellions intended to prompt them to take more account of climate

change. Ratings agency Moody's said the actions 'signal rising threat to oil companies' from litigation. The 2021 ruling against Shell signified 'a sudden increase in climate litigation and climate activism risk for global oil and gas companies', according to a 2023 study by Sascha Kolaric of Edinburgh University (Kolaric 2023: 3141). His review of climate litigation showed 'a significant negative impact on the stock prices for European and North American oil and gas firms, while firms located in other jurisdictions record slight gains' (Kolaric 2023: 3141). And that geographical difference could hint at ways to shield profits; for example, 'Increased climate litigation and activism, particularly in Europe and North America, may lead some companies to consider shifting parts of their production activities to countries with less stringent regulations and/or lower levels of climate litigation and activism risk' (Kolaric 2023: 3142).

While oil majors and other big emitters are the main target, banks or insurers are also at increasing risk as litigants try to sway corporate behaviour.

In this regard, some experts argue that other companies may be underestimating the future reach of climate litigation. While oil majors and other big emitters are the main target, banks or insurers are also at increasing risk as litigants try to sway corporate behaviour. 'Litigants are coming after the banks, "come hell or high water"', Frank Elderson, a member of the European Central Bank's Executive Board, warned in a 2023 speech (Elderson 2023). If the ruling ordering Shell to cut emissions were upheld by the Dutch Supreme Court, Elderson said, 'it could establish a legal obligation under Dutch law for all corporates to proactively reduce their emissions in a way that is aligned with the objectives of the Paris Agreement'. He noted: 'This would have major repercussions and would quite frankly be revolutionary. Such a duty is not currently priced into, nor part of, firms' business and transition plans.' Suing the banks, for instance, might 'turn off the taps' of funding to high emitters. Elderson warned that the phrase 'come hell or high water', used in the 19th century to describe the hard-headedness of US settlers travelling westwards, 'can equally be used to describe the determination of climate activists to use the justice system to fight the climate crisis – and the hell and high water that crisis is already generating'.

So far, companies face a maze of ill-defined risks over potential liability for climate change. David Pitt-Watson, an investor and former chair of the UN Environment Programme Finance Initiative (UNEP-FI), said producers of asbestos were 'sued out of existence' because they continued to sell asbestos long after they became aware of its health hazards in insulation and fireproofing. He suggested that asbestos was a cautionary tale for companies who failed to do their part to combat climate change. 'Insurers today would be crazy to cover such an open-ended risk for a company that, in the future, might similarly

be deemed not to have fulfilled its responsibilities in addressing climate change’ (Pitt-Watson n.d.).

Another risk is that litigation may target companies that have set ambitious goals for tackling the climate crisis. Unambitious companies, which have no clear climate policies or goals, are less likely to be sued because there is no standard to hold them to account. French food group Danone regularly features on an ‘A-list’ of companies compiled by the non-profit group CDP, formerly the Carbon Disclosure Project, affirming their positive action on climate change, forest protection and water security (CDP n.d.). Nevertheless, in January 2023, Danone was sued in France by NGOs claiming its statutorily required ‘vigilance plan’ did not adequately address plastic-related risks across the value chain (*ClientEarth, Surfrider Foundation Europe, and Zero Waste France v Danone* 2023). In February 2025 the parties announced a settlement following court-ordered mediation, which included Danone’s commitment to make an updated vigilance plan, strengthen mitigation and prevention measures, publish its plastic footprint and hold annual review meetings with the plaintiff coalition (ClientEarth 2025).

Finally, the targets of these legal challenges overwhelmingly remain companies listed in democratic countries. While there are dozens of US legal cases involving Houston-based oil major ExxonMobil, for instance, none (so far) have been filed in Saudi Arabia against state-owned Saudi Aramco—the biggest corporate GHG emitter in the world. Lawyers will likely continue to seek the most favourable legal frameworks to bring cases. Publicly listed companies in Europe, for example, are subject to a much more extensive range of environmental and corporate governance obligations than government-owned companies in other regions.

It also perhaps reflects lawyers’ judgments as to the comparative independence of European and, for example, Saudi courts and judges—likely reflecting the comparative lack of independence in the latter. Yet, such companies are not fully insulated. For example, in September 2021, ClientEarth filed a complaint with the UN Working Group on Business and Human Rights, alleging that Saudi Aramco’s fossil fuel expansion plans represent the largest climate-linked breach of human rights law ever committed by a business. In 2023 the Working Group and four UN Special Rapporteurs issued a communication to the President and CEO of Aramco, as well as separate communications to its financiers, cautioning that that Aramco’s business activities could be contrary to the Paris Agreement goals and obligations, including negatively impacting

Unambitious companies, which have no clear climate policies or goals, are less likely to be sued.

the human right to a safe environment, and requesting a detailed response (UN Working Group on the Issue of Human Rights and Transnational Corporations and other Business Enterprises et al. 2023). While there was no reply from Aramco or Saudi Arabia as of August 2025, such international communications may provide groundwork or support for litigation in other forums.

Courtrooms alone cannot remake global markets, but each lawsuit raises the cost of climate indifference—through discovery, reputational damage and direct monetary awards—thereby modifying the boardroom calculus.

5.6. CONSIDERATIONS FOR DEMOCRACY

So, does climate litigation work? The answer is: it depends. It is impossible to give a verdict that applies in all circumstances and to all cases. This chapter has identified the strengths and drawbacks of different types of cases: international, systemic, project-based and claims against private companies. It has highlighted the potential direct and indirect consequences of different cases, as well as the risks associated with them.

In evaluating whether a case is worthwhile, there are several factors potential litigants should consider. First, they should think about whether the prevailing laws, precedents and legal culture of their jurisdiction are likely to lead to a successful outcome, and if so, under which legal frameworks. In some countries, for example, effective administrative and environmental laws may allow for successful project-based suits, while the absence of framework climate laws or constitutional review might mean that systemic cases are unlikely to succeed. Lawyers and activists should also consider what additional indirect benefits might result from the case. Building a movement and raising public awareness can be effective benefits of litigation. They are also necessary prerequisites for raising momentum and support for future cases. There should, however, be a plan in place to channel these benefits into political payoffs, and to mitigate potential risks in terms of cost, negative precedent and backlash.

This chapter has also identified some clear success stories, as well as cases that might legitimately be questioned. Climate litigation remains a relatively new and growing phenomenon. As the number of cases grows, consideration of which cases might provide the most value will become more important.

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Chapter 6

CONCLUSIONS

Michele Poletto and Sharon Pia Hickey

In the introduction to this report, Alister Doyle traces the rise of climate litigation, from its origins in the USA at the end of the 1980s to its current global prominence, in parallel with the deepening of the climate crisis and the gradual realization of its human-made nature. Courts have become arenas for addressing climate accountability, environmental crime and intergenerational justice, and legal actions have expanded in scope, geography and significance.

Targeting both state and corporate actors, climate litigation has emerged as a powerful tool.

Targeting both state and corporate actors, climate litigation has emerged as a powerful tool, which combines scientific evidence and rights-based reasoning to demand legal remedy, policy effectiveness and transparency—as seen in testimonies from Germany, Indonesia, the Netherlands and Peru. Landmark cases, ranging from emissions reduction orders to human rights and consumer protection, highlight how litigation has the potential to drive change and open new avenues for civic engagement. At the same time, defendants have pushed back, often arguing against the legitimacy of the courts to rule on these matters, and ‘backlash cases’ have emerged, where businesses sue public authorities for loss of revenue due to the introduction of new, more stringent environmental requirements.

In Chapter 2, focusing on global trends in climate litigation, Kate McKenzie, Lennart Wegener, Catherine Hall and Abel Shibu Simon consider four case typologies: ‘systemic cases’, challenging entire public policies; ‘project-based cases’, referring to specific public initiatives or authorizations which lead to climate-negative outcomes; ‘cases involving private actors’; and ‘regional or international cases’. In so doing, they demonstrate how climate-related lawsuits present various aspects from a democratic point of view.

First, climate litigation helps rebalance unequal distribution of power, in terms of resources and access to information, by enabling claimants to stand up to governments and private corporations. In addition, as an expression of ‘objective scrutiny’, courts emphasize evidence and push governments to focus on more forward-looking, science-based policies to address long-term issues, the impact of which may not be immediately visible. Finally, lawsuits also raise the profile of climate action and provide a major platform for debate. In this regard, even when they are unsuccessful, climate lawsuits can still have an impact, as initially unsuccessful arguments acquire visibility and can be adapted, adjusted and replicated in other instances.

As Christina Eckes shows in Chapter 3, litigation has become a key strategic tool for climate action in Europe, with many cases aimed at compelling states to reduce GHG emissions and uphold climate commitments. Eckes takes into consideration four different and many times overlapping conceptions of democracy that underlie judicial reasoning (‘representative, participatory, deliberative and epistemic democracy’) and analyses some critical issues for democratic governance, as well as the role of judicial review.

European climate litigation reflects the dynamic interplay of domestic, regional and international legal frameworks. Landmark cases like *Urgenda* and *Neubauer* show that court rulings are not endpoints but stepping stones in a broader policy conversation: while judges do not have the final word, their decisions influence ongoing political processes. The evolving case law in Europe is uniquely shaped by its multilayered legal system, incorporating both EU law and the ECHR. In addition, developments at the international level, including the 2024 ITLOS opinion, the 2025 IACHR opinion and the 2025 ICJ opinion, are already shaping domestic and regional litigation. These opinions affirm that climate obligations are legal and enforceable, broaden access to justice, recognize the rights of vulnerable communities (and even of nature itself), and reinforce that inadequate climate action may violate both international law and human rights. They further underscore that litigation should not be seen as isolated national efforts but as part of an interlinked global movement, where domestic rulings resonate internationally and vice versa.

In Chapter 4, Maria Antonia Tigre illustrates how climate litigation is rapidly gaining momentum in the Global South as a vital means to challenge governmental inaction, hold corporate actors accountable and amplify the demand for environmental justice. She observes

Initially unsuccessful arguments acquire visibility and can be adapted, adjusted and replicated in other instances.

Courts in the Global South and Small Island Developing States are already making a significant contribution to the development of the global legal landscape of environmental action and loss and damage.

that future climate litigation is likely to take root in the regions most affected by the impact of global warming, such as the Caribbean and the Pacific Island nations, where the increasingly urgent debate on adaptation and compensation makes it ever more crucial to effectively represent and defend the rights and interests of the affected communities.

In this regard, courts in the Global South and Small Island Developing States are already making a significant contribution to the development of the global legal landscape of environmental action and loss and damage, and they are poised to play an ever growing role in ensuring that vulnerable populations have access to remedies and that legal systems contribute meaningfully to climate resilience and accountability. This evolving legal movement will not only influence domestic climate policies but also contribute to a wider global push for more equitable and effective climate governance.

Finally, in Chapter 5, Alister Doyle and Sam Bookman provide a lively and balanced assessment of the impact of climate litigation so far. They highlight litigation efforts that have achieved notable results, considering the direct consequences of the rulings and the 'indirect benefits' in terms of advocacy and influence on the legal systems. Conversely, they mention costs, questionable approaches and potential unforeseen consequences of climate litigation, including 'backlash cases' or the risk that both public and private actors avoid making more ambitious climate commitments due to concerns over potential legal risks in the future.

They argue that, as the field matures and more legal actions continue to be filed, the goal should be to maximize the overall positive impact of litigation by identifying which cases have the greatest potential to drive legal, political and cultural change, while also learning from less successful attempts. Strategic thinking will be essential to ensure that litigation supports long-term climate goals and aligns with the broader push for just transition and sustainability.

As a whole, the report considers how climate litigation touches upon key issues for democratic governance, including separation of powers, access to justice and the protection of constitutional and human rights. These dimensions are central to ensuring government accountability, citizen participation and the rule of law in addressing the climate crisis.

Some general conclusions can be drawn from the authors' contributions. First, when courts scrutinize governmental action,

they can be perceived as stepping into roles traditionally held by lawmakers and the executive, raising concerns about breaching the democratic principle of separation of powers. While mindful of this principle, the report shows that judges do not necessarily dictate legislation or policies to be adopted, but rather indicate parties' responsibilities to act, leaving specific targets and modalities to the other institutional branches. In addition, policymaking can be seen as a cyclical process: judges settle a specific case at a certain time, in light of the applicable norms, but their decisions do not represent the final destination, instead influencing and informing a continuous development of norms and policies.

Second, access to courts is a democratic cornerstone, but legal barriers often hinder climate litigation. A major issue is legal standing—the requirement that plaintiffs show a personal and specific harm caused by the defendant's actions. In climate cases, these harms are often diffuse or long term, making them hard to prove. NGOs often step in where individuals can't meet standing requirements, while international treaties like the Aarhus Convention and Escazú Agreement have expanded access to justice, particularly by allowing broader public participation and advocating for intergenerational rights.

Third, as the right to a healthy environment has been progressively affirmed in international law, invoking constitutional and human rights provides a powerful legal path for climate claims, emphasizing that states must protect citizens' rights from the impacts of climate change. These cases underscore that democratic states must protect citizens' rights against environmental harms. Moreover, rights-based litigation is extending to private actors, as courts are increasingly recognizing that corporations also bear human rights responsibilities and can be held accountable for violations resulting from their environmental conduct.

Climate litigation thus intersects with core democratic principles, and courts play a crucial role in upholding rights and ensuring government accountability, especially when other branches fail to act. Expanding access to justice, modernizing standing and causation rules, and embracing rights-based legal approaches are essential to ensure democratic legitimacy in addressing the climate crisis. In addition, civil society and non-governmental actors can leverage international and human rights frameworks and, where appropriate, persuasive jurisprudence from international bodies and foreign courts.

As the right to a healthy environment has been progressively affirmed in international law, invoking constitutional and human rights provides a powerful legal path for climate claims.

The report also shows that relying solely or too heavily on the courts would be a mistake and could weaken the cooperative mindset required for reaching global agreements. In addition, countersuits against regulatory authorities, the so-called ‘backlash cases’, are a growing trend, often pursued by corporate actors claiming loss of revenue as a result of climate and environmental standards. In this context, there is also a risk that public authorities might refrain from committing to more ambitious targets and policies, fearing litigation from both environmental campaigners and businesses active in the fossil fuel sector. Finally, when rulings do not produce the intended consequences, are ignored, or are not properly and fully implemented, overall trust in climate litigation can be damaged and mistrust in public authorities further deepened.

While aware of these risks and of the need to manage them, it is clear that legal action is a proven approach and will continue to be a fundamental complement to other strategies. Together with better regulations, appropriate economic incentives, institutional reforms and enhanced public participation in decision making, litigation—whether at the local, national or supranational level—can act as a trigger for advancing climate action and promoting environmental and intergenerational justice.

In conclusion, several areas that would benefit from further research have been identified:

1. *Democratic impact of advisory opinions.* How the recent advisory opinions from the ICJ, ITLOS and ECtHR influence legislative agendas, domestic jurisprudence and public discourse.
2. *Trust, legitimacy and democratic governance.* How reliance on courts for climate action affects public trust in institutions and perceptions of democratic legitimacy in both negative and positive ways, considering when and how judicial interventions catalyse constructive policy dialogue, and when they risk contributing to political polarization.
3. *ISDS and SLAPP.* The extent to which ISDS and SLAPPs create a chilling effect—or not—on government climate ambitions and possible legal or policy responses to mitigate such risks.
4. *Implementation and enforcement.* How comprehensively climate rulings have been enforced, with attention to any gaps in implementation, and mechanisms such as parliamentary

oversight, civil society monitoring or constitutional review that could increase the likelihood of compliance.

5. *Standing and access to justice.* Innovations and evolutions in standing and causation rules that lower barriers to seeking climate justice.
6. *Global South leadership and innovation.* The pioneering role of Global South laws, litigants and courts in developing environmental rights, rights of nature and intergenerational equity, and how these innovations are shaping global jurisprudence.

These areas for further research acknowledge that, while climate litigation has undoubtedly become a key feature of global climate governance, its democratic potential and long-term impacts depend on continued analysis, policy, legislative and institutional innovation, and the reinvigoration and evolution of democratic processes to increase legitimacy and inclusivity.

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Climate litigation has emerged as an important tool in addressing the gap between climate commitments and implementation. Since the late 1980s, nearly 3,000 cases have been brought worldwide, with a marked increase since the Paris Agreement in 2015. This report examines how litigation complements other forms of climate action by promoting accountability, advancing rights-based approaches and contributing to public debate and ambition.

Drawing on expert interviews, global case mapping and analysis of landmark judgments, the report traces the evolution of legal strategies, actors and venues across regions. It considers both the democratic potential of climate litigation—enhancing transparency, participation and oversight—and its risks, including backlash and over-reliance on courts. From this analysis emerges insights into the complex role of litigation in shaping climate governance and democratic legitimacy.

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