



FORUM

Global Climate Change Litigation: A New Class of Litigation on the Rise

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As climate change has come to the forefront of the public consciousness in recent years, we have seen increased global urgency and public awareness regarding this issue. This awareness has led to the advent of a new and ever-evolving body of environmental law related to mitigating climate change risks.

According to the [London School of Economics](#), “climate litigation is generally recognized to have started in the United States in the late 1980s but has since emerged as a growing global phenomenon.” Climate change litigation made headlines following the 2021 ruling by the Hague District Court in the case *Milieudefensie v. Shell*. This landmark ruling in environmental law held that Shell was required to both set and uphold emissions standards and reduction targets by 2030. Notably, the number of climate litigation cases filed has increased significantly following the signing of the 2016 Paris Agreement, with just over 800 cases filed between 1986 and 2014 and over 1,200 cases filed between 2014 and 2022. The Paris Agreement, while not legally binding, was a pivotal step forward because it was an attempt to “promote accountability and ambition” for all nations.

With the growing number of climate change cases in recent years, precedents are set regularly, and cases are being brought against both corporations and governments. However, as we see a rise in cases, there are noticeable discrepancies in why these cases are brought forward and the bases upon which they are decided. While cases are brought with different forms of strategic intent, there are trends in the arguments being brought forward in the cases we have seen, making it possible

to sort heterogeneous cases in the field of environmental law into various categories.

Constitutional and human rights cases concern themselves with the constitutional and moral obligations that have failed to be upheld by a nation due to climate-change-related risks to citizens. According to the United Nations, “States have an affirmative obligation to take effective measures to prevent and redress these climate impacts, and therefore, to mitigate climate change, and to ensure that all human beings have the necessary capacity to adapt to the climate crisis.” If inadequate environmental conditions due to climate change compromise these rights, governments are liable to be sued. Under the rule of law, governments and citizens alike are accountable to laws that are “publicly promulgated, equally enforced and independently adjudicated” and are consistent with international human rights standards.

The challenge that arises is enforcing such liability under international law. In 2008, the UN Human Rights Council (UNHRC) issued a resolution that outlined the concern that climate change “poses an immediate and far-reaching threat to people and communities around the world and has implications for the full enjoyment of human rights.” However, after conducting a later study of the relationship between human rights and climate change, they concluded that “it is less obvious whether, and to what extent, such effects can be qualified as human rights violations in a strict legal sense.” As such, these cases can be particularly challenging to bring forward, as many states will concede that climate change can interfere with the realization of human rights but reject the idea that failure to prevent climate change or take substantial action is a violation of international human rights law. The Paris Agreement is a legally binding international treaty; yet there is no formal accountability or consequence for nations failing to meet their individual goals. Instead, the Agreement focuses on transparency and ensuring that they are taking active measures to work towards their Nationally Determined Contributions (NDC).

Administrative cases involve the review of “administrative decision-making by federal, state or local government, often concerning permitting and licensing approvals granted to high-emissions projects under environmental or planning laws.” An example of a case was ClientEarth v. Secretary of State, where ClientEarth, an environmental NGO, brought forward a case to the High Court challenging the UK government’s decision to approve what would become the largest gas plant in Europe. The court ruled in favor of the defendants, as the judge determined that the case “involved policy questions requiring a balancing of interests and that other public interests weigh against the UK’s climate goals.” This case is illustrative of a

key challenge that litigants bringing environmental claims face, as governments attempting to weigh different interests often conclude that climate change is not the most pressing issue, and can be compromised in favor of other more relevant or pressing issues.

Private law cases involve disputes about negligence, nuisance, and public trust. For example, in *Smith v. Fonterra Co-Operative Group Limited*, the climate change spokesperson for the Iwi Chairs' Forum, a Māori development platform, filed a case against seven New Zealand companies in the agriculture and energy sectors on the grounds of "public nuisance, negligence and breach of a duty to cease contributing to climate change." However, this case, as with many other private law cases, was dismissed, as the court held that "tort law was not the appropriate vehicle for dealing with climate change" and that "every person in New Zealand — indeed, in the world — is (to varying degrees) both responsible for causing the relevant harm, and the victim of that harm." Private cases have often been dismissed on the grounds that it is the responsibility of the government, rather than the court, to address climate change impacts and that it is difficult to prove that the harm the plaintiff incurred was directly attributable to the defendant's actions.

Fraud and consumer protection cases are typically concerned with misrepresentation claims against corporations for failing to disclose the risk associated with their products or for "greenwashing" their products or practices. For example, *Ramirez v. Exxon Mobil Corp.* was a 2016 securities fraud class action suit alleging that Exxon failed to disclose climate risks, and this was also the first climate-change-related securities class action against a major oil and gas company.

It is important to recognize that climate change litigation has had mixed success, particularly as this is such a new class of action with little precedent or comparable cases. Firstly, there is the question of justiciability and whether a court has the mandate to hear a claim about decisions on climate change. A notable example of this is in the case *Lho'imggin et al. vs Her Majesty the Queen (2020)* where two houses of the Canadian indigenous group filed a case against the Canadian government's failure to meet their climate goals resulting in significant warming of their territories. The Federal Court of Canada responded by stating that "when the issue spans across various governments, involves issues of economics and foreign policy, trade, and a host of other issues, the courts must leave these decisions in the hands of others" and found that the case was not justiciable because the issue was inherently political rather than legal. Additionally, there is the challenge of establishing a causal link between the failure of a government to act in relation to climate change and the occurrence of subsequent negative climate developments. Litigants are, however,

increasingly framing the case in terms of human rights and the state's obligation to protect against the infringement of human rights due to climate change.

As the scope of this new class of litigation continues to grow, it is imperative that companies are ready to respond to this changing regulatory landscape. While climate litigation is frequently met with challenges and is not always successful, the very existence of climate litigation is a powerful impetus for governments and corporate actors to uphold their social responsibility and pursue more sustainable environmental practices.