

Litigation trends and climate transition plans


Catherine Higham

Grantham Research Institute on Climate Change and the Environment
London School of Economics and Political Science

Outline

- Our work at GRI
- Growth and trends in climate litigation
- How climate litigation impacts companies
 - Cases against governments increase transition risk
 - Cases against companies
 - Direct and indirect impacts of litigation
- Climate Litigation and transition plans

Big picture of climate law and litigation



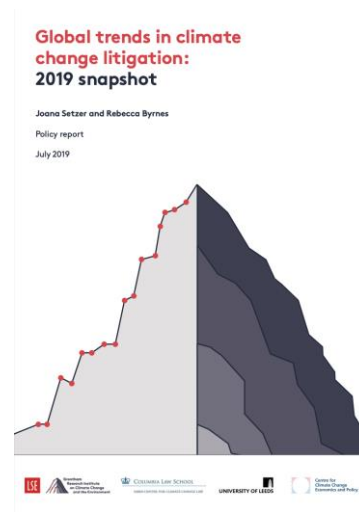
Global trends in climate change litigation: 2024 snapshot

Joana Setzer and Catherine Higham

Policy report
June 2024



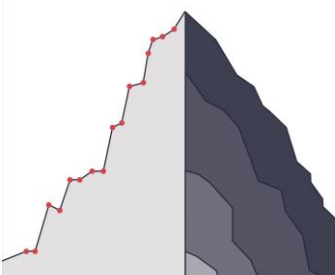
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Climate Change Laws of the world



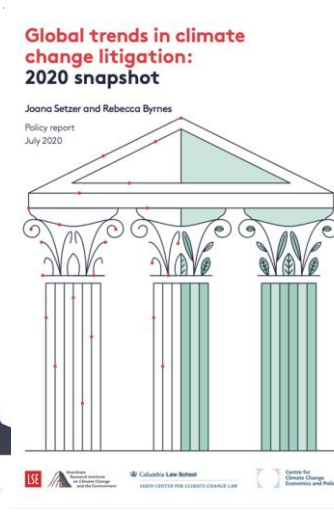
Global trends in climate change litigation: 2019 snapshot

Joana Setzer and Rebecca Byrnes

Policy report
July 2019



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Global trends in climate change litigation: 2020 snapshot

Joana Setzer and Rebecca Byrnes

Policy report
July 2020



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Global trends in climate change litigation: 2021 snapshot

Joana Setzer and Catherine Higham

Policy report
July 2021



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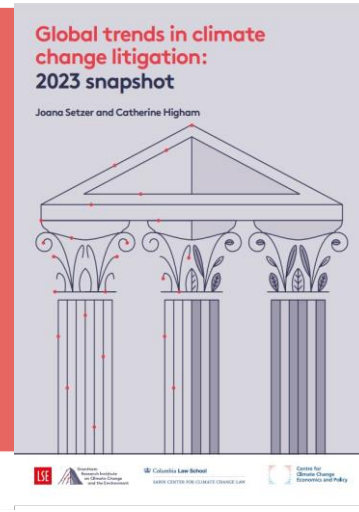
Global trends in climate change litigation: 2022 snapshot

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Policy report
June 2022

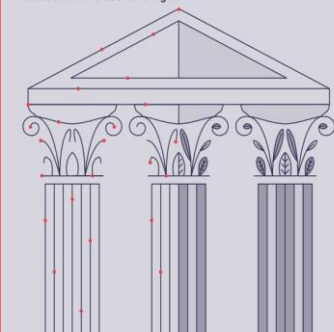


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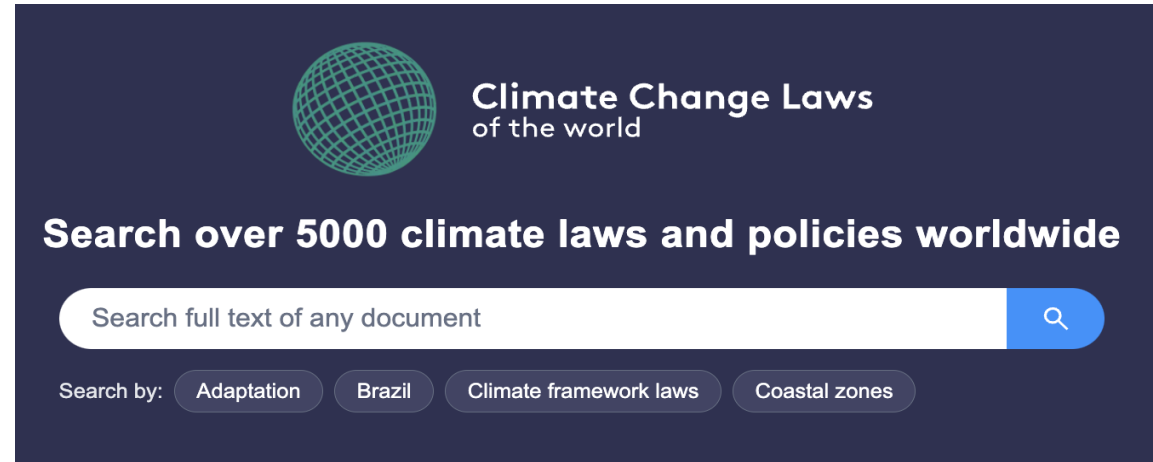


Global trends in climate change litigation: 2023 snapshot

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Climate Change Laws of the world

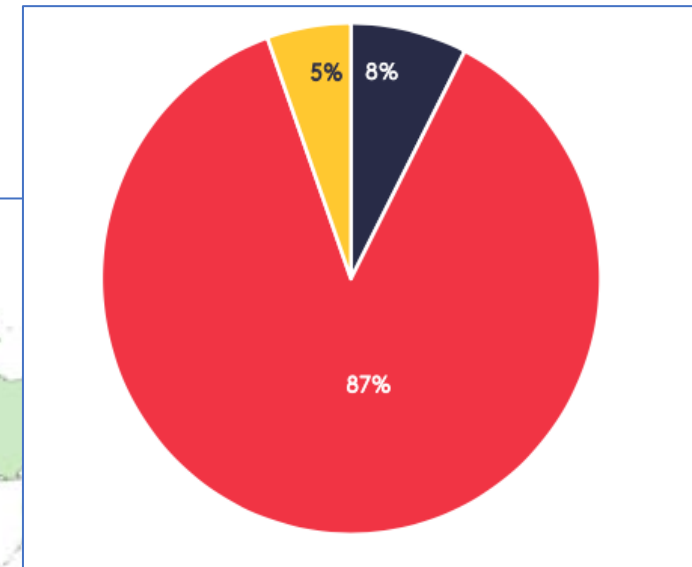
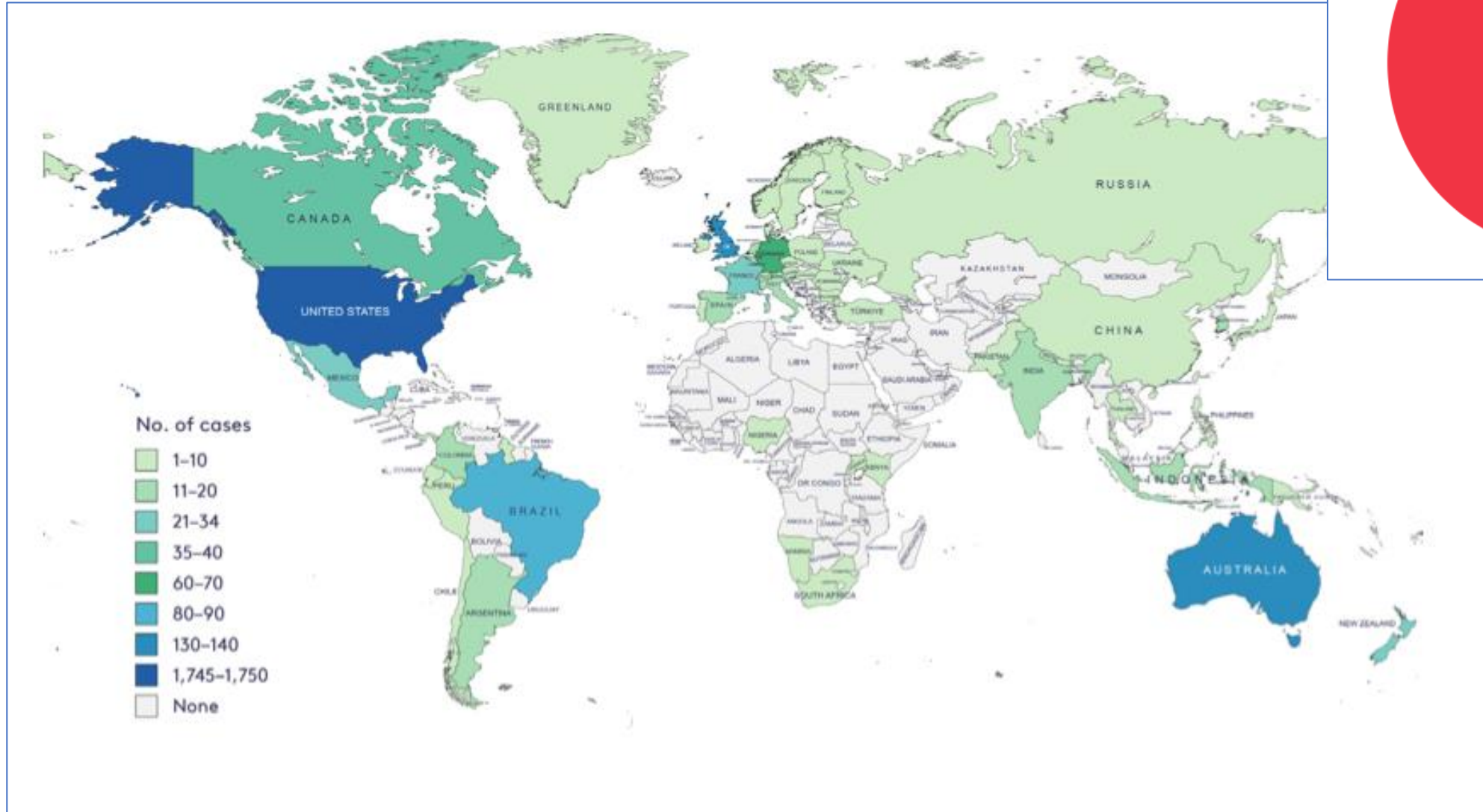
Search over 5000 climate laws and policies worldwide

Search full text of any document

Search by: **Adaptation** **Brazil** **Climate framework laws** **Coastal zones**

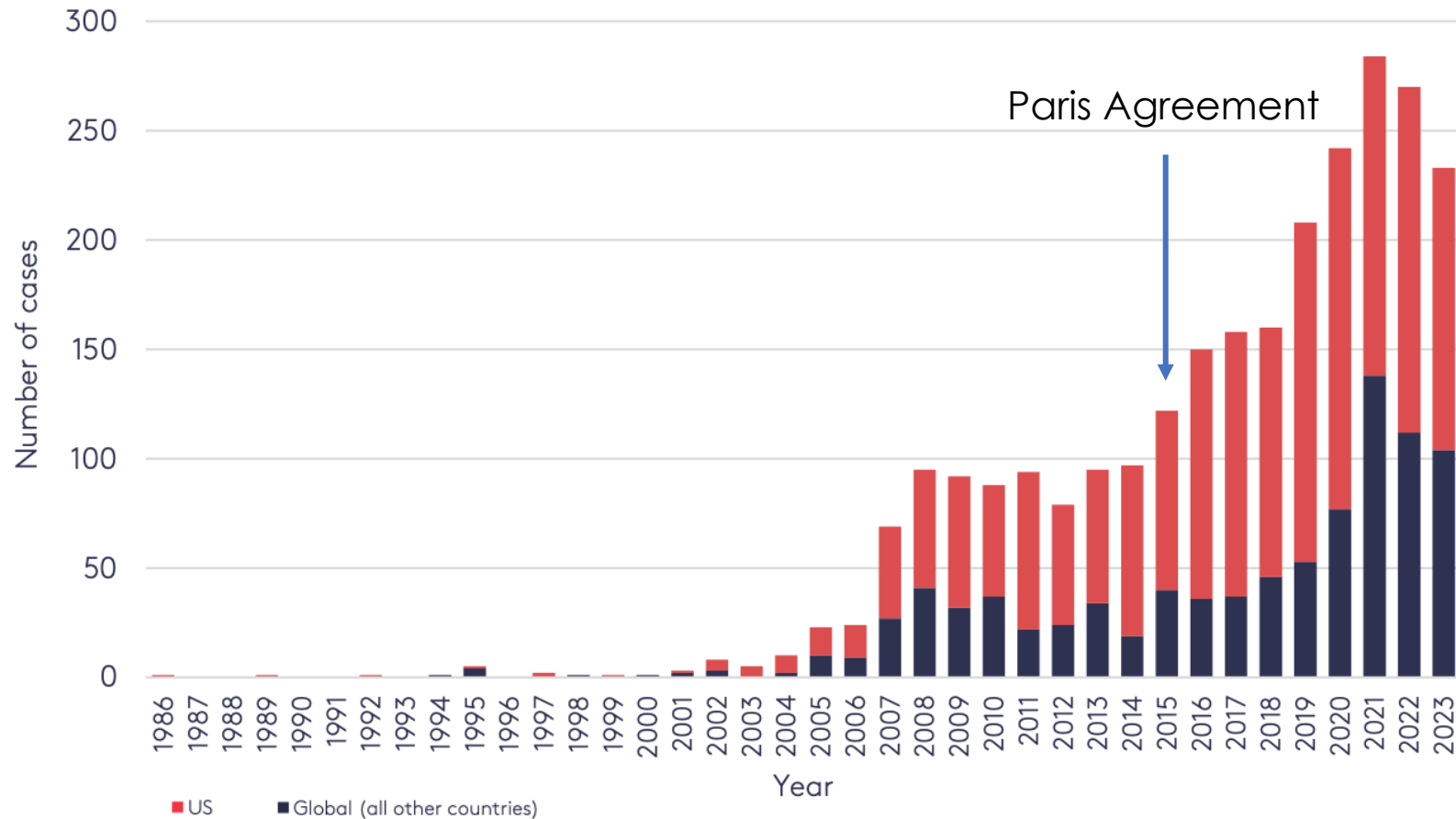
- Understanding trends in governance approaches and legal interventions intended to address climate change
- Assessing their impacts in a variety of socio-economic, political and institutional contexts

Climate litigation is spreading



- Global South
- Global North
- International

Annual increase in case numbers

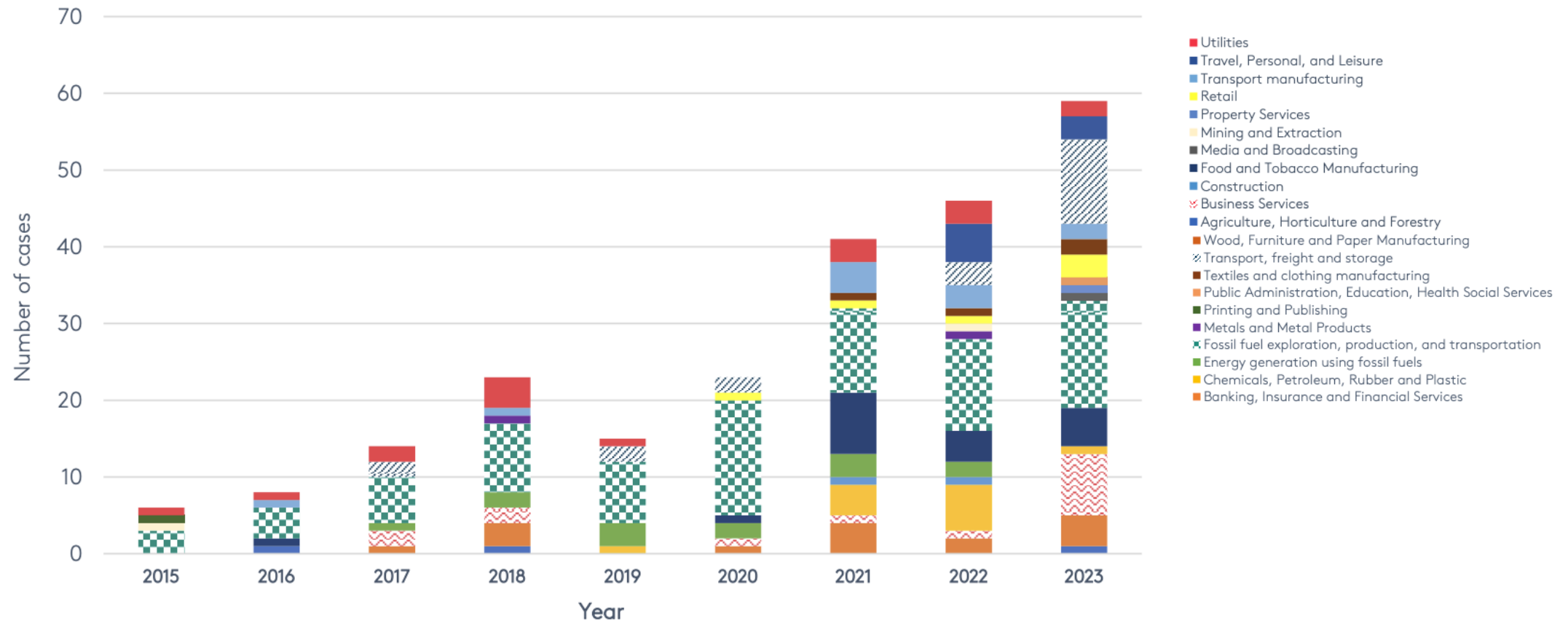


- Over 2,600 climate cases globally now
- Around 70% filed since 2015
- 233 cases filed in 2023

Source: Setzer J and Higham C (2024) *Global Trends in Climate Change Litigation: 2024 Snapshot*. London: Grantham Research Institute on Climate Change and the Environment, London School of Economics and Political Science.

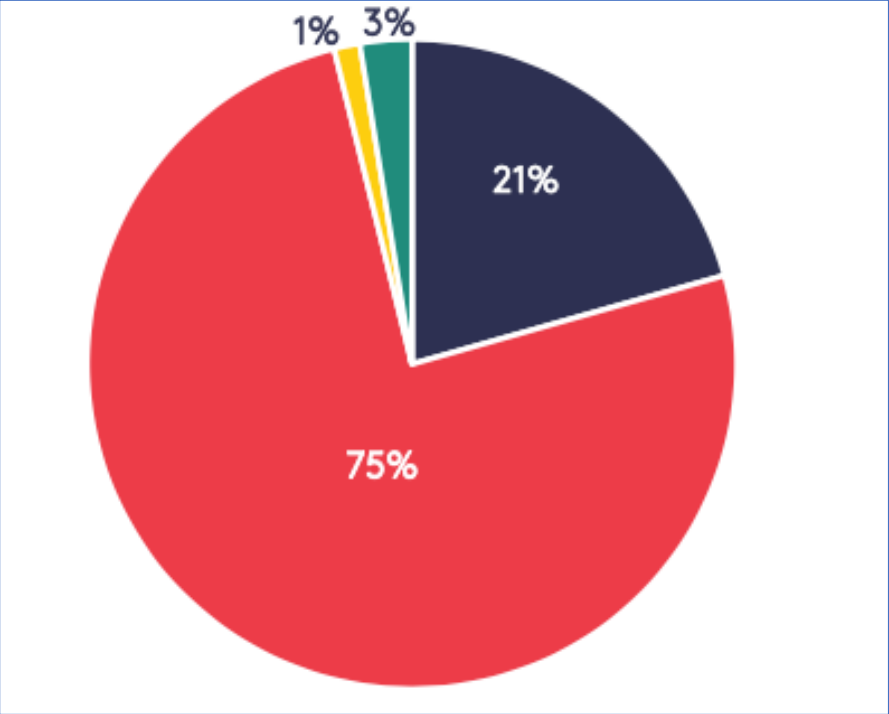
Data: Sabin Center for Climate Change Law, data was downloaded from the US database on 4 April 2024 and from the Global database on 10 May 2024.

Number of cases against companies still rising



Source: Setzer J and Higham C (2024) *Global Trends in Climate Change Litigation: 2024 Snapshot*. London: Grantham Research Institute on Climate Change and the Environment, London School of Economics and Political Science.

Not all climate litigation is aligned with climate goals



- Cases including non-aligned arguments
- Cases including both aligned and non-aligned arguments
- Cases including aligned arguments
- Cases where no alignment classified

Industries | Legal
Exxon Suit Targeting Activist Group Arjuna Tossed by Judge

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US judge ends Exxon lawsuit against shareholder over climate activism

**SUPREME COURT OF THE STATE OF NEW YORK
 NEW YORK COUNTY**

PRESENT: HON. ANDREA MASLEY PART 48

Justice

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INDEX NO. 652297/2023

WAYNE WONG, JERIANN JALOZA, JENNIFER DIMEGLIO, JATANIA MOTA, and AMERICANS FOR FAIR TREATMENT, INC.,

MOTION DATE _____

Plaintiff,

MOTION SEQ. NO. 004

- v -

NEW YORK CITY EMPLOYEES' RETIREMENT SYSTEM, TEACHERS' RETIREMENT SYSTEM OF THE CITY OF NEW YORK, and BOARD OF EDUCATION RETIREMENT SYSTEM OF THE CITY OF NEW YORK,

DECISION + ORDER ON MOTION

Defendants.

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Complexity: Just Transition Litigation + Green v Green cases



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Last UK coal plant closes and successfully redeploys the workforce

Author Craig Stewart
Published date 26 Sep 2024

The last UK coal power station is closing this month. When Ratcliffe-on-Soar power station shuts down, the UK will end 140 years of burning coal to make electricity - the first G7 country to phase out coal power.

This is a historic moment. It is also a story about unions and an employer working

nature sustainability

Perspective

<https://doi.org/10.1038/s41893-024-01439-y>

Conceptualizing just transition litigation

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Check for updates

Annalisa Savaresi^{1,2}✉, Joana Setzer³, Sam Bookman⁴, Kim Bouwer⁵, Tiffanie Chan³, Isabela Keuschnigg³, Chiara Armeni⁶, Alexandra Harrington⁷, Corina Heri⁸, Ian Higham³, Chris Hilson⁹, Riccardo Luporini¹⁰, Chiara Macchi¹¹, Linnéa Nordlander¹², Pedi Obani¹³, Lauri Peterson^{1,14}, Andrea Schapper¹⁵, Navraj Singh Ghaleigh¹⁶, Maria Antonia Tigre¹⁷ & Margaretha Wewerinke-Singh^{18,19}

The transition towards low-carbon societies is creating winners and losers, raising new questions of justice. Around the world, litigation increasingly articulates these justice questions, challenging laws, projects and policies that aim to deliver climate change adaptation and/or mitigation. In this Perspective, we define and conceptualize the phenomenon of ‘just transition litigation’. This concept provides a new frame for identifying and



Government cases as drivers of transition risk

- European Court of Human Rights (April 2024): *KlimaSeniorinnen v Switzerland*
- Integrating climate considerations: *Finch v Surrey County Council* (June 2024)

The Economist

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Britain | Court out?

The ECtHR's Swiss climate ruling: overreach or appropriate?

A ruling on behalf of pensioners does not mean the court has gone rogue



Polluter Pays cases: the 'classic' corporate climate litigation

- 30+ 'Climate liability' lawsuits filed by subnational governments in the US against Carbon Majors result in diverse judgments in state courts
- *Lluyta v RWE*
- *Asmania v Holcim* and *Falys v. Total*



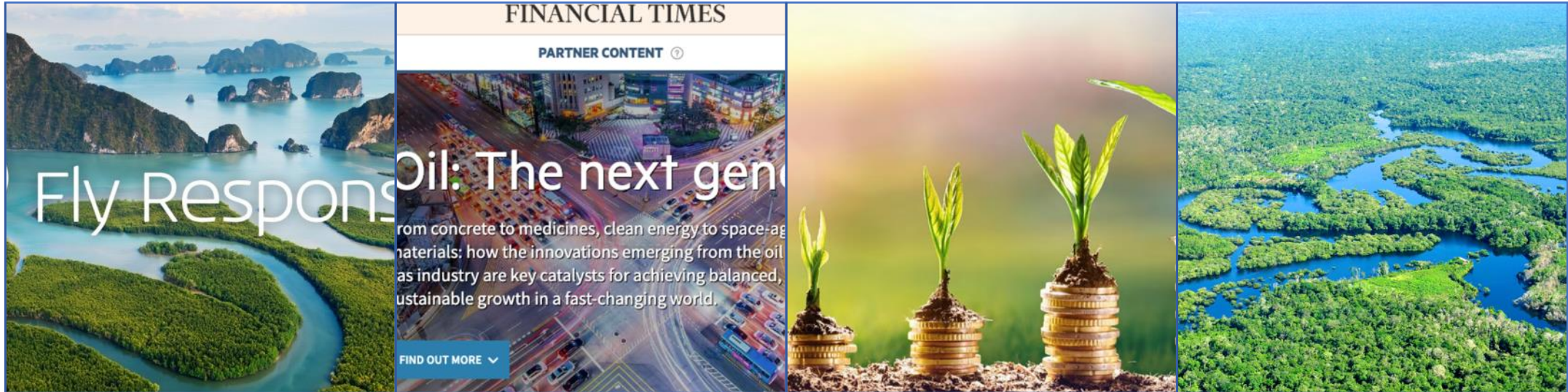
Corporate framework cases: looking to the future

- Seek to disincentivise companies from continuing with high-emitting activities
- *Milieudefensie et al. v. Royal Dutch Shell*
- *Smith v. Fonterra* (proceeding to trial)
- *Youth Climate Case Japan* (filed against thermal powerplant operators)
- *Notre Affaire a Tous et al v BNP Paribas*



Climate-washing litigation

More than 140 cases filed to date, 47 new cases in 2023



Misleading communication in advertising – majority of successful cases

E.g. KLM's claims about use of carbon offsets and biofuels

Actors who disseminate misleading communications – marketing and PR agencies

E.g., Saudi Aramco and FT

Sustainable investment claims

E.g., Vanguard Investments ethical bond case

Utilising climate-washing arguments to demonstrate human rights violations

E.g., Amorema and Amoretgrap v Sustainable Carbon



Transition Risk cases

Shareholders v Enea Directors (Ostroleka C case, Jan 2024):

- December 2023, Enea sued those of its former directors who had supported the investment for USD\$160 million
- 2021, Poland's Supreme Audit Office identified deficiencies in Enea's risk management practices in connection with the project
- Followed years of campaigning and litigation against the project by ClientEarth

Metamorphose v Total (July 2023):

- TotalEnergies' shareholders sued the company TotalEnergies for unlawful dividends
- Error in valuation for future cost of carbon led to over valuation of assets
- Dividends should be returned to the company
- If successful could lead to further shareholder action against directors

Outcomes and impacts

- Direct judicial outcomes in climate-aligned strategic cases vary
 - Climate-washing: More than half of the nearly 140 cases filed from 2016 have reached a decision and 70% of these aligned with climate action
 - Government framework cases: Around 60% of these cases have at least one judicial decision. Of these, one-third have positive outcomes, while two-thirds have been unsuccessful.
- Impacts beyond the courtroom:
 - Spurring legislative reforms
 - Open avenues for new cases
 - Shaping narratives
 - Amplifying financial risk



Impacts of climate litigation on firm value

Misato Sato, Glen Gostlow, Catherine Higham, Joana Setzer and Frank Venmans

May 2023



Market responses to climate cases

nature sustainability


Article

<https://doi.org/10.1038/s41893-024-01455-y>

Impacts of climate litigation on firm value

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 Check for updates

Misato Sato¹✉, Glen Gostlow², Catherine Higham¹, Joana Setzer¹ & Frank Venmans¹

Communities and individuals are turning to courts to hold governments and high-emitting firms to account for the adverse consequences of climate change. Such litigation is part of a broader trend in which stakeholders are increasingly scrutinizing firms for their sustainability practices. For firms, rising climate litigation risk may exacerbate wider sustainability risks. Here we construct a comprehensive database of filings and decisions relating to 108 climate lawsuits against US- and European-listed firms between 2005 and 2021. We show that firms experience, on average, a 0.41% fall in stock returns following a climate-related filing or an unfavourable court decision. Cases filed against Carbon Majors, primarily the world's largest fossil fuel producers, saw the largest stock market responses, with returns reducing by 0.57% and 1.50% following filings and unfavourable decisions, respectively. Markets respond more to 'novel' climate litigation involving new legal arguments or jurisdictions. Our findings suggest that climate litigation provides a way for stakeholders to challenge actual and perceived weaknesses in the sustainability practices of firms. We conclude that financial markets consider such litigation to be a relevant financial risk.

- Climate litigation filed or a decision against a company saw company value drop on average by 0.41%
- Higher for carbon majors
- Effect largest for negative decisions against Carbon majors
- No effect before 2019

Mandatory climate Transition Plans: a contested instrument?

	CSRD	CSDDD	CRD6	CRR3 (Pillar 3 disclosures)	EU Benchmark Regulation	EU Green Bond Regulation
Main objective	Sustainable disclosure regime	Sustainable corporate governance	Bank safety and soundness	Bank safety and soundness	Common framework for Low-carbon benchmarks	High quality green bonds
Main stakeholders	Investors, stakeholders	Stakeholders	Investors, depositors, public interest in financial stability	Investors, depositors, public interest in financial stability	Investors	Issuers and investors
Applicability to companies or banks or both?	Non-specific	Partially specific, only banks meeting turnover targets	Bank-specific	Bank-specific	Non-specific	Partially specific, only relevant to issuers of green bonds
Transition plan relevance	Disclosure of outward-facing document	Adopted 'best efforts' transition plans	'Prudential' transition plans	Transition risk metrics	Paris-aligned decarbonisation trajectory, sectoral approach; exclusion criteria relevant for CSRD TPs	TP disclosure obligation for EUGB issuers
Status	In force (further bank-specific guidance expected 2025)	2028 (expected)	2027 (expected)	In force	In force	2024 (applicable to issuers)

Adapted from Smolenska, forthcoming

Key areas of risk?

- The “Say-Do” Gap: can companies demonstrate due diligence efforts to implement transition plans?
- Inadequate plans: what is sufficient to meet a duty of care? Is it required to have an absolute emissions reduction target?
- Transition plans and derivative actions?
 - Aligned and non-Aligned
- Inadequate disclosure: assumptions and methodologies?

Thank you!

- **Access the 2024 report**

<https://www.lse.ac.uk/granthaminstitute/publication/global-trends-in-climate-change-litigation-2024-snapshot/>

- **Access the database:** <https://climate-laws.org>

Catherine Higham c.m.higham@lse.ac.uk

Scan to download the 2024 report



Global trends in climate change litigation: 2024 snapshot

Joana Setzer and Catherine Higham

Policy report

June 2024

