



Global Climate Litigation Report

2020 STATUS REVIEW

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Foreword

Our planet continues to navigate a climate crisis. As reported in the United Nations Environment Programme's 2020 Emissions Gap Report, despite a brief dip in carbon dioxide emissions caused by the COVID-19 pandemic, the world is still heading for a temperature rise of 3°C this century. This is far beyond the Paris Agreement goals of limiting global warming to well below 2°C and pursuing 1.5°C. This would amount to an untenable future for people and planet.

However, there is hope. More and more governments are progressively committing to net-zero emissions goals by around mid-century. Businesses are accelerating efforts to transition and align their operations with the goals of the Paris Agreement. Children and youth are demanding a safe climate and are forcing positive change, helping demonstrate that climate change is at the forefront of a global environmental rights movement. And – as illustrated by this report – judiciaries around the world are increasingly playing a critical role in addressing climate change.

I am proud to introduce this report, developed with the outstanding support of the Sabin Center for Climate Change at Columbia University. The *Global Climate Change Litigation Report – Status Review* provides an overview of the current state of climate change litigation around the world. It updates our 2017 report on the same and finds there has been a rapid increase in climate litigation. In 2017 there were 884 climate change cases brought in 24 countries. In 2020 the number of cases has nearly doubled with at least 1,550 cases filed in 38 countries.

This growing tidal wave of climate cases is driving much needed change. The report shows how climate litigation is compelling governments and corporate actors to pursue more ambitious climate change mitigation and adaptation goals. It reports on key emerging trends in these cases, including the role of fundamental human rights connected to a safe climate and cases that bring to life the right to a healthy environment we now see in the constitutions of over 100 countries. It outlines how cases are forcing greater climate disclosures and ending “corporate greenwashing” on climate change. It reports how people are holding their governments to account, seeking to keep fossil fuels in the ground and challenging non-enforcement of climate-related laws and policies.

As countries urgently seek to access and distribute much awaited COVID-19 vaccines, we are well advised to remember that the future impacts of climate change will far outstrip the devastation of the current global coronavirus pandemic. Environmental rule of law – supported and achieved in part through strong and independent judiciaries – contributes as an effective vaccine against future zoonotic diseases and pandemics. The role of judiciaries in combating climate change, therefore, cannot be overstated.



Inger Andersen
Executive Director
United Nations Environment Programme.



Executive Summary

Climate ambition in countries around the world remains inadequate to meet the challenge of climate change. As a result, individuals, communities, non-governmental organizations (NGOs), business entities, and subnational governments have turned to the courts to seek relief through the enforcement of existing climate laws; integration of climate action into existing environmental, energy, and natural resources laws; clear definitions of fundamental climate rights and obligations; and compensation for climate harms. As these actions become more frequent in their occurrence, and more numerous overall, the body of legal precedent grows, forming an increasingly coherent field of law.

This report, which updates the 2017 document by the United Nations Environment Programme (UNEP) entitled *The Status of Climate Change Litigation: A Global Review*, provides an overview of the current state of climate change litigation, as well as a fresh assessment of global climate change litigation trends. It finds that a rapid increase in climate litigation has occurred around the world. The 2017 Litigation Report identified 884 cases brought in 24 countries, comprised of 654 cases in the United States of America and 230 cases in all other countries combined. As of 1 July 2020, the number of cases has nearly doubled with at least 1,550 climate change cases filed in 38 countries (39 counting the courts of the European Union). Those cases include approximately 1,200 filed in the U.S. and over 350 filed in all other countries combined.

Key trends include: ongoing and increasing numbers of cases relying on fundamental and human rights enshrined in international law and national constitutions to compel climate action; challenging domestic enforcement (and non-enforcement) of climate-related laws and policies; seeking to keep fossil fuels in the ground; claiming corporate liability and responsibility for climate harms; addressing failures to adapt and the impacts of adaptation; and advocating for greater climate disclosures and an end to corporate greenwashing on the subject

of climate change and the energy transition. Summaries of significant cases appear throughout this report, providing context and examples of those issues and the trends they comprise.

This report also describes five types of climate cases that suggest where global climate change litigation may be heading in the coming years. First, plaintiffs are increasingly filing consumer and investor fraud claims alleging that companies failed to disclose information about climate risk or have disclosed information in a misleading way. Second, recent years suggest a growing number of pre- and post-disaster cases premised on a defendant's failure to properly plan for or manage the consequences of extreme weather events. Third, as more cases are filed and some reach a conclusion, implementation of courts' orders will raise new challenges. Fourth, courts and litigants increasingly will be called on to address the law and science of climate attribution as cases seeking to assign responsibility for private actors' contributions to climate change and cases arguing for greater government action to mitigate both advance and proliferate. Finally, litigants are increasingly bringing claims before international adjudicatory bodies, which may lack for enforcement authority but whose declarations can shift and inform judicial understanding.

Although climate change cases are premised on a broad range of legal theories, and are brought before many different courts, tribunals, and other fora throughout the world, such cases often face common core legal issues. This report summarizes those issues, which include challenges to whether the court has the power to resolve the dispute, identifying the source of an enforceable climate-related right or obligation, crafting a remedy that will lessen the plaintiffs' injuries and, importantly, marshalling the science of climate attribution. As cases move through the process of litigation, parties are advancing sophisticated arguments about how to link a specific greenhouse gas emitter's actions to global climate change and how foreseeable,

climate-driven extreme weather events can be linked to specific harms suffered by plaintiffs.

In summary, the amount of climate change litigation is increasing, the range of legal theories is expanding, and it has become clear that climate cases can contribute in meaningful ways to compel governments and corporate actors to pursue more ambitious climate change mitigation and

adaptation goals. As the international community advances deeper into the third decade of the millennium—a critical decade in which nations must reverse course to dramatically reduce greenhouse gas emissions, enact reforms to achieve the United Nations Sustainable Development Goals, and also respond to and recover from the COVID-19 pandemic—climate litigation will continue to have an important role to play.



Introduction

Countries around the world have enacted laws and adopted policies that describe national and international responses to climate change. But the current levels of both climate ambition and climate action are inadequate to meet the challenge. As a consequence, individuals, communities, nongovernmental organizations, business entities, subnational governments and others have brought cases seeking to compel enforcement of those laws, replace them with stronger ones (and sometimes weaker ones), extend existing laws to address climate change, or define the relationship between fundamental rights and the impacts of climate change. In recent years, a number of those cases have produced clear judicial statements about the reality of climate change and the responsibility for it, as well as how protection of other rights may be burdened by climate change impacts. As actions seeking to fill gaps in legislative and regulatory responses to climate change continue to increase,

so does the body of legal precedent recognizing the urgency of the climate crisis and the role of courts in addressing it.

In 2017, UNEP published a survey of global climate change litigation, identifying key developments, profiling significant cases, describing then-current and emerging trends, and outlining the key legal issues in climate change cases.¹ The climate crisis has only deepened since then.² This report provides a fresh assessment of global climate change litigation and analysis of trends. It also updates cases that were pending when the prior report was published. While most of the trends identified in 2017 have continued in the intervening years, and the key legal issues discussed in the prior report remain central, this report identifies new trends and emerging issues in climate litigation. Except where otherwise noted, this report contains information as of 1 July 2020.

Defining “Climate Change Litigation”

This report considers “climate change litigation” to include cases that raise material issues of law or fact relating to climate change mitigation,

when climate change keywords are only used as a passing reference to the fact of climate change and those issues are not related to

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