

Climate Litigation as Climate Activism: What Works?

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Introduction

The hopes for and devastating failure of the Copenhagen COP of the UNFCCC in 2009 sparked a new era of climate action that employed a blend of modern digital and traditional physical techniques of confrontational activism. It also re-ignited an interest in the prospects for climate litigation, as the growing frustration of climate activists drove a return to the courts to challenge climate inaction. What is more surprising is that the years subsequent to the conclusion of the Paris Agreement in 2015 have seen an increase in activist legal mobilisation in the Courts, as much as it has other forms of activism. Environmental litigation, as environmental activism, is not a new strategy. Litigation as a technique has been long integrated in environmental activism, pursued in conjunction with other forms of mobilisation.¹

Over the last few years, climate change litigation has been increasingly used as a tool to influence policy outcomes and/or to change corporate and societal behaviour.² This approach sees advocates using climate litigation to drive ambition in climate action, taking a long view beyond the immediate success or failure of individual cases. Claims brought against states seeking increased mitigation ambition have seen some success. Litigation is also being brought against large emitters or states seeking compensation for damages caused by, or costs incurred due to, climate change. High-profile judgments on climate change have attracted considerable media and scholarly attention.³ These actions seek to leverage pending litigation to instigate broader policy debates and change - for instance, increasing the share of renewables in an energy market or aligning national laws with Paris Agreements targets. While the majority of climate change litigation to date has occurred in the United States and other developed countries, cases raising issues of law or fact regarding climate change are increasingly reaching courts across the world.

In this briefing we examine this wave of post-Paris legal mobilisation. We discuss the who, why, how and what for, of this new wave of activity that has not been quietened by increased multilevel commitments to take steps to manage the climate crisis.

1 Hilson, (2002) 'New social movements: the role of legal opportunity', *Journal of European Public Policy*, 9(2), 238-255, <https://doi.org/10.1080/13501760110120246>.

2 Peel & Osofsky, (2015) *Climate Change Litigation Regulatory Pathways to Cleaner Energy*, (Cambridge: Cambridge University Press); Bouwer, (2018) 'The unsexy future of climate change litigation', *Journal of Environmental Law*, 30(3), 483-506, <https://doi.org/10.1093/jel/eqy017>; Setzer & Byrnes, (2020) *Global trends in climate change litigation: 2020 snapshot* (Policy report. LSE's Grantham Research Institute on Climate Change and the Environment).

3 Setzer & Vanhala (2019) 'Climate change litigation: A review of research on courts and litigants in climate governance', *WIREs Climate Change* (Published Online: 4 March 2019).

Who are the new actors in climate advocacy?

The escalation in the use of litigation by activists is being recognised as one of the new developments changing the context of environment and climate advocacy.⁴ In litigation, diverse kinds of parties play a role either as claimants or defendants. Broadly speaking, individuals and NGO claimants are instigating proceedings against government and corporate defendants to encourage improved ambition on GHG emissions reduction, while industry actors and government officials have also used litigation to fight tighter regulatory controls.⁵ Local and regional governments also act as claimants against major carbon and oil producers in climate change-related private law cases. Still surprisingly absent from courts in climate-related cases and from the scholarship are groups involved in the supply chain causing deforestation (e.g. the agribusiness and the meat industry) and the plastic industry.⁶

Actors associated with climate change litigation

- Activists in criminal trials
- The fossil fuel divestment movement
- Climate change denial groups
- Judges and legal scholars
- Banks, pension funds, institutional investors, insurance companies, corporate borrowers, financial supervisory authorities, and regulators
- Scientists
- Political parties
- Funders

A growing awareness of other actors associated with climate change litigation is observed in socio-legal scholarship and social movement research: from climate activists in criminal trials, to the fossil fuel divestment movement,⁷ climate change denial groups,⁸ judges,⁹ and legal scholars. There is also an interesting and perhaps unexpected set of actors in the financial sector (e.g. banks, pension funds, institutional investors, insurance companies, corporate borrowers, financial supervisory authorities, and regulators).¹⁰ Other players that have received less explicit scholarly attention but that might influence litigation strategies and the types of cases brought are: scientists that produce research later used in courts, political parties, and funders.

It is worth noting that litigating is generally a costly strategy, with uncertain outcomes.¹¹ This is particularly the case in adversarial systems, where claimants are likely to pay their legal representatives' fees, the costs of a communication campaign, court costs to bring and pursue the case and often also experts' fees. They also frequently bear the risk of paying some or all of the defendants' costs should they lose. All added, bringing a case can be prohibitively expensive. For supporters, there is also an opportunity cost incurred; engaging in litigation divert resources away from other strategies.¹²

4 Hall et al. (2019) "Transnational Advocacy and NGOs in the Digital Era: New Forms of Networked Power." *International Studies Quarterly*, forthcoming; Eilstrup Sangiovanni (2019) "Competition and Strategic Differentiation among Transnational Advocacy Groups." *Journal of Interest Groups and Advocacy* 8 (3): 376-406.

5 Markell & Ruhl, (2012) 'An empirical assessment of climate change in the Courts: A new jurisprudence or business as usual?' *Florida Law Review*, 64(1), 15-86; McCormick et al. (2018) 'Strategies in and outcomes of climate change litigation in the United States', *Nature Climate Change* 8: 829-833; Setzer & Byrnes, (2020) *Global trends in climate change litigation: 2020 snapshot*.

6 Setzer & Vanhala, (2019) 'Climate change litigation: A review of research on courts and litigants in climate governance', *WIREs Climate Change*.

7 Franta, (2017) 'Litigation in the fossil fuel divestment movement', *Law & Policy*, 39(4), 393-411, <https://doi.org/10.1111/lapo.12086>.

8 Ley, (2018) 'Mobilizing Doubt: The Legal Mobilization of Climate Denialist Groups', *Law & Policy*, 40(3), 221-242.

9 Preston, (2016) 'The Contribution of the Courts in Tackling Climate Change', *Journal of Environmental Law*, 28(1), 11-17.

10 Solana, (2020) 'Climate Litigation in Financial Markets: A Typology', *Transnational Environmental Law*, 1-33.

11 Setzer, (2020) 'Costs and impacts of climate litigation against Carbon Majors: starting with one piece of a large puzzle', *Open Global Rights*, forthcoming.

12 Bouwer (2020a) "Lessons from a Distorted Metaphor: The Holy Grail of Climate Litigation." *Transnational Environmental Law*, <https://doi.org/10.1017/S2047102520000114>; Bouwer 2020b "Climate Change and the Individual in the UK." In *Climate Change Litigation - A Comparative Approach*, edited by Makane Mbengue and Francesco Sindico. Springer (forthcoming)

Why are we seeing these actors engaging in legal mobilisation?

Early research suggests that climate litigation was related in some way to one of three governance phenomena.¹³ First, the failure to reach agreement on a comprehensive, binding international treaty to limit greenhouse gas emissions at the UNFCCC Conference of the Parties in Copenhagen in 2009 was seen as a major driver of climate litigation. Second, litigation was understood to be a response to the existence as well as the dearth of climate change regulation at the national level; key cases in Canada and the US in the early 2000s are emblematic. Third, scholars noted that in some cases, courts were understood as venues in which to support, contest or augment the implementation and enforcement of climate legislation. According to this work, climate litigation emerged as a response to institutional failures at both the international and national level and as an instrument to debate, enforce, augment, or challenge climate legislation.

However, today's context is considerably different. The argument that climate litigation emerged as a response to the failure of the international community to reach an agreement has in many ways been complicated by the adoption of the Paris Agreement. This set a new course in the global climate effort as the first international climate agreement to bring all nations together into the common cause of combating climate change and adapting to its effects. In addition, every country in the world now has at least one law addressing climate change or the transition to a low-carbon economy.

The enactment of climate legislation has not deterred litigation; if anything, legislation frequently forms the basis of climate litigation.¹⁴ Moreover, a number of judges (e.g. in Germany, Ireland, and New Zealand) have already recognised governments' responsibility to mitigate the risks of climate change, even if in their decisions they were reluctant to decide that national climate policies were unlawful.

An understanding of why climate litigation is increasingly being used as an advocacy strategy is therefore needed. A short answer might be that, despite the institutional progress made in the last half-decade, climate campaigners still have good reason to be concerned, and to increase pressure on governments and high emitters. While actors' motivations are diverse, litigants' concerns mirror those of activists, which broadly relate to ambition and equity.¹⁵ In short, even on the face of pledges submitted under the Paris Agreement, its parties have not shown sufficient ambition to achieve the stringent emission reductions (either in quantity or pace) necessary to keep warming within 'safe' limits.¹⁶

Furthermore, arguably all governments and most corporations continue to engage in high-emission activities that are inconsistent with a trajectory towards meeting these pledges (for example, subsidies for high emitters, or the granting of consents for the construction of high carbon infrastructure). They also take inadequate steps to protect ordinary people from the impacts of climate change, even as worldwide, these

13 Setzer & Vanhala, (2019) 'Climate change litigation: A review of research on courts and litigants in climate governance'. *WIREs Climate Change* (Published Online: 4 March 2019).

14 Setzer & Nachmany, (2018) 'National Governance: The State's Role in Steering Polycentric Action' In Andrew Jordan, Dave Huitema, Harro van Asselt and Johanna Forster (eds.), *Governing Climate Change*. Cambridge, Cambridge University Press, 47-62.

15 Thunberg, 2019 *No One Is Too Small to Make a Difference*

16 UNEP, (2017) https://wedocs.unep.org/bitstream/handle/20.500.11822/22070/EGR_2017.pdf?sequence=1&isAllowed=y

impacts are becoming more noticeable. Such failures both in ambition and speed have equity implications for future generations, but more pressingly, for vulnerable people alive now.

While motivations are most likely complex, this combination of circumstances probably explains some of the continued activity in climate litigation, despite the increase in commitments. In addition, of course, the distinctive architecture of the Paris Agreement creates new opportunities for litigants to keep the heat on governments and organisations, in order to hold them to the substance of their Paris pledges through domestic or transnational litigation.¹⁷

¹⁷ Bower, (2018) The unsexy future of climate change litigation. *Journal of Environmental Law*, 30(3), 483-506

How are climate aims being reflected in litigation?

As much as initiating a legal procedure is one weapon in the arsenal of climate activists, litigation is not a simple or homogenous phenomenon. As discussed below, there is a variety of campaigns and differing approaches to litigation, with the range probably reflecting capitalisation on immediate legal opportunities, the interests or expertise of litigants and their lawyers, a reaction to specific events, or alternatively how much current activity reflects a specific, focused strategy.¹⁸

Scholars investigating climate litigation have suggested different typologies to systematise the existing cases, for example, based on the type of litigant, the legislative basis, the type of court, the type of remedy. Different reports and policy documents have since contributed to this type of analysis, surveying global climate change litigation, its trends and key issues that courts must resolve in the course of climate change cases.

What follows is not a typology of climate litigation. Rather, the three categories identified connect climate litigation with strategies in climate activism, and show some of the ways in which climate litigation engages with other forms of climate activism.

First, a tactical approach in climate litigation is reflected in the proactive *targeting of high-carbon projects or policies*, including in some instances a state's climate policy and targets as a whole. This type of 'hit the target' action can be observed in legally technical challenges to infrastructure projects, including public law challenges to legal defects in development consents for high-emitting infrastructure.¹⁹ In such cases, the legal proceedings would focus on the legal flaws in the consent, but the ultimate purpose of the litigation would be to prevent the infrastructure from being built. Judicial review challenges might also be brought in relation to flaws in a project's environmental impact assessments; again, seeking to challenge this participatory process but ultimately also attacking the high-carbon project as a whole. **Policy challenges at present are represented most significantly in challenges to either mitigation or adaptation ambition at the national level**, for instance the now-famous *Urgenda v. The Kingdom of the Netherlands* or *Leghari v. Federation of Pakistan* decisions, which successfully challenged state climate ambition in the Netherlands and Pakistan. The internationalisation of and networking in the climate movement has facilitated collaboration, particularly in relation to these challenges.

Second, litigation can also be used as a 'stepping stone', forming part of a broader strategy by social movements or organisations, either using other types of activism to set up, or lay the groundwork for, litigation, or resorting to litigation to ensure the viability of ongoing campaigns. For instance, litigation is used (albeit with mixed results) by divestment campaigners.²⁰ Alternatively, NGOs might use softer strategies to set up litigation as a possible endgame, for instance as seen in the 'long-game'

18 Hilson, (2010) Climate change litigation: an explanatory approach (or bringing grievance back in). In: Fracchia, F. and Occhiena, M. (eds.) *Climate change: la riposta del diritto*. Editoriale Scientifica, 421-436.

19 Humby, (2018) "The Thabametsi Case: Case No 65662/16 Earthlife Africa Johannesburg v Minister of Environmental Affairs." *Journal of Environmental Law* 30 (1), 145-155, <https://doi.org/10.1093/jel/eqy007>; Saiger, (2020) "Domestic Courts and the Paris Agreement's Climate Goals: The Need for a Comparative Approach." *Transnational Environmental Law* 9 (1): 37-54.

20 Franta, (2017) 'Litigation in the fossil fuel divestment movement', *Law & Policy*, 39(4), 393-411

played by ClientEarth in its pensions and carbon targets campaigns.²¹ In as much as it might be said that climate activism represents a return to direct action (e.g. physical protest), **litigation campaigns reflect a significant and subtle approach that directly seeks to disrupt the risk profiles of major entities.**

This type of ‘stepping stone’ litigation can also be blended with a more conventional and direct forms of activism, for instance where activists who are prosecuted use their defence or mitigation statements as climate protest. While this technique of using criminal litigation reactively as a form of environmental protest is not new,²² this has been proactively repurposed by Extinction Rebellion, which has (not unproblematically) encouraged public order offences as a route to arrest and prosecution, as an extreme form of climate activism. There would be an overlapping category which might be ‘framed’ as climate litigation by commentators or the activists themselves but that is *brought for other (or other express) reasons*.²³ For instance, challenges arising from decisions about wind energy infrastructure dominate climate litigation in the UK.

A third category of cases are ‘name and shame’ cases, framed to emphasise the flagrant *inconsistency between discourse and action*. When governments claim to be committed to the Paris Agreement, while taking actions that are inconsistent with it, litigation is brought to challenge the lawfulness of certain policies and actions (e.g. *R (Plan B Earth and others) v. Secretary of State for BEIS*, in which an NGO challenged the failure of the Secretary of State to exercise a power to increase the emission reduction targets in the UK Climate Change Act). Another example is actions against fossil fuel companies based on the inconsistency between their purported support for the Paris Agreement, and simultaneous lobbying against climate policy and ongoing investment and exploration in further oil and gas extraction (e.g. *Milieudefensie et al. v. Royal Dutch Shell*, seeking that Shell reduce its CO2 emissions by 45% by 2030 compared to 2010 levels and to zero by 2050, in line with the Paris Climate Agreement). Another similar type of case makes evident that these companies are misleading consumers about the central role its products play in causing climate change and/or intentionally misleading investors about material climate-driven risks to its business (e.g. *Massachusetts v. Exxon*, in which the attorney general asserts that Exxon committed deceptive practices against Massachusetts investors and consumers, including by failing to disclose climate change risks.).

21 Bouwer, (2020b) ‘Climate Change and the Individual in the UK.’ In *Climate Change Litigation - A Comparative Approach*, edited by Makane Mbengue and Francesco Sindico. Springer (forthcoming)

22 Hilson, (2010) ‘Climate change litigation: an explanatory approach (or bringing grievance back in)’ In: Fracchia, F. and Occhiena, M. (eds.) *Climate change: la risposta del diritto*. Editoriale Scientifica, 421-436.

23 Hilson, (2012) ‘UK climate change litigation: between hard and soft framing’ In: Farrall, S., Ahmed, T. and French, D. (eds.), *Criminological and legal consequences of climate change*. Hart 2010.

Aim	Description	Examples
Hit the target	Target high-carbon projects or policies - including state's climate policy and targets	<u><i>EarthLife Africa Johannesburg v. Minister of Environmental Affairs & others</i></u> <u><i>Urgenda v. The Kingdom of the Netherlands</i></u> <u><i>Leghari v. Federation of Pakistan</i></u>
Stepping stone	Part of a broader strategy to 'set up' litigation, to ensure the viability of ongoing campaigns, or brought for other reasons	<u><i>Harvard Climate Justice Coalition and Others v. Harvard Corporation and Others</i></u>
Name and shame	Emphasise the flagrant inconsistency between discourse and action	<u><i>R (Plan B Earth and Others) v. Secretary of State for Transport</i></u> <u><i>Milieudefensie et al. v. Royal Dutch Shell</i></u> <u><i>Commonwealth v. Exxon Mobil Corp</i></u> <u><i>Complaint against BP</i></u>

What Works?

This plurality of approaches and possible motivations raises further questions about what ‘effective’ might mean in this context, as climate litigation scholarship moves into a new phase of impact evaluation. The impacts and implications of climate litigation are not always simple or clear. While a comprehensive categorisation is too complex for a briefing of this nature, we would suggest that an evaluation of the effectiveness and impacts of climate litigation cannot simply focus on the result in the courts, but the implications of publicity (even of a loss) and the litigation campaign as a whole need to be taken into account. Moreover, as the number of cases increase, there is a need to consider what is the impact resulting from litigation risk. Time is an important factor. **Litigation campaigns can take years, and frequently litigation has a ‘long tail,’ with the full effects manifesting much later down the line.**

In addition, a consideration of what cases or strategies work must include an understanding that a win or loss in litigation may have complex and difficult to understand implications and that these could be positive or negative, or both, and weak or strong, or both. For clarity, weak impacts could include something like ‘awareness raising’, and strong impacts could include something like policy change that was clearly caused by the litigation, or a ‘bad’ precedent that complicated future legal action. Some of the possible permutations are outlined below.

A first category consists of cases that ‘win’ in the courts with a fair likelihood of contributing meaningfully to climate action. This would include a variety of fairly mundane or legally technical regulatory challenges that sought to regulate emissions in various contexts. Many of the project challenges fall into this category, for instance the recent successful challenge to the granting of consent to build a third runway at London Heathrow decision in the *UK Friends of the Earth, R (Plan B Earth and Others) v. Secretary of State for Transport; Save Lamu v. NEMA*, which challenged issue of a license to build a coal mine in Kenya; *Gloucester Resources Limited v. Minister for Planning*, which challenged permission for a new coal mine in Australia; *EarthLife Africa Johannesburg v. Minister of Environmental Affairs*, a challenge to the quality and form of a climate change impact assessment for a coal mine in South Africa; or the wind farm decisions, referenced in Jones.²⁴ These are effective because they literally prohibit the construction of high carbon infrastructure, and as such, support decarbonisation. But, because of the technical and procedural nature of these decisions, they are legally and politically vulnerable, as in most instances the technical consent processes could be corrected, or Ministerial action could override the legal ‘win’, as happened in South Africa.²⁵

This category might also include some broader challenges to state ambition on climate change, such as *Leghari*, and *Urgenda*, although it is not universally accepted that *Urgenda* has been the panacea some might think (Mayer 2019; Bouwer 2020a). Whatever the reality, there is a strong will to replicate *Urgenda* both in ‘result’ and in relation to its human rights arguments, which attempts have been largely unsuccessful, for example *Armando Ferrão Carvalho and Others v. The European*

24 Jones (2016) “Wind Energy and Adverse Visual-Impact Litigation: A Balance of Global and Local Interests?” *Climate Law*, no. 6: 336–52, <https://doi.org/10.1163/18786561-00603008>.

25 Humby, (2018) “The Thabametsi Case: Case No 65662/16 Earthlife Africa Johannesburg v Minister of Environmental Affairs.” *Journal of Environmental Law* 30 (1): 145–155.

Parliament and the Council “The People’s Climate Case”.²⁶ While the motivation to persist with these cases is clear, many of the arguments for pursuing actions with poor or difficult prospects are unconvincing. It is also difficult to reconcile uncertain strategy with the need for urgent and effective climate action (for instance, we are probably past the stage of ‘raising awareness’ on climate change), and in as much as the opportunity cost of these campaigns is unclear, they certainly consume time and resources that might be used more constructively elsewhere. Having said that, in the recent *Friends of the Irish Environment v. Ireland* the claimants (despite not succeeding on some of their more normative, human rights claim) did persuade the Irish Supreme Court to quash the National Mitigation Plan, as being insufficiently specific to show how Ireland would meet its stated 2050 reduction targets.

There is a second category of cases which fail, often in preliminary hearings, but nevertheless might or are held to make a positive contribution to climate action in some respect. Counter-intuitively, the choice of litigation as a strategy or blended strategy in environmental activism does not always predict or result in overt or clear success in the litigation, but this has not necessarily deterred activist litigators, potentially because litigation campaigns can be repurposed.

An example of this type of ‘failing with benefits’ outcome is above-mentioned *R (Plan B Earth and Others) v. The Secretary of State for Business, Energy, and Industrial Strategy*. The Appeal Court upheld an earlier decision that the action was unarguable on all grounds, but the litigation was well-publicised and the campaign managed as a ‘peoples’ campaign. This prompted then-PM Theresa May to promise to revisit the targets, and indeed, some years later the targets were adjusted to ‘net zero’ by a subsequent government. Arguably the Children’s Trust litigation – *Juliana v. United States* – might fall into this category, as the powerful narrative impact statements of the claimants,²⁷ and strong ‘signalling’ from the bench in the Appeal Court, might be said to have contributed to youth engagement. The difficulty is we cannot be sure about this – young people surely are aware of their problematic inheritance anyway – although perversely the aggressive defence strategy and (current) refusal of this petition might contribute to a justified sense of outrage. Similarly, the recent petition to the UN Human Rights Committee in *UNHR Committee Views Adopted on Teitiota Communication*, while not providing relief to the petitioner, did echo the concern expressed by the New Zealand domestic courts about the inherent unsuitability of international law to provide appropriate protection for climate refugees.²⁸

There is a third category of cases which demand attention due to their high-profile nature, but are legally difficult, in that they face both procedural and substantive doctrinal hurdles. The third category would include cases that either seek to affect climate defendants’ reputations in a ‘soft’ way, including campaigns that ultimately seek a court victory. The hope is that this would happen by refocusing public narratives, damaging public relations or undermine corporate ‘greenwashing’ by fossil fuel majors. For instance, some scholars argue that it could be potentially effective to target a relatively small group of corporations who are responsible for a large percentage of emissions.²⁹ This reflects a new and improved trend in high-profile climate litigation in private law, and was supported by Richard Heede’s work, which was the first to map and quantify the cumulative emissions of the 90 largest

26 Bouwer (2020a) “Lessons from a Distorted Metaphor: The Holy Grail of Climate Litigation.” *Transnational Environmental Law*, <https://doi.org/10.1017/S2047102520000114>

27 Hilson, (2019) ‘Law, courts and populism: climate change litigation and the narrative turn’ In: Sterett, S. M. and Walker, L. D. (eds.) *Research Handbook on Law and Courts*.

28 Setzer & Yoshida, (2020) ‘The Trends and Challenges of Climate Change Litigation and Human Rights’ *European Human Rights Law Review*.

29 Ganguly et al., (2018) ‘If at First You Don’t Succeed: Suing Corporations for Climate Change’, *Oxford Journal of Legal Studies*, <https://doi.org/10.1093/ojls/gqy029>.

carbon producers (the “Carbon Majors”) from 1854 to 2010.³⁰

Strategic climate litigation against Carbon Majors aims to help in reshaping the way the world thinks about energy production and the consequences of global warming, and ultimately to alter the risk profile of major emitters. In this type of litigation that aims to ‘shape narratives’, positive outcomes for combating climate change are not only achieved through the provision of effective legal remedies for climate harms, but also by transforming how climate change is defined and should be addressed.³¹ When targeting Carbon Majors companies, this type of litigation advocates a shift from fossil fuels to renewables and draw attention to the vulnerability of coastal communities and infrastructure to extreme weather and sea level rise. In addition, it articulates climate change as a legal and financial risk – ultimately with the aim of driving behaviour change and/or guiding climate change-responsive adjudication in the longer term.

It is probably still too early to categorise these cases – at present most are stayed or subject to a variety of jurisdictional disputes. The German-Peruvian case *Lliuya v. RWE AG*, in which the Peruvian claimant seeks a small contribution to his climate adaptation costs from the German defendant, has overcome similar hurdles, but it is notable that due to the relief sought, a success in this action would not have the far-reaching consequences of other Carbon Majors cases.³² In as much as the focus on fossil fuel producers as defendants makes strong appeals to equity,³³ the context in which much of this campaign is waged is not uncontroversial from an equity perspective.³⁴ Moreover, the narrative that is built through these lawsuits can resonate differently with the actors involved, exerting more or less influence on policy-makers, advocacy movements, and the affected communities.³⁵

30 Heede (2014) ‘Tracing Anthropogenic Carbon Dioxide and Methane Emissions to Fossil Fuel and Cement Producers, 1854–2010’, *Climatic Change* 122(1-2), 229-241.

31 Nosek, (2018) ‘Climate Change Litigation and Narrative: How to Use Litigation to Tell Compelling Climate Stories.’ *William & Mary Environmental Law and Policy Review* 42: 3.

32 Frank, (2019) ‘The Case of Huarez: First Climate Lawsuit on Loss and Damage Against an Energy Company Before German Courts.’ In *Loss and Damage from Climate Change: Concepts, Methods and Policy Options*, edited by Mechler, Bouwer, Schinko, Surminski, and Linnerooth-Bayer, 475. SpringerOpen; Bouwer, (2020a) ‘Lessons from a Distorted Metaphor: The Holy Grail of Climate Litigation.’ *Transnational Environmental Law*

33 Frumhoff et al, (2015) ‘The Climate Responsibilities of Industrial Carbon Producers.’ *Climatic Change* 132: 157–178

34 Bouwer, (2020a) ‘Lessons from a Distorted Metaphor: The Holy Grail of Climate Litigation.’ *Transnational Environmental Law*

35 Jodoin et al, (2020), ‘Realizing the Right to Be Cold? Framing Processes and Outcomes Associated with the Inuit Petition on Human Rights and Global Warming’ *Law & Society Rev*, 54: 168-200, <https://doi.org/10.1111/lasr.12458>.

Outcome	Description	Example
Win in court	Directly contributes to climate action	<u><i>Friends of the Earth and Plan B Earth and Others v. Secretary of State for Transport</i></u> <u><i>Save Lamu v. NEMA</i></u> <u><i>Gloucester Resources Limited v. Minister for Planning</i></u> <u><i>EarthLife Africa Johannesburg v. Minister of Environmental Affairs & others</i></u>
Fail with benefits	Indirectly contributes to climate action or opens avenues for new cases	<u><i>R (Plan B Earth and Others) v. Secretary of State for Transport</i></u> <u><i>Juliana v. United States</i></u> <u><i>UN Human Rights Committee Views Adopted on Teitiota Communication</i></u>
Shaping narratives	Face procedural and/or substantive doctrinal hurdles, but can help changing narratives	<u><i>Lliuya v. RWE AG, Juliana v. United States</i></u>

Concluding remarks

The escalation in the use of litigation by activists is being recognised as one of the new developments changing the context of environmental and climate advocacy. However, as much as it represents one weapon in the arsenal of climate activists, climate litigation is not a simple or homogenous phenomenon. Litigation approaches vary, and as a strategy it engages in various ways with other forms of climate activism. In this short piece, we have identified three types of strategic litigation used by activists: litigation that targets high-carbon projects or policies (*hit the target litigation*); litigation that is part of a broader strategy to encourage further litigation, to ensure the viability of ongoing campaigns, or brought for other reasons (*stepping stone litigation*); and litigation that emphasises the flagrant inconsistency between discourse and action (*name and shame litigation*).

Whether climate litigation is an effective advocacy tool is still unclear, and an evaluation of the effectiveness and impacts of climate litigation cannot end with the result in the courts. To illustrate this point, we explored three different situations: cases that 'win' in the courts and that likely contribute meaningfully to climate action (*win in the courtroom*); cases which fail, but that have some positive contribution to climate action (*fail with benefits*); and test-cases that are so legally difficult that their best result they have is helping to shape narratives (*shaping narratives*).

Despite the range of possible outcomes, climate litigation has been increasingly viewed as a tool to influence policy outcomes and societal behaviour, in an increasing number of courts across the world. Though there have been multilevel commitments to take steps to manage the climate crisis, the wave of post-Paris legal mobilisation looks set to continue.

