

Climate Litigation around the World



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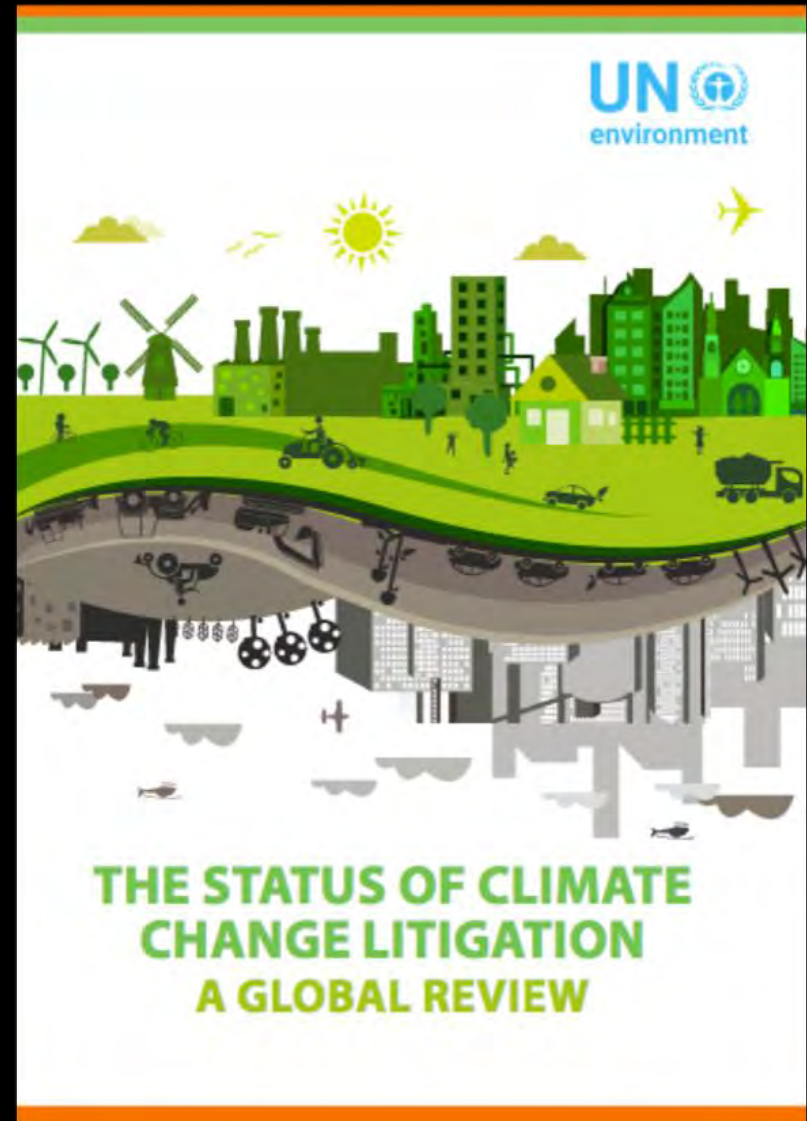
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What is climate litigation?



Definition of Climate Litigation

“[C]ases brought before administrative, judicial and other investigatory bodies that raise issues of law or fact regarding the science of climate change and climate change mitigation and adaptation efforts”



Sabin Center for Climate Change Law

[U.S. LITIGATION](#)[NON-U.S. LITIGATION](#)[SEARCH](#)[ABOUT](#)

Climate Change Litigation Databases

**U.S. CLIMATE CHANGE
LITIGATION**

**NON-U.S. CLIMATE CHANGE
LITIGATION**

This site provides two databases of climate change caselaw. Cases in the databases are organized by type of claim and are searchable. In many cases, links are available to decisions, complaints, and other case documents.



<http://climatecasechart.com/>

Who brings climate litigation?

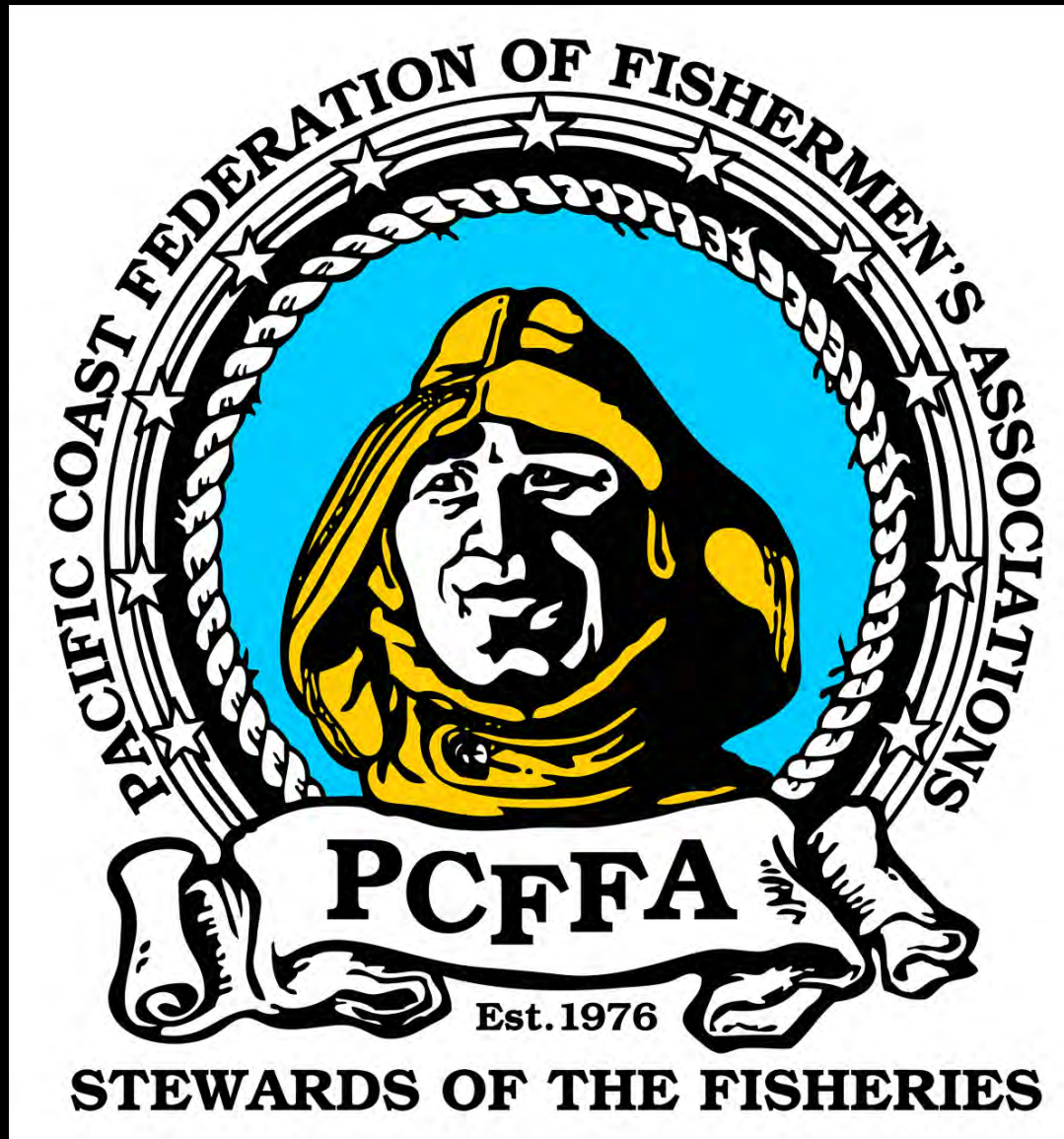


KlimaSeniorinnen v. Switzerland

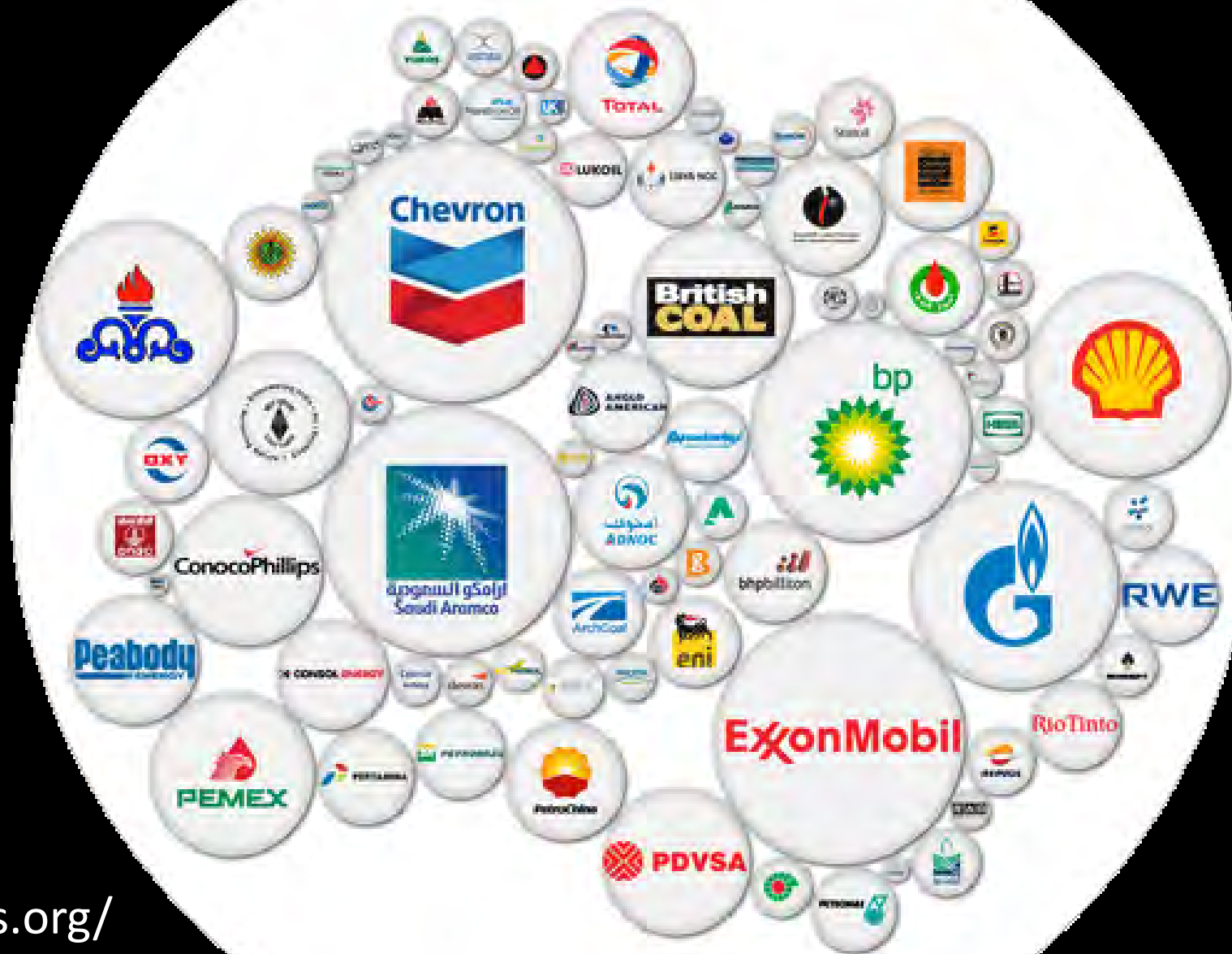


ATTENTION POLITICIANS:
RESPECT SCIENCE-BASED CLIMATE POLICIES,
OR FACE GRANNIES LIKE THESE IN COURT

Pacific Coast Fishermen v. Chevron et al



“Carbon Majors”



carbonmajors.org/

40% of non-US
cases brought by
corporations

20% by governments

20% by individuals

13% by NGOs

79% vs governments

Global trends in climate change legislation and litigation

2017 Update

Michal Nachmany, Sam Fankhauser, Joana Setzer
and Alina Averchenkova



Types of Climate Litigation

Government

- U.S. – Mass v EPA, Juliana
- Netherlands – Urgenda
- Pakistan – Ashgar Leghari
- Belgium – VZW Klimaatzaak
- New Zealand – Sarah Thomson v NZ
- Switzerland – KlimaSeniorinnen

Private Entities

- U.S. – local govts v Carbon Majors
- Netherlands - Milieudefensie v Shell
- Germany – Peru farmer v RWE
- Philippines – citizens/orgs v Carbon Majors (HR petition)

Project Specific

- Norway – oil exploration
- South Africa – coal plant
- Australia – coal mine

	Mitigation	Adaptation	Damages	Decision making
Goals	<ul style="list-style-type: none"> • Stop or reduce specific emissions • Force government to take bolder action to reduce emissions • Support non-GHG emitting alternatives 	<ul style="list-style-type: none"> • Improve infrastructure • Protect vulnerable areas • Relocate communities • Protect threatened resources • Protect resources important for resiliency 	<ul style="list-style-type: none"> • Compensation for impacts suffered • Recover costs of adaptation 	<ul style="list-style-type: none"> • Ensure climate impacts of projects and policies are considered • Consider impacts of changing climate on proposed projects and policies • Ensure costs of climate change are considered
Defendants	<ul style="list-style-type: none"> • Government bodies • Private project developers • Utilities • Fossil fuel companies 	<ul style="list-style-type: none"> • Government bodies • Private project developers 	<ul style="list-style-type: none"> • Emitting states • Private entities including fossil fuel producers 	<ul style="list-style-type: none"> • Government decision makers
Legal basis	<ul style="list-style-type: none"> • Constitution • Pollution laws • Tort • Energy planning laws • Precautionary principle • Public trust doctrine • UNFCCC and NDCs 	<ul style="list-style-type: none"> • Constitution • Energy planning laws • Land use/zoning • UNFCCC and NDCs • Forest laws 	<ul style="list-style-type: none"> • Constitution • Tort • Civil code • Polluter pays principle 	<ul style="list-style-type: none"> • Constitution • EIA laws • Energy planning laws • NDCs • Endangered species laws • Land use laws • Precautionary principle

Government

Assess

Disclose

Compensate

Adapt

Mitigate

Private Entity

Assess

Disclose

Compensate

Adapt

Mitigate

Failure to Assess Climate Impacts

Direct climate impacts **from a project**

(Earthlife v. Minister of Env. Affairs)

Indirect climate impacts from a project

(Gray v. Minister of Planning; GRL v. Min.)

Cumulative climate impacts **from a regulation**

(CBD v. NHTSA)

Climate impacts **on a project**

(Earthlife; Myers v. South Gippsland)

Climate impacts **on a species**

(Defenders of Wildlife v. Jewell; NWF v. NMFS)

Earthlife Africa Johannesburg v. Minister of Environmental Affairs (2017)



“The absence of express provision in the statute requiring a climate change impact assessment does not entail that there is no legal duty to consider climate change as a relevant consideration”

Earthlife Africa Johannesburg (2017)

“A climate change impact assessment is necessary and relevant to ensuring that the proposed coal-fired power station fits South Africa’s peak, plateau and decline trajectory as outlined in the NDC”

Coal plants “not only contribute to climate change but are also at risk from the consequences of climate change. As water scarcity increases due to climate change, this will place electricity generation at risk, as it is a highly water intensive industry.”

Gray v. Minister for Planning (2006)

“there is a sufficiently proximate link between the mining of a very substantial reserve of thermal coal in NSW, the only purpose of which is for use as fuel in power stations, and the emission of GHG which contribute to climate change ... to require assessment of that GHG contribution of the coal when burnt in an environmental assessment”

“The fact that it is difficult to quantify an impact with precision does not mean it should not be done”

GRL v Min. for Planning (2019)

“For the Rocky Hill Coal Project, the principal Scope 2 emissions will be indirect emissions associated with on-site electricity ... Scope 2 emissions physically occur outside the boundary of the coal mine, such as at the power station that generates the electricity that is purchased. These are ‘upstream’ indirect emissions.”

“Emissions from the combustion of product coal are ‘downstream’ emissions as they physically occur at the power stations or steel mills combusting product coal from the mine”

Defenders of Wildlife v. Jewell (2016)



“Other threats are minor in comparison to the driving primary threat of climate change; however, cumulatively, they could become significant when working in concert with climate change if they further suppress an already stressed population”

“the [agency] unlawfully ignored the best available science by dismissing the threat to the wolverine posed by climate change”

“No greater level of certainty is needed to see the writing on the wall for this snow-dependent species standing squarely in the path of global climate change. ... if there is one thing required of the Service under the ESA, it is to take action at the earliest possible, defensible point in time to protect against the loss of biodiversity”

National Wildlife Fed'n v. NMFS (2016)

NMFS “*fails properly to analyze the effects of climate change, including: its additive harm, how it may reduce the effectiveness of the [mitigation] actions, particularly habitat actions that are not expected to achieve full benefits for decades*”



“[NMFS] assumed recent climate conditions would remain the same and did not engage in any analysis as to whether the survival benefits attributed to habitat actions would be diminished by the future effects of climate change. ... [NMFS] had information that climate change may well diminish or eliminate the effectiveness of some of the BiOp’s habitat mitigation efforts but does not appear to have analyzed these effects.”

“To accept [NMFS’s] statements at face value at this point contradicts the requirement of the Endangered Species Act that the consulting agency must give the ‘benefit of the doubt’ to the endangered species.”

Failure to Adapt

Failure to adapt to sea level rise
(Myers v. South Gippsland II)

Failure to implement an adaptation policy
(Ashgar Leghari v. Pakistan)

Failure to preserve water sources & carbon sinks
[adaptation & mitigation]
(Alberto Castilla v. Colombia)

Myers v. South Gippsland Shire Council (2009) [Myers II]



“climate change and the impact on coastal communities is an issue that can no longer be ignored. As decision makers we can no longer leave the issue for the next generation to sort out.”

*“to grant a permit in these circumstances would consent to a poor planning outcome that would unnecessarily **burden future generations**”*

“In the absence of any strategy ... on how the issue of climate change, rising sea level and increase in storm surges is to be addressed including what mitigation works may be necessary and undertaken, we adopt the precautionary approach ... On this basis, we cannot support a subdivision in the knowledge that without mitigation works, there will be no dune, no road, no access to the site and the site is likely to be inundated with sea water”

Ashgar Leghari v. Pakistan (2015)



Ashgar Leghari v. Pakistan (2015)

“The existing environmental jurisprudence has to be fashioned to meet the needs of something more urgent and overpowering i.e., Climate Change. From Environmental Justice, which was largely localized and limited to our own ecosystems and biodiversity, we need to move to Climate Change Justice”

“the delay and lethargy of the State in implementing the Framework offends the fundamental rights of the citizens which need to be safeguarded”

Sentencia C-035/16 de la Corte Constitucional de Colombia (2016) [Alberto Castilla v. Colombia]



Sentencia C-035/16 (páramos)

“los páramos son ‘sumideros’ de carbono, es decir, almacenan y capturan carbono proveniente de la atmósfera, según los cálculos más conservadores, al menos diez veces más que los bosques tropicales, con lo cual contribuyen a mitigar los efectos del calentamiento global”

“la remoción de la capa vegetal puede traer como consecuencia la liberación del carbono depositado en estos sumideros, lo cual trae consecuencias graves para el calentamiento global”

Sentencia C-035/16 (páramos)

“[Los páramos] son indispensables para garantizar no sólo la desaceleración del cambio climático, la biodiversidad y la riqueza de la nación, sino el derecho fundamental al agua [porque] cumplen un papel esencial como reguladores del ciclo hídrico, garantizando así la calidad, accesibilidad y continuidad del agua”

Sentencia C-035/16 (páramos)

“el páramo no solo debe ser protegido en tanto que es un recurso de la naturaleza, sino en atención a los servicios ambientales que presta, los cuales resultan estratégicos para contribuir a mitigar el cambio climático y a garantizar el acceso al agua potable”

Failure to Mitigate

Failure to mitigate under environmental legislation
(Mass. v. EPA)

Failure under civil code, constitutional & int'l law
(Urgenda v. Netherlands)

Failure under constitutional & international law
(Andrea Lozano Barragán v. Colombia; FoIE v. Ireland)

Failure under customary & constitutional law
(Juliana v. US)

Failure under international law
(Armando Ferrão Carvalho v. EU)

Urgenda v. Netherlands (2015)

“[A]ny anthropogenic greenhouse gas emission, no matter how minor, contributes to an increase in CO2 levels in the atmosphere and therefore to hazardous climate change. ... A sufficient causal link ‘can be assumed to exist’ between Dutch emissions, global climate change, and the effects.”



Urgenda v. Netherlands (2015)

“Since it is also an established fact that without farreaching reduction measures, the global greenhouse gas emissions will have reached a level in several years, around 2030, that realising the 2° target will have become impossible, these mitigation measures should be taken expeditiously.”

“the State has a duty of care to mitigate as quickly and as much as possible.”

Urgenda v. Netherlands (2018)

“based on the current proposed policy the Netherlands will have reduced 23% by 2020. That is not far from 25%, but a margin of uncertainty of 19-27% applies. This margin of uncertainty means that there is real chance that the reduction will be (substantially) lower than 25%. Such a margin of uncertainty is unacceptable.”

Urgenda v. Netherlands (2018)

“[T]he State fails to fulfil its duty of care pursuant to Articles 2 and 8 ECHR by not wanting to reduce emissions by at least 25% by end-2020. A reduction of 25% should be considered a minimum, in connection with which recent insights about an even more ambitious reduction in connection with the 1.5° C target have not even been taken into consideration.”

Juliana v US (2016)



“I have no doubt that the right to a climate system capable of sustaining human life is fundamental to a free and ordered society.”

Opinión Consultiva OC-23/17 de la Corte Interamericana de Derechos Humanos (2018)



Opinión Consultiva OC-23/17

“Esta Corte ha reconocido la existencia de una relación innegable entre la protección del medio ambiente y la realización de otros derechos humanos, en tanto la degradación ambiental y los efectos adversos del cambio climático afectan el goce efectivo de los derechos humanos.”

Opinión Consultiva OC-23/17

“el cambio climático tiene repercusiones muy diversas en el disfrute efectivo de los derechos humanos, como los derechos a la vida, la salud, la alimentación, el agua, la vivienda y la libre determinación”

2018 Statement by UN SR on HR&E



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Mandate of the Special Rapporteur on human rights and the environment

Statement on the human rights obligations related to climate change,
with a particular focus on the right to life¹

David R. Boyd,
UN Special Rapporteur on Human Rights and Environment

October 25, 2018

2018 Statement by UN SR on HR&E

*“This expert statement is submitted in relation to the case **Friends of the Irish Environment** ...*

*“[C]limate change clearly and adversely impacts the **right to life**, a right which the Government of Ireland is legally obligated to respect, protect and fulfill.*

*Therefore, the Government of Ireland has positive human rights **obligations to mitigate climate change** by rapidly reducing its greenhouse gas emissions.”*

Corporate Failure to Mitigate

Breach of customary (tort) duties of care
(Oakland; NY; RI; King Cty; Pacific Coast Fishermen)

Breach of codified duties of care
(Lluya v. RWE; Milieudefensie et al. v. Shell)

Breach of duty to respect human rights
(Philippines Human Rights Commission)

Pacific Coast Fishermen v. Chevron et al

“the largest commercial fishing industry trade group on the west coast seeks to hold responsible parties accountable for acute changes to the ocean off of California and Oregon that resulted ... in prolonged regulatory closures of the Dungeness crab fisheries....

Such closures will recur, as the conditions giving rise to them increase in frequency and magnitude ...

Accordingly, the crab fishing industry brings this action to force the parties responsible for this severe disruption to fishing opportunity, and the consequent impacts on fishing families, to bear the costs of their conduct.”

Saul Luciano Lliuya v RWE



Milieudefensie et al. v. Shell

“Milieudefensie et al. are of the opinion that the extent of current and future CO2 emissions linked to Shell are such that ... these CO2 emissions and the Shell policy they are based on are in conflict with the social duty of care ... The reduction of these emissions as demanded by Milieudefensie et al. is necessary in order to eliminate the unlawfulness of Shell’s actions.”

Philippines: Human Rights Commission

GREENPEACE

Southeast Asia



Other Corporate Liability Cases

Failure to adapt oil infrastructure to sea level rise
(Conservation Law Foundation v. Exxon)

Failure to inform shareholders of climate risks
(New York v. Exxon)

Holding Corporations Accountable for Damaging the Climate

Environmental Law Alliance Worldwide
2014





<http://www.elaw.org/climate>

Climate Litigation around the World

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