

TURNING UP THE HEAT:

Corporate legal accountability for climate change



Corporate Legal Accountability Briefing 2018

EXECUTIVE SUMMARY

Climate change is an extraordinary threat to human rights. The worsening harm of climate change on marginalised communities, especially in the global south, epitomises the injustice of corporate human rights abuse. Just 100 major companies have been linked to, and profited from, over 70% of global CO₂ emissions since 1988, the year in which human-induced climate change was officially recognised. There is also evidence that for decades many of these companies knew about the climate impacts of their operations, failed to act, and misinformed the public and investors. Meanwhile, the poorest communities in the world suffer from the slow accretion of a shifting climate, alongside the more visible disasters like cyclones, floods, heatwaves and wildfires.

"The big polluters who have contributed to climate change should now contribute to the solutions of our problems."

Saul Luciano Lliuya, Peruvian farmer bringing a claim against RWE

Climate litigation has been steadily rising for the past decade across jurisdictions. In [early 2017](#), there were over 1,200 laws and policies related to climate change in 164 countries, while in 1997 there were only 60. In the USA, around 20 new climate lawsuits are now filed each year, up from just a couple in 2002. Outside the USA, 64 climate cases have been filed in the past 15 years, 21 of which have been filed since 2015.

Traditionally, these cases have been brought against governments, but there is now a steep rise in climate lawsuits brought directly against companies: in the USA seven climate lawsuits were filed against companies in 2017, and six had so far been filed by May 2018. This rise can be explained by advancements in science, lessons learnt from similar litigation efforts, revelations into companies' long-standing climate knowledge and deception efforts, increased public mobilisation, and collaboration between cities, lawyers, scientists and activists. At a time when both governments and companies have repeatedly failed to take bold steps to adequately combat climate change, strategic litigation on climate change is a beacon of hope for the climate and broader corporate accountability movement.

"The ultimate goal of almost all litigation towards climate justice is to establish global political responsibility that makes such lawsuits unnecessary."

Roxana Baldrich, Policy Advisor at Germanwatch

As of May 2018, there were 14 ongoing climate change lawsuits against fossil fuel companies, and one notice of intention to file a claim against an oil company had been presented. Litigation is one of the many different tools in the growing movement demanding corporate accountability in relation to climate change, which has involved collaboration between scientists, lawyers, and human rights and climate activists, who continue to integrate their strategies.

However, none of the cases have so far reached the merits stage; these legal avenues and arguments are being tested and the jury is out on their effectiveness, efficacy, and impact. This briefing examines the growing pace of climate change litigation against companies and the opportunities and challenges ahead. Key takeaways are:

- **Scientific research has bolstered legal claims:** Research attributing shares of global emissions to specific companies has facilitated legal cases seeking to hold private companies liable for their role in climate change. So too has evidence that companies were aware of their contribution to climate change, and its impacts, and worked to deceive or misinform the public and investors.
- **Climate litigation is used as a tool for the broader climate justice movement:** Lawsuits mostly look to recover the costs for climate adaptation and resilience, but they are also used as a strategic tool to hold emitters accountable and to prompt more responsible climate policies by companies. Litigation is complementary to non-judicial approaches, which are important levers to pressure companies to be more transparent and take bolder steps to contribute to tackling global warming. Litigation may also encourage further climate policy and regulatory measures both at the national and international levels.
- **Human rights and environmental lawyers can learn from each other:** Environmental lawyers have pioneered and mastered approaches on climate justice that human rights lawyers can learn from. Equally, human rights legal considerations can play a powerful complementary role in environmental litigation. The use of both human rights and environmental law in establishing legal arguments reinforces the value of strong collaboration between advocates from both spheres.
- **Novel approaches and collaborations for climate justice are emerging,** including through shareholder activism, litigation, and legislative efforts, as well as attempts to establish fiduciary obligations of company officials and/or third-party liability of insurers.
- **Carbon majors are on the offensive:** These companies' responses to legal action have traditionally been aggressive and well-financed, and climate litigation is no different. Plaintiffs are likely to face long and costly proceedings, and can expect combative responses by defendant companies. Restrictions on civic freedoms, in particular Strategic Lawsuits Against Public Participation (SLAPPs), also threaten environmental organizations, activists, journalists and scientists.

This Annual Briefing is intended to be a catalyst for further action on corporate legal accountability for climate change. Many of the opportunities and challenges highlighted are in fact shared by both climate justice advocates and human rights advocates.

Please [get in touch with us](#) so we can help share the word on your own efforts, invite you to join future conversations, and explore opportunities for collaboration.