



Climate Change before the Courts: Emerging Trends, Theories and **opportunities**

Overview of climate litigation trends
globally and in Africa.


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Interest Climate Litigation Training for Lawyers.

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DISCUSSION QUESTION

What do you think is the **general feel** of courts to climate change cases?



Let's first establish some key terms to ground our discussion.

LET'S ESTABLISH KEY TERMS



Climate Action



Climate Justice



Climate Litigation

13 CLIMATE ACTION



Climate action (SDG 13) is defined as a range of activities including strategies, policies and initiatives aimed at **reducing GHGs**.

Taking action to combat climate change and its impacts.



Climate justice imperatively addresses imbalances and injustices, starting from centering climate action in the perspectives, knowledge and demands of groups and communities most affected by the climate crisis.






Climate Litigation Defined

Climate litigation is understood to include cases raising material issues of law or fact connected to:

- **Climate change mitigation, adaptation, or climate science.**
- **Judicial or quasi-judicial bodies**, where matters must generally be brought before such bodies.
- **Policy, law, or science**, which must be central to the dispute.

What is Climate Litigation Today?

A tool used by:



-  Individuals
-  Civil society
-  Governments

To challenge (or defend) climate action by:



-  Public institutions
-  Private entities

Key Functions of Climate Litigation

Pushing for Stronger Action





-  Stronger mitigation efforts
-  Stronger adaptation efforts

Resisting or Weakening Action

-  Challenging existing climate policies
-  Commercial & regulatory concerns


Expanding Scope of Climate Cases


As climate governance evolves, litigation now covers:

-  Enforcement of climate commitments
-  Challenges to Environmental Impact Assessments (EIAs)
-  Greenwashing claims
-  Carbon offset disputes

Global Climate Litigation

3,099 cases

 55 jurisdictions + 24 international bodies

 USA: **1,986** cases

 Rest of World: **1,113** cases

Category	Number of Cases
United States of America	1,986
All Other Jurisdictions	1,113
Global North	611
Global South	305
International/Regional Bodies	216

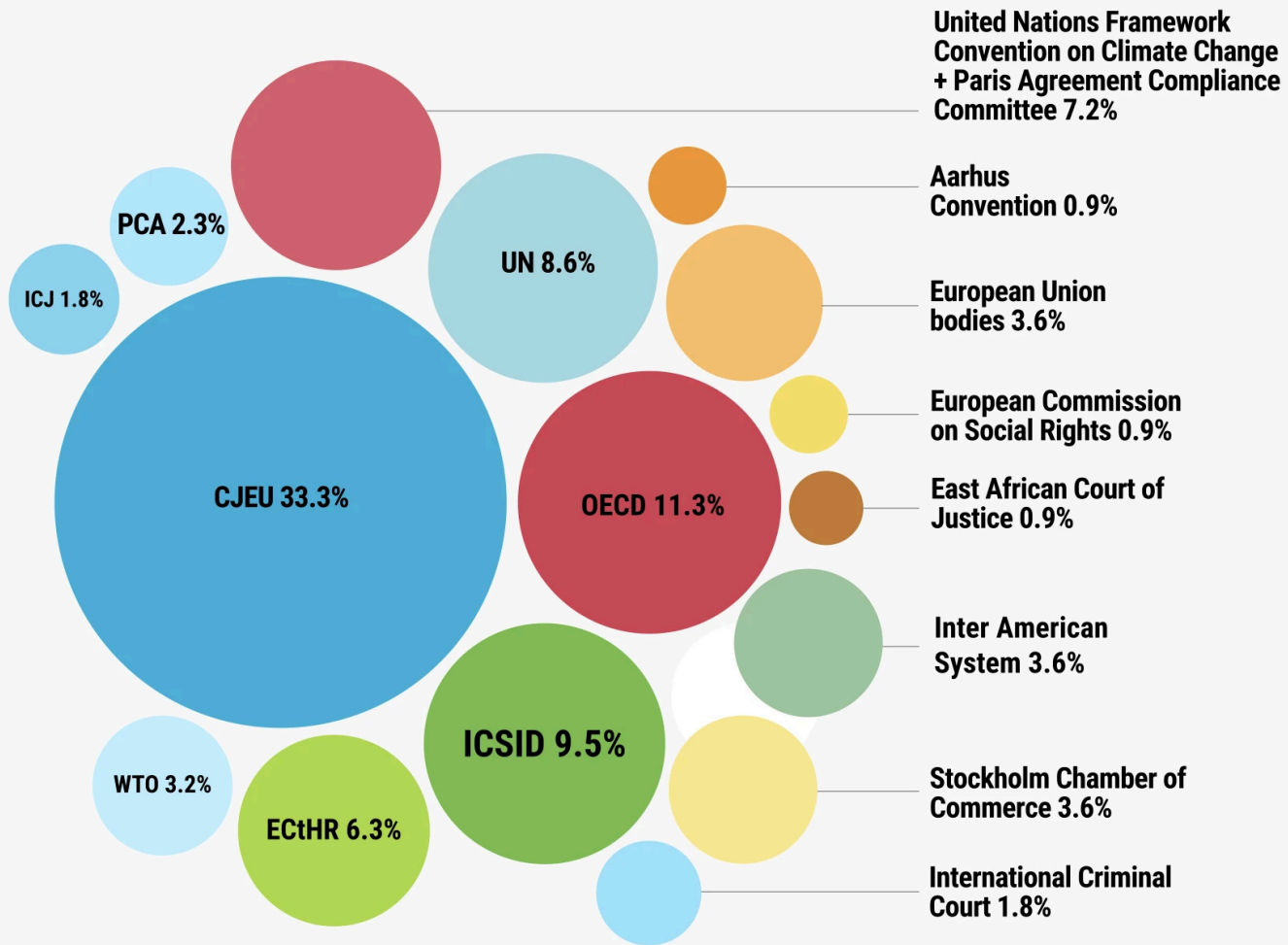


Growth Spike: After 2015



Peak Year: 2021

Figure 6: Cases before international bodies, through 30 June 2025



ICJ Climate Opinion (2025)

States' Legal Duties



QUESTIONS

- What are States required to do to protect the climate?
- What happens if States cause serious harm?

KEY FINDINGS

	1. Binding duties exist	States have legal obligations under treaties and customary law.
	2. 1.5°C is the benchmark	The Paris goal is a legal target, not just an aspiration.
	3. Human rights apply	A healthy climate supports human rights.
	4. Harm must be prevented	States must avoid significant climate harm.
	5. Responsibility follows breaches	Violations can trigger cessation, assurances, and reparations.
	6. Shared but different duties	Developed States should lead, finance, and transfer technology.

Conclusions of the ICJ

- States have binding obligations under international law to protect the climate system and prevent significant harm to the environment.
- Failure to take adequate climate action may constitute an internationally wrongful act.
- States must adopt and update ambitious climate mitigation and adaptation measures.
- States must regulate private actors, phase out fossil fuel subsidies, and ensure environmental licensing.
- States must support vulnerable nations and act in good faith through international cooperation.

East African Court of Justice

East African Crude Oil Pipeline (EACOP) Case

Center for Food and Adequate Living Rights et al. v. Tanzania and Uganda



1. CASE OVERVIEW

- **Plaintiffs:** Four civil society organizations
- **Defendants:** Governments of Tanzania and Uganda
- **Core claim:** Lack of proper environmental, social, human rights, and climate impact assessments
- **Oversight issue:** Alleged failure by the EAC Secretary-General under the EAC Treaty



2. PROCEDURAL HISTORY

- **2023** Case filed; injunction sought
- **Nov 2023** Dismissed on procedural grounds
- **Post-Nov 2023** Appeal filed by NGOs
- **Status** Appeal dismissed



3. KEY ISSUES

- Environmental and climate impact assessment failures
- EAC Treaty obligations
- Oversight and accountability concerns
- Human rights and social impacts



4. WHY IT MATTERS

A major test of regional judicial accountability for large fossil fuel projects.

Advisory Opinion Petition

Climate Change and Human Rights



Overview



Date filed: 2 May 2025



Petitioner: PALU



Supporting CSOs: African climate and justice groups



Status: Pending before the AfCHPR



Key Questions

- Do States have human rights duties to protect against climate harm?
- Must States act internationally on mitigation, adaptation, and finance?
- What remedies, accountability, and participation duties apply?



AfCHPR is asked to clarify that climate inaction can violate human rights and that States have binding duties to protect people.”

Domestic Climate Litigation – Cases Against Governments

The Majority of Climate Cases Target State Actors

OVERVIEW



Primary Target

National and subnational governments



Objective



Compel governments to adopt more ambitious climate policies, enforce laws, or account for climate impacts



Core Claim

Governments, by failing to act decisively on climate change, are violating legal obligations

FOUR KEY CATEGORIES OF GOVERNMENT-FOCUSED CLIMATE CASES

CATEGORY	DESCRIPTION	EXAMPLES
1  Climate Rights Litigation	Claims that government inaction violates constitutional or human rights (life, health, environment).	 <ul style="list-style-type: none">• Urgenda v. Netherlands (2019)• Neubauer v. Germany (2021)
2  Domestic Enforcement	Suits to compel governments to enforce existing climate laws, policies, or emission reduction commitments.	 <ul style="list-style-type: none">• Earthlife Africa v. Minister of Environmental Affairs (2017)
3  Keeping Fossil Fuels and Carbon Sinks – in the Ground	Challenges to government approvals of fossil fuel extraction or projects that destroy carbon sinks (forests, wetlands).	 <ul style="list-style-type: none">• EACOP case (Center for Food and Adequate Living Rights v. Tanzania & Uganda)
4  Climate Migration	Cases seeking government accountability for climate-induced displacement and protection of climate refugees.	 <ul style="list-style-type: none">• Iten ELC Petition No. 007 of 2022 (Kenya – Lake Baringo flooding case)



CLIMATE RIGHTS LITIGATION

Using fundamental and human rights to challenge government climate inaction.



WHAT ARE CLIMATE RIGHTS CASES?

Lawsuits asserting that individuals and communities are entitled to protection from climate harm through:



TRADITIONAL HUMAN RIGHTS

Rights to life, health, food, water, housing, family life, liberty



RIGHT TO A CLEAN, HEALTHY & SUSTAINABLE ENVIRONMENT

Constitutional or statutory environmental rights



EMERGING RIGHT TO A STABLE CLIMATE

Recognition of a stable climate as a fundamental right



RIGHTS OF NATURE

Legal recognition of nature's rights in some jurisdictions



TREND: Claimants increasingly invoke multiple rights—creating a network of legal protections and state duties.



Climate Cases Against Corporations

Expanding Liability from Governments to Private Actors



Global Trend

~20% of climate cases filed in 2024 targeted companies or their directors and officers



Legal Basis

Tort law, human rights frameworks, consumer protection, fiduciary duties, and duty of care



Key Development

Courts increasingly willing to accept attribution science to establish corporate liability

(a) Corporate Duty to Mitigate Emissions


Case	Key Finding
<i>Milieudefensie v. Shell</i> (Dutch Court of Appeal, 2024)	Court affirmed the indirect horizontal effect of human rights on corporations; companies have an obligation to contribute to climate change mitigation even without specific binding public law targets
<i>Milieudefensie v. Shell</i> (District Court, 2021)	Obligated Shell to reduce its global CO ₂ emissions by 45% by 2030 (set aside on appeal regarding specific percentage)



Principle: Companies that contribute significantly to the climate problem and have the capacity to combat it have an obligation to limit CO₂ emissions


(b) Corporate Liability for Adaptation

 Case	Key Finding
 Lliuya v. RWE (Germany, 2025)	Court held that a major GHG emitter can, in principle, be held civilly liable for transboundary climate-related harm under German civil law
 Significance	RWE's 0.38% share of global emissions was deemed substantial, not negligible; the "drop in the ocean" argument was rejected






 *Principle: Companies can be required to contribute proportionally to adaptation costs where their emissions contribute to climate impacts (e.g., glacial melting, flood risk).*

(c) Loss and Damage Cases






 Case	 Status	 Claim
Lliuya v. RWE	Dismissed on evidentiary grounds	Peruvian farmer sought €17,000 (0.38% of adaptation costs) for flood risk from glacial melting
Asmania et al. v. Holcim AG (Switzerland)	Admissible (2025)	Indonesian islanders seek 0.42% of damages from Holcim for sea-level rise and flooding
Pakistan Climate Cost Case	Pending	39 Pakistani farmers claim damages against RWE and Heidelberg Materials for 2022 floods

 *Principle: Attribution science is making it possible to link specific corporate emissions to quantifiable climate harms.*

(d) Climate Damages – Civil Liability for Climate Harm

 Legal Requirement	Application
 Causation	Courts require a "sufficiently direct and certain causal nexus" between the wrongful act and the injury
 Attribution Science	Courts accepting three forms: (i) warming attribution, (ii) source attribution (linking specific actors to emissions), (iii) impact/event attribution
 Knowledge Requirement	Companies have an ongoing duty to stay informed about scientific developments regarding harmful effects of emissions
 Lawful Conduct No Defence	The legality of emitting GHGs does not bar civil liability for resulting harm

(e) Responsibility of Financial Institutions

 Risk Category	Description
 'Turning Off the Taps' Claims	Challenges to financing of high-emitting industries, projects, or activities incompatible with climate goals
 'Polluter Pays' Claims	Damages sought based on alleged contribution to climate harm; may extend to financiers
 Transition Risk Claims	Allegations that directors failed to manage climate transition risks appropriately
 Greenwashing Claims	Financial institutions may face claims if disclosures are inconsistent with financing activities



Key Insight: While claims against financial institutions are still emerging, the ICJ (2025) confirmed that States have a duty to regulate private actors, which may lead to stricter requirements for financial services.



Protection of Investors and Consumers

INVESTOR CLAIMS: KEY TYPES

	Securities Litigation	Investors claim companies misrepresented climate impacts, inflating or deflating stock value.
	Derivative Actions	Shareholders sue directors for breaching fiduciary duties by failing to consider climate risks.
	Pension Fund Litigation	Challenges to ESG objectives influencing investment management and breaching fiduciary duties.

CONSUMER PROTECTION: GREENWASHING CASES

Case	Jurisdiction	Finding
 TotalEnergies (2025)	France	Website statements on carbon neutrality removed; NGOs awarded damages.
 JBS USA (2025)	New York AG Settlement	Required removal/revision of “Net Zero by 2040” claims; \$1.1M payment to Cornell University.
 BMW (UK) Ltd.	UK Advertising Standards Authority	“Zero emissions” ads for EVs held misleading due to omitted lifecycle emissions data.
 Tyson Foods (2025)	US DC Court	Motion to dismiss denied; net-zero by 2050 claims may mislead without a realistic plan.



States must regulate private actors, advance attribution science, and ensure corporations—and those who finance them—are accountable for climate harm.



KEY TREND

Greenwashing remains a major driver of climate litigation.



Net-zero and carbon neutrality claims



Carbon offset integrity



Climate-related goals without concrete plans









Failure to define terms like “climate-smart”

Key Lessons from Climate Litigation

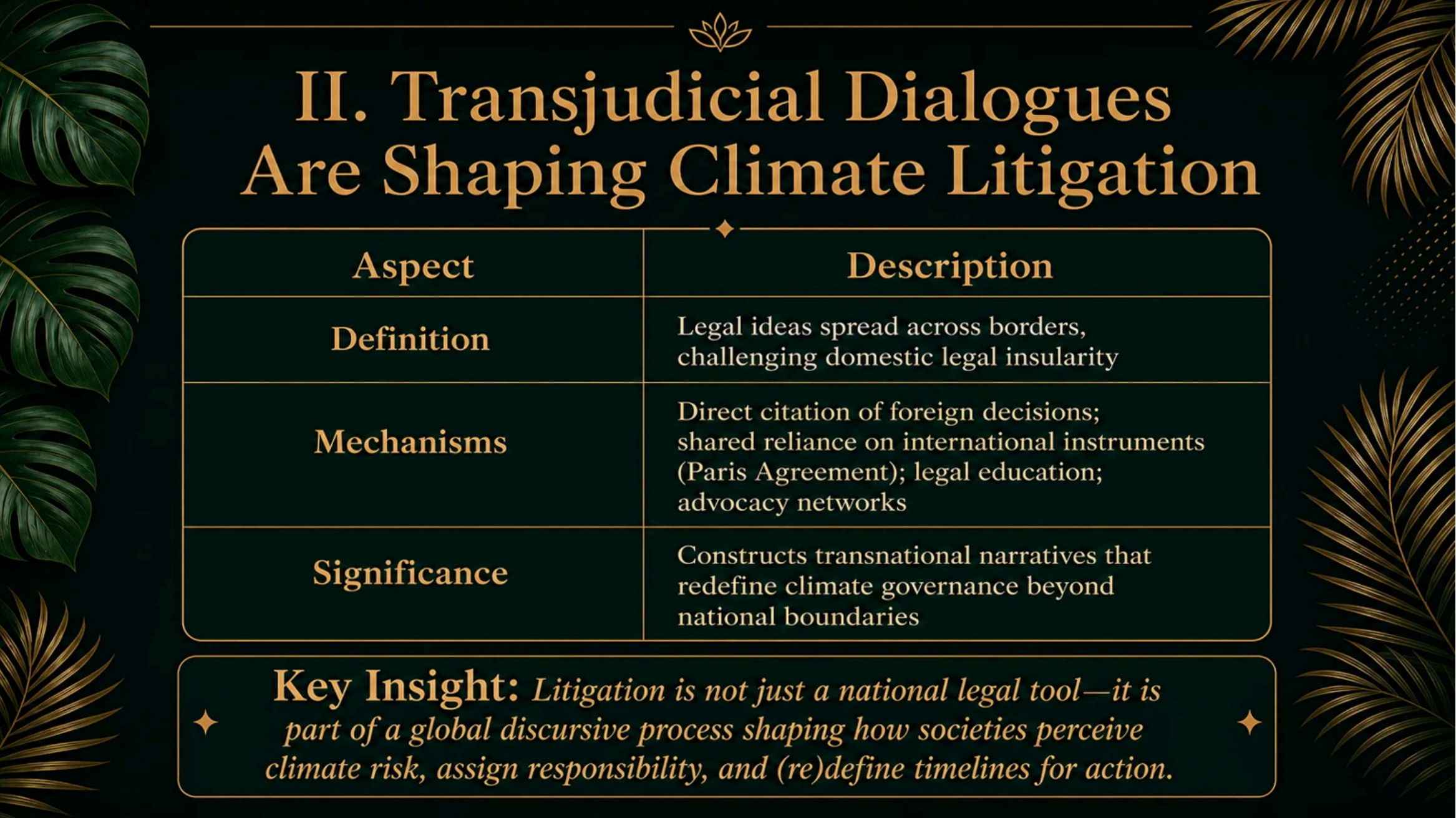
Strategic Insights from a Decade of Climate Cases

I. Centering Human Rights to Ground Obligations

Substantive Rights	Procedural Rights
 Right to a clean, healthy and sustainable environment	 Access to environmental information
 Requires states to take concrete emission reduction action	 Public participation in decision-making
 Protects vulnerable populations from climate impacts	 Access to justice
Examples: Substantive: Colombian Supreme Court, German Federal Constitutional Court, IACtHR – recognized state duties to reduce emissions	Examples: Procedural: Challenges to inadequate planning processes, lack of transparency, exclusion of communities



Why it works: Rights-based approaches ground climate claims in well-established legal frameworks, expanding access to justice and reinforcing the normative weight of climate obligations.



II. Transjudicial Dialogues Are Shaping Climate Litigation

Aspect	Description
Definition	Legal ideas spread across borders, challenging domestic legal insularity
Mechanisms	Direct citation of foreign decisions; shared reliance on international instruments (Paris Agreement); legal education; advocacy networks
Significance	Constructs transnational narratives that redefine climate governance beyond national boundaries

◆ **Key Insight:** *Litigation is not just a national legal tool—it is part of a global discursive process shaping how societies perceive climate risk, assign responsibility, and (re)define timelines for action.* ◆

III. The Use of Scientific Evidence and Attribution Science

Aspect	Description
Warming Attribution	Linking global temperature rise to GHG emissions
Source Attribution	Linking specific actors (corporations/states) to emissions
Impact/Event Attribution	Linking specific climate events to emissions

◆ Key Cases: ◆

- ◆ *Milieudefensie v. Shell* – Court relied on IPCC findings and attribution studies to establish Shell's emissions contributed substantially to global warming
- ◆ *Held v. Montana* – Trial court made extensive findings of fact based on expert testimony on climate harms to youth plaintiffs
- ◆ *Lliuya v. RWE* – Claim sought proportional contribution to flood risk from glacial melting (dismissed on imminence grounds)

◆ *Challenges: Access to high-quality attribution data and expert testimony is limited, especially in the Global South.* ◆

IV. Framing Remedies to Support Enforceability

Successful Framing	Less Successful Framing
Specific, measurable targets	Vague, overly broad orders
Tied to existing legal duties	Diffuse policy critiques
Judicial oversight/retention of jurisdiction	Declarations without enforcement mechanisms
Phased implementation with monitoring	Orders lacking administrative feasibility

Positive Examples:

- ✿ *Urgenda* – Ordered 25% reduction by 2020 (specific, measurable)
- ✿ *PSB et al. v. Brazil* – Ordered reactivation of Climate Fund + governance mechanisms; civil society monitoring enabled
- ✿ *Navahine F. v. Hawai'i* – Court retains jurisdiction until 2045 target achieved

V. Litigation as a Lever for Institutional Change & Civic Mobilization

Mechanism	Impact
Last Resort Strategy	Litigation used after other advocacy strategies have fallen short
Catalytic Effect	Even before final decisions, lawsuits can prompt institutional reform, unblock administrative inertia, and pressure legislatures
Civic Mobilization	Litigation empowers grassroots movements, mobilizes new constituencies, and generates public debate
Policy Response	<i>Neubauer v. Germany</i> – Constitutional Court ruling led to immediate amendment of Climate Protection Act, accelerating targets
Advisory Proceedings	Becoming focal points for civic engagement, generating amicus interventions, academic commentary, and strategic collaboration across regions.



Key Insight: Litigation's impact is magnified when paired with public engagement, media scrutiny, and sustained civil society mobilization.





Thank you for
your attention