

Phasing Out Fossil Fuels: The Role of International Law and Climate Litigation



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The incompatibility of fossil fuel production and climate goals



‘Projected CO₂ emissions from **existing fossil fuel infrastructure** without additional abatement would **exceed the remaining carbon budget for 1.5°C (50%)**’

([IPCC SYR 2023](#))



‘Governments, in aggregate, still plan to **produce more than double the amount of fossil fuels in 2030** than would be **consistent with limiting warming to 1.5°C**’

([SEI et al. 2023](#))



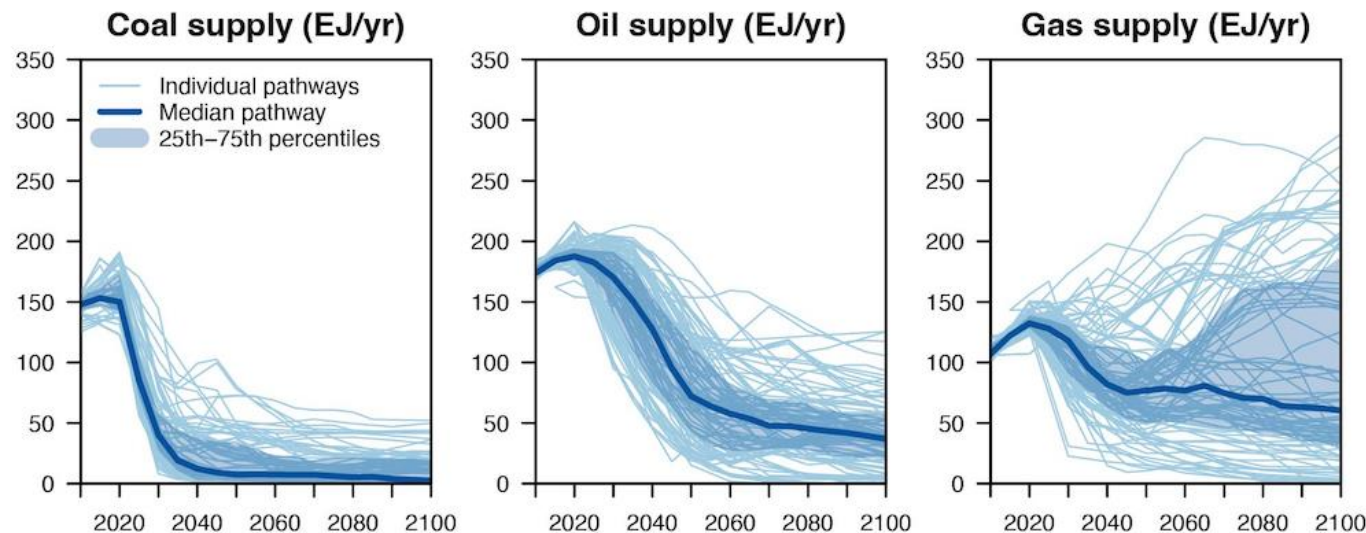
‘[T]here are **no new oil and gas fields** approved for development in our [1.5°C] pathway, and **no new coal mines** or mine extensions are required’

([IEA 2021](#))

Fossil fuel supply phase-out/down and 1.5°C

Fossil fuel supply drops dramatically in all 1.5°C pathways

- 95% (coal), 62% (oil), and 42% (gas), with **optimistic assumptions** of CDR
- 99% (coal), 70% (oil), and 84% (gas), with more **conservative assumptions**



nature communications

Article | [Open access](#) | Published: 13 September 2023

Global fossil fuel reduction pathways under different climate mitigation strategies and ambitions

[Ploy Achakulwisut](#) , [Peter Erickson](#), [Céline Guivarch](#), [Roberto Schaeffer](#), [Elina Brutschin](#) & [Steve Pye](#)

Source: [Achakulwisut et al. 2023](#)

General international law



- **Prevention principle** as corollary to principle of permanent sovereignty over natural resources
- **Significant harm** likely to occur from fossil fuel production and use
- **Customary duty to exercise due diligence** to assess and address environmental harm from GHG emissions linked to upstream fossil fuel production
- **Relevant contents**
 - **Transboundary EIA**, including Scope 3 emissions of fossil fuel projects
 - **Consultation, notification, cooperation** with affected countries
 - **Monitoring** effects to determine **mitigation measures**, e.g. restricting unabated production, limiting financial support, or banning exports

International climate change law (1)

- **No mention of fossil fuels** in Paris Agreement
- **Paris Agreement goals** require (1) winding down fossil fuel production and use to meet temperature goals, and (2) a shift in financial support away from fossil fuels
- Parties' climate pledges (NDCs) need to reflect '**highest possible ambition**' and **progress** over time
- Principle of **CBDRRC** suggests developed countries take the lead in phasing out fossil fuels, and provide support to developing countries



International climate change law (2)

- **COP26** call for accelerating efforts towards **‘phase-down of unabated coal power’**
- **COP28** decision calls on Parties to contribute to global mitigation efforts, incl.
 - **‘Transitioning away from fossil fuels in energy systems, in a just, orderly and equitable manner, accelerating action in this critical decade, so as to achieve net zero by 2050 in keeping with the science’**
 - **‘Phasing out inefficient fossil fuel subsidies’** asap
- But role of **‘transitional fuels’** (i.e. fossil gas) in energy transition also recognised



International human rights law

- States have obligation to refrain from human rights violations through **contributing to climate impacts**
 - ‘States parties should **effectively contribute to phasing out fossil fuels**’ (Joint Statement on Human Rights and Climate Change)
- States have positive human rights obligation to ensure a **just transition**
- Suggestions for **specific contents** include:
 - Assess impacts of fossil fuel projects
 - Limit fossil fuel lobbying
 - End fossil fuel subsidies
 - Prohibit certain forms of fossil fuel extraction



International investment law

- Investment treaties offer **protection for fossil fuel investments**, and may lead to **compensation for fossil fuel companies**, increasing the cost of climate policy
- Threat of investment arbitration may **delay/deter fossil fuel phase-out** ('regulatory chill')



This Company Is Suing the U.S. Over the Keystone Pipeline Cancellation. Taxpayers Are Footing the Bill.

The lawyers, meanwhile, are living handsomely.

LNG firm's \$20-billion lawsuit against Canada exposes NAFTA's toxic legacy

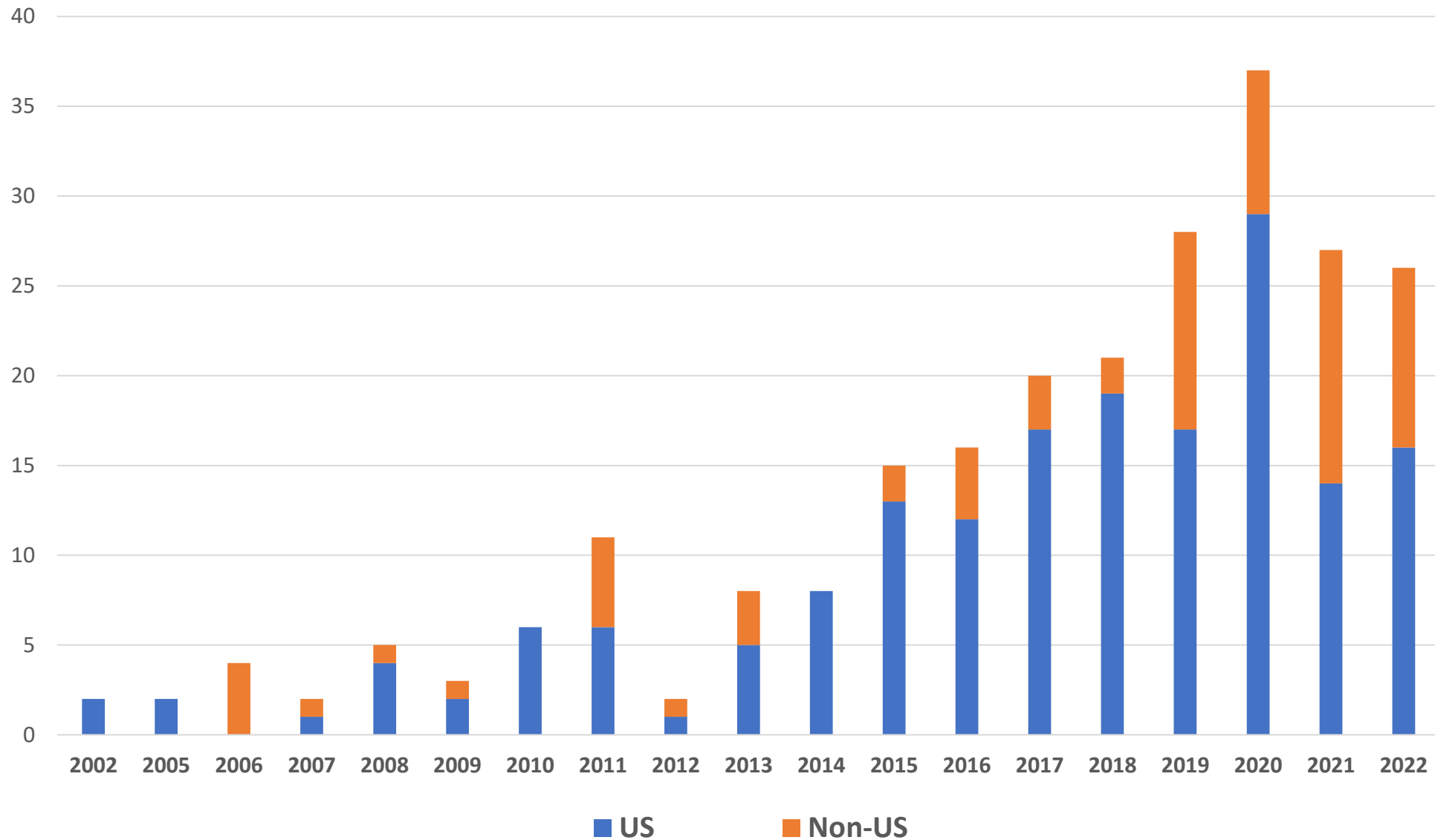
Cop26 targets pushed back under threat of being sued

Anti-fossil fuel litigation

- (1) A **sub-set of climate change litigation**, i.e. ‘litigation in which the party filings or tribunal decisions directly and expressly raise an **issue of fact or law regarding the substance or policy of climate change causes and impacts**’ ([Markell & Ruhl 2012](#)), ...
- (2) ... in which the **production of fossil fuels** (i.e. coal, oil and gas) and/or ...
- (3) ... **behaviour by fossil fuel-producing companies** is at stake



The rise of anti-fossil fuel litigation (1)



Total: 243 cases

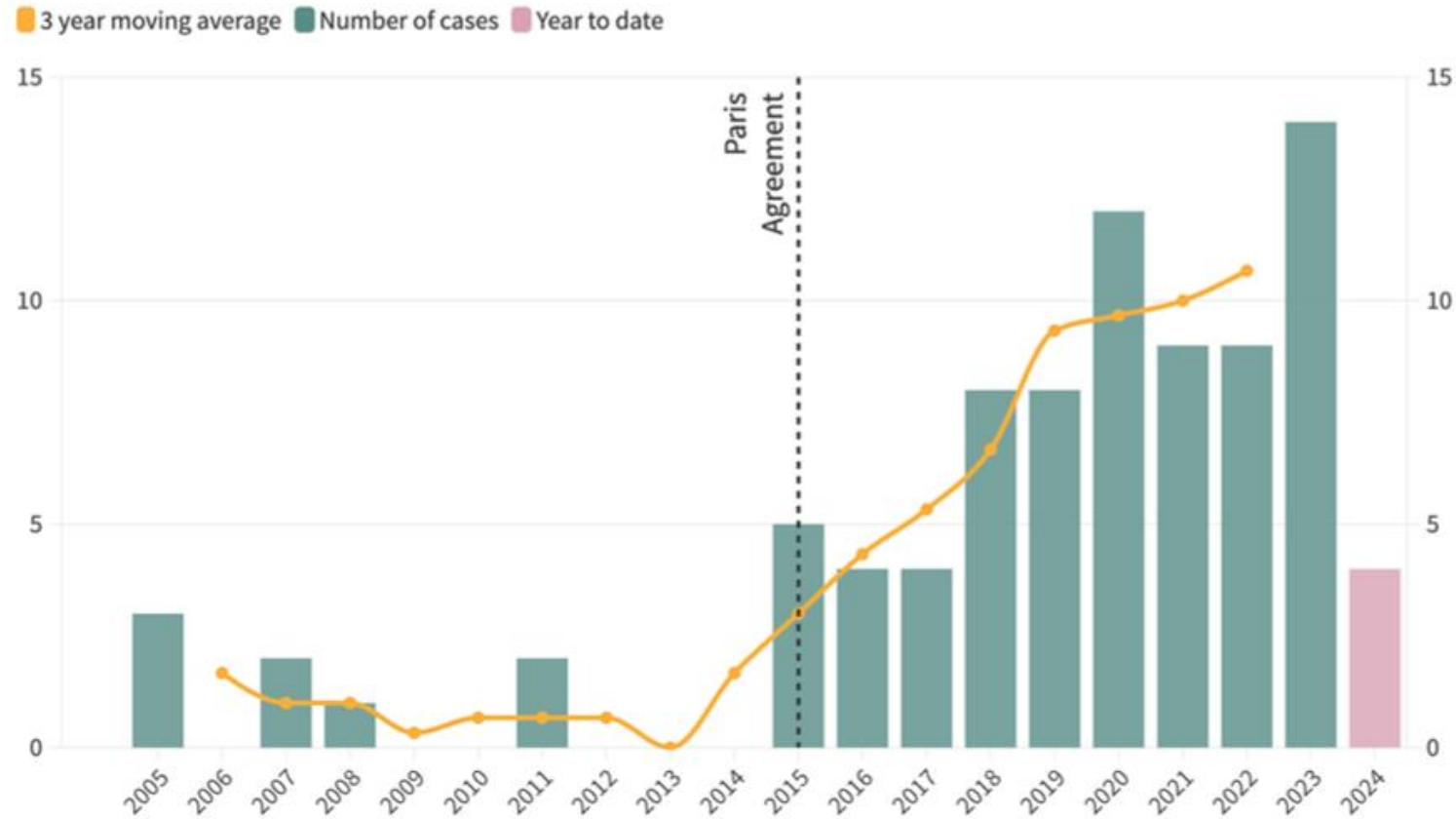
US: 174 cases

Non-US: 69 cases

Data drawn from:
[Sabin Center Climate Change Litigation Databases](#)

The rise of anti-fossil fuel litigation (2)

Fig 1: Number of cases by year filed (2005-2024)

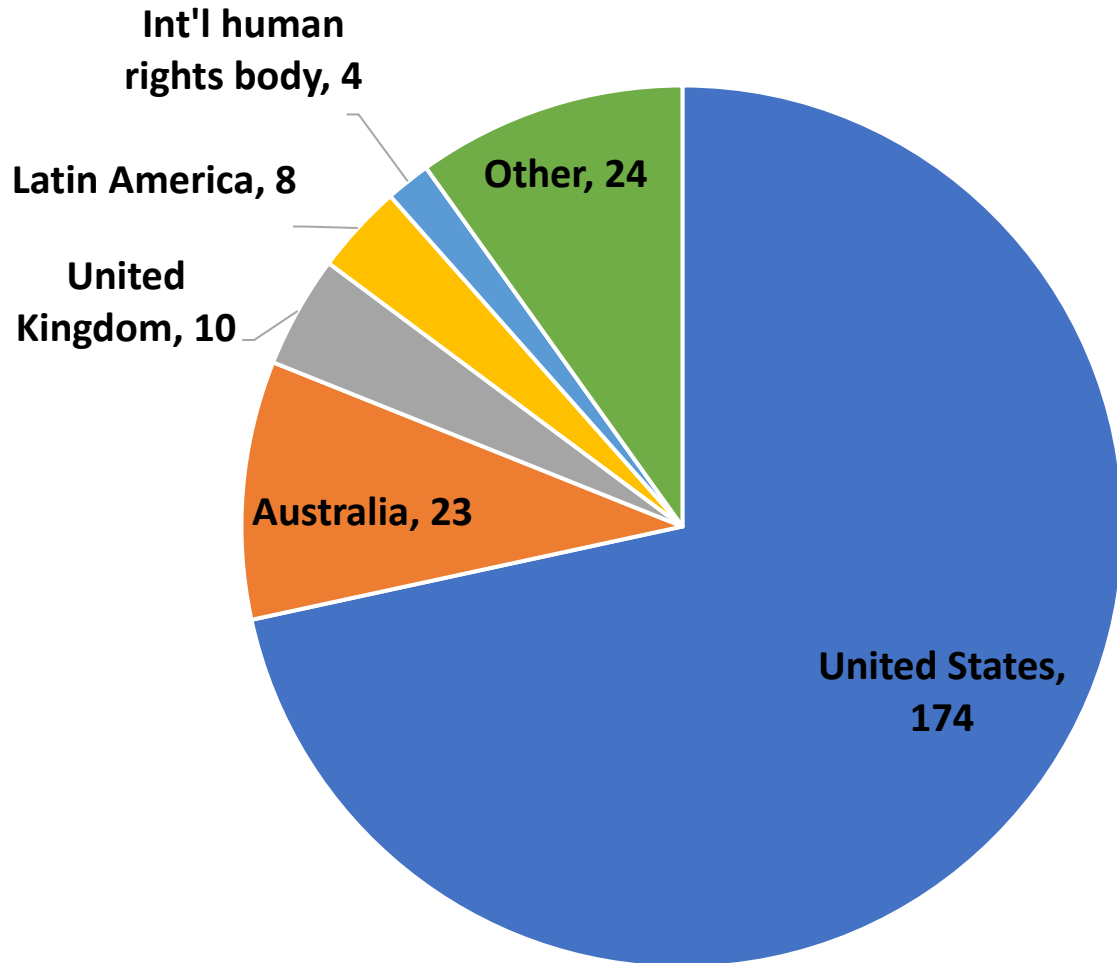


Source: Sabin Center for Climate Change Law Climate Change Litigation Database • Zero Carbon Analytics analysis.
2024 figure for cases included in the database by July 2024.

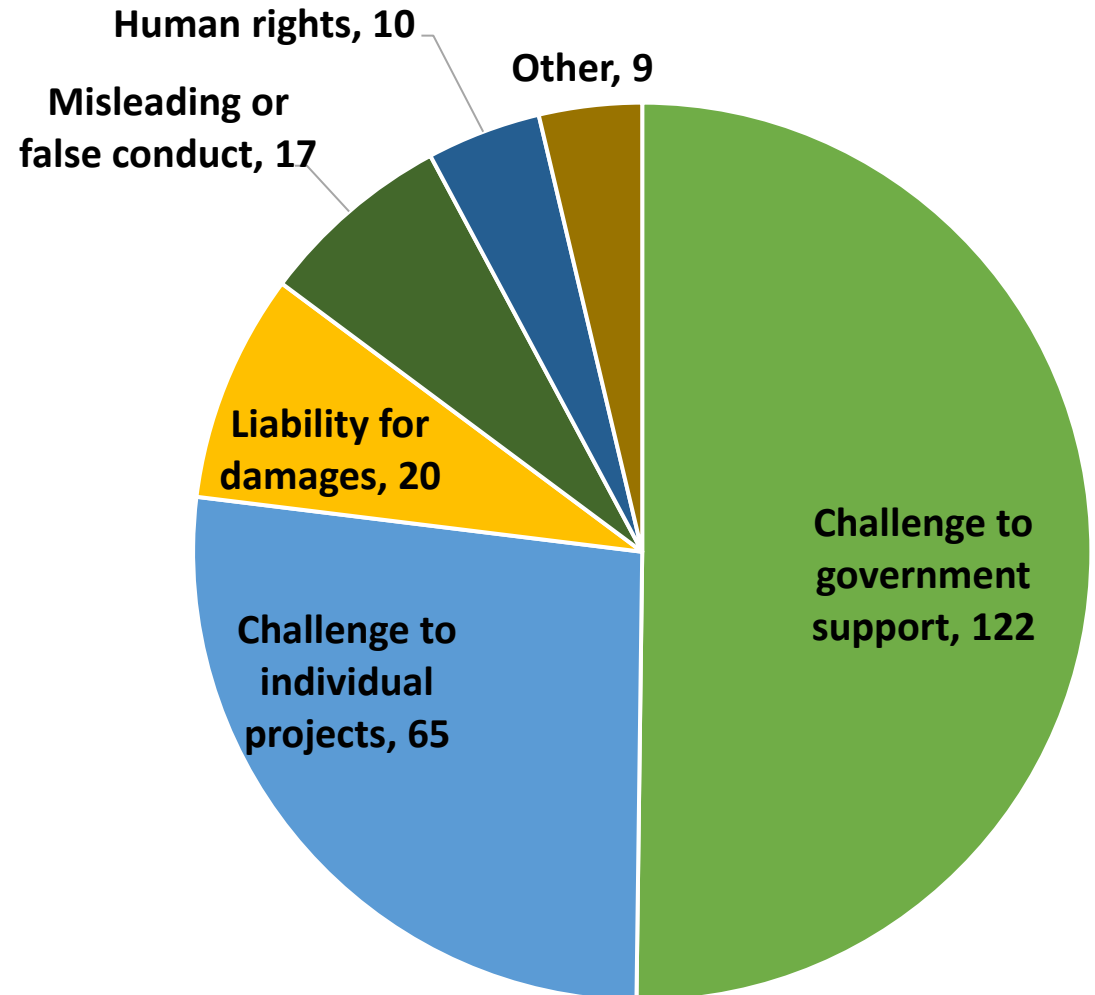


The landscape of anti-fossil fuel litigation

JURISDICTION



TYPE



The (possible) effects of anti-fossil fuel litigation

Direct

- Halting/delaying a project
- Legislative or administrative action (e.g. new EIA)
- Compensation for damage
- Climate risk disclosure

Indirect

- Undoing social license of fossil fuel companies
- Increasing cost of future production
- Spurring regulatory action (e.g. climate test)
- Raising awareness/
introducing new narratives

Unintended

- Counter-litigation
- Regulatory response
- Substitution with more carbon-intensive production

The road ahead



Relevant publications

Thank you!

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 [@harrovanasselt](https://twitter.com/harrovanasselt)

- H van Asselt et al, '[The Environmental and Economic Effects of International Cooperation on Restricting Fossil Fuel Supply](#)' (2024) 24 *International Environmental Agreements* 141
- H van Asselt and F Green, '[COP26 and the Dynamics of Anti-Fossil Fuel Norms](#)' (2023) 14(3) *WIREs Climate Change* e816
- H van Asselt & P Newell, '[Pathways to an International Agreement to Leave Fossil Fuels in the Ground](#)' (2022) 22(4) *Global Environmental Politics* 28–47
- H van Asselt & E Harrould-Kolieb, '[Toward an Intergovernmental Transparency Arrangement for Fossil Fuel Production](#)' (2022) 16(3) *Carbon & Climate Law Review* 161–178
- H van Asselt, '[Governing Fossil Fuel Production in the Age of Climate Disruption: Towards an International Law of 'Leaving It in the Ground''](#) (2021) 9 *Earth System Governance* 100118
- P Newell, H van Asselt & F Daley, '[Building a Fossil Fuel Non-Proliferation Treaty: Key Elements](#)' (2022) 14 *Earth System Governance* 100159
- G Piggot et al, '[Curbing Fossil Fuel Supply to Achieve Climate Goals](#)' (2020) 20(8) *Climate Policy* 881–887 (and [full Special Issue](#))
- M Lazarus & H van Asselt, '[Fossil Fuel Supply and Climate Policy: Exploring the Road Less Taken](#)' (2018) 150(1–2) *Climatic Change* 1–13 (and [full Special Issue](#))