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Climate Change in the Courts: A 2023 Retrospective

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**CLIMATE CHANGE IN THE
COURTS:
A 2023 RETROSPECTIVE**

By Maria Antonia Tigre and Margaret Barry

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The Sabin Center for Climate Change Law develops legal techniques to fight climate change, trains law students and lawyers in their use, and provides the legal profession and the public with up-to-date resources on key topics in climate law and regulation. It works closely with the scientists at Columbia University's Climate School and with a wide range of governmental, non-governmental and academic organizations.

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The Sabin Center is extremely grateful to the rapporteurs of the Peer Review Network of Climate Litigation for their efforts to increase and improve climate litigation data and knowledge.

TABLE OF CONTENTS

1. INTRODUCTION	3
2. CONSTITUTIONAL AND HUMAN RIGHTS CASES	4
3. GREENWASHING AND CLIMATE-WASHING	6
4. CARBON CAPTURE, REMOVAL AND SEQUESTRATION	6
5. ESG BACKLASH	7
6. NON-COMPLIANCE WITH CLIMATE COMMITMENTS	8
7. INADMISSIBLE CLAIMS AND SUCCESSFUL DEFENSES	9
8. NUISANCE AND CLIMATE DAMAGES	10
9. CLIMATE CHANGE IN INTERNATIONAL AND REGIONAL COURTS	10
10. CONCLUSION	11

1. INTRODUCTION

In this year-end report, we examine some key rulings and newly filed cases that have shaped discourse on climate change within the legal sphere in 2023, or that are poised to have an impact in the coming months and years. Drawing from the jurisdictions covered in the [United States \(U.S.\)](#) and [Global Climate Litigation](#) databases, we offer insights into key developments, emerging themes, evolving legal strategies, and the pulse of climate litigation.

As of December 15, 2023, the U.S. Climate Litigation database has 1,687 cases, with 114 of these cases filed in 2023. The Global Climate Litigation Database has 853 cases, with 70 cases filed in 2023. The Databases currently include cases in 54 [jurisdictions](#) (including the U.S.) and 21 international or regional courts, tribunals, quasi-judicial bodies, or other adjudicatory bodies, including special procedures of the United Nations and arbitration tribunals. New jurisdictions in 2023 include Estonia, Panama, Portugal, and Romania. In total, the databases currently have 2,540 cases. These numbers are depicted in Figure 1, below.

Figure 1: Growth of Climate Change Litigation in 2023

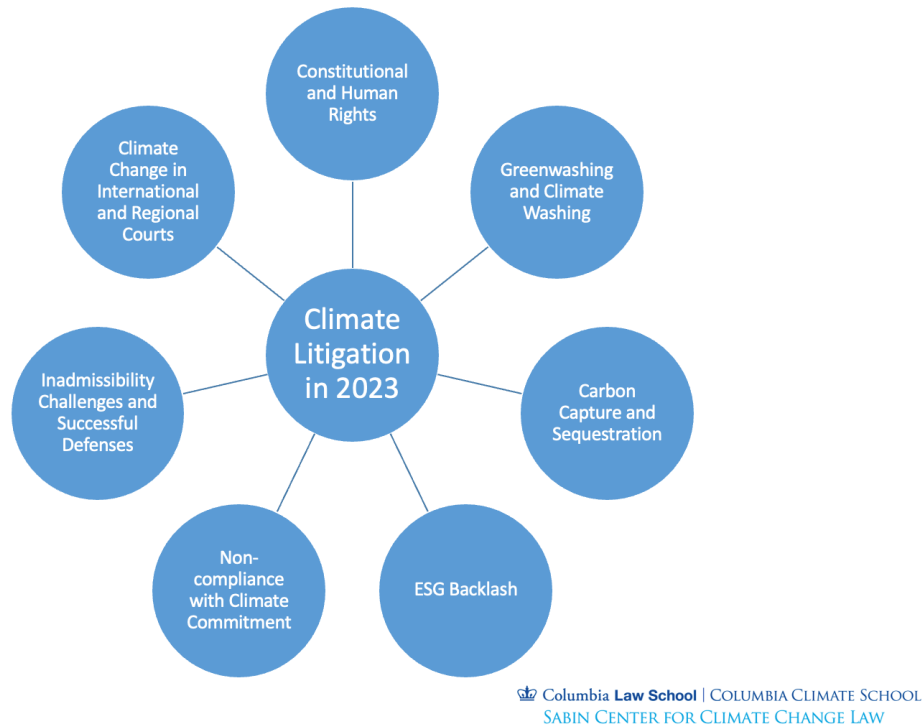


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In 2023, there were fewer “groundbreaking” decisions than in recent years. At the same time, crucial cases at the international and regional levels have had important developments, with hearings that will likely lead to decisions in 2024. This report highlights developments in seven thematic areas: (i) constitutional and human rights cases, (ii) greenwashing and climate washing cases, (iii) carbon capture and sequestration cases, (iv) environmental, social, and corporate governance (ESG) backlash cases, (v) non-compliance with climate commitments, (vi) inadmissibility challenges and successful defenses, and (vii) climate change in international and regional courts. These are depicted in Figure 2, below.

This report seeks to be illustrative, not comprehensive, and to observe the evolution of the field from a comparative perspective. Our assessment grows out of our monthly updates, which are available [here](#).¹

Figure 2: Key Themes in Climate Litigation Observed in 2023



2. CONSTITUTIONAL AND HUMAN RIGHTS CASES

This year saw two favorable state court rulings for youth plaintiffs in their state constitutional rights claims against state governments in the U.S. In *Held v. State*, a trial court in Montana held a seven-day trial, including testimony from the youth plaintiffs and their expert witnesses on topics that included the effects of greenhouse gas (GHG) emissions and climate change on the state, and the children in it. In August, the court ruled that a provision of Montana law that prohibited consideration of GHG emissions and corresponding climate change impacts in environmental reviews violated the plaintiffs’ right to a clean and healthful environment under the Montana Constitution. The State defendants have appealed the trial court’s decision to the Montana Supreme Court. Meanwhile, the Hawai‘i Supreme Court [ruled](#) that the Hawai‘i Constitution’s right to a clean and healthful environment encompasses the right to a life-sustaining climate system, and indicated that state agencies have an obligation to protect that “affirmative” and “constantly evolving” right. Later in the year, a Hawai‘i trial court [denied](#) a motion to dismiss a separate lawsuit brought by youth plaintiffs who asserted that Hawai‘i’s fossil fuel-based transportation

¹ A broader analysis of the developments in climate litigation, updated until December 2022, can be found [here](#). Short summaries of themes observed in 2022 and 2021 can be found [here](#) and [here](#).

system violates the Hawai‘i Constitution’s public trust doctrine and right to a clean and healthful environment. (The trial in that case—in which the plaintiffs, like the plaintiffs in [Held v. State](#), are represented by the non-profit public interest law firm Our Children’s Trust—is scheduled for June 24–July 12, 2024.) In addition, a federal district court in Oregon has allowed the plaintiffs in [Juliana v. United States](#) (also represented by Our Children’s Trust) to amend their complaint to attempt to rectify the shortcomings in standing that the Ninth Circuit Court of Appeals identified in 2020 for their climate change-based constitutional claims against the federal government. In December, Our Children’s Trust and other attorneys filed a [lawsuit](#) against the U.S. Environmental Protection Agency (EPA), the United States, and the EPA Administrator on behalf of 18 California children. The plaintiffs seek declaratory judgments that EPA has violated their equal protection and substantive due process rights and “has exceeded its delegated authority by allowing unsafe levels of climate pollution that endanger Children ... to enter and accumulate in the nation’s air.”

In Europe, the Brussels Court of Appeal handed down its much-anticipated ruling in [VZW Klimaatzaak v. Kingdom of Belgium and Others](#). The Court of Appeals partially reversed the first instance judgment, which ruled that the governments had failed to act with sufficient prudence and diligence in breach of their duty of care. The Court confirmed the finding of a breach, ruling that the Belgian authorities had failed to adequately participate in the global effort to curb global warming. The finding was grounded on Articles 2 and 8 of the European Convention on Human Rights and the Belgian Civil Code. Notably, reversing the first instance judgment, the Court imposed a binding GHG emissions reduction target to be achieved by 2030. The Court ordered the federal government and the governments of the regions of Flanders and Brussels (except Wallonia, which was in compliance) to reduce their GHG emissions by at least 55% (the current target is 47%, plaintiffs had asked for a 61% reduction) compared to 1990 levels by 2030 at the latest. See an analysis of the decision [here](#) and [here](#).

In Latin America, the Brazilian Supreme Court (STF) published its final ruling on [PSB et al. v. Brazil \(on Amazon Fund\)](#), a key decision and part of a series of cases addressing backsliding in environmental and climate policies in Brazil. (See more [here](#).) The Amazon Fund is a financial mechanism created by the Brazilian government to combat deforestation and GHG emissions caused by deforestation and forest fires. In particular, it funds REDD+ projects and represents a crucial mechanism to comply with Brazil’s commitments under the Paris Agreement. However, during the previous political administration, the fund was paralyzed. The STF emphasized that environmental and climate protection, especially in the Amazon, is a legal obligation imposed by the Federal Constitution and various international regulations, and ordered the Federal Government to take measures to reactivate the Amazon Fund and to refrain from engaging in omissive conduct that would jeopardize the Fund’s operation.

In South Korea, the National Human Rights Commission (KNHRC), an independent commission for protecting, advocating, and promoting human rights, issued two notable opinions. In [Opinion of the National Human Rights Commission on the climate crisis and human rights](#), the KNHRC opined that South Korea’s climate mitigation response is insufficient to protect human rights and that the government must set additional GHG reduction targets. Specifically, the KNHRC called on the state to recognize climate-related human rights, improve support of climate-vulnerable groups, strengthen adaptation, and increase mitigation targets. In [Opinion of the National Human Rights Commission on the Constitutional Complaints on Constitutionality of the Carbon Neutrality](#)

[Act](#), the KNHRC submitted that certain provisions of the Carbon Neutrality Act and its Enforcement Decree are unconstitutional. Among other things, the opinion relies on violations of the state’s duty to protect fundamental rights. Since South Korea’s carbon budget is expected to be exhausted before 2030, the KNHRC noted that shifting the burden unequally to future generations is discriminatory and violates the constitutional principle of equality. The role of non-judicial bodies in climate litigation can be impactful, as shown in the years-long investigation—finalized in 2022—of the Philippines Commission on Human Rights in [In re Greenpeace Southeast Asia and Others](#) into the responsibility of fossil fuel companies for the adverse effects of climate change on human rights.

3. GREENWASHING AND CLIMATE-WASHING

In the U.S., there was an uptick in 2023 in the number of climate change-focused greenwashing cases, including a handful of new cases against airlines—KLM ([here](#) and [here](#)), [Delta](#), and [United](#)—as well as cases against other types of businesses, such as an online retailer ([Etsy](#)) and a consumer products company ([Nike](#)). The alleged misrepresentations range from allegedly misleading assertions regarding the effectiveness of carbon offsets, to overstated claims regarding the use of sustainable aviation fuel, to deceptive labeling of products as supporting zero-carbon goals. The plaintiffs assert claims under state consumer protection statutes as well as common law claims such as fraud, unjust enrichment, and negligent misrepresentation. These new cases will face motions to dismiss in the coming year. In California, the State Attorney General reached a [settlement](#) in August with a gas utility to resolve claims under California’s Unfair Competition Law and Environmental Marketing Claims Act that the utility had misled consumers with statements that its natural gas was “renewable.” The consent judgment permanently enjoins the utility from stating or implying that its natural gas is “renewable” unless the statements comply with the Federal Trade Commission’s Green Guides.

Globally, the “[Misleading Advertising](#)” category currently includes 55 cases; 16 of these were filed in 2023. Cases are found in the United Kingdom (14), Germany (13), Australia (6), Netherlands (6), Italy (4), France (3), Canada (3), and Switzerland (3), Belgium (1), Denmark (1) and New Zealand (1). Broadly, greenwashing cases address: (i) advertisement of products as carbon neutral, (ii) advertisement of green, clean, environmentally or climate-friendly energy products, and (iii) advertisement of impacts of a company’s carbon footprint, or, specifically, about its net zero commitments. In the case of [KlimaAllianz v. FIFA](#), the Swiss Fair Advertising Commission advised FIFA to avoid making baseless assertions in the future, particularly the statement that the 2022 FIFA World Cup in Qatar was carbon or climate neutral. Essentially, the Commission reaffirmed that stringent regulations apply when advertising carbon neutrality, and that factual statements must be truthful and not deceptive, which also includes environmental claims. More on the complaints related to the Qatar World Cup is available [here](#).

4. CARBON CAPTURE, REMOVAL AND SEQUESTRATION

Cases involving carbon capture, removal and sequestration this past year focused on both tech-based approaches, where cases highlighted legal and political challenges in developing the

necessary infrastructure, and nature-based approaches, where cases addressed forestry management and accounting.

In the U.S., litigation has challenged local governments' restrictions on carbon capture and sequestration projects and the pipelines that transfer the captured carbon dioxide to the sequestration sites. In Iowa, several lawsuits challenging local laws that regulated carbon dioxide pipelines were withdrawn after one interstate pipeline project was canceled, with the developer [citing](#) “the unpredictable nature of the regulatory and government processes involved.” (See [here](#), [here](#), and [here](#) for the withdrawn cases.) In other cases, developers have had success in challenging local roadblocks. For example, see [here](#) and [here](#) (summary judgment decisions finding that federal and state law preempted local restrictions on carbon dioxide pipelines), [here](#) (stipulation of dismissal after denial of motion to dismiss preemption challenge to moratorium on carbon dioxide pipelines), and [here](#) (consent judgment dismissing challenge to ordinance blocking carbon sequestration project). Although there do not yet appear to have been many challenges to tech-based carbon capture and sequestration projects, one recently filed [state court case](#) in Iowa challenges whether a water withdrawal permit for carbon capture would be putting the water resources of the state to “beneficial use.”

In 2023, several U.S. federal courts issued decisions in cases that raised the issue of whether the U.S. Forest Service adequately considered the impacts on carbon storage of logging in national forests. A district court in Montana [found](#) that the Forest Service’s analysis of a commercial timber harvest’s impacts on forest carbon stocks was “cookie-cutter and boilerplate” and did not satisfy the National Environmental Policy Act’s standards, while a federal court in Ohio [found](#) (without going into detail) that the Forest Service adequately responded to comments on fungal networks and their role in “carbon storage and sequestration” and “forest health and resiliency in the face of climate change.” A federal district court in Indiana [enjoined](#) the Forest Service from conducting a burn in a case in which the plaintiffs alleged, among other things, that the Forest Service failed to analyze emissions associated with logging older trees and burning forest land, which emits greenhouse gases during burns and reduces the long-term ability of trees in the burn. The government subsequently said it would further evaluate the project. Additional U.S. judicial decisions addressing the carbon sequestration capacity of public lands are likely given the number of new cases raising this issue that were filed in 2023, including in [Montana](#), Oregon ([here](#) and [here](#)), Alaska ([here](#) and [here](#)), and [California](#).

Several cases in the Global Climate Litigation database also address nature-based solutions. For example, a case related to forest logging is found in Germany ([Deutsche Umwelthilfe v. Germany \(LULUCF\)](#)). Several challenges to REDD+ projects were also recently filed in Latin America, in particular as it relates to the (lack of) participation of indigenous communities (see cases in Colombia [here](#), and [here](#), and Brazil [here](#), [here](#) and [here](#)).

5. ESG BACKLASH

The backlash to the consideration of environmental, social, and governance (ESG) factors in governmental policies and corporate decision-making has emerged in some climate litigation in the U.S. Plaintiffs have challenged federal policies, including in cases in [Texas](#) and [Wisconsin](#)

challenging the U.S. Department of Labor “Investment Duties” regulation, which clarified that employee benefit plan fiduciaries may consider environmental, social, and governance (ESG) factors such as climate change in risk and return analyses for investment decisions. The federal district court in Texas [rejected](#) the challenge to the regulation, finding that the rule’s allowance of ESG considerations was not “manifestly contrary to the statute” or arbitrary and capricious. The plaintiffs have appealed. Texas and three other states also [challenged](#) a Securities and Exchange Commission (SEC) rule on proxy vote reporting requirements that they allege is intended to force companies to increase the number of votes taken to further an ESG agenda. More lawsuits can be expected once the SEC finalizes its climate disclosure rulemaking in 2024.

A particular focus of the backlash to climate policies has been state and local natural gas “bans,” and several cases have challenged these laws and regulations. In April 2023, the federal Ninth Circuit Court of Appeals [held](#) that federal law preempted a City of Berkeley, California ordinance banning natural gas infrastructure in new buildings. The City has petitioned for rehearing en banc. (See [here](#) for a *Climate Law Blog* post that provides additional analysis of and takeaways from this case.) After the Ninth Circuit’s decision, a [case](#) challenging Washington State restrictions on natural gas appliances was voluntarily dismissed while the State defendants conducted a process to consider amendments based on the Ninth Circuit decision. In October, a [lawsuit](#) was filed in federal court in New York asserting that federal law preempts New York laws that ban natural gas appliances and infrastructure in certain new buildings.

Other U.S. cases that fall into this “ESG backlash” category include a [lawsuit](#) filed in May 2023 that challenges New York City pension plans’ plans to divest from fossil fuels. In Kentucky, a federal court [ruled](#) that plaintiffs lacked standing for a First Amendment challenge to the Kentucky Attorney General’s investigation of banks that were members of the UN’s Net-Zero Banking Alliance, and remanded the case to state court to resolve the rest of the claims.

6. NON-COMPLIANCE WITH CLIMATE COMMITMENTS

Several key decisions and new filings came in cases concerning national adherence to climate targets established through international commitments by governments.

The High Administrative Court Berlin-Brandenburg in [DUH and BUND v. Germany](#) found the German government to be in violation of national climate legislation for neglecting GHG emissions targets in the transportation and building sectors. Under the Climate Protection Act, the government is obligated to devise programs for these sectors to reduce GHG emissions by 65% by 2030, relative to 1990 levels. The Court found the government out of compliance and ordered it to reassess its policies. The ruling is subject to appeal. See [here](#) for more details on the case and the decision.

In Colombia, two decisions in 2023 ordered the Colombian government to comply with its legal obligations under the Colombian climate framework (specifically, Law 1931 of 2018 and Law 2169 of 2021). In [Office of the Inspector General and others v. Ministry of Environment and Sustainable Development \(‘MADS’\)](#), the Council of State found that the Colombian government had failed to: (i) regulate goals related to nationally determined contributions; (ii) issue a legal

document to guide territorial entities and authorities in incorporating climate change in their regulatory and planning instruments; (iii) regulate the National Information Service on Climate Change (draft legislation is in process); and (iv) establish GHG quotas (draft legislation is in process). As a result, the Council of State ordered the Ministry and the President to fully comply with obligations. In [*Citizens and NGOs v. Ministry of Environmental and Sustainable Development and Ministry of Mines and Energy*](#), the Tribunal of Cundinamarca declared non-compliance with several provisions of the Climate Law, specifically related to mechanisms and studies concerned with coal exploitation and supply chain. In particular, the Tribunal ordered the: (i) identification of climate impacts within the Environmental Impact Assessments of mining projects; (ii) information gathering to update GHG inventory by the Ministry of Mining and Energy; (iii) implementation and monitoring of climate action plans; (iv) creation of more specific control and monitoring processes to verify GHG emissions and its reductions; (v) inclusion in climate action plans of specific goals and measures to mitigate climate change; and (vi) mandatory report of GHG by public and private parties. An analysis of the two decisions can be found [here](#).

7. INADMISSIBLE CLAIMS AND SUCCESSFUL DEFENSES

It is important to identify and examine cases where plaintiffs fell short, as well as those where they prevailed. In 2023, several notable climate cases were either deemed inadmissible on procedural grounds, dismissed due to separation of powers arguments or lack of standing, or ruled against on the merits by the court. .

In June, the Spanish Supreme Court handed down its final ruling in [*Greenpeace v. Spain II*](#). In this case, environmental and human rights organizations had taken legal action against the Government of Spain, alleging inadequate action on climate change. The case, like others, models the successful [*Urgenda*](#) case. The Supreme Court found that Spain’s regulatory actions are aligned with the Paris Agreement and in compliance with European Union commitments and regulations. (More on the decision [here](#)).

In May, the United Kingdom’s High Court in [*ClientEarth v. Shell's Board of Directors*](#) dismissed a derivative claim, finding that the plaintiff had not made a prima facie case that the Board had breached their duties to exercise reasonable care, skill and diligence related to climate risk. Read more about the claim [here](#).

Also in the United Kingdom, in [*R\(Bristol Airport Action Network\) v Secretary of State for Levelling Up, Housing and Communities \(expansion of Bristol Airport\)*](#), the High Court denied the claimant’s permission to challenge Bristol Airport’s expansion, finding that the nation’s climate laws constituted a “separate pollution control regime,” and that the government agency was not obliged to consider it in its permitting decision.

Several cases were dismissed due to separation of powers concerns. In June 2023, the Austrian Constitutional Court rejected the application in [*Children of Austria v. Austria*](#) as inadmissible, finding the scope of the application too narrow, and that repealing the law would amount to an act of legislation by the court. The case, filed by a group of Austrian children, claimed the Federal Climate Protection Act (Klimaschutzgesetz 2011), which does not stipulate any emissions

reduction targets after 2020 , violates the constitutionally guaranteed rights of children and the fundamental right to equality. In [*Mexican Center for Environmental Law \(CEMDA\) v. Mexico \(on the Climate Change Fund\)*](#), the Mexican Supreme Court ruled that the federal government’s decision to extinguish the Climate Change Fund and transfer that budget directly assigned to the Environmental Secretariat was a policy decision appropriately left to the executive and legislative branches, not the courts.

8. NUISANCE AND CLIMATE DAMAGES

2023 saw several cases filed and/or decided in Latin America related to climate damages. In March 2023, the Superior Court of Justice (STJ) ruled on [*Federal Public Prosecutor’s Office \(MPF\) v. Brazil and others \(Sea advance and coastal erosion\)*](#), a case pertaining to environmental harm resulting from the irregular occupation of an area of Boa Viagem Beach in Sergipe. The property was damaged due to beach erosion, which has worsened due to rising tides. The STJ highlighted the undeniable consequences of climate change on human populations, especially the poorest, and the reality of anthropogenic climate change, and urged that judges must be vigilant to avoid repeating “irrational ideas” that deny the facts, and rather apply the values of the environmental rule of law. The court found the advance of the tides due to climate change and the consequent destruction of bars and restaurants located on the shores of Sergipe foreseeable, and damages therefore warranted. Along these lines, nine cases related to climate damages from illegal deforestation were recently filed in Brazil by the Federal Environmental Agency (IBAMA). Courts in the first instance have made decisions on two of these cases. In [*Federal Environmental Agency \(IBAMA\) v. Seringal Indústria e Comércio de Madeiras EIRELI*](#) and [*Federal Environment Agency \(IBAMA\) v. Souza Brilhante EIRELI*](#), the courts have ordered the defendants to restore the illegally deforested area and pay damages based on the social cost of carbon.

In the U.S., the Supreme Court [declined](#) to consider appeals of the remands to state court of climate change nuisance/deceptive marketing cases brought by state and local governments against fossil fuel companies. (See this [*Climate Law Blog post*](#) about the history of this jurisdictional battle.) In the months since the Supreme Court denied certiorari, federal district courts and circuit courts of appeal, including the [Second](#) and [Ninth](#) Circuits, have issued new decisions remanding cases brought by state or local governments. Now that these cases are proceeding in state courts, more decisions may begin to emerge in 2024 that show how the state courts will view the merits of state and local governments’ claims. So far, Honolulu’s case has advanced farthest, with the Hawai’i Supreme Court issuing a decision on October 31 [rejecting](#) fossil fuel companies’ appeal of a trial court’s denial of their motion to dismiss.

9. CLIMATE CHANGE IN INTERNATIONAL AND REGIONAL COURTS

Advisory opinions at regional and international courts and tribunals formed our final thematic focus of 2023 . In December 2022, the Co-Chairs of the Commission of Small Island States on

Climate Change and International Law (COSIS) submitted the [Request for an Advisory Opinion on Climate Change and International Law](#) to the International Tribunal for the Law of the Sea. More on the request [here](#) and [here](#). The ITLOS advisory opinion has advanced throughout the year. Hearings were held in September 2023. At the end of September 2023, the Sabin Center published a [report](#) titled “ITLOS Advisory Opinion on Climate Change: Summary of Briefs and Statements Submitted to the Tribunal.” The ITLOS advisory opinion is expected to be published in 2024.

In January 2023, Chile and Colombia requested an advisory opinion from the Inter-American Court of Human Rights (IACtHR), aiming to clarify the scope of the state obligations for responding to the climate emergency under the frame of international human rights law ([Request for an advisory opinion on the scope of the state obligations for responding to the climate emergency](#)). More on the request [here](#). The IACtHR has extended the deadline for submission of amicus briefs multiple times, with the final deadline now set for December 18, 2023. The Sabin Center has submitted an [amicus brief](#) in November 2023. The IACtHR will hold hearings during the first semester of 2024, and an advisory opinion is expected to be published towards the end of 2024.

Finally, based on an initiative spearheaded by Vanuatu, the United Nations General Assembly (UNGA) adopted a [resolution](#) requesting an advisory opinion from the International Court of Justice (ICJ) on the obligations of States with respect to climate change in March 2023 ([Request for an advisory opinion on the obligations of States with respect to climate change](#)). More on the request [here](#). Written statements on the questions put to the ICJ may be [accepted](#) until March 22, 2024, and written replies until June 24, 2024.

Several contentious cases are also pending before the [European Court of Human Rights](#). These cases are being heard by the Grand Chamber. Hearings on [Duarte Agostinho and Others v. Portugal and 32 Other States](#) were held in September 2023. See more [here](#). Hearings on the [KlimaSeniorinnen v Switzerland](#) and [Carême v. France](#) were held in March 2023. See more [here](#). Decisions on these cases are expected in 2024.

10. CONCLUSION

In 2023 the field of climate change litigation continued to demonstrate notable expansion in thematic diversity. The emergence of cases pertaining to carbon capture, removal, and sequestration; environmental, social, and corporate governance (ESG) backlash; and instances of non-compliance with climate commitments marks a significant set of developments. Concurrently, we have seen a continued proliferation of cases involving constitutional and human rights, and an increase in legal actions addressing greenwashing and climate washing. The expanding array of legal arguments within these spheres suggests a dynamic and evolving landscape. Looking ahead to 2024, we expect the multifaceted nature of climate-related legal disputes to persist, with a continued diversification of themes and an ongoing evolution of legal arguments.