



**When balance sheets pollute:  
Litigating the climate change-related  
human rights impacts of financial  
institutions**

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**WHEN BALANCE SHEETS POLLUTE: LITIGATING THE CLIMATE CHANGE-RELATED HUMAN RIGHTS IMPACTS OF FINANCIAL INSTITUTIONS**

QUANDO OS BALANÇOS POLUEM: LITIGANDO OS IMPACTOS RELACIONADOS COM AS ALTERAÇÕES CLIMÁTICAS DAS INSTITUIÇÕES FINANCEIRAS NOS DIREITOS HUMANOS

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**Abstract:** How is climate litigation being used to compel financial institutions (FIs) to fulfil their baseline responsibility to respect human rights? Under the UN Guiding Principles on Business and Human Rights, FIs must not cause, contribute to or be directly linked to adverse human rights impacts arising from their own operations as well as their business relationships. Translating this responsibility to the climate crisis, civil society and affected rightsholders are initiating legal actions against FIs globally. They are seeking (1) the measurement, disclosure and alignment of Scope 3 emissions of FIs with the Paris Agreement goals, and (2) the divestment or disengagement of FIs from projects, clients, or sectors characterized by high greenhouse gas intensity. This article analyzes 14 domestic court and OECD National Contact Point cases collected from five databases, illuminating a recent “rights-turn” in climate litigation concerning the financial sector.

**Keywords:** Climate litigation; ESG litigation; financial institutions; corporate accountability; OECD NCP mechanism

**Resumo:** Como está a ser utilizada a litigância climática para compelir as instituições financeiras (IFs) a cumprirem a sua responsabilidade básica de respeitar os direitos humanos? De acordo com os Princípios Orientadores das Nações Unidas sobre Empresas e Direitos Humanos, as IFs não devem causar, contribuir para, ou estar diretamente ligadas a impactos adversos nos direitos humanos decorrentes das suas próprias operações, bem como das suas relações comerciais. Transpondo esta responsabilidade para a crise climática, a sociedade civil e os titulares de direitos afetados estão a instaurar processos judiciais contra as IFs a nível global, tendo em vista (1) a medição, divulgação e alinhamento das emissões de Escopo 3 das IFs com os objetivos do Acordo de Paris, e (2) o desinvestimento ou desligamento das IFs de projetos, clientes ou setores caracterizados por alta intensidade de gases com efeito de estufa. Este artigo analisa 14 casos de tribunais nacionais e Pontos de Contacto Nacional da OCDE recolhidos de cinco bases de dados, iluminando uma recente “viragem para os direitos” na litigância climática no sector financeiro.

**Palavras-chave:** Litigância climática, Litigação ESG, Instituições financeiras, Responsabilidade corporativa, Mecanismo PCN da OCDE

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## 1. Introduction

In June 2023, UN human rights experts issued Special Procedures Communications to Saudi Aramco, a major oil and gas company responsible for 4.33% of global emissions, along with the financial institutions and the home States of the institutions involved<sup>2</sup>. The UN human rights experts communicated that the financial institutions (FIs) supporting Saudi Aramco's activities were allegedly contributing to adverse climate change-related human rights impacts, contrary to their own human rights responsibilities<sup>3</sup>. Clarifying these responsibilities, the experts indicated that FIs can be directly linked to adverse climate change-related human rights impacts, not just through their own operations, but also through their business relationships, such as through the provision of financing<sup>4</sup>.

At first glance, the matters communicated by the UN human rights experts might appear counterintuitive for two reasons. First, due to the indirectness of the emissions of FIs. The direct emissions stemming from the own operations of FIs are estimated to be much lower when contrasted with the indirect emissions related to their products and services<sup>5</sup>. Therefore, FIs are typically portrayed as being implicated in climate change in an indirect manner, primarily through the value chain of numerous industries due to their extensive financing, investing, insurance and reinsurance activities. Second, due to the indirectness of the relationship between the financial activity and the adverse impact. This argument focuses on the collective, diffuse, and transboundary nature of climate change, and the difficulty in demonstrating a connection between a particular financial activity (such as financing) and the specific activity causing an adverse impact (such as the activity of a client receiving finance)<sup>6</sup>.

An emerging consensus aims to refute the indirectness problem by arguing as follows. First, the indirect emissions (referred to as Scope 3 emissions) of FIs are a relevant factor in determining the fulfillment of their baseline responsibility to respect human rights<sup>7</sup>. According to their baseline responsibility under the UN Guiding Principles on Business and Human Rights (UNGPs), FIs must not cause, contribute to or be directly linked to adverse human rights impacts arising from their own operations as well as business relationships<sup>8</sup>. This covers adverse climate change-related human rights impacts which may arise from their business relationships, including

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2. Special Procedures Communication initiated on 26 June 2023 by the Working Group on the issue of human rights and transnational corporations and other business enterprises et al., UN Ref AL OTH 81/2023.

3. *Ibid.*, pp. 6-7. Adverse climate-change related human rights impact can be understood as a harm which corresponds to a reduction in or removal of a person's ability to enjoy a recognized human right in the context of the climate crisis.

4. Special Procedures Communication, footnote 2, pp. 6-7.

5. The emissions associated with FIs' investing, lending and underwriting activities are on average over 700 times higher than their direct emissions, according to a report by the Carbon Disclosure Project. See Carbon Disclosure Project, *The Time to Green Finance*, Financial Services Disclosure Report 2020, 28 April 2021, p. 3.

6. See ORGANISATION FOR ECONOMIC COOPERATION AND DEVELOPMENT (OECD), *Due Diligence for Responsible Corporate Lending and Securities Underwriting*, 2019, p. 45.

7. Special Procedures Communication, footnote 2, p. 6; The Greenhouse Gas Emission (GHG) Protocol, WORLD RESOURCES INSTITUTE AND WORLD BUSINESS COUNCIL FOR SUSTAINABLE DEVELOPMENT, launched in 1998. Available at: <https://ghgprotocol.org/corporate-value-chain-scope-3-standard>.

8. UN Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework, HR/PUB/11/04, 2011, Principle 13.

from financed or facilitated emissions, i.e. indirect emissions<sup>9</sup>. Therefore, FIs bear the responsibility to avoid contributing to or being directly linked to adverse climate change-related human rights impacts through their indirect emissions.

Second, the direct relationship between a financial activity and an adverse impact may be demonstrated through the use of climate attribution science<sup>10</sup>. Although climate change is a complex problem, scientists convey a clear message: global warming must be limited to 1.5°C with no or limited overshoot to avoid the most severe adverse human rights impacts<sup>11</sup>. To avoid such impacts, FIs should adopt, publish and track short-, medium- and long-term absolute emissions reduction targets and, where appropriate, relative emissions reduction targets, across their entire value chain including all indirect emissions, using a robust methodology verified by a third party<sup>12</sup>. If an existing or new financial product or service is inconsistent with the set targets, FIs have a responsibility to take measures to prevent or mitigate the adverse impacts<sup>13</sup>. Such measures may include shareholder proposals, engagement with management, the threat of divestment, or divestment and disengagement<sup>14</sup>. Moreover, if FIs have contributed to or caused the adverse impact, they must provide for or cooperate in the provision of remedies<sup>15</sup>.

This line of argument has been advanced in various forums, including before judicial and non-judicial mechanisms. For instance, the United States National Contact Point (NCP) is currently assessing the admissibility of the *Inclusive Development International et al. v. Marsh* case, in which the claimants contend that an insurance broker has contributed to adverse climate change-related human rights impacts by facilitating the construction of a new oil pipeline, particularly infringing the rights of local communities<sup>16</sup>. A Brazilian federal civil court is determining in the *Conectas Direitos Humanos v. BNDES and BNDESPAR* lawsuit whether continuing in investments in companies with high greenhouse gas emissions contradicts the constitutional right of current and future generations to an ecologically balanced environment<sup>17</sup>. Furthermore, the United Kingdom Court of Appeal recently handed down its decision in *McGaughey and Davies v. Universities*

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9. Special Procedures Communication, footnote 2, p. 5.

10. NETWORK FOR GREENING THE FINANCIAL SYSTEM (NGFS), Climate-related Litigation: recent trends and development, NGFS Technical Document, 1 September 2023, p. 15.

11. See INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE (IPCC), Climate Change 2023: Synthesis Report. Contribution of Working Groups I, II and III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change, IPCC (2023), para B.6.

12. UN HIGH-LEVEL EXPERT GROUP ON THE NET ZERO EMISSIONS COMMITMENTS OF NON-STATE ENTITIES, Integrity Matters: Net Zero Commitments by Businesses, Financial Institutions, Cities and Regions, December 2022, p. 17.

13. UN WORKING GROUP on the issue of human rights and transnational corporations and other business enterprises, Information Note on Climate Change and the Guiding Principles on Business and Human Rights, Office UN High Commissioner of Human Rights (OHCHR), June 2023, paras 20-21.

14. Special Procedures Communication, footnote 2, p. 5.

15. UNGPs, footnote 8, Principle 22.

16. See generally *Inclusive Development International et al. vs. Marsh*, United States NCP, filed in 2023. Available at: <https://www.oecdwatch.org/complaint/inclusive-development-international-et-al-vs-marsh/>.

17. See generally *Conectas Direitos Humanos v. BNDES and BNDESPAR*, Brazil 9<sup>th</sup> Federal Civil Court of the Federal District, filed in 2023. Available at: <http://climatecasechart.com/non-us-case/conectas-direitos-humanos-v-bndes-and-bndespar/>.

*Superannuation Scheme Ltd. (USS)*, upholding the first-instance judgment that denied the beneficiaries of a pension fund leave to bring a claim against its directors for undermining climate risks<sup>18</sup>. The claimants argued that directors' duties should be interpreted compatibly with the rights to life, and respect for private and family life, in the context of the climate crisis<sup>19</sup>. Climate litigation has emerged as a powerful tool in this context, demanding FIs to comply with their baseline responsibility (Solana JA, 2019). In the dynamic climate litigation landscape, FIs have transitioned from peripheral figures to one of the central players (Golnaraghi MA, et al., 2021: 26-27). Although not the earliest litigants, their involvement in climate litigation has significantly grown, establishing them as a category of both respondents and claimants.

This article explores the role of climate litigation in demanding FIs to meet their baseline responsibility. For this purpose, it examines 14 cases filed before courts and NCPs. Notably, the dataset includes groundbreaking instances, such as the first time that a climate-related complaint was declared admissible by an NCP, the first climate lawsuits against a commercial bank and a development bank, as well as the first case demanding to hold the directors of a pension fund directly accountable for climate risks<sup>20</sup>. The analysis takes into account relevant legal and policy frameworks, enabling critical engagement with the application of the UNGPs and the OECD Guidelines for Multinational Enterprises (Guidelines) to the climate crisis<sup>21</sup>. It shows the use of climate change-related human rights (hereinafter "climate rights") before courts and NCPs in a range of situations, including climate protests, shareholder activism, and the environmental, social and governance (ESG) movement<sup>22</sup>. The article begins by describing the methodology, followed by analyses of the cases and relevant legal and policy frameworks. It concludes by situating the cases within the larger trends of rights-based climate litigation and climate litigation in the financial sector. By doing so, it contributes to scholarly debate on an observed "rights turn" in climate litigation, i.e. using human rights laws and standards to force governments and companies to adopt and implement more ambitious climate action (Peel JA, Osofsky HA, 2018; de Vilchez PA, 2022).

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18. See generally *McGaughey and Davies v. Universities Superannuation Scheme Limited (USS)*, United Kingdom Court of Appeal, filed in the High Court of Justice of England and Wales in 2021. Available at: <http://climatecasechart.com/non-us-case/ewan-mcgaughey-et-al-v-universities-superannuation-scheme-limited/>.

19. Claim Form for the High Court of Justice of England and Wales, Case n° CR-2021-001966, 26 October 2021, para 103. Available at: [https://climatecasechart.com/wp-content/uploads/non-us-case-documents/2021/20211027\\_2022-EWHC-1233-Ch-2023-EWCA-Civ-873\\_petition.pdf](https://climatecasechart.com/wp-content/uploads/non-us-case-documents/2021/20211027_2022-EWHC-1233-Ch-2023-EWCA-Civ-873_petition.pdf).

20. See generally *Oxfam Novib, Greenpeace Netherlands, BankTrack, and Friends of the Earth Netherlands (Milieudefensie) v. ING Bank*, The Netherlands NCP, filed in 2017. Available at: <https://www.oecdwatch.org/complaint/dutch-ngos-vs-ing-bank/>; *Notre Affaire à Tous, Les Amis de la Terre, and Oxfam France v. BNP Paribas*, France Judicial Court of Paris, filed in 2023. Available at: <http://climatecasechart.com/non-us-case/notre-affaire-a-tous-les-amis-de-la-terre-and-oxfam-france-v-bnp-paribas/>; *BNDES*, footnote 17; *USS*, footnote 18.

21. OECD Guidelines for Multinational Enterprises, 2011, last updated in 2023.

22. This article uses "climate rights" to refer to all substantive and procedural human rights in connection with climate change-related matters, aligning with the resolutions on human rights and climate change adopted by the UN Human Rights Council since 2008. See generally OHCHR and climate change, last updated 2023. Available at: <https://www.ohchr.org/en/climate-change/reports-human-rights-and-climate-change>. For use of climate rights in global climate litigation, see UN Environment Program, Global Climate Litigation Report, 2023 Status Review, 2023, pp. 25-60.

## 2. Methodology

To understand the role of climate litigation in demanding FIs to meet their baseline responsibility, cases were collected from four climate litigation databases<sup>23</sup>. The Sabin Centre for Climate Change Law at Columbia University manages two of these databases, while the others are independently administered by the Faculty of Law at the University of Zurich and Melbourne Climate Futures at the University of Melbourne<sup>24</sup>. Furthermore, the OECD Complaints Database was used to corroborate and expand on the NCP cases collected<sup>25</sup>.

Cases were collected based on three criteria. First, the case needed to have been brought before either a court or an NCP. Second, an FI had to have been involved in the proceedings. Third, the case had to explicitly discuss climate change and human rights. Borrowing from the scope of application of the UNGPs, a broad definition of FIs was used, encompassing all business enterprises in the financial sector irrespective of size, structure, operational context, or ownership<sup>26</sup>. This includes any public or private corporate entity recognized by law as an enterprise, including State-owned and State-supported enterprises in the financial sector<sup>27</sup>. Additionally, the scope of involvement in the proceedings was construed broadly, extending beyond the role of a litigant. This enabled the incorporation of two criminal cases involving the members of a climate activist group who protested against the fossil fuel investments of a commercial bank<sup>28</sup>. On the other hand, the criterion on the explicit mention of climate change and human rights was narrowly construed. For instance, cases that generally discussed the environment and human rights, without specific references to climate change, were not included<sup>29</sup>.

The selection criteria resulted in the collection of 14 cases, all of which were filed after 2015, coinciding with the international endorsement of the climate change-human rights linkages in the Preamble of the Paris Agreement

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23. The data collection period extends until 20 September 2023. Special thanks to Jérôme Crugnola-Humbert for the invaluable support and expert views provided during data collection and interpretation, and to Eva Dinis for formatting reviews and Portuguese translations.

24. Climate Change Litigation Databases, available at: <https://climatecasechart.com/>; Climate Rights Database, available at: <https://climaterightsdatabase.com/>; Australian and Pacific Climate Change Litigation, available at: <https://law.app.unimelb.edu.au/climate-change/index.php>.

25. OECD Complaints Database, available at: <https://www.oecdwatch.org/complaints-database/>.

26. UNGPs, footnote 8, Principle 14.

27. The Corporate Responsibility to Respect Human Rights, An Interpretive Guide, OHCHR, HR/PUB/12/02, 2012, pp. 21-22.

28. See generally *N.B. v. Credit Suisse*, Switzerland Federal Supreme Court, first decision of the Police Court issued in 2020. Available at: <https://climaterightsdatabase.com/2021/09/28/credit-suisse-climate-activists-trial-geneva/>. *12 climate protesters v. ministère public central du canton de Vaud*, Switzerland Federal Supreme Court, first decision of the Police Court issued in 2020. Available at: <https://climaterightsdatabase.com/2021/05/26/credit-suisse-climate-activists-trial-lausanne/>.

29. For instance, the following NCP cases were excluded: *Friends of the Earth v. Rabobank*, The Netherlands NCP, filed in 2014. Available at: <https://www.oecdwatch.org/complaint/friends-of-the-earth-vs-rabobank>. *Society for Threatened Peoples v. Credit Suisse*, Switzerland NCP, filed in 2017. Available at: <https://www.oecdwatch.org/complaint/society-for-threatened-peoples-vs-credit-suisse/>.

concluded in December 2015<sup>30</sup>. The cases mainly appeared in domestic courts (8) rather than NCPs (6), predominantly in Europe (9), followed by the United States (2). A majority of cases (8) were filed by NGOs against FIs, with two cases involving criminal proceedings, three featuring adversely affected rightsholders, and one exhibiting stakeholder activism. The cases discuss a diverse range of human rights, including the rights to life, health, food, water, healthy environment, property, access to information, indigenous rights, and freedoms of expression, assembly and association. Human rights are the central focus in the majority (11) of cases, with a few (3) placing them in a peripheral role. All cases address the business relationships of FIs in two ways: as integral to claims advocating for the measurement, disclosure or alignment of Scope 3 emissions, and as part of divestment or disengagement claims from projects, clients, or sectors characterized by high greenhouse gas intensity.

Four limitations of the study merit consideration. First, concerning data collection, variations in data availability across the five databases may create bias towards certain jurisdictions. Second, the selection criteria exclude certain types of cases, for instance when the FI involved is a governmental agency. Nonetheless, the analyses take into account landmark judgments to situate the collected cases within the larger trends of rights-based climate litigation, climate litigation in the financial sector, and ESG litigation. Third, the global climate litigation landscape evolves fast, making it difficult to draw comprehensive conclusions from the concluded or ongoing cases. The final limitation relates to what climate litigation may not show. One example is the political activism of some FIs, as demonstrated in their recent support for an orderly phase out of all fossil fuels in a just and equitable way<sup>31</sup>. While some FIs may genuinely advocate for global regulatory efforts aimed at leveling the playing field to direct financial flows toward a low-emission pathway, various interrelated factors, including political opposition, lobbying influence, applicable rules and regulations, armed conflicts, the inflation crisis, and other global events, limit immediate and impactful change in financial markets and industry (Masters BR, Temple-West PA, 2023).

Despite these limitations, the cases to follow illuminate a stark reality. Fossil fuel companies, buoyed by backing from FIs worldwide, continue to reap astronomical profits and expand their operations even as the global temperature reaches a critical 1.1°C rise<sup>32</sup>. The forthcoming analyses home in on this undeniable truth.

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30. Paris Agreement to the United Nations Framework Convention on Climate Change, signed on 12th of December 2015, T.I.A.S. No. 16-1104, Preamble.

31. The Transformation is Unstoppable, 8 December 2023. Available at: <https://bteam.org/our-thinking/news/statement-the-transformation-is-unstoppable>. Also see generally Glasgow Financial Alliance for Net Zero. Available at: <https://www.gfanzero.com>.

32. See UNFCCC Conference of the Parties serving as the meeting of the Parties to the Paris Agreement, Outcome of the first global stocktake, FCCC/PA/CMA/2023/L.17, 13 December 2023, paras 15(a) and 16(b); Secretary-General's remarks at the World Economic Forum on 18 January 2023, "Today, fossil fuel producers and their enablers are still racing to expand production, knowing full well that this business model is inconsistent with human survival". Available at: <https://www.un.org/sg/en/content/sg/statement/2023-01-18/secretary-generals-remarks-the-world-economic-forum>.

### 3. NCP Cases

Cases brought before the NCPs in the Netherlands (1), Poland (1), Japan (1), Australia (1), and the United States (2) are important for two reasons. First, they contribute to promoting a common understanding on the interpretation and application of the Guidelines to FIs. Despite being voluntary, the Guidelines stand as the only government-backed multilateral instrument on responsible business conduct with a built-in grievance mechanism. Their broad applicability within the global financial sector covers all multinational enterprises in 51 States, representing two-thirds of world trade and encompassing some of the highest-emitting countries<sup>33</sup>. Second, the cases demonstrate that the Guidelines can be leveraged to compel FIs to fulfill their baseline responsibility, successfully addressing the indirectness problem outlined in the introduction of this article. However, the cases come with three limitations. First, NCPs have not made explicit determinations as to whether an FI has breached the Guidelines in any of the cases<sup>34</sup>. Second, they do not offer insights into the application of the updated version of the Guidelines, published in 2023<sup>35</sup>. Third, they do not offer insights into the misalignment between the updated version of the Guidelines and the most recent guidance from the OHCHR, also published in 2023<sup>36</sup>. This misalignment is problematic as the Guidelines aim to align with the UNGPs. Notably, differences persist in three crucial areas: indirect emissions, fossil fuel phase-out, and carbon offsetting. To delve into these observations, this section commences with a brief overview of the six NCP cases and the applicable framework. Subsequently, the cases are analyzed according to the updated Guidelines and the most recent guidance from the OHCHR.

#### 3.1. Overview

Although the 2011 version of the Guidelines did not specifically mention climate change, the chapters on general policies, disclosure, environment, human rights, employment and industrial relations, and consumer interests contained relevant recommendations<sup>37</sup>. Complainants used these recommendations to bring their claims concerning the adverse climate rights impacts of FIs on six occasions<sup>38</sup>. Furthermore, the three complaints

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33. OECD, Updated guidelines lift ambition on responsible business conduct, 9 June 2023. Available at: <https://www.oecd.org/newsroom/updated-guidelines-lift-ambition-on-responsible-business-conduct.htm>.

34. It must be noted that some NCPs do not have the legal authority to make a determination of non-adherence of the Guidelines, such as the United States NCP. See, OFFICE OF COMMERCIAL AND BUSINESS AFFAIRS, A Guide to the U.S. National Contact Point for the OECD Guidelines for Multinational Enterprises, March 2019, Offer Specific Instance Mediation". Available at: <https://www.state.gov/u-s-national-contact-point-for-the-oecd-guidelines-for-multinational-enterprises/a-guide-to-the-u-s-national-contact-point-for-the-oecd-guidelines-for-multinational-enterprises/#SpecificInstanceProcess>.

35. See generally Guidelines 2023, footnote 21.

36. See generally Information Note, footnote 13.

37. OECD Guidelines for Multinational Enterprises, 2011 edition. Available at: <http://dx.doi.org/10.1787/9789264115415-en>.

38. See generally *ING Bank*, footnote 20; *Development YES - Open-Pit Mines NO vs. Group PZU S.A.*, Poland NCP, filed in 2018. Available at: <https://www.oecdwatch.org/complaint/development-yes-open-pit-mines-no-vs-group-pzu-s-a/>; *Market Forces v. Mizuho, SMBC and MUFG*, Japan NCP, filed in 2018.

that were filed after 2019 also relied on the OECD's Due Diligence Guidance for Responsible Business Conduct (Due Diligence Guidance), published in 2018, and its sector-specific counterpart, Due Diligence for Responsible Corporate Lending and Securities Underwriting (Lending Due Diligence), published in 2019<sup>39</sup>. On one occasion, an NCP conducted an examination of other OECD documents, including a guidance specific to institutional investors published in 2017, and a background note on climate action published in 2019<sup>40</sup>.

The 2011 version of the Guidelines provided some specificity about climate change and what FIs should do. The most relevant recommendation in the Guidelines was contained in the commentary on the disclosure chapter, which encouraged the disclosure of direct and indirect, current and future, corporate and product greenhouse gas (GHG) emissions<sup>41</sup>. Furthermore, the chapter on the environment recommended the development and provision of products or services that reduce GHG emissions<sup>42</sup>. Beyond these specific references to GHG emissions, the complainants argued that some of the other recommendations on the environment were relevant to their case. For instance, the recommendations on the establishment of measurable objectives and, where appropriate, targets for improved environmental performance, or not using the lack of full scientific certainty as a reason for postponing cost-effective measures to prevent or minimize threats of serious damage to the environment<sup>43</sup>. The relevant recommendations from other chapters of the Guidelines included, applying high quality standards for financial and non-financial disclosures, and not making representations or omissions, nor engaging in any other practices, that are deceptive, misleading, fraudulent, or unfair<sup>44</sup>.

Building on these, each complainant put the focus on adverse climate rights impacts either at the center or the periphery of their claims. The former specifically alleged that there was a breach of the chapter on human rights. The latter did not raise an alleged breach of the chapter on human rights, but nonetheless, referred to taking into account the human health and safety impacts of corporate climate policies and disclosures. Only two complaints belong to this category, one of which led to a successful agreement amongst the parties<sup>45</sup>. Filed in 2017 to the Dutch NCP, the complainants in the *Oxfam*

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Available at: <https://www.oecdwatch.org/complaint/market-forces-v-mizuho-smbc-and-mufg/>. *Australian bushfire victims and Friends of the Earth Australia v. Australia and New Zealand Bank*, Australia NCP, filed in 2020. Available at: <https://www.oecdwatch.org/complaint/australian-bush-fire-victims-and-foe-australia-vs-anz-bank/>. *Divest Invest Protect, Indigenous Peoples Law and Policy Program, and Women's Earth and Climate Action Network v. Credit Suisse Group, United States NCP*, filed in 2020. Available at: <https://www.oecdwatch.org/complaint/indigenous-women-and-divest-invest-protect-vs-credit-suisse/>. *Marsh*, footnote 16.

39. OECD Due Diligence Guidance for Responsible Business Conduct (2018); Lending Due Diligence, footnote 6, p. 6. See *ANZ Bank*, footnote 38, Complaint, 30 January 2020, p. 11; *Credit Suisse*, footnote 38, Initial Assessment, 31 August 2021, p. 5; *Marsh*, footnote 16, Summary of Complaint, 7 February 2023, p. 3.

40. *ANZ Bank*, footnote 38, Final Statement, 15 December 2021, paras 16-20 and 27-34.

41. Guidelines 2021, footnote 37, Commentary (Disclosure), para 33.

42. *Ibid* Chapter IV (Environment), Article 6 (b).

43. *Ibid* Chapter IV (Environment), Articles 1(b) and 4.

44. *Ibid* Chapter III (Disclosure), Article 4 and Chapter VIII (Consumer Interests), Article 4.

45. See generally *ING Bank*, footnote 20; *ANZ Bank*, footnote 38.

*Novib, Greenpeace Netherlands, BankTrack, and Friends of the Earth Netherlands (Milieudefensie) v. ING Bank* case aimed to compel ING Bank to measure and publish its indirect emissions (i.e. measuring), set specific and measurable goals (i.e. target setting), and reduce its emissions and align with the 1.5°C goal of the Paris Agreement (i.e. steering)<sup>46</sup>. The complainants particularly used climate science to justify their claim by drawing attention to the difference limiting warming to 1.5°C makes to many inhabitants of island nations and deltas. “It is literally the difference between being able to continue to live in their homes or having to flee due to rising sea levels”, emphasized the complainants<sup>47</sup>.

After around two years of dialogues facilitated by the Dutch NCP, ING Bank agreed to steer its lending portfolio towards meeting the Paris Agreement goal of keeping global warming well below 2°C<sup>48</sup>. Furthermore, it has published its decisions to almost completely phase out its investments in the coal industry by the year 2025, as well as refraining from investing in new coal-fired power stations<sup>49</sup>. A novel outcome of the process was the agreement of the parties to call directly upon the Dutch government to request the International Energy Agency (IEA) to develop two scenarios as soon as possible, one with and one without carbon capture and storage (CCS), that provide a 66 percent chance of limiting global warming to below 1.5°C<sup>50</sup>. This was intended to allow banks and other FIs to adjust their loans and investments accordingly<sup>51</sup>.

The success of this case was replicated in the *Poland Development YES – Open-Pit Mines NO v. Group PZU S.A.* case, where the disclosures of the insurance, reinsurance, and banking activities of PZU Group were assessed<sup>52</sup>. Putting human rights at the center of the claim, the complainant argued that PZU Group should have performed an analysis of the human rights impacts of its insurance, reinsurance, and investment activities in carbon-intensive sectors, in particular the coal sector<sup>53</sup>. The complainant alleged that insuring and investing in the activities of entities which extract or burn coal may limit the right to live in a clean environment<sup>54</sup>. Therefore, the complainant argued that PZU Group should disclose the real and potential impacts of its financial products and services on climate rights, and the actions taken to minimize the identified adverse impacts<sup>55</sup>. The dialogues supported by the Polish NCP led to the publication of PZU Group’s new non-financial statement, which disclosed information on its human rights and environmental protection policies<sup>56</sup>. Although the complainant expressed its satisfaction with the disclosures, it noted that they were not

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46. *ING Bank*, footnote 20, Final Statement, 19 April 2019, para 5.2.

47. *Ibid* Press Release, 19 April 2019, p. 1.

48. *Ibid* Final Statement, 19 April 2019, para 5.5.

49. *Ibid* para 5.4.

50. *Ibid* para 5.5.

51. *Ibid* Press Release, 19 April 2019, p. 2.

52. Only the Initial Assessment of the *ING Bank* case was available during the dialogues conducted by the Polish NCP. See *Group PZU*, footnote 38, Final Statement, 26 July 2019, p. 6.

53. *Ibid* pp. 3-4.

54. *Ibid*.

55. *Ibid*.

56. *Ibid* pp. 6-7.

perfect yet, particularly with regard to PZU Group's responsibility for the activities of the entities it insures or with regard to the emissions caused by its investments<sup>57</sup>.

The outcomes of the remaining concluded cases did not result in an immediate shift in corporate policies and disclosures. On two occasions, dialogues failed to result in an agreement between the parties, and one claim was rejected based on procedural grounds<sup>58</sup>. From these cases, two key insights emerge. First, FIs demonstrated the ability to effectively utilize a combination of arguments to assert their adherence to the Guidelines. This was exemplified in the complaint against three Japanese FIs in the *Market Forces v. Mizuho, SMBC and MUFG* case for financing coal-fired power projects in Vietnam, which allegedly adversely impacted the rights to a healthy environment and livelihood<sup>59</sup>. The FIs employed arguments encompassing client confidentiality, adherence to other voluntary international frameworks, and the "ineffectiveness of exclusion"<sup>60</sup>. The first allowed them to resist disclosing project-specific environmental and human rights information<sup>61</sup>. The second enabled them to assert that, despite not disclosing their due diligence reports, they had conducted the appropriate due diligence, aligning their loan approval process with the Equator Principles<sup>62</sup>. Lastly, by emphasizing that their loan amount comprised less than half of the total project funding, and asserting limited leverage as one of the lenders, they successfully invoked the "ineffectiveness of exclusion" argument. In essence, they demonstrated that the projects would have proceeded without their involvement<sup>63</sup>.

The second insight arises from the comments of the OECD Watch regarding the conservative interpretation of the Guidelines of the Australian NCP and the misinterpretation of the Guidelines of the United States NCP<sup>64</sup>. The former concluded in its final assessment of the *Australian bushfire victims and Friends of the Earth Australia v. ANZ Bank* case that issues relating to climate disclosure, target-setting and scenario analysis fell within the scope of the Guidelines, whereas divestment from fossil fuels did not<sup>65</sup>. The latter demonstrated in its initial assessment of the *Divest Invest Protect, Indigenous Peoples Law and Policy Program, and Women's Earth and Climate Action Network v. Credit Suisse Group* case a conflation of the adverse climate rights impacts connected with the project financing activities of Credit Suisse Group with those stemming from its corporate lending activities<sup>66</sup>. Despite the resolution of an earlier NCP case concerning Credit Suisse's project financing activities, the new complaint before the United States NCP did merit further examination because it concerned the

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57. Ibid p. 7.

58. See generally *Mizuho*, footnote 38; *ANZ Bank*, footnote 38; *Credit Suisse*, footnote 38.

59. *Mizuho*, footnote 38, Complaint, November 2016, p. 16.

60. Ibid Final Statement, 15 January 2021, paras 5(2)-(4).

61. Ibid para 5(4).

62. Ibid para 5(2).

63. Ibid.

64. *ANZ Bank*, footnote 38, "Outcome"; *Credit Suisse*, footnote 38, "Outcome".

65. *ANZ Bank*, footnote 38, Final Statement, 15 December 2021, para 41 and Initial Assessment, 24 November 2020, paras 19 and 22 (2).

66. *Credit Suisse*, footnote 38, "Outcome".

bank's corporate lending activities<sup>67</sup>. The fact that the bank agreed to change its internal guidelines on project financing as a result of an earlier NCP case or that the same project or client was involved in both claims should not have led the United States NCP to reject the claim<sup>68</sup>. Notably, the involvement of indigenous peoples directly affected by the project and broader lending activities in the new complaint indicated the necessity for analysis<sup>69</sup>.

In this emerging landscape, several NGOs filed a complaint against Marsh with the United States NCP in 2023<sup>70</sup>. Alleging that Marsh, as an insurance broker for the East African Crude Oil Pipeline (EACOP), contributes to adverse climate rights impacts, the complainants request Marsh to cease its role, disclose relevant policies, and adopt an effective due diligence policy<sup>71</sup>. As the analysis below argues, this case presents a groundbreaking opportunity. Not only can the United States NCP build on a series of case assessments reviewed by the OECD Watch, but it can also take into account the updated version of the Guidelines and the most recent guidance from the OHCHR.

### 3.2. Analysis

In 2023, the Guidelines were updated to incorporate, amongst others, recommendations on climate change and biodiversity<sup>72</sup>. Concurrently, the OECD introduced a specialized tool designed for institutional investors to manage climate risks and impacts directly linked to their investments and activities<sup>73</sup>. These developments follow OECD reports on transition finance and a due diligence framework for adverse environmental and social impacts of FIs<sup>74</sup>. Additionally, the OHCHR issued an information note on the application of the UNGPs to the climate crisis, featuring dedicated recommendations for FIs<sup>75</sup>. The interpretation of the Guidelines in accordance with the OHCHR information note presents an opportunity to promote a common understanding for FIs to meet their baseline responsibility. However, challenges could arise due to existing misalignments of the recommendations on indirect emissions, fossil fuel phase-out, and carbon offsetting. This section begins with an examination of the OECD updates and the OHCHR information note. Then, it highlights

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67. Ibid Final Statement, 31 August 2021, para III (f).

68. Ibid "Outcome".

69. Ibid.

70. *Marsh*, footnote 16, Summary of Complaint, 7 February 2023, p. 1.

71. Ibid pp. 3-4.

72. Guidelines 2023, footnote 21, Commentary (Environment), paras 33-38.

73. See generally OECD, *Managing Climate Risks and Impacts Through Due Diligence for Responsible Business Conduct: A Tool for Institutional Investors*, 3 October 2023, "Understanding investor's relationship to climate risks and impacts directly linked to their investments and activities". Available at: <https://www.oecd-ilibrary.org/sites/8aee4fce-en/1/3/2/index.html?itemId=/content/publication/8aee4fce-en&csp=ed1a71fe57ed671337257727d20b8e07&itemIGO=oeecd&itemContentType=book#section-d1e891-afb683167a>.

74. See generally OECD, *Guidance on Transition Finance: Ensuring Credibility of Corporate Climate Transition Plans*, 3 October 2022; OECD, *Responsible Business Conduct Due Diligence for Project and Asset Finance Transactions*, 2022, pp. 12 and 13.

75. Information Note, footnote 13, paras 16-22.

insights for the United States NCP's consideration in the complaint against Marsh.

With the updates, the Guidelines now explicitly address climate change in the chapter on the environment, as well as in the commentary on disclosure, environment, and science, technology and innovation<sup>76</sup>. Notably, a crucial recommendation regarding the disclosure of GHG emissions—covering direct and indirect, current and future, corporate and product GHG emissions—has been replaced by a softer stance focusing on the disclosure of material sustainability-related information<sup>77</sup>. Additionally, the commentary on consumer interests suggests providing information about the sustainability attributes of financial products or services<sup>78</sup>. Finally, the commentary on the environment now recommends setting science-based targets on emissions from own operations and purchased electricity (referred to as Scope 1 and Scope 2 emissions)<sup>79</sup>. However, indirect emissions are only recommended “to the extent possible based on best available science”<sup>80</sup>.

Moreover, climate change is now explicitly categorized as an adverse environmental impact<sup>81</sup>. The link between climate change and human rights is also firmly acknowledged, necessitating enterprises to factor in related actual or potential impacts during their risk-based due diligence processes<sup>82</sup>. For institutional investors, this particularly means assessing their investments in assets or businesses that directly or indirectly contribute to GHG emissions or impact carbon sinks in a manner inconsistent with the Paris Agreement goals based on best available science<sup>83</sup>. Furthermore, they should assess activities that undermine climate adaptation for, or resilience of, communities, workers, and ecosystems<sup>84</sup>. The OECD explains that in both occasions, investors may be contributing to or be directly linked to adverse impacts through their business relationships<sup>85</sup>. If they are directly linked to adverse impacts, then they must prevent or mitigate those impacts by taking measures<sup>86</sup>. The OECD recommends two sets of measures: first, influencing existing assets through engagement, active ownership, and stewardship, and second, responding to climate considerations through portfolio allocation at asset-class and asset-levels using available investments strategies<sup>87</sup>. Additionally, if investors have contributed to the

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76. Guidelines 2023, footnote 21, Chapter VI (Environment), Chapeau, Commentary (Disclosure), para 37, Commentary (Environment), paras 66, 70, 76, 77, 79, 80, Commentary (Science, Technology and Innovation), para 105.

77. *Ibid* Commentary (Disclosure), para 33.

78. *Ibid* Commentary (Science, Technology and Innovation), para 97.

79. *Ibid* Commentary (Environment), para 77.

80. *Ibid*.

81. *Ibid* Chapter VI (Environment), Preamble.

82. *Ibid* Commentary (Environment), para 70; Finance Due Diligence, footnote 74, p. 12.

83. Climate Risk Tool, footnote 73, “Understanding investor’s relationship to climate risks and impacts directly linked to their investments and activities”.

84. *Ibid*.

85. *Ibid* “RBC due diligence by institutional investors for climate risks and impacts”, Measure 3.

86. *Ibid*.

87. *Ibid*.

adverse impacts, then they must provide for or cooperate in the provision of remedies<sup>88</sup>.

This clarification can be considered as a pivotal development facilitating FIs in meeting their baseline responsibility. Practical implementation, however, may encounter challenges due to two key matters. First, the assessment of an enterprise's connection to adverse impacts relies on applicable rules and regulatory frameworks, as well as widely recognized standards.<sup>89</sup> In practice, this may result in situations where regulations governing an FI do not sufficiently mandate relevant disclosures or actions, and the widely recognized standard employed by the FI may allegedly prove ineffective in preventing or mitigating harm. An illustration of this is evident in the *Mizuho* case, where client confidentiality was used to circumvent disclosure requirements, and adherence to a widely recognized standard (the Equator Principles) was invoked<sup>90</sup>. It is uncertain whether the application of the updated version of the Guidelines and the accompanying recommendations for institutional investors could have facilitated a different result.

Second, transitional efforts are placed at the heart of the due diligence process<sup>91</sup>. This may be problematic, because the focus of the due diligence process may tilt away from the severity of the adverse impact in favor of the existence of science-based GHG reduction targets of investors and investees. It must be reiterated that the OECD recommends science-based GHG reduction targets to take into account indirect emissions "to the extent possible"<sup>92</sup>. In fact, the Guidelines and the climate risk tool explicitly state that many business activities will continue to involve some level of GHG emissions or reduction of carbon sinks<sup>93</sup>. Therefore, FIs could claim to have conducted the necessary due diligence, and be aligned with the Paris Agreement goals based on available science, whilst neglecting the adverse impacts associated with their and their investees' indirect emissions. This might undermine the successes achieved with the *ING Bank* and *Group PZU S.A* cases.

If an adverse impact is identified nonetheless, then the OECD encourages engagement with investee companies involved in such activities<sup>94</sup>. As the OECD claims, investors can play "a key role in supporting high-carbon, energy-intensive and hard-to-abate companies and economic activities transition to net-zero emission trajectory"<sup>95</sup>. In other words, continuing to provide financial products and services to fossil fuel companies are, of themselves, not inconsistent with the Guidelines, even when an adverse impact is identified. Disengagement from a business relationship or divestment from a project are seen as last resort and reserved only for the most severe adverse impacts, to be considered if engagement actions have

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88. Ibid.

89. Ibid Measure 2; Guidelines 2023, footnote 21, Chapter VI (Environment), para 4.

90. *Mizuho*, footnote 38, Final Statement, 15 January 2021), paras 5(2)-(4).

91. Climate Risk Tool, footnote 73, "RBC due diligence by institutional investors for climate risks and impacts", Measure 2; Guidelines 2023, footnote 21, Commentary (Environment), paras 76-77.

92. Ibid.

93. Ibid.

94. Climate Risk Tool, footnote 73, "RBC due diligence by institutional investors for climate risks and impacts", Measure 2.

95. Ibid "Understanding investor's relationship to climate risks and impacts directly linked to their investments and activities".

failed<sup>96</sup>. The OECD justifies this position by clarifying that the divested assets might be purchased by another investor or disengagement may slow the needed transition in high-emitting assets and sectors<sup>97</sup>. These arguments resonate with the “ineffectiveness of exclusion” defense FIs may use in climate litigation.

This stance is in stark contradiction with the OHCHR information note. The OHCHR recommends a comprehensive identification of all emissions across enterprises’ operations, products and services, including their Scope 3 emissions, emphasizing that this identification should be science-based, verifiable and informed by input from experts<sup>98</sup>. Furthermore, the OHCHR recommends that all business enterprises should phase out fossil fuel use and GHG emissions production, with FIs specifically urged to move away from financing fossil fuel projects<sup>99</sup>. The OECD and the OHCHR differ in their approach to carbon offsetting as well. While the OHCHR clearly advise against the use of carbon offsets and contribution to deforestation, the Guidelines consider carbon credits or offsets as “a means to address unabated emissions as a last resort”, but warn that they should be “of high environmental integrity”, a term left undefined<sup>100</sup>. On a positive note, the OECD states that enterprises should report publicly on their reliance on, and relevant characteristics of, any carbon credits or offsets<sup>101</sup>.

The pending admissibility decision in the *Marsh* case provides an opportunity to underscore the Guidelines’ effectiveness in facilitating FIs to meet their baseline responsibility. Contrary to viewing Marsh’s role as inherently indirect, the crucial consideration lies in substantiating the link between Marsh’s activities and the actual or potential adverse impacts associated with EACOP. The summary of the complaint underscores the effort invested in demonstrating this link<sup>102</sup>. Notably, the engagement of affected local organizations in the complaint adds weight to the likely link between Marsh’s activities and the adverse climate rights impacts raised<sup>103</sup>. Furthermore, the treatment of EACOP before the East African Court of Justice, which was recently dismissed due to being time barred, emphasizes the materiality of the issues at hand<sup>104</sup>.

If the United States NCP decides to facilitate mediation, Marsh would be expected to engage in good faith<sup>105</sup>. The dialogues offer Marsh a valuable

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96. Ibid “RBC due diligence by institutional investors for climate risks and impacts”, Measure 2; Guidelines 2023, footnote 21, Commentary (General Policies), para 23.

97. Climate Risk Tool, footnote 73, “RBC due diligence by institutional investors for climate risks and impacts”, Measure 2.

98. Information Note, footnote 13, para 17 (d).

99. Ibid para 20.

100. Information Note, footnote 13, para 19 (b); Guidelines 2023, footnote 21, Commentary (Environment), para 77.

101. Guidelines 2023, footnote 21, Commentary (Environment), para 77.

102. *Marsh*, footnote 16, Summary of Complaint, 7 February 2023, pp. 1-2.

103. Ibid.

104. *Centre for Food and Adequate Living Rights et al. v. The Attorney General of the Republic of Uganda, The Attorney General of the United Republic of Tanzania, and the Secretary General of the East African Community*, Reference n.º 39/2021, East African Court of Justice at Arusha First Instance Division, 29 November 2023, para 64. Available at: <https://www.eacj.org/wp-content/uploads/2023/11/Reference-No.-39-of-2020.pdf>.

105. United States NCP Guide, footnote 34, “Mediation”.

opportunity to fulfill its baseline responsibility, enhance its reputation both locally and internationally by respecting climate rights, and take concrete measures to prevent, mitigate or remedy harm. Furthermore, engaging in the dialogue would position Marsh as an active contributor to setting standards of conduct for its industry. While Marsh can invoke arguments such as client confidentiality, adherence to voluntary international standards, and the “ineffectiveness of exclusion”, it may instead take this opportunity to unequivocally manifest its commitment to being a responsible corporate citizen.

#### 4. Court Cases

Cases brought before the domestic courts in Switzerland (2), Belgium (1), United Kingdom (1), Brazil (1), Italy (1), and France (2) offer valuable insights into three key areas. First, they show the relevance of the UNGPs and the Guidelines, explicitly discussed in petitions in half of the cases. Second, they underscore the strategic use of recently established legal obligations to promote corporate liability on ESG issues, notably the directors’ “success duty” in United Kingdom law, and the corporate vigilance duty in French law. Third, they represent the necessity to hold publicly funded FIs accountable for their adverse climate rights impacts. Half of the cases are currently pending before the courts, which makes it difficult to predict the judicial receptivity of these cases. Despite this challenge, the cases accentuate the multifaceted use of climate rights, spanning claims relating to corporate policies and disclosures, due diligence processes, climate protests, the fiduciary duties of directors, and divestment demands. The discussion begins with a description of eight court cases and the underlying legal frameworks. Subsequently, an analysis of the multifaceted use of climate rights considers whether these cases echo the observed trends in ESG litigation.

##### 4.1. Overview

Claims before the courts are based on various legal foundations, incorporating provisions from constitutional law, domestic statutes, secondary rules and regulations, international and regional treaty law, and “soft” law, as well as legal doctrine. UNGPs and the Guidelines were discussed in four petitions<sup>106</sup>, with the infringement of the rights guaranteed under the ECHR being invoked in four cases<sup>107</sup>. All cases centered on adverse climate rights impacts of the involved FIs, except for *USS*, which put

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106. *BNDES*, footnote 17, Petition, 21 June 2022, paras 123-125; *Notre Affaire à Tous-BNP Paribas*, footnote 20, Summons, 13 June 2023), paras 43-59; *Comissão Pastoral da Terra and Notre Affaire à Tous v. BNP Paribas*, France Judicial Court of Paris, filed in 2023, Summons, 15 June 2023, para II.C.2. Available at: <https://climatecasechart.com/non-us-case/comissao-pastoral-da-terra-and-notre-affaire-a-tous-v-bnp-paribas/#:-:text=Summary%3A,and%20violations%20of%20human%20rights;Greenpeace%20Italy%20et%20Al.%20v.%20ENI%20S.p.A.,the%20Italian%20Ministry%20of%20Economy%20and%20Finance%20and%20Cassa%20depositi%20e%20prestiti%20S.p.A.,Italy%20Court%20of%20Rome,filed%20in%202023,Summons,9%20May%202023,para%2023.4.> Available at: <http://climatecasechart.com/non-us-case/greenpeace-italy-et-al-v-eni-spa-the-italian-ministry-of-economy-and-finance-and-cassa-depositi-e-prestiti-spa/>.

107. *N.B.*, footnote 28, Federal Supreme Court Judgment, 28 September 2021, para 4; *Climate Protesters*, footnote 28, Federal Supreme Court Judgment, 26 May 2021), para 1.2; *USS*, footnote 18, Claim Form, 26 October 2021, para 103; *ENI*, footnote 106, Summons, 9 May 2023, para 23.2.

the matter in the periphery and focused on the breach of directors' duties instead. Climate protesters faced guilty verdicts in two separate cases, one claim was withdrawn following remedial measures, and one case was dismissed on appeal. The remaining cases are currently pending before the courts.

In interconnected criminal proceedings involving Credit Suisse and the climate activist collective "BreakFree Suisse", Articles 10 and 11 of the European Convention on Human Rights (ECHR) were invoked, addressing freedoms of expression, association and assembly<sup>108</sup>. The first case pertained to a climate march in October 2018, during which an activist marked Credit Suisse's façade with red handprints, symbolizing the blood of climate change victims. The activist faced charges of property damage<sup>109</sup>. The second case related to a demonstration against Credit Suisse's fossil fuel investments in November 2018, where activists occupied the bank's entry halls and staged a tennis match to protest a tennis player's involvement in the bank's advertising campaign<sup>110</sup>. Some activists complied with police requests to leave, while others were forcibly removed<sup>111</sup>. As a result, twelve activists were charged with trespassing, violating specific sections of the general police regulations, and preventing an official act<sup>112</sup>.

The Swiss Federal Supreme Court found in both cases that Articles 10 and 11 of the ECHR, read in conjunction with the Swiss constitution, did not automatically confer the right to enter private property, act contrary to peaceful assembly, or commit acts of vandalism<sup>113</sup>. Furthermore, the court held that the protesters' actions could not be justified as a "legitimate act in a situation of necessity" under Article 17 of the Swiss Criminal Code (SCC)<sup>114</sup>. The court reasoned that the application of Article 17 of the SCC required the presence of an immediate (i.e. current and concrete) danger to an individual's specific legal interest that could not otherwise be averted<sup>115</sup>. In the court's opinion, climate change did not pose an immediate danger to an individual's specific legal interest<sup>116</sup>. Instead, the dangers of climate change can strike everyone indiscriminately, without it being possible to identify a specifically threatened legal interest, according to the court<sup>117</sup>. If the activists aimed to defend collective interests, such as the environment and health of the population as a whole, then the court stated that these would not be acceptable grounds for the application of Article 17<sup>118</sup>. Furthermore, it was not the case that the climate crisis was "impossible" to avert by means other

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108. *Ibid.*

109. *N.B.*, footnote 28, Federal Supreme Court Judgment, 28 September 2021, "Facts".

110. *Climate Protesters*, footnote 28, Federal Supreme Court Judgment, 26 May 2021, "Facts".

111. *Ibid.*

112. *Ibid.*

113. *N.B.*, footnote 28, Federal Supreme Court Judgment, 28 September 2021, para 4; *Climate Protesters*, footnote 28, Federal Supreme Court Judgment, 26 May 2021, para 1.2.

114. *N.B.*, footnote 28, Federal Supreme Court Judgment, 28 September 2021, para 3; *Climate Protesters*, footnote 28, Federal Supreme Court Judgment, 26 May 2021, para 2.

115. *Ibid.*

116. *Ibid.*

117. *Ibid.*

118. *Ibid.*

than those employed by the activists<sup>119</sup>. In the court's opinion, the activists had other legal means to express their demands from the bank, such as authorized demonstrations and media interventions<sup>120</sup>.

Exemplifying the use of other legal means strategically in the *ClientEarth v. Belgian National Bank* case, an NGO initiated a claim in Belgium against the Belgian National Bank, seeking a referral to the Court of Justice of the European Union (CJEU) to assess the validity of the Corporate Sector Purchase Program (CSPP) of the European Central Bank (ECB)<sup>121</sup>. To determine if the Belgian National Bank's actions under the CSPP were legal, the domestic court was requested to ask the CJEU whether the CSPP was valid<sup>122</sup>. The ECB developed the CSPP to improve financing conditions for euro-zone businesses as a form of quantitative easing (Macchiarelli CO, Monti MA, Vedolin AN, 2017). However, the NGO claimed that the CSPP enabled European central banks, including the Belgian National Bank, to direct cheap finance and favorable lending conditions towards GHG-intensive sectors<sup>123</sup>. The CSPP allegedly undermined the emission reduction commitments of the European Union (EU) under the Paris Agreement goals<sup>124</sup>. This was allegedly in violation of the ECB's obligation to respect human rights, particularly, the rights to life, and respect for private and family life, and environmental protection, stipulated in Articles 2, 7 and 37 of the EU Charter of Fundamental Rights<sup>125</sup>.

The domestic court dismissed the claim based on procedural grounds and refused to refer the question to the CJEU<sup>126</sup>. Nonetheless, the claimant appealed the decision. Subsequently, the ECB reformed the CSPP, remedying the alleged illegality and leading to the claimant withdrawing the case<sup>127</sup>. The reforms involved a redirection of central banks' corporate bond purchases away from companies exhibiting poor climate performance<sup>128</sup>. Despite these adjustments, the claimant maintained persistent concerns about central banks' ongoing support for fossil fuel and other polluting enterprises<sup>129</sup>.

The remaining cases highlight three issues: the relevance of the UNGPs and the Guidelines, the strategic use of recently established legal obligations, and the imperative to hold State-owned and State-supported FIs accountable. Expounding on the first, the claimants in four cases invoked the UNGPs and the Guidelines to establish the baseline responsibility of FIs. In assessing

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119. Ibid.

120. Ibid.

121. *ClientEarth v. Belgian National Bank*, Belgium Brussels Court of First Instance, filed in 2021, Press Release, 29 November 2022, pp. 1-2. Available at: <http://climatecasechart.com/non-us-case/clientearth-v-belgian-national-bank/>.

122. Ibid.

123. *Belgian National Bank*, footnote 121, Press Release, 29 November 2022, p. 2; ClientEarth, ClientEarth sues over climate impact of ECB policy. Available at: <https://www.clientearth.org/latest/press-office/press/clientearth-sues-over-climate-impact-of-ecb-policy/>.

124. Ibid.

125. *Belgian National Bank*, footnote 121, "Summary".

126. Ibid.

127. Ibid Press Release, 29 November 2022, p. 1.

128. Ibid.

129. Ibid.

whether the FIs fell short of meeting their baseline responsibility, the claimants urged the courts to specifically consider two factors: the size of the operations of the respondent FIs, and the severity of the adverse climate rights impacts<sup>130</sup>. Under the UNGPs and the Guidelines, larger and more complex enterprises are recognized to have a greater capacity to undertake comprehensive human rights due diligence and implement measures to address adverse impacts throughout their operations and business relationships<sup>131</sup>. Emphasizing the severity of the adverse impacts on the rightsholders as the decisive factor, and not the risks to businesses, the claimants requested measures including the prevention and mitigation of adverse climate rights impacts by measuring, target setting and steering corporate policies and business activities. Additional requests included divestment or disengagement from specific business relationships, declaration of liability for past and potential future financial and non-financial losses, and the imposition of monetary penalties for non-compliance with the Paris Agreement goals<sup>132</sup>.

Expounding on the strategic use of recently established legal obligations, the “success duty” of directors was codified under section 172 of the United Kingdom Companies Act of 2006 (hereinafter “CA06”)<sup>133</sup>. Accordingly, the directors of a United Kingdom company are required to have regard to, amongst others, the likely consequences of their decisions in the long term, and the impact of the company’s operations on the community and the environment<sup>134</sup>. In 2018, a disclosure requirement was introduced for large companies, requiring the boards to make a statement on how they have regard to the matters in section 172 of CA06<sup>135</sup>. Additionally, in France, a duty of vigilance was introduced on large French companies in 2017, requiring the adoption, publication, and implementation of a proactive plan to prevent serious violations of human rights, and the health and safety of individuals and the environment resulting from business activities<sup>136</sup>.

The first legal development powered the *USS* lawsuit, in which two members of a pension fund alleged a breach of directors’ duties due to continuing fossil fuel investments without a divestment plan<sup>137</sup>. They argued that directors’ duties must be interpreted compatibly with the rights to life, and respect for private and family life outlined in Articles 2 and 8 of the ECHR,

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130. *BNDES*, footnote 17, Petition, 21 June 2022, paras 123-125; *Notre Affaire à Tous-BNP Paribas*, footnote 20, Summons, 13 June 2023, paras 43-59; *Comissão Pastoral da Terra-BNP Paribas*, footnote 106, Summons, 15 June 2023, para II.C.2; *ENI*, footnote 106, Summons, 9 May 2023, para 23.4.

131. Guidelines 2023, footnote 21, Commentary (General Policies), para 20, Chapter IV (Human Rights), para 5, Commentary (Human Rights), para 42; UNGPs Interpretive Guide, footnote 27, pp. 20, 21, 24, 29.

132. *ENI*, footnote 106, Summons, 9 May 2023, paras 31.4-31.5.

133. Companies Act 2006, United Kingdom Public General Acts, Part 10, Chapter 2, The general duties, section 172.

134. *Ibid* section 172 (1) (a) and (d).

135. *Ibid* section 414CZA. Also see Corporate Governance Code 2018, United Kingdom, Provision 5.

136. Law inserted in Article L. 225-102-4 of the French Commercial Code. To complete the framework, the “loi Pacte” was adopted in 2019. Loi n° 2017-399 du 27 mars 2017 relative au devoir de vigilance des sociétés mères et des entreprises donneuses d’ordre” Journal officiel de la République, 27 March 2017. Available at: <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000034290626&dateTexte=&categorieLien=id>.

137. *USS*, footnote 18, Claim Form, 26 October 2021, paras 32 and 103.

incorporated into domestic law by the United Kingdom Human Rights Act of 1998<sup>138</sup>. The second legal development inspired two cases—*Comissão Pastoral da Terra and Notre Affaire à Tous v. BNP Paribas* and *Notre Affaire à Tous, Les Amis de la Terre, and Oxfam France v. BNP Paribas*—against BNP Paribas’s vigilance plan and financing and investment activities, alleging their incompatibility with limiting global warming to 1.5°C<sup>139</sup>. The claimants highlighted several adverse climate rights impacts of BNP Paribas’s business activities, including on the effective enjoyment of the rights to life, adequate food, housing, water and sanitation, healthy environment, indigenous rights, and labor rights<sup>140</sup>.

Finally, expounding on the imperative to hold State-owned and State-supported FIs accountable, the *Greenpeace Italy et. Al. v. ENI S.p.A., the Italian Ministry of Economy and Finance and Cassa Depositi e Prestiti S.p.A.* case stands out. The claimants in this case targeted not only Italy’s oil and gas giant ENI, but also its two investors, the Italian Ministry of Economy and Finance (MEF) and Cassa Depositi e Prestiti Società per Azioni (CDP)<sup>141</sup>. Although historically a public administration body formed to finance public investments from the collection of postal savings, CDP is currently a joint-stock company in the form of a non-banking financial intermediary subject to the supervision of the Bank of Italy<sup>142</sup>. The claimants argued that the CDP should be considered as an indirect organ of MEF due to the ministry’s decisive influence on its activities as a result of the large majority it holds in CDP’s capital and the specific powers conferred on it with regard to CPD’s management<sup>143</sup>. Furthermore, the claimants contended that CDP and MEF collectively retained ownership of over 30 percent of ENI’s shares, implying a degree of effective control<sup>144</sup>. Therefore, according to the claimants, ENI, MEF and CDP were jointly and severally liable for the failure of ENI to align its business activities with the Paris Agreement goals<sup>145</sup>. They invoked the breach of the rights to life and respect for private and family life under Articles 2 and 8 of the ECHR<sup>146</sup>.

The *BNDES* case articulated similar arguments. Emphasizing that Brazil’s national development bank, BNDES, and its investment arm, BNDESpar, are essentially State-managed entities funded by the public, the claimant reasoned that the absence of climate impact assessment procedures for BNDESpar’s investments contravened Brazil’s climate policies and commitments<sup>147</sup>. Furthermore, the claimant alleged the violations of the right to an ecologically balanced environment, and the duty to prioritize the well-being of the environment above economic and business interests, as

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138. *Ibid* para 103.

139. *Notre Affaire à Tous-BNP Paribas*, footnote 20, Summons, 13 June 2023, para 30; *Comissão Pastoral da Terra- BNP Paribas*, footnote 106, Summons, 15 June 2023, para II.C.1.

140. *Notre Affaire à Tous-BNP Paribas*, footnote 20, Summons, 13 June 2023, paras 26-28; *Comissão Pastoral da Terra- BNP Paribas*, footnote 106, Summons, 15 June 2023, para I.C.2.

141. *ENI*, footnote 106, Summons, 9 May 2023, para 20.2.

142. *Ibid*.

143. *Ibid*.

144. *Ibid*.

145. *Ibid*.

146. *Ibid* para 23.2.

147. *BNDES*, footnote 17, Petition, 21 June 2022, paras 27-54.

outlined in Articles 225 and 170 of the Brazilian constitution<sup>148</sup>. Demonstrating that BNDESpAr invests public resources has further reinforced the claimant's plea for the establishment of a Climate Situation Room<sup>149</sup>. This room would transparently assess the climate targets of BNDES and BNDESpAr and provide access to representatives of civil society, traditional peoples and communities, academics, and relevant public officials<sup>150</sup>.

Together, the court cases show the multifaceted use of climate rights. From climate protests to central banks' investment activities to corporate disclosures and target setting, the cases exhibit activism, creative lawyering, and the growing exposure of FIs to climate litigation risk. The likelihood of case replication, where success in one jurisdiction or case serves as a catalyst for similar actions elsewhere, remains high (Wonneberger AN, Vliegthart RE, 2021). This prospect is particularly pronounced given two factors. First, there is a growing trend towards regulating corporate liability on ESG issues, which has been observed to inspire ESG litigation (Delikat MI, Kray ST, Frantz CA, 2023). The cases of *USS*, *Comissão Pastoral da Terra-BNP Paribas* and *Notre Affaire à Tous-BNP Paribas* may be viewed as instances falling under this trend.

Second, the claimants involved in the cases are transnational activist organizations heavily invested in climate litigation (and increasingly ESG litigation). For instance, the Special Procedures Communications against Saudi Aramco and its financiers, discussed at the beginning of this article, were initiated by ClientEarth<sup>151</sup>. This environmental law charity not only acted as a claimant in the *Belgian National Bank* case explained above, but also spearheaded *ClientEarth v. European Investment Bank*, which led to a 2023 CJEU ruling compelling the bank to face public scrutiny over its financing decisions<sup>152</sup>. It also filed the second case in the United Kingdom targeting the directors of a company for climate inaction, following the *Millieudéfensie v. Royal Dutch Shell* judgment in which the Dutch court instructed Shell to adopt corporate emissions reduction policies<sup>153</sup>. Greenpeace is another organization that stands out. Its international network spearheaded the *ENI* case explained above, as well as the challenge of the European Union's Taxonomy Regulation over its green gas label<sup>154</sup>. These

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148. Ibid paras 92-95.

149. Ibid para 191.

150. Ibid.

151. ClientEarth, Frequently asked questions: UN human rights complaint regarding Saudi Aramco and its financiers. Available at: <https://www.clientearth.org/media/4loj005o/faq-un-human-rights-complaint-regarding-saudi-aramco-and-its-financiers.pdf>.

152. See generally *ClientEarth v. European Investment Bank*, Judgment of the General Court, 27 January 2021, Case n.º T-9/19. Available at: [https://climatecasechart.com/wp-content/uploads/non-us-case-documents/2021/20210127\\_T-919-General-Court-case-and-C-21221-P-ECJ-case\\_judgment.pdf](https://climatecasechart.com/wp-content/uploads/non-us-case-documents/2021/20210127_T-919-General-Court-case-and-C-21221-P-ECJ-case_judgment.pdf).

153. The Hague District Court ordered Shell to adopt corporate policies which result in a 45 percent net reduction of its CO<sub>2</sub> emissions by the year 2030, taking as baseline its emissions in the year 2019. Shell appealed the decision. See generally *Millieudéfensie v. Royal Dutch Shell*, Rechtbank Den Haag, 26 May 2021, ECLI:NL:RBDHA:2021: 5339; *ClientEarth v. Shell's Board of Directors*, EWHC 2182 (2023).

154. See generally *Greenpeace and Others v Commission*, European Union General Court, filed in 2023. Available at: <https://climatecasechart.com/non-us-case/greenpeace-and-others-v-commission/>. Also see *ClientEarth and Others v.*

instances call for an understanding of the overarching trend of ESG litigation, which is delved deeper in the following section.

#### 4.2. Analysis

The ESG movement is rooted in a UN initiative which brought together governments, businesses, civil society, practitioners and academics in early 2000s to build on the existing socially responsible investment movement<sup>155</sup>. Expanding beyond social factors, the concept of ESG aimed to introduce a wide spectrum of issues traditionally excluded from financial analysis, such as climate change<sup>156</sup>. Over the course of two decades, the movement pioneered methodologies, standards, frameworks, principles, policies, practices, and networks to guide decision-making on investments (Bolton PA, Levin SI, Samama FR, 2021). Inspired by this body of impressive work, the claimants argued in the *BNDES* petition that the ESG approach to investment, divestment and reinvestment decisions includes climate risks and impacts, which are allegedly not reflected in BNDESPar's practices<sup>157</sup>.

A significant triumph of the ESG movement has been its ability to enhance transparency, compelling businesses across sectors to disclose information that surpasses statutory and regulatory requirements (Rouen ET, Sachdeva KU, Yoon AA, 2023). Various factors spurred early engagement in ESG reporting. For instance, the UN system, particularly through the UN Global Compact mechanism, progressively positioned business as an essential contributor to the achievement of sustainable development, mandating participating companies to report on their progress (van der Lugt CT, 2005). Investors sought insights into companies' future risks and strategies for managing those risks, especially climate risk (Matos PE, 2020). Evolving societal preferences, notably among millennials favoring sustainable wealth allocation and Generation Z exhibiting heightened climate and social activism, further propelled the momentum<sup>158</sup>. The adoption of the UNGPs in 2011 and the subsequent revision of the Guidelines in the same year drove the emphasis on the disclosure responsibilities of business enterprises, fueling the recent demands for courts and NCPs to scrutinize the ESG reports of FIs, as evident in the cases of *Group PZU*, *ENI*, *Notre Affaire à Tous-BNP Paribas*, and *Comissão Pastoral da Terra-BNP Paribas*<sup>159</sup>.

Notwithstanding its widespread trend, the ESG movement has grappled with three notable shortcomings. First, there has been an inherent ambiguity concerning the incorporation of human rights within the ESG framework.

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*Commission*, European Union General Court, filed in 2023. Available at: <https://climatecasechart.com/non-us-case/clientearth-and-others-v-commission/>.

155. See generally UN Global Compact, *Who Cares Wins*, UN, 2004. Available at: [https://www.unepfi.org/fileadmin/events/2004/stocks/who\\_cares\\_wins\\_global\\_compact\\_2004.pdf](https://www.unepfi.org/fileadmin/events/2004/stocks/who_cares_wins_global_compact_2004.pdf). UN Environment Program Finance Initiative, *A legal framework for the integration of environmental, social and governance issues into institutional investment*, Freshfields Bruckhaus Deringer, October 2005. Available at: [https://www.unepfi.org/fileadmin/documents/freshfields\\_legal\\_resp\\_20051123.pdf](https://www.unepfi.org/fileadmin/documents/freshfields_legal_resp_20051123.pdf).

156. *Ibid.*

157. *BNDES*, footnote 17, Petition, 21 June 2022, paras 159-184.

158. *Ibid.* 2.

159. *Group PZU*, footnote 38, Final Statement, 26 July 2019, p. 4; *ENI*, footnote 106, Summons, 9 May 2023, para 27.1; *Notre Affaire à Tous-BNP Paribas*, footnote 20, Summons, 13 June 2023, paras 11-13; *Comissão Pastoral da Terra- BNP Paribas*, footnote 106, Summons, 15 June 2023, para I.C.6.

The compartmentalization of human rights under the “E” or “S” or “G” categories has been insufficient to capture the adverse impacts of FIs across their entire value chain, pursuant to the due diligence process outlined in the UNGPs and the Guidelines<sup>160</sup>. This conceptual ambiguity has prompted the OHCHR to commission a report on the intersection of the UNGPs and the ESG concept, anticipated for finalization in June 2024<sup>161</sup>.

Second, ESG reports have been inconclusive, predominantly focusing on the risks or impacts of material ESG topics on the reporting company rather than vice versa (Delgado-Ceballos JA, et al., 2022). The emergence of the concept of double-materiality sought to compel companies to evaluate both risks and impacts of business activities on identified material ESG topics<sup>162</sup>. However, even in this context, reports have been omitting information on companies’ lobbying activities or strategic use of mechanisms that create a regulatory chill effect, such as the Investor-State Dispute Settlement Mechanism (Kaplan RS, Ramanna KA, 2021: 11)<sup>163</sup>. In climate reporting, emissions falling under Scope 3 have frequently been disregarded, and target-setting has disproportionately been relying on yet-to-be-realized CCS technologies and carbon offsetting or credits, which may not align with a 2°C, let alone a 1.5°C, pathway<sup>164</sup>.

Third, the ESG movement is yet to bring the requisite behavioral shift. Progress towards aligning financial flows with low GHG emissions pathways remains slow<sup>165</sup>. The IPCC now states with a high degree of confidence that a persistent misallocation of global capital prevails<sup>166</sup>. Notably, this occurs despite the anticipation that the global market for ESG investing may more than double, reaching a substantial US\$53 trillion by 2025 (Bloomberg Intelligence, 2021). The reliance on the discretionary approaches of investors to propel economic transition, amidst the prevailing diversity of definitions, labels, metrics, and indicators, has proven inadequate. So, ESG issues found their way into legal proceedings, marking significant milestones in addressing climate concerns<sup>167</sup>. A notable instance is the successful legal action against the Commonwealth Bank of Australia, compelling the bank to disclose internal documents on seven funded oil and gas projects<sup>168</sup>. Similarly, a court case against the Retail Employees Superannuation Trust

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160. See UN Working Group on Business and Human Rights, Investors, ESG and Human Rights, Call for Input, 2023. Available at: [https://www.ohchr.org/en/calls-for-input/2023/investors-esg-and-human-rights#\\_ftn3](https://www.ohchr.org/en/calls-for-input/2023/investors-esg-and-human-rights#_ftn3).

161. Ibid.

162. Ibid.

163. UNCTAD, Treaty-Based Investor-State Dispute Settlement Cases and Climate Action, IIA Issues Note 4, September 2022, pp. 10, 16, 18, 20.

164. See Net Zero Tracker, “Companies”. Available at: <https://zerotracker.net/#companies-table>.

165. IPCC AR6, footnote 11, WGIII, Chapter 15.

166. Ibid.

167. ESG litigation has secured significant legal precedents beyond climate change concerns. Notably, in matters of diversity, equity and inclusion, an illustrative case is *Students for Fair Admissions v. Harvard*, 600 U.S. 181, 2023.

168. See generally *Abrahams v Commonwealth Bank of Australia*, The Federal Court of Australia, filed in 2021. Available at: <http://climatecasechart.com/non-us-case/abrahams-v-commonwealth-bank-of-australia-2021/>.

(Rest Super) led to the fund adopting a net-zero strategy as part of the settlement<sup>169</sup>.

The ESG legislative movement has been attempting to level the playing field by enforcing reporting standards, formulating taxonomies, mandating the circularity of products, reinterpreting fiduciary duties, regulating carbon markets, and requiring supply chain due diligence (Alamillos RO, de Mariz FR, 2022: 3). For instance, the corporate vigilance duty invoked in the cases against BNP Paribas is an example of a supply chain due diligence obligation. Under this duty, large companies are required to conduct human rights and environmental due diligence while annually disclosing a vigilance plan (Clerc CR, 2021). With a similar ambition, the European Union has progressed towards adopting the Corporate Sustainability Due Diligence Directive (CSDDD)<sup>170</sup>. Going beyond domestic frameworks on supply chain due diligence, the CSDDD aims to impose obligations on large companies concerning actual and potential adverse impacts on human rights and the environment within their operations, subsidiaries, and business partnerships<sup>171</sup>. However, according to a provisional deal reached in December 2023, the financial services sector is temporarily excluded from the directive's scope, with a review clause allowing for potential future inclusion of the financial downstream sector based on a sufficient impact assessment<sup>172</sup>.

An important legislation that requires disclosures on due diligence processes, and is applicable to the financial sector, is the Corporate Sustainability Reporting Directive (CSRD)<sup>173</sup>. Entered into force in 2023, the CSRD aims to ensure that investors and other stakeholders have access to the information they need to assess the impact of companies on people and the environment and for investors to assess financial risks and opportunities arising from climate change and other sustainability issues<sup>174</sup>. The first CSRD reports will be published in 2025<sup>175</sup>. It is reasonable to assume that these reports will be a catalyst for future climate litigation which may be brought before the courts and NCPs for three reasons.

First, the CSRD increases the number of companies in the European Union required to disclose sustainability information from around 11,000 to 50,000<sup>176</sup>. This expansion is expected to impact numerous foreign

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169. See generally *McVeigh v. Retail Employees Superannuation Trust*, Federal Court of Australia, filed in 2018. Available at: <http://climatecasechart.com/non-us-case/mcveigh-v-retail-employees-superannuation-trust/>.

170. Council of the EU, Corporate sustainability due diligence: Council and Parliament strike deal to protect environment and human rights, Press Release, 14 December 2023. Available at: <https://www.consilium.europa.eu/en/press/press-releases/2023/12/14/corporate-sustainability-due-diligence-council-and-parliament-strike-deal-to-protect-environment-and-human-rights/>.

171. *Ibid.*

172. *Ibid.*

173. Directive (EU) 2022/2464 of the European Parliament and of the Council of 14 December 2022 amending Regulation (EU) No 537/2014, Directive 2004/109/EC, Directive 2006/43/EC and Directive 2013/34/EU, as regards corporate sustainability reporting (Text with EEA relevance).

174. *Ibid.* para 25.

175. *Ibid.* Article 5.

176. European Parliament, Sustainable Economy: Parliament adopts new reporting rules for multinationals, Press Release, 11 November 2022. Available at: <https://www.europarl.europa.eu/news/en/press->

companies either due to reporting requirements related to upstream and downstream value chains or by falling under the CSRD's scope, either as large European Union-based subsidiaries of foreign entities or listed entities in the European Union-regulated markets<sup>177</sup>. Furthermore, large private companies are also caught by the directive, mitigating the "sustainability arbitrage problem" (Veziroglu CE, Kayiklik AB, 2023: 590). This problem arises when ESG laws and policies exclusively focus on public companies, placing private companies at a strategic advantage in business operations and undermining the overarching goal of fostering sustainable business activities.

Second, the CSRD harmonizes the information to be provided, making it easier to compare the performance of companies within the same sector as well as across different sectors<sup>178</sup>. Companies subject to the CSRD will have to report according to the European Sustainability Reporting Standards (ESRS), comprising ten topic-specific and two cross-cutting standards, to be complemented by sector-specific standards currently in development<sup>179</sup>. In a bid to enhance transparency, the CSRD mandates companies to digitally "tag" reported sustainability information, subject to external audit, making it machine-readable and available at the European Single Access Point (ESAP)<sup>180</sup>. The ESAP will serve as a consolidated platform for accessing public financial and sustainability-related data concerning impacted enterprises and investment products<sup>181</sup>.

Third, the CSRD is a key component of the European Union's larger European Green Deal, which includes the Sustainable Finance Disclosure Regulation (SFDR) and an environmental taxonomy<sup>182</sup>. While the taxonomy classifies which business activities are aligned with a net-zero trajectory by 2050, the SFDR requires institutional investors to disclose information about how sustainability is integrated into their investment decision-making processes<sup>183</sup>.

The inherent weakness of this legislative system is that it might legally allow coloring fossil fuel financing and business activities in green, weakening legal grounds for greenwashing claims. Fossil gas has a green label under the environmental taxonomy, whereas fossil fuel assets and funds may be

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[room/202211071PR49611/sustainable-economy-parliament-adopts-new-reporting-rules-for-multinationals](https://www.consilium.europa.eu/media/2022/10/71/PR49611/sustainable-economy-parliament-adopts-new-reporting-rules-for-multinationals).

177. CSRD, footnote 173, para 20 and Article 1.

178. CSRD, footnote 173, paras 39-40.

179. Commission Delegated Regulation (EU) 2023/2772 of 31 July 2023 supplementing Directive 2013/34/EU of the European Parliament and of the Council as regards sustainability reporting standards.

180. CSRD, footnote 173, para 55.

181. *Ibid.*

182. The European Green Deal, available at: [https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/european-green-deal\\_en](https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/european-green-deal_en); Regulation (EU) 2019/2088 of the European Parliament and of the Council of 27 November 2019 on sustainability-related disclosures in the financial services sector (Text with EEA relevance); Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088 (Text with EEA relevance).

183. *Ibid.*

stamped “light green” under the SFDR classification (Meager EL, 2021)<sup>184</sup>. Furthermore, under the CSRD, a company may conclude that climate change is not a material topic and not report in accordance with the standard<sup>185</sup>. In that case, the company needs to provide a detailed explanation of the conclusions of its materiality assessment<sup>186</sup>. In the eventuality that a company finds climate change to be a material issue, then it is required to disclose all emissions (including Scope 3 emissions), subject to the general materiality thresholds, using at least one scenario in line with the Paris Agreement goal of limiting warming to 1.5°C<sup>187</sup>.

Concurrently, there has been a reported surge in “anti-ESG” legislation as a reactionary response. In the United States, for instance, over 156 “anti-ESG” bills were introduced in 37 states during the first six months of 2023 (Plural Policy, 2023). The resistance against ESG principles in this context is reportedly rooted in a fundamental disagreement concerning whether companies should exclusively pursue profit maximization or consider a broader spectrum of stakeholders and outcomes (Donefer CH, 2023). The United States has also witnessed the emergence of anti-ESG litigation, contesting pro-ESG legislations and regulations<sup>188</sup>. Additionally, the perceived risk of entanglement in anti-ESG litigation has reportedly acted as a motivating factor for FIs to disengage from net-zero alliances (McGowan JO, 2023).

As FIs navigate in the dynamic landscape of pro- and anti-ESG paradigms, individuals and communities agitated by the brutal reality of climate collapse persist in their protests (Jones OW, 2023). The charges that the members of “BreakFree Suisse” confronted provide an illustration of the proceedings protesters encounter in courts. Adhering to the OHCHR’s advice paves a strategic way forward: business enterprises should view environmental human rights defenders and climate activists as critical partners, ensuring that their actions, whether direct or indirect, refrain from causing harm<sup>189</sup>.

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184. See generally *ClientEarth and Others v. Commission*, filed in 2023. Available at: <https://climatecasechart.com/non-us-case/clientearth-and-others-v-commission/>. *Greenpeace and Others v. Commission*, filed in 2023. Available at: <https://climatecasechart.com/non-us-case/greenpeace-and-others-v-commission/>.

185. ESRS, footnote 179, ESRS 1, 3.2; European Commission, Questions and Answers on the Adoption of European Sustainability Reporting Standards, Press Statement, 31 July 2023. Available at: [https://ec.europa.eu/commission/presscorner/detail/en/qanda\\_23\\_4043](https://ec.europa.eu/commission/presscorner/detail/en/qanda_23_4043).

186. ESRS, footnote 179, E1-6.

187. Ibid.

188. See generally *Braun v. Walsh*, United States District Court for the Eastern District of Wisconsin Milwaukee Division, filed in 2023. Available at: <https://climatecasechart.com/case/braun-v-walsh/>. *Louisiana v. Mayorkas*, United States District Court Eastern District of Louisiana, filed in 2023. Available at: <https://climatecasechart.com/case/louisiana-v-mayorkas/>. *Texas v. Securities and Exchange Commission (SEC)*, United States Court of Appeals for the Fifth District, filed in 2023. Available at: [https://climatecasechart.com/wp-content/uploads/case-documents/2023/20230222\\_docket-23-60079\\_petition-for-review-1.pdf](https://climatecasechart.com/wp-content/uploads/case-documents/2023/20230222_docket-23-60079_petition-for-review-1.pdf). *Utah v. Walsh*, United States Court of Appeals for the Fifth Circuit, filed in 2023. Available at: <https://climatecasechart.com/case/utah-v-walsh/>.

189. Information Note, footnote 13, para 19 (e).

## 5. Conclusion

Climate rights abuses are already a reality for many people around the world, disproportionately affecting individuals, groups, and peoples in vulnerable situations, including women, children, elderly, indigenous and local communities, migrants, and the poor. The severity of the negative impacts will increase according to the degree of global warming that ultimately takes place<sup>190</sup>. To limit global warming to 1.5°C, it is imperative to cease new investments in fossil fuel supply and decommission and cancel existing assets<sup>191</sup>. However, FIs and markets persist in underestimating climate-related risks, impeding the necessary capital reallocation for a low-carbon transition<sup>192</sup>.

Climate litigation in the financial sector started in this context. One of the earliest recorded lawsuits, *Friends of the Earth, Inc. et al. v. Spinelli et al.*, was filed in 2002, and challenged the financial support provided by United States governmental agencies for international fossil fuel projects<sup>193</sup>. This legal action was grounded in statutory obligations mandating environmental impact assessments<sup>194</sup>. By 2008, insurance companies had entered the courts, seeking declaratory judgments that they were not obligated to defend or indemnify policyholders in climate-related lawsuits<sup>195</sup>. Subsequent years witnessed the evolution of shareholder activism and legal actions targeting employees' pension plans<sup>196</sup>. Simultaneously, the escalating concern for consumer and investor protection against greenwashing claims

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190. OHCHR, Understanding Human Rights and Climate Change, Submission of the OHCHR to the 21<sup>st</sup> Conference of the Parties of the UNFCCC (2015), p. 2. Available at: <https://www.ohchr.org/sites/default/files/Documents/Issues/ClimateChange/COP21.pdf>.

191. Net Zero High-Level Expert Group, footnote 12, p. 12. For a different view, see IEA, Net Zero Roadmap: A Global Pathway to Keep the 1.5°C Goal in Reach (2023 Update), pp. 15-18 (“No need for new coal mines, mine extensions, new unabated coal plants, or new long-lead-time upstream oil and gas projects, however continued investment is required in some existing oil and gas assets and already approved projects”).

192. IPCC AR6, footnote 11, para B.6.

193. *Friends of the Earth, Inc v. Spinelli*, Civ. No. 02-4106, N.D. Cal., filed in 2002, Settlement Agreement, 6 February 2009. Available at: <https://climatecasechart.com/case/friends-of-the-earth-v-watson/>.

194. The National Environmental Policy Act of 1969, 42 U.S.C. sections 4321-4335; The Administrative Procedure Act, 5 U.S.C. sections 701-706.

195. See generally *Steadfast Insurance Co. v. AES Corp.*, United States Virginia Supreme Court, filed in 2008. Available at: <https://climatecasechart.com/case/steadfast-insurance-co-v-the-aes-corporation/>. *Illinois Farmers Insurance Co. v. Metropolitan Water Reclamation District of Greater Chicago*, United States District Court for the Northern District of Illinois Eastern Division, filed in 2014. Available at: <https://climatecasechart.com/case/illinois-farmers-insurance-co-v-metropolitan-water-reclamation-district-of-greater-chicago/>. *Everest Premier Insurance Co. v. Gulf Oil LP*, United States Commonwealth of Massachusetts, filed in 2022. Available at: <https://climatecasechart.com/case/everest-premier-insurance-co-v-gulf-oil-lp/>. *Aloha Petroleum Ltd. v. National Union Fire Insurance Co. of Pittsburgh*, United States District Court for the District of Hawaii, filed in 2022. Available at: <https://climatecasechart.com/case/aloha-petroleum-ltd-v-national-union-fire-insurance-co-of-pittsburgh/>.

196. See generally *Lynn v. Peabody Energy Corp.*, United States District Court Eastern District of Missouri Eastern Division, filed in 2015. Available at: <https://climatecasechart.com/case/lynn-v-peabody-energy-corp/>. *Roe v. Arch Coal, Inc.*, United States District Court Eastern District of Missouri Eastern Division, filed in 2015. Available at: <https://climatecasechart.com/case/roe-v-arch-coal-inc/>. *Fentress v. Exxon Mobil Corp.*, United States District Court Southern District of Texas Houston Division, filed in 2016. Available at: <https://climatecasechart.com/case/fentress-v-exxon-mobil-corp/>.

prompted regulatory and supervisory bodies to initiate investigations, resulting in court actions<sup>197</sup>.

The 22-year history of climate litigation in the financial sector reveals a potential for a “rights turn” from 2017 onward. The first three complaints that invoked climate rights—*ING Bank, Group PZU S.A.*, and *Mizuho*—were filed before the NCP mechanism. While the first case positioned climate rights in the periphery, the subsequent two placed them at the center of their claims, alleging non-adherence to the human rights chapter of the Guidelines. The baseline responsibility of FIs to respect human rights, derived from the UNGPs and incorporated into the Guidelines, served as the bedrock for these claims. In 2019, the first-recorded cases, *European Investment Bank* and *Greenpeace Luxembourg v. Schneider*, appeared before the courts<sup>198</sup>. These cases targeted the biggest multilateral FI in the world (European Investment Bank) and a sovereign pension fund (*Fonds de compensation commun au régime général de pension*) respectively, relying on the right to access environmental information pursuant to the Aarhus Convention to demand climate-related disclosures<sup>199</sup>. In 2020, Brazilian courts received two cases, resulting in landmark rulings against the government, finding the paralysis of public funds to combat climate change and deforestation an unconstitutional omission<sup>200</sup>. Cases filed in that same year against the United Kingdom Export Finance, ANZ Bank and Credit Suisse Group did not yield similar findings of climate rights abuses<sup>201</sup>.

Filed in 2021, the *USS* case faced a dismissal similar to the *ClientEarth v. Shell Plc.* case in the oil and gas sector<sup>202</sup>. Both lawsuits sought permission for a derivative action against company directors to enforce duties, including those under section 172 of CA06<sup>203</sup>. The United Kingdom courts hesitated to view the derivative action mechanism as a tool for advancing a policy

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197. See generally *Australian Securities and Investments Commission v Mercer Superannuation (Australia) Limited*, Australia Federal Court, filed in 2023. Available at: <https://law.app.unimelb.edu.au/climate-change/case.php?CaseID=901&browseAlpha=1>. Australian Securities and Investments Commission v Vanguard Investments Australia Ltd, Australia Federal Court, filed in 2023. Available at: <https://law.app.unimelb.edu.au/climate-change/case.php?CaseID=972&browseChron=1>. Australian Securities and Investments Commission v Active Super, Australia Federal Court, filed in 2023, available at: <https://law.app.unimelb.edu.au/climate-change/case.php?CaseID=974&browseChron=1>.

198. See generally *European Investment Bank*, footnote 152; *Greenpeace Luxembourg v. Schneider*, Luxembourg Administrative Court, filed in 2019. Available at: <https://climatecasechart.com/non-us-case/greenpeace-luxembourg-v-schneider/>.

199. Ibid.

200. See generally *PSB et al. v. Brazil (on Amazon Fund)*, Brazil Federal Supreme Court, filed in 2020. Available at: <https://climatecasechart.com/non-us-case/psb-et-al-v-brazil/>. *PSB et al. v. Brazil (on Climate Fund)*, Brazil Federal Supreme Court, filed in 2020. Available at: <https://climatecasechart.com/non-us-case/psb-et-al-v-federal-union/>.

201. See generally *Friends of the Earth v. UK Export Finance*, United Kingdom Court of Appeal Civil Division, filed in 2020. Available at: <https://climatecasechart.com/non-us-case/friends-of-the-earth-v-uk-export-finance/#:~:text=Summary%3A,off%20the%20coast%20of%20Mozambique>. Global Witness v. UK Export Finance, United Kingdom NCP, filed in 2020. Available at: <https://www.oecdwatch.org/complaint/global-witness-vs-uk-export-finance/>. Also see generally *ANZ Bank*, footnote 38; *Credit Suisse*, footnote 38.

202. See generally *USS*, footnote 18; *Shell*, footnote 153.

203. Although the *USS* case was brought under a common law derivative action, and the *Shell* case under the statutory derivative action mechanism.

agenda or to challenge the investment decisions of directors, emphasizing alternative routes, such as a breach of trust claim, as potentially more appropriate (Burton RE, Presland FA, Rix WI, 2023). On the other hand, the *Belgian National Bank* case filed that same year led to a concrete policy change, tilting ECB's purchases under the CSPP towards issuers with a better climate performance<sup>204</sup>. In 2022, a claim against Korean public financial entities was filed, alleging that support for a gas reserve in Australia contradicts the right to a healthy environment<sup>205</sup>. The *BNDES* case, filed the same year, invoked the right to an ecologically balanced environment<sup>206</sup>. Finally, 2023 witnessed the filing of cases including *Marsh, ENI, Notre Affaire à Tous-BNP Paribas*, and *Comissão Pastoral da Terra-BNP Paribas*<sup>207</sup>.

A catalyst for this shift was the successful use of climate rights in four landmark cases filed in 2015, each contending that insufficient climate mitigation or adaptation violated the claimants' fundamental rights. The *Leghari v. Federation of Pakistan* judgment made history in 2015 by determining that the delay of the government of Pakistan in implementing the country's climate policy framework violated citizens' fundamental rights<sup>208</sup>. The *Urgenda v. The State of the Netherlands* case marked a groundbreaking development in 2018, compelling the Dutch government to reduce emissions by at least 25 percent compared to 1990 by the end of 2020, pursuant to citizens' rights to life and respect for private and family life under Articles 2 and 8 of the ECHR<sup>209</sup>. The Supreme Court of the Netherlands upheld the ruling in 2020, interpreting Article 13 of the ECHR to mean that the national courts must be able to provide effective legal remedies against violations or imminent violations of the rights safeguarded by the ECHR<sup>210</sup>.

In 2019, the Commission on Human Rights in the Philippines (CHRP) announced its initial findings on the allegations of violations of climate rights by major GHG-emitting companies<sup>211</sup>. This was followed by a comprehensive report issued in 2022, reiterating the baseline responsibility of businesses under the UNGPs and the Guidelines in the context of climate change<sup>212</sup>. FIs were advised to refrain from financing fossil fuel-related projects, redirect capital towards "green" projects, and exert pressure on the fossil fuel industry to transition to clean energy by divesting financial instruments

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204. See generally *Belgian National Bank*, footnote 121.

205. See generally *Kang et al. v. KSURE and KEXIM*, South Korea Seoul District Court, filed in 2022. Available at: <https://climatecasechart.com/non-us-case/kand-v-ksureandkexim/>.

206. See generally *BNDES*, footnote 17.

207. See generally *Marsh*, footnote 16; *ENI*, footnote 106; *Notre Affaire à Tous-BNP Paribas*, footnote 20; *Comissão Pastoral da Terra-BNP Paribas*, footnote 106.

208. See generally *Leghari v. Federation of Pakistan*, Pakistan Lahore High Court, filed in 2015. Available at: <https://climatecasechart.com/non-us-case/ashgar-leghari-v-federation-of-pakistan/>.

209. *The State of the Netherlands v. Urgenda Foundation*, The Hague Court of Appeal, Case n.º 200.178.245/01, 9 October 2018, p. 3.

210. *The State of the Netherlands v. Urgenda Foundation*, The Supreme Court of the Netherlands, Case n.º 19/00135, 20 December 2019, ECLI:NL:HR:2019:2007, p. 4.

211. See generally *In re Greenpeace Southeast Asia and Others*, Philippines CHRP, filed in 2015. Available at: <https://climatecasechart.com/non-us-case/in-re-greenpeace-southeast-asia-et-al/>.

212. CHRP, National Inquiry on Climate Change, Report, 5 June 2022, pp. 88-98.

related to the fossil fuel industry<sup>213</sup>. Finally, in the *Juliana v. United States* case, 21 youth plaintiffs alleged injury from climate change devastation and asserted that the United States Constitution guarantees the right to a stable climate system sustaining human life<sup>214</sup>. Over eight years of litigation, the Juliana 21 maintained that their government is responsible for destroying the climate system on which life, liberty, and property depend, thereby violating their fundamental rights<sup>215</sup>. In December 2023, the court denied the motion to dismiss the case and gave the plaintiffs the greenlight to prepare for trial<sup>216</sup>.

These cases, capable of “illuminating the human face of climate disaster”, have reverberated into the financial sector (Peel JA, Osofsky HA, 2018). The final statement of the Dutch NCP in the *ING Bank* case drew on the *Urgenda* judgment<sup>217</sup>. Similarly, the *BNDES*, *ENI* and *Notre Affaire à Tous-BNP Paribas* petitions all referenced the *Urgenda* decision, additionally citing the *Leghari* judgment and the CHRP report<sup>218</sup>. In doing so, the claimants signaled to the judiciary the emerging obligation of governments and business enterprises to limit their GHG emissions in alignment with the Paris Agreement goals. To assess the potential universality, or at least the “regionality”, of such an obligation, human rights have inspired two advisory opinion requests—from the International Court of Justice and the Inter-American Court of Human Rights—along with three climate lawsuits recently decided by the European Court of Human Rights<sup>219</sup>. It is reasonable to expect that the outcomes of these processes will clarify State duties with respect to climate rights, ushering in a transformative wave that may leave no sector, including finance, untouched.

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213. *Ibid* pp. 132-135.

214. See generally *Juliana v. United States*, United States District Court for the District of Oregon Eugene Division, filed in 2015. Available at: <https://climatecasechart.com/case/juliana-v-united-states/>.

215. *Juliana v. United States*, Case n.º 6:15-cv-01517-AA, 29 December 2023, pp. 1-2.

216. *Ibid*.

217. *ING Bank*, footnote 20, Final Statement, 19 April 2019, para 5.5.

218. *BNDES*, footnote 17, Petition, 21 June 2022, para 132, 133; *ENI*, footnote 106, Summons, 9 May 2023, paras 13, 22, 29.2.; *Notre Affaire à Tous-BNP Paribas*, footnote 20, Summons, 13 June 2023, paras 61, 65, 121.

219. Obligations of States in respect of Climate Change, International Court of Justice. Available at: <https://www.ici-cij.org/case/187>. Observations on the Request for an Advisory Opinion, Inter-American Court of Human Rights. Available at: [https://www.corteidh.or.cr/observaciones\\_oc\\_new.cfm?lang=en&lang\\_oc=en&nld\\_oc=2634](https://www.corteidh.or.cr/observaciones_oc_new.cfm?lang=en&lang_oc=en&nld_oc=2634). *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland*, European Court of Human Rights, Application no. 53600/20, decided 9 April 2024; *Carême v. France*, European Court of Human Rights, Application no. 7189/21, decided 9 April 2024; *Duarte Agostinho and Others v. Portugal and 32 Other States*, European Court of Human Rights, Application no. 39371/20, decided 9 April 2024.

## Bibliography

Alamillos RO, de Mariz FR. How Can European Regulation on ESG Impact Business Globally?. In *Journal of Risk and Financial Management*, vol. 15, 2022, p. 3. Available at: <https://www.mdpi.com/1911-8074/15/7/291>.

Bloomberg Intelligence. ESG assets may hit \$53 trillion by 2025, a third of global AUM, 23 February 2021. Available at: <https://www.bloomberg.com/professional/blog/esg-assets-may-hit-53-trillion-by-2025-a-third-of-global-aum/>.

Bolton PA, Levin SI, Samama FR. Navigating the ESG world. In Herman Brill, Georg Kell & Andreas Rasche editors. *Sustainable Investing: A Path To A New Horizon*, 2021, pp. 131-150. Available at: <https://www.taylorfrancis.com/chapters/edit/10.4324/9780429351044-7/navigating-esg-world-1-patrick-bolton-simon-levin-frédéric-samama>.

Burton RE, Presland FA, Rix WI. UK Court of Appeal confirms derivative action relating to climate change should not proceed. In *Linklaters*, 2 August 2023. Available at: <https://sustainablefutures.linklaters.com/post/102ilc4/uk-court-of-appeal-confirms-derivative-action-relating-to-climate-change-should-n>.

Clerc CH. The French 'Duty of Vigilance' Law: Lessons for an EU Directive on Due Diligence in Multinational Supply Chains. In *European Economic, Employment and Social Policy Research Paper*, Policy Brief 1/2021, 2021. Available at: <https://www.etui.org/sites/default/files/2021-01/The%20French%20Duty%20of%20Vigilance%20Law-Lessons%20for%20an%20EU%20directive%20on%20due%20diligence%20in%20multinational%20supply%20chains-2021.pdf>.

de Vilchez Moraguez PA. Climate litigation, taking stock of an increasingly complex trend of legal actions. In *E-Publica*, vol. 9, no. 3, 2022. Available at: <https://e-publica.pt/article/57633-climate-litigation-taking-stock-of-an-increasingly-complex-trend-of-legal-actions>.

Delikat MI, Kray ST, Frantz CA. Trends in ESG Litigation and Enforcement. In *Harvard Law School Forum on Corporate Governance*, 10 August 2023. Available at: <https://corpgov.law.harvard.edu/2023/08/10/trends-in-esg-litigation-and-enforcement/>.

Delgado-Ceballos JA, et al. Connecting the Sustainable Development Goals to firm-level sustainability and ESG factors: The need for double materiality. In *Business Research Quarterly*, vol. 26, 2022, pp. 3-4. Available at: <https://journals.sagepub.com/doi/full/10.1177/23409444221140919>.

Donefer CH. State ESG laws in 2023: The landscape fractures. In *Thomson Reuters*, 31 May 2023. Available at: <https://www.thomsonreuters.com/en-us/posts/esg/state-laws/>.

Golnaraghi MA, et al. Climate Change Litigation: Insights into the evolving global landscape. *The Geneva Association*, April 2021, pp. 26-27. Available at: <https://www.genevaassociation.org/publication/climate-change-and-environment/climate-change-litigation-insights-evolving-global>.

Jones OW. 2023 was the year governments looked at the climate crisis – and decided to persecute the activists. In *The Guardian*, 22 December 2023. Available at:

<https://www.theguardian.com/commentisfree/2023/dec/22/2023-governments-climate-crisis-persecute-activists-silenced>.

Kaplan RS, Ramanna KA. How to Fix ESG Reporting. In Harvard Business School Accounting & Management Unit, Working Paper No. 22-005, CeCAR Working Paper Series 22-005, 2021, p. 11. Available at: [https://www.hbs.edu/ris/Publication%20Files/22-005revised\\_ed6ac430-c3ca-4ba6-b0be-ca48c549aaf2.pdf](https://www.hbs.edu/ris/Publication%20Files/22-005revised_ed6ac430-c3ca-4ba6-b0be-ca48c549aaf2.pdf).

Macchiarelli CO, Monti MA, Vedolin AN. The corporate sector purchase programme (CSPP): Effectiveness and challenges ahead. In European Parliament Directorate General for Internal Policies, September 2017. Available at: [https://www.europarl.europa.eu/RegData/etudes/IDAN/2017/607343/IPO\\_L\\_IDA\(2017\)607343\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/IDAN/2017/607343/IPO_L_IDA(2017)607343_EN.pdf).

Masters BR, Temple-West PA. The real impact of the ESG backlash in Financial Times, 4 December 2023. Available at: <https://www.ft.com/content/a76c7feb-7fa5-43d6-8e20-b4e4967991e7>.

Matos PE. ESG and Responsible Institutional Investing Around The World: A Critical Review, CFA Institute Research Foundation, 2020, pp. 4-10. Available at: <https://www.cfainstitute.org/-/media/documents/book/rf-lit-review/2020/rflr-esg-and-responsible-institutional-investing.ashx>.

McGowan JO. Insurers Leave U.N. Climate Alliance Over ESG Pushback and Antitrust Claims. In Forbes, 26 May 2023). Available at: <https://www.forbes.com/sites/jonmcgowan/2023/05/26/insurers-leave-un-climate-alliance-over-esg-pushback-and-anti-trust-claims/?sh=1b4805d16e13>.

Meager EL. Is SFDR failing? Eight in ten 'sustainable' funds in Europe hold fossil fuel stocks. In Capital Monitor, 29 June 2021. Available at: <https://capitalmonitor.ai/institution/government/is-sfdr-failing-eight-in-ten-sustainable-funds-in-europe-hold-fossil-fuel-stocks/>.

Peel JA, Osofsky HA. A Rights Turn in Climate Change Litigation? In Transnational Environmental Law, vol. 7, 2018. Available at: <https://www.cambridge.org/core/journals/transnational-environmental-law/article/rights-turn-in-climate-change-litigation/OE35456D7793968F37335429C1163EA1>.

Plural Policy, ESG Legislation in the First Six Months of 2023, Full Analysis, 25 July 2023. Available at: <https://learn.pluralpolicy.com/hubfs/PLURAL%20%7C%20ESG%20Legislation%20in%202023.pdf>.

Rouen ET, Sachdeva KU, Yoon AA. The Evolution of ESG Reports and the Role of Voluntary Standards. In SSRN, last revised 27 August 2023. Available at: [https://papers.ssrn.com/sol3/Papers.cfm?abstract\\_id=4227934](https://papers.ssrn.com/sol3/Papers.cfm?abstract_id=4227934).

Solana JA. Climate Litigation in Financial Markets: A Typology. In Transnational Environmental Law vol. 9, 2019, pp. 6-8. Available at: <https://www.cambridge.org/core/journals/transnational-environmental-law/article/abs/climate-litigation-in-financial-markets-a-typology/DB484C25DD817A6C5EBB1528E1F3520C>.

van der Lugt CT. The UN Global Compact and Global Reporting Initiative: Where Principles Meet Performance. In Petschow UI et al. editors. Governance and Sustainability: New Challenges for States, Companies and Civil Society, Routledge, 2005. Available at:

<https://www.taylorfrancis.com/chapters/edit/10.4324/9781351281003-15/un-global-compact-global-reporting-initiative-cornelis-van-der-lugt>.

Veziroglu CE, Kayiklik AB. The Climate Crisis and Private Companies: How to Address the Sustainability Arbitrage Problem?, In *European Business Organization Law Review*, 2023, p. 590. Available at: <https://link.springer.com/article/10.1007/s40804-023-00298-y>.

Wonneberger AN, Vliegenthart RE. Agenda-Setting Effects of Climate Change Litigation: Interrelations Across Issue Levels, Media, and Politics in the Case of Urgenda Against the Dutch Government. In *Environmental Communication*, vol .15, 2021, pp. 699-714. Available at: <https://www.tandfonline.com/doi/full/10.1080/17524032.2021.1889633>.