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Governments sued over climate change, with banks and firms next

By Alice Klein

If you can't beat them, sue them. Citizens are increasingly taking governments to court over climate change inaction, with financial lenders – and possibly big firms – next in the firing line. Some 894 climate change cases have now been filed in 24 countries, according to a report published by the UN Environment Program and Columbia Law School's Sabin Center for Climate Change Law in New York.

By some distance, most – 654 – have been in the US. Australia sits in second place, with 80 cases, and the UK third, with 49. The number of countries with climate cases has tripled since 2014. Citizens have filed the vast majority of these cases against governments, with a handful lodged against fossil fuel companies. Separately, campaign group ClientEarth has written to energy giants BP and Glencore warning them of the risk of investor lawsuits based on over-optimistic statements about future fossil fuel demand in their reporting.

Wins and losses: Recent years have seen significant wins for climate change cases. Environmental group Urgenda, for example, won a landmark case in 2015 that forced the Dutch government to commit to bigger emissions cuts. And in 2015, a Pakistani farmer successfully sued his government for failing to implement adequate climate change action. Others have not had the same success. Last year, the Australian Conservation Foundation lost a legal battle over the Australian government's approval of the Adani Carmichael coal megamine. And in the UK, fracking activists recently lost a case against a shale gas operation.

However, the success rate of climate cases is likely to grow following the Paris agreement. Under the accord, which was ratified late last year, each country is committed to specific emissions targets. Although these commitments are not legally binding, they make it “possible for constituents to articulate more precisely and forcefully concerns about the gaps between current policy and the policy needed to achieve mitigation and adaptation objectives”, say the authors. This is already starting to take effect. In March, EarthLife Africa successfully challenged the South African government's approval of a new coal-fired power station. The high court decision was based partly on the country's commitment to the Paris agreement.

Getting creative: Legal teams are also finding innovative ways to hold governments to account over climate change, says Brendan Sydes at Environmental Justice Australia. “There's a whole international effort – a lot of energy and intellect is being poured into developing new legal remedies,” he says. One example is in the US, where 21 youths have filed a case against the government for failing to safeguard their futures from dangerous climate change. Instead of appealing to environmental laws, the youths have invoked the “public trust doctrine” – an ancient principle holding that certain natural resources belong to everyone and must be protected by the state. Banks and other financial institutions that lend money to fossil fuel projects may also find themselves the subject of legal action, Sydes says. There is an increasing recognition that directors who fail to consider climate risks could be liable for breaching their duty of due care and diligence, he says. This is already causing some businesses to distance themselves from carbon-heavy investments. For example, three of Australia's four major banks have recently ruled out providing loans for construction of the Adani Carmichael mine. And worldwide, almost 700 institutions in 76 countries have committed to ending their investment in fossil fuel companies. The growth of such litigation worldwide shows that many citizens hope courts can force governments and corporations to act on climate change, says Sydes. “People are increasingly turning to the courts to find duties and obligations of governments and corporations who are currently not acting sufficiently on climate change,” he says. “This trend is likely to continue.”

Article amended on 30 May 2017 *This has been amended to correct the number of banks that have recently ruled out providing loans for construction of the Adani Carmichael mine.*

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