

## Overview of Climate Litigation

### Executive Summary<sup>1</sup>

As the impacts of climate change have increased, the prevalence of climate-related litigation has steadily grown. With the number of climate cases rising, it is important for the judiciary to be familiar with the fundamentals of climate change litigation, including its scope and trends, the current legal landscape governing climate litigation, and the role that climate science plays in deciding these cases.

**In recent years, the number and variety of lawsuits in which climate change is a central legal or factual issue have dramatically increased, both in the United States and abroad.** Such ‘climate litigation’ includes legal disputes over mitigating greenhouse gases, adaptation efforts, and climate impacts. Typically, plaintiffs in U.S. state and federal courts bring suit to strengthen environmental protections or to receive compensation for climate-related harms. Cases where climate is not the central issue but that are motivated by or have climate implications are also growing, such as land use disputes related to renewable energy development. Foreign domestic and transnational courts have also seen an uptick in climate litigation, and though these cases are concentrated in the Global North, both their geographic variation and engagement with climate change are expanding.

**There is no typical climate case, as climate litigation involves a varied assortment of parties, causes of action, defenses, and remedies.** Climate-based suits can involve constitutional, statutory, administrative, and common-law claims. In the U.S., climate suits in state courts are most commonly challenges to environmental reviews conducted under state law and public utilities cases. In federal court, climate cases most often arise under the National Environmental Policy Act or the Endangered Species Act. Climate cases generally do not differ markedly from cases arising under similar causes of action, meaning that judges can employ the various case management tools and strategies typically available to them.

**Climate science — particularly detection and attribution studies — may arise in legal analyses related to standing, remedies, and the merits.** No U.S. court has yet ruled that a plaintiff has established a complete causal chain between specific greenhouse gas emissions and a particular climate-related harm, but attempts to do so are more likely as attribution science continues to advance. Defendants in climate cases have generally not denied the fact of climate change but have instead emphasized the uncertainty of scientific methods or specific conclusions in relevant scientific studies. Therefore, issues related to scientific evidence, such as its admissibility and whether it meets an applicable burden of proof, will likely be important aspects of deciding these climate science-based disputes.

<sup>1</sup> This is a summary of Overview of Climate Litigation authored by Sandra Nichols Thiam and Jarryd C. Page.