

Nature-related litigation: emerging trends and lessons learned from climate-related litigation

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Foreword



Sabine Mauderer
Chair of the NGFS



Chiara Zilioli
Chair of the Experts' Network on Legal Issues

It is with great pleasure that we present this report on Nature-related litigation: emerging trends and lessons learned from climate-related litigation.

The 2023 NGFS report on Climate-related litigation: recent trends and developments already anticipated that litigation focused on the biodiversity-climate nexus could be expected to grow, building on litigants' successes in the field of climate-related litigation. Indeed, when the NGFS Experts' Network on Legal Issues began preparing this report, it became clear that nature-related cases are already encompassing a broad range of topics and strategies, concerning not only biodiversity loss, but also deforestation, ocean degradation, carbon sinks and plastic pollution.

In certain respects, nature-related litigation is not a new phenomenon. 'Traditional' environmental cases, where litigants seek to enforce compliance with existing legislation, to rectify damage caused by pollution, or to protect vulnerable species and habitats are already an aspect of economic life. Such cases often capture the popular imagination. We need only think of the old case of *Anderson, et al. v. Pacific Gas and Electric*, depicted in the 2000 film *Erin Brockovich*.

The key novelty identified in this report is the growth of **strategic** nature-related litigation. Strategic litigation is aimed at achieving the protection of nature itself, and of the planetary boundaries which safeguard human existence on Earth, rather than focusing on a narrow issue or single site. In other words, such litigation seeks to safeguard nature's ability to provide the ecosystem services on which humanity depends. It is being used by litigants as a tool to influence policy and regulatory outcomes, as well as to change broader corporate and societal behaviour.

This report emphasises that strategic nature-related litigation is relevant for the financial system, as it can be expected to generate nature-related financial risks through multiple channels, in the same way as climate-related litigation. For that reason, the report recommends that central banks, supervisors, and financial institutions should closely monitor developments in this field.

This report is published together with the updated NGFS report *Nature-related Financial Risks: a Conceptual Framework to guide Action by Central Banks and Supervisors*. By publishing these reports together, we seek to draw attention to the increasing legal risk from nature-related litigation, while the recommendations that the Conceptual Framework offers encourage us to identify and consider specific sources of nature-related risks.

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1. Introduction

The NGFS Conceptual Framework on nature-related financial risks, published in September 2023, identified that litigation risks are relevant to the work of the NGFS on nature¹. This report outlines the key emerging trends related to nature-related litigation, including cases concerning biodiversity loss, deforestation, ocean degradation, carbon sinks and plastic pollution, and explores their potential impacts for central banks, supervisors and the financial system².

Biodiversity is declining faster than at any other point during human history, occurring at a rate from 10 to 100 times higher than that of the past ten million years³. The loss of biodiversity undermines the ability of nature⁴ to provide the essential ecosystem services⁵ on which human society, economies and other species rely⁶.

On 19 December 2022, 196 parties – 195 states and the EU, signed the Kunming-Montreal Global Biodiversity Framework (GBF) under the 1992 Convention of Biological Diversity as a response to extensive scientific evidence that, despite ongoing efforts, biodiversity is deteriorating worldwide at rates unprecedented in human history. The GBF aims to “catalyze, enable and galvanize urgent and transformative action by Governments, and subnational and

local authorities, with the involvement of all of society, to halt and reverse biodiversity loss, to achieve the outcomes it sets out in [GBF’s] vision, mission, goals and targets⁷” and requires states to set up, and periodically update, national biodiversity strategies and action plans, including national targets, that are aligned with GBF’s global goals and targets⁸ (see Box 3 below).

The NGFS has emphasised that nature-related risks, including those associated with biodiversity loss, could have significant macroeconomic implications, and that failure to account for, mitigate, and adapt to these implications is a source of risk for individual financial institutions as well as for financial stability⁹. The NGFS Conceptual Framework defines nature-related financial risks as the risks of negative effects on economies, individual financial institutions and financial systems that result from: (i) the degradation of nature, including its biodiversity, and the loss of ecosystem services that flow from it (i.e. physical risks), or (ii) the misalignment of economic actors (e.g. their business model and strategy) with actions aimed at protecting, restoring, and/or reducing negative impacts on nature (e.g. changes in policy, legislation, and in consumer and investor sentiment) (i.e. transition risks), with litigation risks considered as a subset of both physical and transition risks¹⁰.

1 NGFS (2023a).

2 Climate-related litigation, which may be considered a subset and a driving force of broader nature-related litigation, is not included in the scope of this report. Trends and developments specific to climate-related litigation have been explored in detail in the NGFS reports published in November 2021 and September 2023: NGFS (2021) and (2023b).

3 IPBES (2019): Biodiversity loss is mainly driven by land and sea use (e.g. deforestation), direct exploitation of organisms (e.g. overfishing), climate change, pollution (e.g. plastic pollution) and the invasion of alien species: Jaureguiberry and others (2022). More recently, Dasgupta (2021) suggests extinction rates may be 100 to 1,000 times higher than their background rate over the past tens of millions of years.

4 IPBES (2019). In the IPBES conceptual framework (IPBES, 2015), ‘biodiversity’ refers to the variability among living organisms, while ‘nature’ encompasses both the living-and non-living elements. The term ‘ecosystem’ describes a dynamic complex of both living and non-living elements interacting as a functional unit.

5 Ecosystem services can be defined as the benefits to humans provided by the natural environment and ecosystems. They can be divided into provisioning ecosystem services, providing materials and energy for products that humans derive from the environment (e.g. food, medicine, fresh water, fuel); regulating ecosystem services, which regulate and maintain ecosystem services such as climate, pollination, water and air quality, and disease control; and cultural ecosystem services, providing non-material benefits which support mental and physical health, spiritual and religious values, and recreational activities (NGFS (2022a).

6 NGFS (2022a).

7 [Kunming-Montreal Global Biodiversity Framework](#) (2022), para. 4.

8 *Ibid.*, para.16.

9 NGFS (2023a). Furthermore, NGFS (2022b) recognised that nature-related financial risks are within the mandate of central banks and supervisors.

10 NGFS (2023a).

In September 2023, the NGFS published two reports on climate-related litigation¹¹, noting that governments and civil society may increasingly turn their attention beyond greenhouse gas (GHG) emissions to the importance of nature. The NGFS anticipated that litigants may be expected to draw inspiration from climate-related cases and bring forth claims related both to biodiversity and the climate-biodiversity nexus¹².

In view of these developments, the NGFS has prepared the following report, to highlight emerging trends in the field of nature-related litigation. The NGFS defines nature-related litigation as encompassing all **strategic claims, brought before judicial bodies**, focusing on climate, biodiversity loss and ecosystem services degradation. The NGFS distinguishes between strategic claims and ‘non-strategic’ or ‘traditional’ environmental cases, in accordance with criteria outlined in Annex I¹³. As climate-related litigation has been extensively considered in previous reports, this report focuses on strategic claims encompassing broader aspects of nature, such as biodiversity loss, deforestation, ocean degradation, carbon sinks and plastic pollution¹⁴. Moreover, while beyond the scope of this report, the NGFS also notes that the volume of ‘traditional’ environmental

law cases is increasing, and some of these cases, might lead to large financial and economic impacts for corporations and the financial institutions that support them¹⁵.

Monitoring has taken place on the basis of reporting by the members of the NGFS, along with research using the Climate Change Litigation databases of the Sabin Center for Climate Change Law (Columbia University), the United Nations Environment Programme Global Judicial Portal, the Australian and Pacific Climate Change Litigation database of the University of Melbourne, and academic publications¹⁶. All data related to the court cases mentioned in this report are publicly available.

Like for climate-related litigation, the analysis in this report focuses on assessing the potential impact of the initiation of nature-related litigation, rather than on the outcome of the cases. This is partly due to the nascent nature of this field of jurisprudence, where many cases have yet to be decided, and partly due to the fact that the outcome of the case reflects only part of the implications that such litigation might have on the company’s liability, internal governance, transition costs, and the financial and reputational implications for the financial sector¹⁷.

11 NGFS (2023b and c).

12 NGFS (2023b and c). See also: Setzer and Higham (2023).

13 ‘Traditional’ cases, may be understood as those pertaining to compliance with existing legislation on planning and development, pollution prevention, and the protection of vulnerable species and habitats. These claims typically revolve around a narrow issue or a single site or project.

14 Setzer and Higham (2024), suggest that nature litigation and climate litigation are closely interlinked, and will reinforce each other. First, they note that cases that combine forest and climate change arguments have emerged as a significant area of legal action globally, with at least 81 recorded cases addressing deforestation and forest governance filed between 2009 and 2023. Second, they note that ocean degradation cases may be closely linked to climate change (noting the advisory opinion of the International Tribunal on the Law of the Sea). Third, they suggest that litigation on plastic pollution will evolve, as awareness of the full lifecycle of plastic – and its carbon footprint – grows.

15 See **Annex I**. For example, cases regarding infringement of EU environmental legislation may also have a large financial and economic impact. In the **Netherlands**, a ruling of the Dutch Council of State (highest administrative court) concerning non-compliance with the EU’s Habitats Directive resulted, *inter alia*, in the annulment of 18,000 building permits, a stand-still in the granting of new building permits as well as a need that the agricultural sector drastically reduces emission of nitrogen. See Squintani (2021).

16 See in particular the database developed by Rodríguez-Garavito and Boyd (2023).

17 See Solana (2020).

2. Examples of strategic nature-related litigation

The NGFS has identified two categories of strategic nature-related litigation. So far, the majority of strategic cases have been directed at states and public entities. However, litigants are already targeting corporates, including financial institutions. This contrasts with the trend observed in climate-related cases, which followed three evolutionary stages, starting with litigation against states and public entities, before expanding to target corporates, and most recently addressing financial institutions¹⁸.

2.1 Nature-related litigation against states and public entities

The NGFS has identified two subcategories of litigation against states and public entities. The first relates to rights-based cases, that focus primarily on rights pertaining to nature. The second relates to rights-based cases which also rely on arguments in respect of the climate-nature nexus.

Rights-based nature cases

The NGFS notes that several cases have been filed against states and public entities, grounded on arguments that seek to establish a direct link between ecosystem degradation

and the violation of fundamental rights. The following three types of rights are typically invoked by litigants, often in combination with each other¹⁹.

A. Right to a healthy environment and other civil and socioeconomic rights: In several cases, litigants have framed the protection of nature as a key component of the enjoyment of the specific 'right to a healthy environment', along with other civil and socioeconomic rights, such as the right to life and right to health. This line of argument has been particularly relevant in jurisdictions where the right to a healthy environment is directly recognised in the national constitution²⁰, or by regional human rights' courts²¹. This strategy may gain further traction in the future, following the recent recognition of the right to a healthy environment as a universal right by UN bodies²², and in view of proposals to introduce the 'right to a healthy environment' at national constitutional level in further jurisdictions²³.

B. Rights of indigenous communities: A number of cases have also been grounded on the rights of indigenous communities to informed consultation and/or to consent to certain projects or activities, as well as on their fundamental rights enshrined in national constitutions, such as the right to water, the right to food sovereignty, and cultural and spiritual

18 The faster diversification of nature-related litigation in terms of strategies, and across different types of defendants might be linked to the fact that strategic litigants may already be leveraging their expertise on climate litigation to build cases around nature. In addition, it may be correlated to the rapidly growing awareness of the nature crisis, along with an increasing understanding of the interactions between the financial sector and nature-related risk.

19 This typology is drawn from the work of Rodríguez-Garavito and Boyd (2023).

20 See Boyd (2018). The author notes that "At the national level, the right to a healthy environment enjoys direct constitutional protection in 100 countries." E.g. **Italy**: the national constitution explicitly incorporated the right to a healthy environment in 2022. Key examples of cases include the following: **Colombia** (Castilla Salazar v. Colombia; Center for Social Justice Studies v. President (Atrato River case)); **Costa Rica** (Costa Rican Association of Natural Reserves v. Ministry of Environment and Energy; Flórez-Estrada v. Ministry of Agriculture and Livestock; Federation for the Conservation of the Environment v. Ministry of Environment and Energy); **Finland** (Finnish Association for Nature Conservation and Greenpeace v. Finland); **Mexico** (Amparo en revision 307/2016); **Norway** (Greenpeace Nordic Association v. Ministry of Petroleum and Energy (People v Arctic Oil)); **Pakistan** (Sheikh Asim Farooq v. Pakistan); and the **Philippines** (Oposa v. Factoran; Resident Marine Animals of the Protected Seascape Tañon Strait v. Reyes). See Annex III for further details of these cases. For a case relying primarily on other civil and socioeconomic rights, see **South Africa** (Sustaining the Wild Coast NPC and Others v. Minister of Mineral Resources and Energy and Others). The right to a healthy environment was also used as the basis of landmark climate cases such as in **Portugal** (Associação Último Recurso et al. v. Portuguese State) and **US** (Held v. State of Montana). The latter case relied on Article II § 3 of the Montana Constitution.

21 See the **Advisory Opinion OC-23/17** of the **Interamerican Court of Human Rights** which recognises a justiciable right to an healthy environment, including biological diversity (especially para. 176). On the legal effects of the Advisory Opinions from the Interamerican Court of Human Rights on State parties, which are stronger than in the advisory roles of other human rights courts, see Riemer and Scheid (2024) **Interamerican Court of Human Rights** (Lhaka Honhat Association v. Argentina; Community of La Oroya v. Peru); **European Court of Human Rights** (Greenpeace Nordic and Others v. Norway); and **East African Court of Justice** (Center for Food and Adequate Living Rights v. Uganda (EACOP Case)).

22 In 2021, the UN Human Rights Council recognised the right to a clean, healthy and sustainable environment for the first time at the global level. In 2022, the UN General Assembly confirmed that the right to a healthy environment is a universally recognised human right, stressing that biodiversity loss is one of the most pressing threats to the ability of present and future generations to enjoy all human rights.

23 **Ireland** (Report of the Citizens' Assembly on Biodiversity Loss).

rights, including the right to a healthy environment²⁴. This is particularly significant, in view of the fact that indigenous communities, while constituting five percent of the global population, traditionally own or manage over a quarter of the world's land²⁵.

C. Rights of nature: The 'rights of nature movement' aims to attribute constitutional or legal protection to natural assets and ecosystems such as rivers, glaciers, lakes, and forests, or species of animals, by asserting their legal standing and/or their independent capacity to hold rights. In this way, it aims to overcome the traditional legal barriers faced by claimants seeking to protect nature, who may struggle to establish standing, or prove that the environmental

damage has caused them personal harm. In that respect, once a right has been granted or established in respect of a natural asset, associations or citizens are enabled to act as "stewards" in defence of the natural assets' rights, similar to any entity with legal personality. The legal concept of 'rights of nature' has been established in various jurisdictions, primarily through changes to laws at constitutional, national or municipal level, including the statutes of indigenous communities²⁶. The NGFS notes that litigants have also started to promote the rights of nature in courts, seeking either to advance the protection previously granted by law²⁷ or to establish judicial precedents in jurisdictions where rights of nature are absent²⁸.

24 **Australia** (Cooper v National Offshore Petroleum Safety and Environmental Management Authority); **Brazil** (PSB et al. v. Brazil (on deforestation and human rights; Instituto Socioambiental et al. v. IBAMA and the Federal Union); **Colombia** (Center for Social Justice Studies v. President (Atrato River case); Sentencia T-236/17); **Ecuador** (Caso Nro. 1149-19-JP/21: Revisión de Sentencia de Acción de Protección Bosque Protector Los Cedros); and **US** (Ojibwe wolf case). See also **Interamerican Court of Human Rights** (Lhaka Honhat Association v. Argentina). The role of the rights of indigenous communities in climate litigation has also been notable. See, for instance, **New Zealand** (Smith v Fonterra).

25 UNEP (2023).

26 The 'rights of nature movement' was first articulated by Stone (1972) – see [timeline](#). The movement has been particularly prominent in the **US**, where local municipalities have established legal structures that recognised the rights of nature: [Pittsburgh Code](#) (2010), [Lafayette Climate Bill of Rights](#) (2017); [Orange County Code](#) (2020), as well as tribal national laws and resolutions: Ponca Tribe of Indians of Oklahoma (2018), [Resolution on the preexisting Ponca tribal law of nature \(revised in 2019\)](#); White Earth Band of Ojibwe (2018), [Rights of Manoomin](#); Yurok Tribe (2019), [Resolution of the Yurok Tribal Council](#); Nez Perce Tribe (2020), [Resolution](#); Menominee Indian Tribe of Wisconsin (2020), [Resolution N° 19-52: Recognition of the rights of the Menominee river](#). However, the movement has expanded, and rights have been granted to natural assets and ecosystems in **Bolivia** (Law N° 071 – 21 December 2010); **Brazil** (Paudalho Rights of Nature Law); **Canada** (Minganie County Regional Municipality); **Ecuador** (Articles 71 to 74 of the Ecuador Constitution); **Mexico** (Mexico City Constitution); **New Zealand** (Te Urewera Act; Te Awa Tupua (Whanganui River Claims Settlement) Act); **Panama** (Law N° 287 of 2022); **Spain** (Act 19/2022: Granting Mar Menor and its basin status of a legal person); **Uganda** (Part I, 4 of the National Environment Act); **UK (Northern Ireland)** (Motion approved by Derry City and Strabane District Council; Fermanagh and Omagh District Council).

27 **Ecuador** (Caso Nro. 1149-19-JP/21: Revisión de Sentencia de Acción de Protección Bosque Protector Los Cedros; Caso Nro. 253-20-JH/22, Estrellita Monkey Case).

28 **Colombia** (Center for Social Justice Studies v. President (Atrato River case); Future Generations v. Ministry of the Environment); **India** (Centre for Environmental Law v. Union of India; Mohd. Salim v. State of Uttarakhand and Others; Lalit Miglani v. State of Uttarakhand and Others; Madras High Court W.P. (MD) N°s 18636 of 2013 and 3070 of 2020; M. K. Ranjitsinh and Others v. Union of India and Others; **Pakistan** (Islamabad Wildlife Management Board v. Metropolitan Corporation Islamabad); **Peru** (Marañón River case); **US (Colorado)** (Colorado River Ecosystem v. State of Colorado).

Box 1

Example of 'rights of nature' litigation: Bosque Protector Los Cedros case (2020) in Ecuador

In 2008, Ecuador became the first sovereign state to enshrine rights of nature ("Pachamama") in its Constitution. Article 71 of the Ecuadorian Constitution states that nature has a right to exist and to maintain its lifecycles, structures, functions, and evolutionary processes. The same Article further provides that "every person, community, people or nationality may demand of the public authority the satisfaction of the rights of nature." Articles 72 and 73 supplement this language, providing respectively that nature has a right to restoration in the event of a violation and that the State must apply precautionary or restrictive measures "to activities that may lead to the extinction of species, the destruction of ecosystems, or the permanent alteration of natural cycles."

In 2019, local citizens and NGOs challenged the decision of the Ministry of Environment to approve exploratory mining concessions for two-thirds of Los Cedros biological reserve. The following year, the Ecuadorian Constitutional Court revoked the environmental permits in the reserve, ruling that the government had not only violated the fundamental rights of local communities (the right to a healthy environment, the right to water, the right to previous consultation), but also the rights of nature. Crucially, the court held that the rights of nature, as constitutional rights, are legally binding and have an operative effect¹. The court specifically recognised the rights of the Bosque Protector Los Cedros.

1 Lewis and Clarke Law School (2021).

Rights-based cases focused on the climate-nature nexus

A number of rights-based nature cases have focused on the climate-nature nexus. Such cases have relied on arguments based on both fundamental rights and climate protection laws, including international commitments to protect degraded ecosystems²⁹. The majority of such cases have been brought in Brazil, and seek to demonstrate the link between protection of the Amazon and the mitigation of the climate emergency, including GHG emissions caused by deforestation and the forests' function as carbon sinks.

Two cases were already decided by the Supreme Court of Brazil in 2020. First, the Supreme Court ordered the Federal Government of Brazil to reactivate the Amazon Fund, which was established with the objective of promoting and financing projects that prevent or combat deforestation³⁰. The Supreme Court emphasised that nature preservation, especially in the Amazon, is an obligation imposed by the Federal Constitution of Brazil³¹, as well as by contractual commitments with international partners. In a separate, but similar case concerning the Climate Fund, which is an instrument of Brazil's National Policy on Climate Change aimed at financing activities to mitigate and adapt to climate change, the Supreme Court of Brazil recognised that environmental law treaties, such as the Paris Agreement, are human rights treaties³².

29 **Brazil** (*Instituto Socioambiental et al. v. IBAMA and the Federal Union*; *PSB et al. v Brazil (on the Amazon Fund)*; *PSB et al. v Brazil (on the Climate Fund)*; *PSB et al. v. Brazil (on deforestation and human rights)*; *Institute of Amazonian Studies v. Brazil*); **Finland** (*Finnish Association for Nature Conservation and Greenpeace v. Finland*); **Pakistan** (*Sheikh Asim Farooq v. Pakistan*). For Brazilian cases, see Setzer and de Carvalho (2021). The climate-nature nexus might be further reinforced by the 2024 ruling of the **European Court of Human Rights** (*KlimaSeniorinnen v Switzerland*), which established that Article 8 of the European Convention on Human Rights, on the right to respect for private and family life, encompasses a right for individuals to effective protection by State authorities from the serious adverse effects of climate change. The European Court of Human Rights also considered two other climate cases, but ruled that these were inadmissible (*Duarte Agostinho and Others v. Portugal and others*; *Carême v. France*).

30 **Brazil** (*PSB et al. v Brazil (on the Amazon Fund)*).

31 In particular, the Supreme Court of Brazil referred to the duty of the State, enshrined in Article 225 of the Brazilian Constitution, to preserve and restore ecological processes and promote the ecological management of ecosystems.

32 **Brazil** (*PSB et al. v Brazil (on the Climate Fund)*). Setzer and Higham (2023) argue that this recognition will help litigants to integrate climate and human rights in a shared framework of action, of possible relevance also for nature-related cases.

In a further case before the Brazilian courts, which is currently pending, plaintiffs are seeking to combat the degradation of Amazonian ecosystems, as well as increase the government's ambitions in GHG emissions reduction targets, through the establishment of a constitutional right to a stable climate for present and future generations under domestic and international climate commitments³³.

Separately, in 2024 the Supreme Court of India recognised the right of citizens to be protected against the adverse effects of climate change as a fundamental right linked to the right to life and right to equality. The case concerned the protection of two rare species of birds, and the need to find a balance between their conservation, and India's climate commitments. The Court ruled that the government must devise strategies to promote climate goals and safeguard the most vulnerable parts of the population, such as women and indigenous communities, without unduly sacrificing biodiversity³⁴.

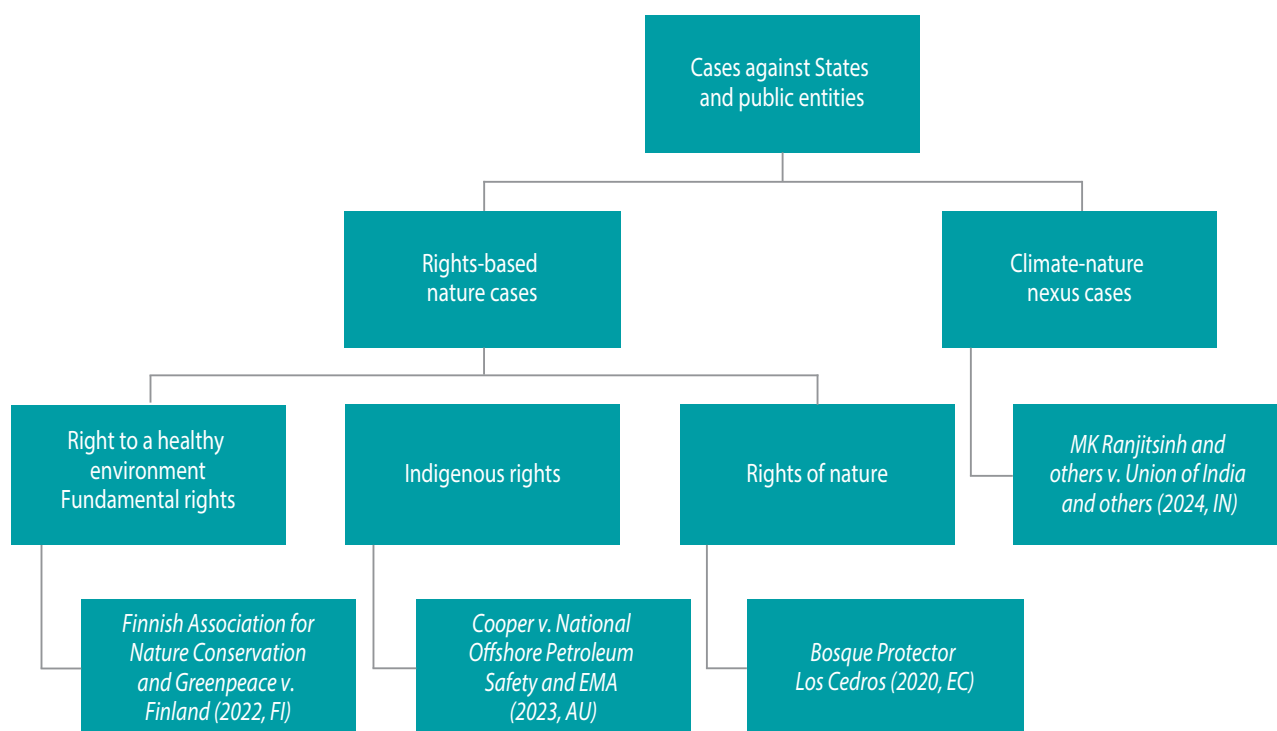
2.2 Nature-related litigation against companies and financial institutions

The NGFS has also identified a number of cases filed against companies and financial institutions, challenging their role in causing adverse impacts on ecosystems, in particular through global supply chains. Three of these cases have been directed against financial institutions.

Corporate sustainability due diligence legislation:

The NGFS has identified three nature-related pending cases based on environmental and human rights due diligence legislation in France. First, a supermarket chain has been challenged on the basis that its due diligence plan inadequately considers the environmental and human rights impacts caused by its supply chain partners in deforested areas in the Amazon, including the rights of indigenous communities³⁵. Second, a French credit

Figure 1 Categories of nature-related litigation against states and public entities



33 **Brazil** (*Institute of Amazonian Studies v. Brazil*). The case is based on Articles 225 and 5 of the Brazilian Federal Constitution (principle of human dignity and right to life), as well as on the National Climate Change Policy, which was amended to include the Paris targets.

34 **India** (*M. K. Ranjitsinh and Others v. Union of India and Others*). Setzer and Higham (2024) cite this case as an example of 'green v. green' cases, where courts address the trade-off between climate and other environmental aims, such as biodiversity conservation. They also point to a **US** case (*Save Long Beach Island v. US Department of Commerce*), which concerned the impact of an offshore wind project on the North Atlantic and humpback whales, and their carbon sequestration capacity.

35 **France** (*Envol Vert v. Casino*).

institution has been challenged based on the alleged inadequacy of its due diligence plan to prevent deforestation in the Amazon, and the violation of the rights of indigenous communities. The claim refers to the commercial ties of the credit institution to beef producers operating in the region³⁶. Finally, a claim has been filed against a major food producer, alleging that the company is not adequately addressing the risks associated with plastic production within its supply chain³⁷. The claim contends that the company's practices contribute to the 'plastic crisis,' identified as a significant factor driving the loss of marine biodiversity and the degradation of ecosystem services, particularly those related to freshwater provision. None of the cases have been subject to a final decision by the French courts at this stage.

Tort law: In Brazil, litigants have brought a case seeking to hold a steel company and its manager accountable for promoting illegal deforestation, as well as climate damages through GHG emissions derived from illegally sourced coal. In particular, the plaintiffs allege failure by the company to carry out adequate due diligence in its supply chain under Brazilian climate and environmental laws³⁸. In addition, a state in western Brazil is seeking compensation for environmental damages from a major

global meat processor and other meatpacking companies, which stand accused of contributing to deforestation and nature degradation by purchasing cattle raised illegally in protected areas of the Amazon³⁹.

Shareholder rights: In Australia, a shareholder of the listed parent of a financial group, which includes banking and other business, has sought the court's permission to access internal risk management documents, claiming that the bank within the group is failing to properly manage the twin crisis of climate change and biodiversity loss⁴⁰.

Anti-money laundering legislation: In France, the NGO Sherpa filed a criminal complaint to the French Financial Prosecutor's Office against three French banks and a large insurance group. The complaint is based on charges of money laundering and receiving stolen goods, citing the banks' financial support to cattle companies implicated in deforestation in the Amazon, and the profit derived from it⁴¹. In the UK, an application has been filed before the UK High Court, asserting that the London Metal Exchange allows the trading of 'dirty metals' sourced from the West Papua province of Indonesia, which are allegedly the proceeds of environmental crimes⁴².

36 **France** (*Comissão Pastoral da Terra and Notre Affaire à Tous v. BNP Paribas*).

37 **France** (*ClientEarth, Surfrider Foundation Europe and Zero Waste France v. Danone*).

38 **Brazil** (*Federal Environmental Agency (IBAMA) v. Siderúrgica São Luiz Ltd. and Martins*).

39 **Brazil** (*Rondonia State v. JBS*). Setzer and Higham (2024) have identified additional 'polluter pays' cases brought in Brazil under tort law, including a case against a cattle farmer for allegedly causing illegal deforestation in the Amazon in **Brazil** (*Ministério Público Federal v. de Rezende*).

40 **Australia** (*Rossiter v ANZ Group Holdings Limited*).

41 **France** (*Sherpa v. BNP Paribas, Crédit Agricole and Others*).

42 **UK** (*GLAN and London Metal Network v. London Metal Exchange*).

Box 2

Nature-related complaints under the OECD Guidelines for Multinational Enterprises on Responsible Business Conduct

While not falling within the traditional definition of litigation, the NGFS notes that complaints filed before OECD National Contact Points (NCPs) can offer insights into expected future trends in respect of nature-related cases against corporates¹.

OECD NCPs have been established by governments as non-judicial mechanisms to handle cases of non-compliance² with the OECD Guidelines for Multinational Enterprises on Responsible Business Conduct³. These OECD Guidelines are non-binding recommendations jointly addressed by governments to multinational enterprises to enhance the business contribution to sustainable development and address adverse impacts associated with business activities on people, planet, and society. The OECD has also published tailored guidance to operationalise responsible business conduct for the financial sector⁴.

Complaints against companies

The NGFS has identified several examples of complaints under this mechanism that may be relevant to companies. First, a complaint has been filed before the US NCP in respect of a food company due to its alleged failures in environmental and human rights due diligence system pertaining to soy operations in Brazil⁵. Second, a complaint has been filed before the Dutch NCP, in respect of an agricultural commodities trader, arising from alleged failures in its due diligence system pertaining to palm oil plantations in Peru, and their impact on deforestation and indigenous rights⁶. Third, a complaint has been filed

before the Italian NCP in respect of a company which supplies leather to car manufacturers. The complaint concerns the purchasing of leather from tanneries that are supplied by cattle ranches allegedly occupying and illegally deforesting the territory of the last uncontacted indigenous tribes in Paraguay⁷.

Complaints against financial institutions

The NGFS has identified 37 complaints pertaining to corporate due diligence performed by financial institutions, referring specifically to adverse impacts on the environment and the climate⁸. The NGFS has identified five complaints, where an agreement was reached between the financial institution involved and the claimants. These included complaints brought before the NCPs in the Netherlands and France respectively, regarding investments in palm oil⁹; before the NCP in Switzerland, concerning investments in a pipeline in the US and its potential risks for the supply of drinking water for local indigenous people¹⁰; and before the NCPs in Poland and the Netherlands respectively, in respect of indirect impacts on climate change¹¹. A further complaint has been filed before the NCP in Luxembourg against the Luxembourgish sovereign pension fund¹². The applicants demand the state-owned fund to establish a sustainable investment strategy in line with the OECD Guidelines, to address any adverse impacts on the environment, climate or human rights linked to its investments in its value chain, and to set-up a grievance mechanism which enables stakeholders to report sustainability-related issues.

1 See also Aristova, Higham, Higham and Setzer (2024).

2 OECD Watch, a network of civil society organisations monitoring the OECD Guidelines, has compiled a [database](#) of complaints.

3 OECD (2023a).

4 OECD (2023b).

5 **US** (*ClientEarth v. Cargill*).

6 **Netherlands** (*Indigenous leaders of AIDESEP and FECONAU et al. vs. Louis Dreyfus Company BV*).

7 **Italy** (*Survival International on behalf of the Ayoreo people vs. Gruppo Pasubio*). Setzer and Higham (2023).

8 See, for example, **Australia** (*Australian bushfire victims and Friends of the Earth Australia vs. ANZ Bank*); **Netherlands** (*Milieudefensie et al. vs. ING*); **UK** (*Global Witness vs. UK Export Finance*).

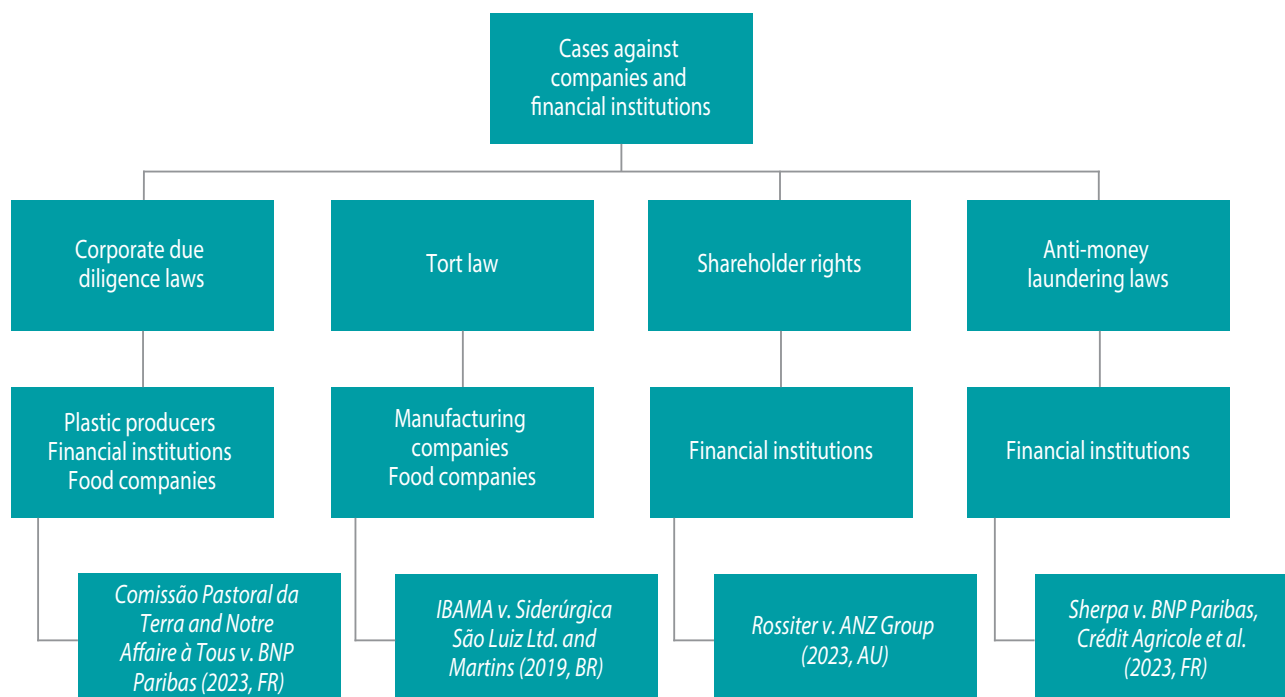
9 **France** (*Sherpa et al. v. Bolloré*); **Netherlands** (*Friends of the Earth vs. Rabobank*).

10 **Switzerland** (*Society for Threatened Peoples v. Credit Suisse*).

11 **Netherlands** (*Dutch NGOs v. ING Bank*); **Poland** (*Development YES – Open-Pit Mines NO vs. Group PZU S.A.*).

12 **Luxembourg** (*Greenpeace Luxembourg vs. Fonds de Compensation de la Sécurité sociale SICAV FIS*).

Figure 2 **Categories of nature-related litigation against companies and financial institutions**



3. Nature-related litigation and the interaction with legislation and governance

In respect of both categories of cases, like for climate litigation, it will be important to observe the interaction between litigation and the growing body of international agreements and national legislation. As noted in the 2023 NGFS Report, there is a close interaction between nature-related legislation and litigation: legislation can

offer new grounds for future litigation; while litigation may fill gaps where legislation is not in place or is weakly enforced and may act as a driver for new legislation. The NGFS identified a number of key developments, which may act as feedback loops in respect of nature-related litigation in **Box 3**.

Box 3

Legislation and governance on nature

International law and governance on nature

In December 2022, 196 parties – 195 countries and the EU – signed the Kunming-Montreal Global Biodiversity Framework (GBF), within the framework of the 1992 Convention on Biological Diversity¹. Even though the GBF is not legally binding, it may, mostly through its implementation into national legal frameworks, provide litigants a further reference point in terms of international commitments, which may be relevant for their claims. The NGFS notes that while in most jurisdictions, international standards and commitments need to be transposed into the domestic legal framework to give effect to rights and obligations, some courts also utilise the possibility to interpret national laws in light of these texts². The GBF sets out 4 goals for 2050 and 23 targets for 2030 to protect biodiversity, both of which are global in nature. These targets include, among others, the restoration of at least 30 percent of terrestrial and

marine ecosystems by 2030³, and measures to be taken to encourage and enable transnational corporations and financial actors to regularly monitor, assess and disclose their risks and impacts on biodiversity through their operations, portfolios, and value chains⁴. The GBF also sets out that the implementation of the framework must, among others, respect the rights of local communities, indigenous peoples, and, where relevant, the rights of nature and acknowledges the human right to a clean, healthy and sustainable environment⁵.

Corporate sustainability due diligence and deforestation

Several jurisdictions have recently proposed or introduced new legislation obliging corporations to take measures to identify risks, and to prevent and mitigate impacts on human rights and the environment – in particular product-based due diligence aimed at curbing deforestation⁶.

.../...

1 Kunming-Montreal Global Biodiversity Framework (2022).

2 On the interpretation of the Convention on Biological Diversity in court cases, see: **Costa Rica** (*Flórez-Estrada v. Ministry of Agriculture and Livestock*; *Federation for the Conservation of the Environment v. Ministry of Environment and Energy*); **Interamerican Court on Human Rights** (*Advisory Opinion OC-23/17*; *Lhaka Honhat Association v. Argentina*).

3 Targets 2 and 3 of the *Kunming-Montreal Global Biodiversity Framework*. See for instance the new rules agreed in the European Union on the EU Nature Restoration Law: *Council of the EU* (2023).

4 Target 15 of the *Kunming-Montreal Global Biodiversity Framework*.

5 Section C of the *Kunming-Montreal Global Biodiversity Framework*.

6 For example, **EU** (*Corporate Sustainability Due Diligence Directive (CSDDD) proposal*; *Regulation on Deforestation-free products*); **UK** (*Forest Risk Commodities Regime*); **US** (proposed *FOREST Act*).

Due diligence laws may offer new grounds for future litigation, by establishing clear responsibilities for corporate actors in respect of their global supply chains⁷. The litigation risk posed by such legislation may be even more potent for nature degradation than for climate: given that nature-related harm is often more localised and specific, it may be easier to identify and attribute responsibility for that harm to a particular company and its suppliers, compared to climate cases⁸. The NGFS notes that while recent legislation on corporate sustainability due diligence and deforestation tends to apply primarily to corporates, it can have an indirect impact on the financial sector, through exposures to their clients and counterparties. Moreover, in some jurisdictions, the relevant legislation may also apply directly to financial institutions⁹, or may foresee application to financial institutions in the future¹⁰.

Nature-related disclosure standards

Further evidence on nature-related risks, opportunities, dependencies, and impacts could lead to an increase in companies' accountability over time. Sustainability disclosure standards are increasingly being expanded to encompass reporting on biodiversity and nature¹¹.

For example, at international level, in September 2023, the Taskforce for Nature-related Financial Disclosures (TNFD) issued its final recommendations to assist businesses and financial institutions in integrating nature-related considerations into decision-making processes, risk management, and disclosures¹². While these guidelines are non-binding, it can be expected that some states might implement the TNFD framework in their legislation, similarly to the pathway already taken with the recommendations of the Taskforce on Climate-related financial disclosures (TCFD)¹³.

Legislation on greenwashing

A further potential source of litigation may arise from new and more stringent legislation that seeks to address 'greenwashing'¹⁴. A number of jurisdictions have sought or are seeking to introduce stricter legislation to regulate companies' environmental claims¹⁵. In particular, such legislation has the potential to lead to more frequent administrative enforcement actions related to misleading statements by companies regarding their impact on nature, or contribution to nature conservation¹⁶.

.../...

7 Setzer and Higham (2024).

8 NGFS (2023a).

9 **France** (*Duty of Vigilance law*).

10 **EU**: The proposed CSDDD may impose limited obligations on financial institutions, requiring due diligence on the upstream part of their value chain.

11 **EU**: The *Corporate Sustainability Reporting Directive* (CSRD) encompasses disclosures related to biodiversity and ecosystems, pollution, and water and marine resources, which will be subject to a (double) materiality assessment. Companies will be required to assess both the impacts of nature-related risks on the company and of the company on nature-related risks, and to disclose those risks which are material. For examples of **climate-related disclosures** across the world, see Financial Stability Board (2023), and, among the most recent initiatives, the *draft disclosure framework on Climate-related Financial Risks* developed by the **Reserve Bank of India** in 2024.

12 TNFD, *Recommendations of the Taskforce on Nature-related Financial Disclosures* (2023).

13 **New Zealand** (*Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021*); **UK** (*Task Force on Climate-related Financial Disclosure (TCFD) aligned disclosure application guidance*).

14 A uniform definition of greenwashing is still lacking. However, in general terms, greenwashing can refer to unsubstantiated, misleading, or selective claims regarding an entity's environmental performance. See also Di Maio and others (2023).

15 **EU** (*Proposal for a Directive on Green Claims; Proposal for a Directive on Empowering consumers for the green transition; Proposal on the transparency and integrity of Environmental, Social and Governance (ESG) rating activities*).

16 **EU**: A consumer organisation has *filed* a complaint to the European Commission and the network of consumer protection authorities to launch an investigation for greenwashing against the commercial claims about the recyclability of the products of major drinking water bottle traders. **US**: In 2022, the *Enforcement Task Force Focused on Climate and ESG Issues* took action against various investment advisers for failure to follow its policies and procedures involving ESG investments, as well as misstatements and omissions concerning ESG considerations.

Environmental crimes, including ecocide

Enforcement actions through criminal law may also become increasingly relevant, as states, public entities, and civil society organisations seek to address the causes of ecosystem degradation more forcefully¹⁷. Currently, 'ecocide', i.e., the mass damage and destruction

of ecosystems, is recognised as a crime in a number of countries¹⁸, and further jurisdictions are introducing severe penalties for ecocide¹⁹. Civil society organisations are lobbying for the establishment of ecocide as an international crime under the Rome Statute of the International Criminal Court (ICC), along with its incorporation into national legislation²⁰.

17 See also, Setzer and Higham (2024).

18 **Armenia** (Article 394 of the [Criminal Code](#)); **Belarus** (Article 131 of the [Criminal Code](#)); **Chile** ([Law 21.595 of 2023](#)); **Ecuador** (Article 245 of the [Penal Code](#)); **France** (Article 231-3 of the [Climate and Resilience Act 2021](#)); **Georgia** (Article 409 of the [Criminal Code](#)); **Kazakhstan** (Article 161 of the [Criminal Code](#)); **Kyrgyz Republic** (Article 374 of the [Criminal Code](#)); **Moldova** (Article 136 of the [Criminal Code](#)); **Russia** (Article 358 of the [Criminal Code](#)); **Tajikistan** (Article 400 of the [Criminal Code](#)); **Ukraine** (Article 441 of the [Criminal Code](#)); **Uzbekistan** (Articles 196 and 198 of the [Criminal Code](#)); **Vietnam** (Article 278 of the [Penal Code](#)). **Belgium**: the Federal Parliament has [voted](#) in favour of a new penal code including the recognition of the crime of ecocide at the national and international levels.

19 **Brazil** (Bill N° 2933/2023); **EU** (Proposal for a Directive on the protection of the environment through criminal law – Confirmation of the final compromise text with a view to agreement); **Scotland** (Proposed Ecocide Prevention (Scotland) Bill).

20 The Independent Expert Panel for the [Legal Definition of Ecocide](#) (2021) proposes ecocide to be defined as any "unlawful or wanton acts committed with knowledge that there is a substantial likelihood of severe and either widespread or long-term damage to the environment being caused by those acts". The ICC Office of Prosecutor (2024) [opened](#) a public consultation on a new policy initiative to advance accountability for environmental crimes under the Rome Statute.

4. Relevance of nature-related litigation for the financial sector

Nature-related litigation can be expected to generate nature-related financial risks through several channels, in the same way as climate-related litigation⁴³. First, litigation against states and public entities can increase **transition risk and compliance costs** by intensifying or accelerating public policy to protect nature⁴⁴. This can be particularly relevant when certain economic activities are restricted or prohibited, or where companies are required by law to change their business processes. Both strategic and traditional nature-related cases can also impact companies more directly, where the challenges pertain to state decisions authorising, subsidising, or incentivising third-party activities, including in respect of procedural obligations. Transition risks may be further exacerbated where corporates are directly challenged through tort actions⁴⁵, including for public nuisance, negligence and/or breach of a duty, and where damages and/or injunctions are granted against such activities.

Second, where a company is directly challenged, **financial risk may manifest in various ways in their balance sheets**, such as legal costs, costs of damages, fines and other administrative sanctions⁴⁶; impact on the stock price, creditworthiness and/or financing costs⁴⁷; and increased insurance costs⁴⁸, including with respect to the costs of legal defence, irrespective of the litigation outcome⁴⁹. Financial losses and stranded assets can result from procedural-based cases which lead to delays, additional

costs, or blockage of projects⁵⁰. Companies might also be made subject to potential onerous contributions for nature conservation and restoration, as well as for climate mitigation and adaptation⁵¹. Furthermore, these legal actions might have repercussions on the liability, governance and reputation of these entities, necessitating substantial compliance and adaptation costs.

Third, regardless of the outcome of the case, it can impact not only the defendant to the litigation but can have **spill-over effects on other companies** in the same sector, along with other **institutions with financial exposures** to the defendant, including financial institutions. Moreover, like for climate-related litigation, nature-related litigation risk might be a driver of prudential risk categories, including credit, market, operational and liquidity risk⁵². Given the core-periphery structure⁵³ of the financial system, litigation might amplify physical and transition nature-related risks, with potential repercussions for financial stability.

The NGFS notes that financial institutions are already being directly targeted by litigants bringing nature-related litigation. As noted above, in 2023, three nature-related cases against credit institutions were identified⁵⁴. In addition, the trend in climate-related litigation is increasingly considering the role of financial institutions: a Dutch NGO has announced its intention to initiate litigation against a bank over its inadequate climate action plan⁵⁵.

43 See further NGFS (2023b and c).

44 NGFS (2023a). See also Wetzer, Stuart-Smith and Dibley (2024).

45 See, on climate, NGFS (2023b); in particular **Italy**: *Greenpeace Italy et. Al. v. ENI S.p.A and Others*.

46 Solana (2020).

47 Sato and others (2023).

48 Bank of England (2022). This, in turn, could lead to increase in premia or the withdrawal of insurers from certain lines of businesses.

49 **US** (*Aloha Petroleum Ltd. v. National Union Fire Insurance Co. of Pittsburgh*). A fossil fuel company brought an action against its insurer for refusing to defend and indemnify the company in underlying climate change cases.

50 For example, see Australia (*Dennis Murphy Tipakalippa v National Offshore Petroleum Safety and Environmental Management Authority and Anor; Cooper v National Offshore Petroleum Safety and Environmental Management Authority*); South Africa (*Sustaining the Wild Coast NPC and Others v. Minister of Mineral Resources and Energy and Others*).

51 **US** (*People of California v. Big Oil*). The State of California aims to compel the world's largest oil and gas corporations to finance a fund dedicated to mitigating and adapting to climate change.

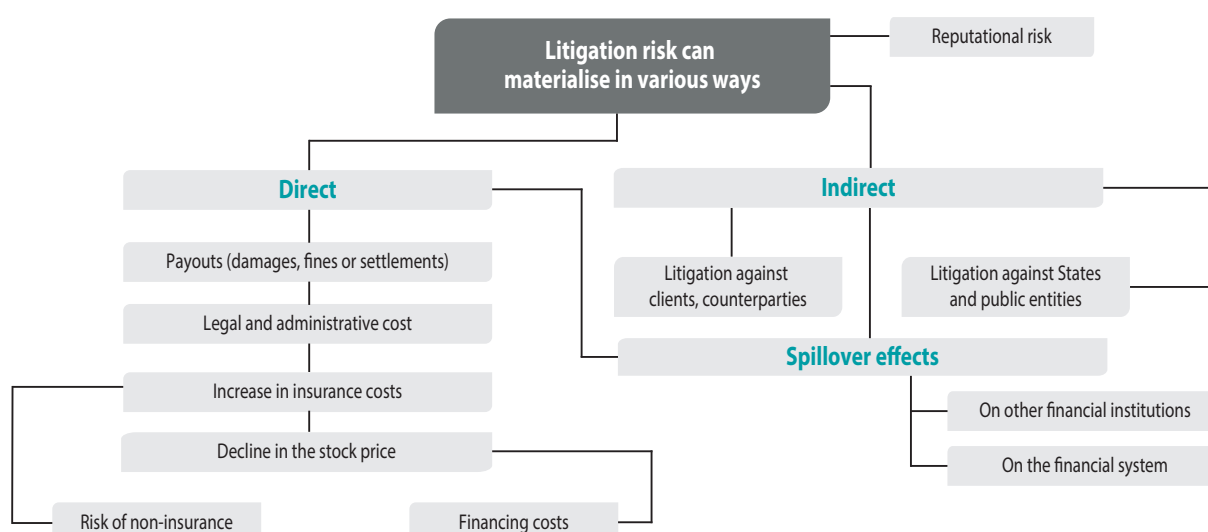
52 NGFS (2023c).

53 van der Leij, in 't Veld and Hommes (2016).

54 Australia (*Rossiter v. ANZ Group Holdings Limited*); France (*Comissão Pastoral da Terra and Notre Affaire à Tous v. BNP Paribas; Sherpa v. BNP Paribas, Crédit Agricole and Others*).

55 Netherlands (*Milieudefensie v. ING Bank*, see Financial Times (2024), *ING faces threat of legal action from climate group behind Shell case*, 19 January).

Figure 3 Potential impacts of nature-related litigation risk on financial institutions



Box 4

The UN Communication on banks and climate-related human rights violations

In Summer 2023, the UN issued a warning to a major oil company and its financiers, including a number of large banks, for their involvement in driving climate-related human rights violations¹. The UN's communication asserts that the company's financiers are 'contributing' to such violations through their financial activities², based on the UN Guiding Principles (UNGPs). The UNGPs require contributing businesses to take actions such as ceasing,

preventing, leveraging, or terminating relationships in response to any potential or actual adverse impact and remedying any adverse impact³. While the UN warning does **not** hold legal binding status, it carries significant persuasive influence and may impact the interpretation of legal texts on corporate sustainability due diligence⁴ and, in turn, reporting.

1 United Nations (2023).

2 United Nations (2023): (i) Lending funds, (ii) purchasing bonds or equities, (iii) supporting, facilitating and/or advising on key financial transactions, (iv) and investing in oil and gas infrastructure.

3 Principle 11 of the [United Nations Guiding Principles on Business and Human Rights](#) (2011).

4 See [EU: Corporate Sustainability Due Diligence Directive \(CSDDD\) proposal](#).

5. Conclusion and outlook

While strategic nature-related litigation is still in its infancy, the NGFS anticipates that the number of nature-related cases will continue to grow. It can be expected that the nature, scope and addressees of nature-related legal actions will evolve, taking inspiration from successes in respect of climate-related litigation and benefiting from increasing awareness of the nature crisis. Moreover, the development of nature-related cases may depend on the impetus to protect specific ecosystems, potentially prompting litigation in biodiversity hotspots and megadiverse countries⁵⁶, and on the evolution of extraterritorial litigation related to environmental damage⁵⁷.

Based on the cases identified by the NGFS, two key **categories** of nature-related litigation might be expected to develop in the coming years.

First, there may be an increase in the number of **rights-based nature cases** against states and public entities. The trend of rights-based litigation might gain traction relatively quickly, because of the experience of litigants, who are increasingly seeking to build upon and extend legal precedents within and across jurisdictions, leveraging transnational networks, and drawing insights from experiences in recent climate litigation⁵⁸. Likewise, the growing scientific articulation in respect of a climate-nature nexus and developments in international law and governance may be expected to reinforce this trend.

Second, the number of cases based on **corporate responsibility** may continue to grow. Such cases might be expected to follow a variety of legal strategies, with the overarching aim of establishing corporate and financial responsibility for nature degradation through companies'

global supply chains. Like for climate-related litigation, a potential trend may emerge in respect of claims arising from company law, such as shareholder actions against directors for breaches of fiduciary duties⁵⁹. Two recent legal opinions in common law jurisdictions have pointed to the possibility of litigation risk arising from directors' duties under corporate law, arguing that such duties include the responsibility to identify the company's nature-related dependencies and impacts, as well as consider the potential risks these might pose to the company⁶⁰. Furthermore, the NGFS expects a potential intertwining of nature-related litigation with the development of nature-related legislation, especially in areas such as corporate sustainability due diligence, green claims and greenwashing, and efforts to strengthen enforcement against environmental crimes.

The NGFS observes that a case against a company, whether it is *threatened, initiated, or successful* can have far-reaching consequences. While efforts to quantify climate-related litigation risks are in their infancy⁶¹, research suggests that even the filing of climate-related litigation can impact firm value⁶². The same is likely to hold true in respect of nature-related litigation. Such litigation can impact not only the specific company in question, but also other companies within the same sectors, the financial institutions that support them, and the broader financial system. The NGFS emphasises that financial institutions are already being directly targeted by such litigation.

Furthermore, the NGFS considers that two important **drivers** may influence the development of these trends. The increasing understanding of the **climate-nature nexus** may influence litigants to explore synergies between those concepts, in order to bolstering their

56 Biodiversity is not distributed uniformly across the globe. Megadiverse countries together are home to between 60 to 80% of life on Earth (**Australia, Brazil, China, Colombia, Democratic Republic of Congo Ecuador, Philippines, India, Indonesia, Madagascar, Malaysia, Mexico, Papua New Guinea, Peru, South Africa, Venezuela, US**). See the Statement of the Group of Megadiverse Countries in respect of the way forward for the Convention of Biological Diversity (2010).

57 On the responsibility of the parent company for environmental harms in third countries, see for example **UK** (*Okpabi, Vedanta and Mariana Dam cases*).

58 See Macchi and van Zeven (2021); Burger, Wentz and Metzger (2022); Heemskerk and Cox (2023).

59 Setzer and others (2022). A notable aspect of this trend related to NGOs purchasing shares in a company, with a view to exercising the rights of shareholders to force change within a company: **Australia** (AGL Energy); **Poland** (*ClientEarth v. ENEA*); and **UK** (*ClientEarth v. Shell's Board of Directors*). See also **US** (Bloomberg (2024), Exxon Sues ESG Investors to Stop Climate Proposals on Ballot, 22 January).

60 **Australia**: Hartford-Davis and Bush (2023); **UK**: Shivji and others (2024).

61 Wetzler, Stuart-Smith and Dibley (2024); NGFS (2023c).

62 Sato and others (2023).

reasoning and strengthening their claims. The NGFS Conceptual Framework has emphasised that “while climate change may be the starting point for action, science also tell us that broader nature-related risks cannot be analysed or addressed in isolation”⁶³. Nature-related cases are already including climate-based arguments⁶⁴, while climate-related cases are likewise including nature-based considerations. For example, in *People of California v. Big Oil*, the State of California contends that climate change has impacted the state’s supply of healthy ecosystem services, including clean air, clean water, crop pollination, as well as recreational activities, leading to negative economic consequences⁶⁵. Concurrently, these trends may be accelerated through the openness of courts to **engage with advanced scientific concepts and sources**.

As evidenced in climate cases such as *Urgenda*, *Shell*, and *Neubauer*, courts are more and more willing to examine scientific sources and to rely thereon to support their reasoning. This driver is particularly relevant, given that scientific research is establishing a growing body of evidence regarding the interrelation between climate- and nature-related risks, including in respect of global tipping points⁶⁶.

In view of the above, the NGFS advises central banks, supervisors and financial institutions to closely monitor developments in nature-related litigation. Climate- and nature-related litigation, used synergistically, might increase pressure on the financial system, through compounding legal ‘points of entry’.

63 NGFS (2023a).

64 See Section 2.1 above.

65 **US** (*People of California v. Big Oil*).

66 For example, **Germany**: The Federal Constitutional Court in *Neubauer* engaged considerably with the concept of global tipping points, referring to the nine planetary boundaries within which humanity could safely operate in the Earth System. See further in Stockholm Resilience Center (2023).

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Annex I – Criteria for identifying ‘strategic’ nature-related cases

The NGFS distinguishes between ‘strategic’ nature-related cases on the one hand, and ‘standard’ or ‘traditional’ environmental-related cases (‘non-strategic’ cases)⁶⁷ on the other.

To make this distinction, the NGFS follows the criteria adopted for strategic climate litigation by Setzer and Higham⁶⁸:

1. **Identity of the plaintiffs:** Plaintiffs (NGOs, individual campaigners, opposition parties, campaigners working with local communities, as well as states and public administrations) want to communicate a clear message. They are often assisted and represented by an experienced legal team with a recorded track of strategic legal interventions.
2. **Identify of the defendants:** Defendants may include actors that make the largest direct contribution to the problem and/or mislead the public about nature-related risks, and actors with a crucial role in the survivability of the value chain (e.g. public institutions that grants permits and licenses; financial institutions providing capital or insurance).
3. **Aim of the litigation:** Nature-related cases are aimed at achieving the protection of nature itself and of the planetary boundaries which safeguard the human existence on the Earth, rather than on the environment (as the natural surroundings in which human beings live and interact). Litigation is used as a tool to influence policy and/or regulatory outcomes, as well as to change broader corporate and societal behaviour⁶⁹. Litigation strategies can change quite significantly depending on the directions established by elected policymakers⁷⁰.

4. **Broader advocacy strategy:** The case is part of a broader strategy, including, for example, lobbying, communication and media coverage campaigns, protests, specific actions with targeted entities.

The NGFS classifies a nature-related litigation case as strategic when criteria 1, 2, and 3 are met, while criterion 4 is considered non-essential.

‘Non-strategic’ cases are those which may already be considered an aspect of economic life, which has been priced in by the market, insofar as such cases pertain to compliance with existing legislation addressing planning and development, pollution prevention, and the protection of vulnerable species and habitats. These claims typically revolve around a narrow issue or a single site and/or project and present few signs of cross-fertilisation across jurisdictions. That said, as noted in the introduction to this report, the number of ‘traditional’ environmental cases is increasing, and some of these cases could potentially result in significant financial and economic repercussions for both corporations and the financial institutions backing them, which are not yet fully priced in by the market⁷¹. Given the absence of systematic compilations on nature-related cases, the fragmentation of primary sources and information, and the potentially larger number of cases relevant for central banks and supervisors, it is important to clarify that the aim of the NGFS’s analysis is not to provide an exhaustive and up-to-date database of nature-related cases. Rather, the NGFS has collected cases that can be indicative of a trend that may have clear and/or wide repercussions for financial actors, central banks and supervisors.

⁶⁷ Hays (1986).

⁶⁸ Setzer and Higham (2023 and 2024). It should be noted that the definition in this report diverges slightly from the approach of Setzer and Higham, insofar as – in the context of climate litigation – project-related and site-specific cases with transnational implications are included in their definition of strategic litigation.

⁶⁹ Bouwer and Setzer (2020). The rise of climate- and nature-related litigation is mostly associated with pro-regulatory cases, seeking to push more ambitious policies and regulatory actions. However, Setzer and Higham (2023) underline that non-climate aligned cases, with the purpose of obstructing or delaying policy or regulatory, have also been identified.

⁷⁰ For instance, Setzer and de Carvalho (2021) note that the rise of climate litigation in Brazil during the years Bolsonaro’s administration could be attributable to the inaction and deregulatory actions of the government. Various cases initiated by public prosecutors, civil society organisation, and opposition political parties shared the common objective of combating illegal deforestation, reducing Brazilian GHG emissions, and, more broadly, mainstreaming climate action in the court system. Gerrard and McTiernan (2018) similarly depict an increase in climate-related legal actions in the initial year of the Trump administration. Over 100 lawsuits were filed, aiming to address deregulatory measures and/or to preserve existing regulations on climate change.

⁷¹ For example, in **Belgium** (*ClientEarth and others v. Flemish Region*), an NGO challenged the Flemish Region for granting a new licence to a petrochemical company; in **Norway** (*Greenpeace and others v. Norwegian Government*) three permits given by the Norwegian government to develop new offshore oil and gas fields were found to be invalid because their environmental impact was not sufficiently assessed; in the US (*McCormick v. HRM Resources*), a class action lawsuit has been filed in Colorado against oil and gas companies, targeting ‘zombie wells’ that continue emitting methane even after they have ceased operations. The plaintiffs argue that these wells, abandoned by major corporations and passed on to smaller companies which later went bankrupt, have not been adequately cleaned up or secured. They are seeking court action to hold oil and gas companies accountable for clean-up costs, reportedly amounting to hundreds of billions of dollars.

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Annex III – Database of nature-related cases

Cases against states and public entities

Jurisdiction	Case	Status	Ecosystem	Plaintiff	Defendant	Legal bases
Australia	Cooper v National Offshore Petroleum Safety and Environmental Management Authority	2023, filed 2023, decided (successful)	<i>Ocean biodiversity loss</i>	Indigenous citizen, assisted by NGOs	State entity	- Indigenous rights - National environmental laws - Procedural obligations in respect of third-party activities
Brazil	Instituto Socioambiental et al v. IBAMA and the Federal Union	2020, pending	<i>Biodiversity loss; forest degradation</i>	NGOs	Federal state/ State entity	- National constitution - Fundamental rights - National climate laws implementing international commitments - National environmental laws
Brazil	PSB et al v Brazil (on the Amazon Fund)	2020, filed 2023, decided (successful)	<i>Biodiversity loss; forest degradation</i>	Opposition political parties	Federal state	- National constitution - Fundamental rights - International climate commitments (Paris Agreement) - Precautionary principle
Brazil	PSB et al. v Brazil (on deforestation and human rights)	2020, pending	<i>Biodiversity loss; forest degradation; climate change</i>	Opposition political parties	Federal state	- National constitution - Fundamental rights - Indigenous rights - National environmental laws - International climate commitments (Paris Agreement)
Brazil	PSB et al v Brazil (on the Climate Fund)	2020, filed 2022, decided (successful)	<i>Forest degradation; climate change</i>	Opposition political parties	Federal state	- National constitution - Fundamental rights - International climate commitments (Paris Agreement) - National climate laws implementing international commitments
Brazil	Institute of Amazonian Studies v. Brazil	2020, pending	<i>Biodiversity loss; forest degradation; climate change</i>	NGOs	Federal state	- National constitution - Fundamental rights - National climate laws implementing international commitments - International climate commitments (Paris Agreement)
Colombia	Future Generations v. Ministry of the Environment	2016, filed 2018, decided (successful)	<i>Biodiversity loss; forest degradation; climate change</i>	Youth petitioners	State, State entities and other public entities	- Children's rights - National constitution - Fundamental rights - International climate commitments (Paris Agreement) - Rights of nature
Colombia	Center for Social Justice Studies v. President (Atrato River case)	2015, filed 2016, decided (successful)	<i>Biodiversity loss; water pollution</i>	Local communities	State	- National constitution - Fundamental rights - Rights of nature - Right to a healthy environment
Colombia	Castilla Salazar v. Colombia [Decision C-035/16]	2015, filed 2016, decided (successful)	<i>Biodiversity loss</i>	Colombian citizens	State	- National constitution - Fundamental rights - Right to a healthy environment - Precautionary principle - Third-party activities
Colombia	Sentencia T-236/17	2017, filed 2018, decided (successful)	<i>Biodiversity loss</i>	Local municipality	State/State entities	- National constitution - Fundamental rights - Indigenous rights - International human rights law - Procedural obligations - Precautionary principle

Costa Rica	Federation for the Conservation of the Environment v. Ministry of Environment and Energy	2019, filed 2021, decided (successful)	<i>Biodiversity loss; land pollution</i>	NGO	State entity	• National constitution • Fundamental rights • National environmental laws • International commitments on biodiversity (Convention on Biological Diversity)
Costa Rica	Costa Rican Association of Natural Reserves v. Ministry of Environment and Energy	2008, decided (successful)	<i>Biodiversity loss</i>	Environmental association	State entity	• National constitution • Right to a healthy environment • Third-party activities
Costa Rica	Flórez-Estrada v. Ministry of Agriculture and Livestock	2020, decided (successful)	<i>Biodiversity loss; land pollution</i>	Environmental attorney	State entity	• National constitution • Right to a healthy environment • Third-party activities • International commitments on biodiversity (Convention on Biological Diversity)
East African Court of Justice	Center for Food and Adequate Living Rights v. Uganda [EACOP Case]	2021, filed	<i>Biodiversity loss</i>	NGOs	State	• African Charter on Human and Peoples' Rights • Fundamental rights • International human rights law • National environmental and administrative laws • Third-party activities
Ecuador	Caso Nro. 1149-19-JP/21: Revisión de Sentencia de Acción de Protección Bosque Protector Los Cedros	2019, filed 2021, decided (successful)	<i>Biodiversity loss; forest degradation</i>	Local municipality	State entity	• National constitution • Fundamental rights • Indigenous rights • Procedural obligations • Rights of nature • Third-party activities
Ecuador	Caso Nro. 253-20-JH/22 ("Mona Estrellita")	2022, decided (successful)	<i>Biodiversity loss</i>	Ecuadorian citizen	State entity	• National constitution • Animal rights • Rights of nature
European Court of Human Rights	Greenpeace Nordic and Others v. Norway	2021, filed	<i>Ocean biodiversity loss</i>	NGOs	State	• European Convention on Human Rights • Fundamental rights • Right to a healthy environment • Third-party activities
Finland	Finnish Association for Nature Conservation and Greenpeace v. Finland	2022, filed 2023, decided (procedurally inadmissible)	<i>Carbon sinks; forest degradation</i>	NGOs	State	• Fundamental rights • National climate laws implementing international commitments • Right to a healthy environment
India	Centre for Environmental Law v. Union of India	2012, decided (successful)	<i>Biodiversity loss</i>	Research centre and NGO	Federal state	• National constitution • National environmental laws • Rights of nature • Wildlife regulations
India	Mohd. Salim v. State of Uttarakhand and Others	2014, filed 2017, decided (successful)	<i>Biodiversity loss; water pollution</i>	Indian citizen	Indian state + corporate actor (mining company)	• National constitution • National environmental laws • Rights of nature • Third-party activities
India	Lalit Miglani v. State of Uttarakhand and Others	2015, filed 2017, decided (successful)	<i>Biodiversity loss; deforestation; water pollution</i>	Indian citizen	Indian state	• National constitution • National environmental laws • Rights of nature
India	Madras High Court W.P.(MD) Nos. 18636 of 2013 and 3070 of 2020	2013 and 2020, filed 2022, decided (successful)	<i>Biodiversity loss</i>	Indian citizen	Indian state	• National constitution • National environmental and administrative laws • Rights of nature

India	Ranjitsinh and Others v. Union of India and Others	2019, filed 2024, decided, interim orders (successful)	<i>Biodiversity loss ; climate change</i>	Indian citizen	Indian state	• National constitution • International commitments on climate (UNFCCC, Paris Agreement) • National environmental laws • Fundamental rights • Right to a healthy environment • Right to be free from the adverse impacts of climate change • Rights of nature • Third-party activities
Interamerican Court of Human Rights	Lhaka Honhat Association v. Argentina	2018, filed 2020, decided (successful)	<i>Biodiversity loss ; forest degradation</i>	Indigenous communities	State	• American Convention of Human Rights • Indigenous rights • Right to a healthy environment • International commitments on biodiversity (Convention on Biological Diversity)
Interamerican Court of Human Rights	Community of La Oroya v. Peru	2006, filed 2023, decided (successful)	<i>Land pollution</i>	Local communities and NGOs	State	• American Convention of Human Rights • Right to a healthy environment • Third-party activities
International Tribunal on the Law of the Sea	Advisory opinion	2024, decided	<i>Ocean degradation; marine pollution</i>	Small island states	State parties to the UNCLOS	• United Nations Convention on the Law of the Sea (UNCLOS) • Climate change
Mexico	Amparo en revision 307/2016	2016, filed 2018, decided (successful)	<i>Biodiversity loss</i>	Local communities	State entity	• National constitution • National environmental laws • International human rights law • Right to a healthy environment • Precautionary principle • Third-party activities
Norway	Greenpeace Nordic Association v. Ministry of Petroleum and Energy (People v Arctic Oil)	2016, filed 2020, rejected	<i>Ocean biodiversity loss</i>	NGOs	State	• European Convention on Human Rights • National constitution • International human rights law • Right to a healthy environment • Third-party activities
Pakistan	Islamabad Wildlife Management Board v. Metropolitan Corporation Islamabad	2019, filed 2020, decided (successful)	<i>Biodiversity loss</i>	Citizens	Public entity	• National constitution • National environmental laws • Rights of nature • Wildlife regulations
Pakistan	Sheikh Asim Farooq v. Pakistan	2018, filed 2019, decided (successful)	<i>Forest degradation; climate change</i>	Citizens	State	• National constitution • Fundamental rights • National climate laws implementing international commitments • National environmental laws
Peru	Marañón River case	2024, decided (successful)	<i>Biodiversity loss; water pollution</i>	Indigenous women and NGOs	State entities and corporate actor (oil company)	• American Convention of Human Rights • Indigenous rights • Precautionary principle • Right to healthy environment • Rights of nature
Philippines	Oposa v. Factoran	1990, filed 1993, decided (successful)	<i>Forest degradation</i>	Youth petitioners and NGOs	State	• National constitution • Fundamental rights • National environmental laws • Rights of future generations • Right to a healthy environment • Third-party activities
Philippines	Resident Marine Mammals of the Protected Seascape Tanon Strait v. Secretary Angelo Reyes	2015, decided (successful)	<i>Ocean biodiversity loss</i>	Marine mammals, represented by stewards and NGOs	State	• National constitution • Fundamental rights • National environmental laws • Right to a healthy environment • Third-party activities

Portugal	<u>Associação Último Recurso et al. v. Portuguese State</u>	2023, filed 2024, rejected (under appeal)	<i>Climate change</i>	Three NGOs (<i>Associação Último Recurso, Quercus – Associação Nacional de Conservação de Natureza and Sciaena – Associação de Ciências Marinhas e Cooperação</i>)	State	• National constitution and European Convention on Human Rights (ECHR) • Human and Fundamental rights (Right to life and to a healthy environment) • National environmental laws (Portuguese Climate Framework Law) • European Regulation (Regulation (EU) 2021/1119 of the European Parliament and of the Council of 30 June 2021) • Paris Agreement
South Africa	<u>Sustaining the Wild Coast NPC and Others v. Minister of Mineral Resources</u>	2021, filed 2022, decided (successful)	<i>Ocean biodiversity loss; climate change</i>	Local communities and NGOs	State and corporate actor (energy company)	• National constitution • Fundamental rights • National environmental laws • Procedural obligations • Third-party activities
US	<u>Ojibwe wolf case</u>	2021, rejected	<i>Biodiversity loss</i>	Indigenous community	US state	• Administrative laws • Indigenous rights • Procedural obligations
US	<u>Colorado River Ecosystem v. State of Colorado</u>	2017, rejected	<i>Biodiversity loss; water pollution</i>	Indigenous community	US state	• Indigenous rights • Rights of nature
US	<u>Save Long Beach Island v. US Department of Commerce</u>	2024, decided	<i>Ocean biodiversity loss, climate change</i>	NGO	State	• Administrative laws • Climate change • Third-party activities

Cases against companies and financial institutions

Jurisdiction	Case	Status	Ecosystem	Plaintiff	Defendant	Legal bases
Australia	<u>Rossiter v. ANZ Group Holdings Limited</u>	2023, filed	<i>Biodiversity loss; climate change</i>	Individual shareholder assisted by NGOs	Financial institution (commercial bank)	• Shareholder rights
Brazil	<u>IBAMA v. Siderúrgica São Luiz Ltd. and Martins</u>	2019, pending	<i>Forest degradation; climate change</i>	Federal environmental agency	Manufacturing company	• National tort law • National climate laws implementing international commitments • National environmental laws
Brazil	<u>Rondonia State v. JBS</u>	2023, filed	<i>Forest degradation</i>	Brazilian state (Rondonia)	Meat producers	• National tort law
Brazil	<u>Ministério Público Federal v. de Rezende</u>	2021, pending	<i>Forest degradation</i>	Federal prosecution office	Cattle farmer	• National tort law
France	<u>Envol Vert and Others v. Casino</u>	2021, pending	<i>Forest degradation</i>	NGOs	Food company	• National duty of vigilance law • Indigenous rights
France	<u>Comissão Pastoral da Terra and Notre Affaire à Tous v. BNP Paribas</u>	2023, pending	<i>Forest degradation</i>	NGOs	Financial institution (commercial bank)	• National duty of vigilance law • Indigenous rights
France	<u>ClientEarth, Surfrider Foundation Europe, and Zero Waste France v. Danone</u>	2023, pending	<i>Biodiversity loss; freshwater and marine pollution</i>	NGOs	Plastic producer	• National duty of vigilance law • Ecological prejudice under national law
France	<u>Sherpa v. BNP Paribas, Crédit Agricole and Others</u>	2023, filed	<i>Forest degradation</i>	NGOs	Financial institutions (commercial banks, insurance company)	• National anti-money laundering law
UK	<u>GLAN and London Metal Network v. London Metal Exchange</u>	2024, filed	<i>Biodiversity loss; land pollution</i>	NGOs	Stock exchange	• National anti-money laundering law



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