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Decolonial Climate Litigation

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Abstract
This article identifies and analyzes a select body of climate litigation, framing such litigation as a decolonial approach to legal mobilization. Drawing on 58 cases filed between 2003 and 2023, we examine how certain climate lawsuits – spanning diverse jurisdictions, legal claims, and forums – articulate political projects grounded in historical struggles against colonialism, racial capitalism, and extractivism. Instead of adopting conventional typologies based on rights, torts or procedural elements, we propose a political lens attentive to the subaltern voices, contexts, and narratives that animate these cases. We identify commonalities across this litigation: racialized plaintiffs, three contexts of decolonial struggle (settler colonies, metropoles/(post)colonies, and global peripheries), and four distinctive types of decolonial claim. While these cases remain partially entangled with liberal legal frameworks, they nonetheless contest dominant climate governance paradigms and advance emancipatory visions of justice. We argue that these cases represent a tactical, albeit imperfect, intervention in the struggle for decolonial climate justice.

Keywords: Decolonial climate litigation; Climate coloniality; Political ecology; Legal mobilization; Climate justice; World systems

1. Introduction

> A people under occupation are denied their fundamental right of self-determination, which includes control over their natural resources and environment. In the case of Palestine, restrictions imposed by the Israeli authorities significantly limit the policy instruments and public investment opportunities available to the Palestinian Government to address climate challenges.[1]

The Intergovernmental Panel on Climate Change (IPCC), in its Sixth Assessment Report, has, for the first time, amplified what many thinkers from the global south have asserted for years: colonialism is a crucial factor that shapes vulnerability to

[1] International Court of Justice (ICJ), *Request for Advisory Opinion on the Obligations of States in respect of Climate Change*, Verbatim Record 2024/46, public sitting 9 Dec. 2024 (President Salam presiding), 'Statement of the Palestinian Ambassador before the International Court of Justice during the Public Hearing on the Obligations of States in respect of Climate Change', p. 47, available at: https://www.icj-cij.org/sites/default/files/case-related/187/187-20241209-ora-02-00-bi.pdf.

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climate breakdown.[2] Indeed, in former colonies or areas where colonialism still pervades – from Bangladesh to Puerto Rico, from Haiti to Palestine – all the impacts derived from fossil capitalism,[3] including displacement for oil exploitation and climate-induced disasters, hit harder because colonialism has manufactured a perpetual state of vulnerability.[4] Communities from these regions have historically resisted extermination and exploitation by various colonial and imperial powers, employing different tools at their disposal to end oppressive relationships with the ruling classes.[5] Legal mobilization has also been part of that repertoire.[6] How is litigation being deployed in climate coloniality, and what are its promises and limits?

Litigation related to climate change has rapidly increased over the past two decades, developing from a speculative legal strategy into a complex field with a considerable diversity of claims.[7] Amounting to thousands of cases worldwide, litigation is a consequential process for evolving climate change law and policy in numerous national and international legal systems. Cases address a diverse range of issues related to mitigation, adaptation, and loss and damage resulting from long-term shifts in temperature and weather patterns.[8] Yet, amid this tremendous diversity of cases, legal scholars have remained fixated primarily on the formal and regulatory properties of the cases in their attempts to categorize, classify, and order the field of legal action.[9]

For example, following the articulation by Jacqueline Peel and Hari Osofsky of a 'rights turn' in climate litigation,[10] many scholars have further developed accounts of human rights-based litigation,[11] while others have focused on litigation rooted in

[2] H.-O. Pörtner et al., 'Summary for Policymakers', in Intergovernmental Panel on Climate Change (IPCC) (H.-O. Pörtner et al. (eds)), *Climate Change 2022 – Impacts, Adaptation and Vulnerability: Working Group II Contribution to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change* (Cambridge University Press, 2023), pp. 3–33, at 12 ; C. Nair, 'IPCC Decolonization Call: Policymakers Must Listen' (2022) 606(7915) *Nature*, p. 653.

[3] A. Malm, *Fossil Capital: The Rise of Steam Power and the Roots of Global Warming* (Verso, 2016).

[4] F.B. Islam et al., 'Climate Coloniality and Settler Colonialism: Adaptation and Indigenous Futurities' (2024) 114 *Political Geography*, article 103164.

[5] U. Özsu, *Completing Humanity: The International Law of Decolonization, 1960–82* (Cambridge University Press, 2023).

[6] N. Tzouvala, *Capitalism as Civilisation: A History of International Law* (Cambridge University Press, 2020), p. 130.

[7] S. Maljean-Dubois, 'Climate Change Litigation', in *Max Planck Encyclopaedia of Public International Law* (Oxford University Press, 2018).

[8] J. Setzer & C. Higham, 'Global Trends in Climate Change Litigation: 2023 Snapshot', Grantham Research Institute on Climate Change and the Environment, Centre for Climate Change Economics and Policy, London School of Economics and Political Science & Columbia Law School Sabin Center for Climate Change Law, 2023.

[9] N.S. Ghaleigh, '"Six Honest Serving-Men": Climate Change Litigation as Legal Mobilization and the Utility of Typologies' (2010) 1(1) *Climate Law*, pp. 31–61; J. Solana, 'Climate Litigation in Financial Markets: A Typology' (2020) 9(1) *Transnational Environmental Law*, pp. 103–35.

[10] J. Peel & H.M. Osofsky, 'A Rights Turn in Climate Change Litigation?' (2018) 7(1) *Transnational Environmental Law*, pp. 37–67.

[11] A. Savaresi & J. Auz, 'Climate Change Litigation and Human Rights: Pushing the Boundaries' (2019) 9(3) *Climate Law*, pp. 244–62; P. Paiement, 'Urgent Agenda: How Climate Litigation Builds Transnational Narratives' (2020) 11(1–2) *Transnational Legal Theory*, pp. 121–43; C.A. Rodríguez-Garavito, 'Litigating the Climate Emergency: The Global Rise of Human Rights–Based Litigation for

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private law, such as tort law.[12] Others have sought to categorize climate litigation by the forums involved, including regional human rights bodies,[13] regional accounts of litigation before national courts[14] and international forums.[15] Such an approach to formal classifications has displaced the focus away from the historically contingent and politically agonistic underpinnings of climate litigation. Instead, what may prompt another stream of generative discussion is the foregrounding of climate change as 'legally disruptive' in that 'its highly polycentric, uncertain, socio-politically charged and dynamic nature presents particular challenges for legal orders and adjudication'.[16] The response to such disruption in the field of litigation comprises a multifaceted cluster of political motivations held by diverse constituencies and interest groups seeking to align law with their climate justice visions.

In this article, we seek to make sense of the intersection of law and justice by assessing a selected body of climate litigation in the light of the historically shaped political projects underpinning the cases. We are convinced that such an approach offers deeper insights into how litigation can shape and evolve climate governance. This approach follows the findings of Maria Antonia Tigre and co-authors, who identified 20 cases in Latin America related to questions of justice in the energy transition process.[17] Their analysis connects climate change and energy production with diverse legal challenges, such as the labour rights dispute heard by the Supreme

Climate Action', in C.A. Rodríguez-Garavito (ed.), *Litigating the Climate Emergency: How Human Rights, Courts and Legal Mobilization Can Bolster Climate Action* (Cambridge University Press, 2022), pp. 9–83.

12 M. Spitzer & B. Burtscher, 'Liability for Climate Change: Cases, Challenges and Concepts' (2017) 2017(2) *Journal of European Tort Law*, pp. 137–76, at 176; L. Burgers, 'An Apology Leading to Dystopia: Or, Why Fuelling Climate Change Is Tortious' (2022) 11(2) *Transnational Environmental Law*, pp. 419–31; R. Verheyen & J. Franke, 'Climate Change Litigation: A Reference Area for Liability', in P. Gailhofer et al. (eds), *Corporate Liability for Transboundary Environmental Harm: An International and Transnational Perspective* (Springer, 2023), pp. 353–418; P. Paiement, 'Reimagining the Energy Corporation: *Milieudefensie and Others* v *Royal Dutch Shell Plc*', in D. Dam-de Jong & F. Amtenbrink (eds), *Netherlands Yearbook of International Law 2021: A Greener International Law – International Legal Responses to the Global Environmental Crisis* (T.M.C. Asser Press, 2023), pp. 281–99.

13 J. Auz, '"So, This Is Permanence": The Inter-American Human Rights System as a Liminal Space for Climate Justice' (2021) 22(2) *Melbourne Journal of International Law*, pp. 187–220.

14 J. Lin & D. Kysar (eds), *Climate Litigation in the Asian Pacific* (Cambridge University Press, 2020).

15 P. Sands, 'Climate Change and the Rule of Law: Adjudicating the Future in International Law' (2016) 28(1) *Journal of Environmental Law*, pp. 19–35; M. Wewerinke-Singh, J. Aguon, & J. Hunter, *Bringing Climate Change before the International Court of Justice: Prospects for Contentious Cases and Advisory Opinions* (Brill Nijhoff, 2021); D. Bodansky, 'Advisory Opinions on Climate Change: Some Preliminary Questions' (2023) 32(2) *Review of European, Comparative & International Environmental Law*, pp. 185–92.

16 E. Fisher, E. Scotford, & E. Barritt, 'The Legally Disruptive Nature of Climate Change' (2017) 80(2) *The Modern Law Review*, pp. 173–201, at 174.

17 M.A. Tigre et al., 'Just Transition Litigation in Latin America: An Initial Categorization of Climate Litigation Cases Amid the Energy Transition', Sabin Center for Climate Change Law, Jan. 2023. On the conceptual foundations of just transition litigation see A. Savaresi et al., 'Conceptualizing Just Transition Litigation' (2024) 7(11) *Nature Sustainability*, pp. 1379–84. For a discussion of decolonial climate change litigation in Brazil see G. Mantelli et al., 'Decolonizing Climate Litigation: An Analysis of Indigenous Climate Litigation in Brazil', in M.A. Tigre, A. Rocha & D.W. de Carvalho (eds), *Brazil and Climate Justice: Pioneering Climate Litigation for a Global Cause* (Brill, 2025), pp. 200–22.

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Court of Chile in 2021,[18] and a land rights dispute that was launched by an Indigenous community in Oaxaca (Mexico) against the France-based energy company Électricité de France (EDF).[19] Such recategorizations of climate change-related litigation and legal mobilizations offer insightful accounts of the tectonic political projects upon which climate litigation attempts are built.

The article presents a novel analysis of recent and ongoing cases (filed between 2003 and 2023) to map what we argue to be an unfolding field of decolonial climate litigation. We assert that this body of litigation comprises a diverse range of cases that defy conventional categorizations. It includes cases initiated by individuals, groups, communities, and public authorities, targeting various national governments, publicly owned enterprises, and (multinational) private actors. The cases hinge on multiple claims, including those premised on fundamental rights, administrative challenges, tort and nuisance claims, treaty rights, and consumer protection legislation. They pursue diverse remedies, including declaratory relief, compensation, injunctions, and open-ended legal interpretations (for example, in the context of advisory opinions).

While transcending these formal characteristics, we suggest that this body of cases is unified by their shared pursuit of a particular notion of climate justice premised on decolonial political transformation. Whether explicitly or implicitly, symbolically or materially, each case positions the respective conflict amid a historical account or narrative of colonial processes of extraction and exploitation of natural resources, land, capital, and labour. Simultaneously, it situates litigation efforts as part of an emancipatory political struggle embedded in a web of colonial histories animated by global capitalist extraction and production. We also argue that centring the politics of subaltern actors in legal analysis, while criticizing Eurocentric typologies and ahistorical doctrinal accounts, is, in and of itself, a decolonial intervention. Accordingly, our evaluation does not hinge on whether these cases succeed in securing favourable judgments or measurable emissions reductions, but on how they reconfigure legal argumentation, challenge epistemic authority, and foreground racialized subjects within transnational climate litigation, thereby revealing both the possibilities and structural constraints of legal mobilization as a praxis of decolonial contestation.

Section 2 sets out the legal and political ecology of climate coloniality as the theoretical framework for identifying the oppressive structures produced by the historical and ongoing dialectics of racial capitalism, and clarifies the forms of decolonial praxis aimed at dismantling those structures within the climate crisis. Section 3 discusses our analysis of 58 cases that illustrate the decolonial climate litigation thesis. Here, we describe the critical role of racialized subjects serving as plaintiffs in these cases, the three political contexts of coloniality in which they arise, and four types of decolonial claim found across the cases. Finally, Section 4 discusses

[18] *Company Workers Union of Maritima and Others* v. *Ministry of Energy* (318-202,1), Court of Appeal of Antofagasta (Chile), 26 Mar 2021; (25.530-2021), Supreme Court of Chile, 9 Aug. 2021.

[19] *Union Hidalgo and Others* v. *Électricité de France*, Case No. 20/10246, Judicial Court of Paris (France), ongoing as at 6 Nov 2025.

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the importance of this socio-legal, rather than formalist, approach to thinking about climate change litigation, while also emphasizing the limitations of using legal mobilization as a tactic for decolonial struggle.

2. The Law and Political Ecology of Climate Coloniality

This section examines the political and legal dimensions of decolonial climate litigation as mutually constitutive arenas through which resistance to climate coloniality is articulated. In what follows, we situate climate litigation within broader decolonial and political-ecological frameworks that reveal how global capitalism, racial hierarchies, and extractivist logics shape both environmental harm and the conditions of legal redress. Based on this foundation, we interrogate how law itself – through doctrines of property, sovereignty, and personhood – has sustained racialized patterns of ecological exploitation, while also providing openings for subaltern actors to reimagine legal and judicial structures. Ultimately, we bring to the fore that decolonial climate litigation is not merely a juridical exercise but a form of political praxis aimed at transforming the epistemic and material orders that underwrite the climate crisis.

2.1. The Political Ecology of Climate Coloniality

To interrogate decolonial politics in climate litigation, we draw on a theoretical framework that integrates decolonial theory and political ecology, both of which are informed by world-systems analysis. This combined lens enables us to approach climate litigation not merely as a legal tool but as a politically situated practice embedded within long-standing global structures of capitalism that reproduce ecological, economic, and epistemic inequality. It provides a foundation for critically assessing the origins and trajectories of climate harm, as well as the legal responses that seek to address it.

World-systems theory provides the macro-structural perspective necessary to understand the global distribution of ecological ruin. Originally developed by Immanuel Wallerstein, the theory delineates a global capitalist system stratified into core, semi-peripheral, and peripheral zones.[20] These zones are distinguished by their production, accumulation, and exploitation/dispossession roles.[21] The core – primarily industrialized nations – accumulates capital and concentrates technological and legal control, while the (semi-)periphery provides cheap raw materials and labour, becoming the dumping ground for waste.[22] This configuration underlies what Jason Hickel and co-authors describe as unequal ecological exchange, in which the periphery consistently delivers more value than it receives in return.[23] Climate breakdown is one

[20] I.M. Wallerstein, *World-Systems Analysis: An Introduction* (Duke University Press, 2004).
[21] R. Luxemburg, *The Accumulation of Capital* (Routledge, 2nd edn, 2003), p. 350.
[22] R. Patel & J.W. Moore, *A History of the World in Seven Cheap Things: A Guide to Capitalism, Nature, and the Future of the Planet* (University of California Press, 2017).
[23] J. Hickel et al., 'Imperialist Appropriation in the World Economy: Drain from the Global South through Unequal Exchange, 1990–2015' (2022) 73 *Global Environmental Change*, article 102467; A. Hornborg, 'Towards an Ecological Theory of Unequal Exchange: Articulating World System Theory and Ecological Economics' (1998) 25(1) *Ecological Economics*, pp. 127–36.

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of the most significant manifestations of this asymmetry, whereby nations least responsible for emissions are the most vulnerable to its effects.[24] Farhana Sultana terms this the condition of 'climate coloniality': the entanglement of climate harm with racial capitalism, Eurocentric legal hegemony, and militarized development practices.[25]

Building on this, political-ecology and world-ecology approaches examine the material and socio-political processes that mediate environmental harm.[26] Political ecology, particularly in the work of scholars like Jason Moore, Enrique Leff, and Maristella Svampa, considers environmental degradation not as an accidental by-product but a structural feature of capitalist modernity.[27] Moore's approach to the 'Capitalocene' reframes the climate crisis as dialectically constitutive of capitalist world-ecology – a system that depends on the appropriation of 'cheap nature' to sustain accumulation.[28] Similarly, Alf Hornborg's theory of unequal ecological exchange explains how economic production functions as an energy transformation process.[29] He observes that the value of goods increases as more energy (or *exergy*) is dissipated in their production – meaning that products from industrial centres tend to contain less remaining energy than the raw resources they import.[30] This creates a systemic energy flow from the periphery to the industrial core within the capitalist world system. As production intensifies, core regions accumulate more capital to import additional high-energy resources, perpetuating this imbalance. Hornborg argues that this cycle, which applies across all natural resources, leads to a spatial redistribution of environmental degradation. Crucially, he emphasizes that monetary systems do not mitigate ecological harm – they merely obscure or displace it, enabling the ongoing exploitation of the biosphere through global capitalist exchange. This

[24] K. Thomas et al., 'Explaining Differential Vulnerability to Climate Change: A Social Science Review' (2019) 10(2) *WIREs Climate Change*, article e565.

[25] F. Sultana, 'The Unbearable Heaviness of Climate Coloniality' (2022) 99 *Political Geography*, article 102638, p. 4 (Sultana (2022a)). The notion of 'climate coloniality' is also held to contribute towards the purported development of a global racial regime of 'climate apartheid'; see O.O. Táíwò, *Reconsidering Reparations* (Oxford University Press, 2022), p. 171; F. Sultana, 'Critical Climate Justice' (2022) 188(1) *The Geographical Journal*, pp. 118–24, at 120 (Sultana (2022b)); J. Long, 'The Coloniality of Climate Apartheid: Excising Colonial Legacies in Climate Development and Governance', in F. Sultana (ed.), *Confronting Climate Coloniality: Decolonizing Pathways for Climate Justice* (Routledge, 2025), pp. 31–44.

[26] Tetrault offers a helpful review of the major schools of thought within the overarching framework of political ecology, including materialist and discursive pillars, and a group of scholars offering a third approach that seeks to combine materialist and post-structural (or discursive) analyses: D. Tetreault, 'Three Forms of Political Ecology' (2017) 22(2) *Ethics and the Environment*, pp. 1–23, at 19.

[27] J.W. Moore, 'Our Capitalogenic World: Climate Crises, Class Politics, and the Civilizing Project' (2023) 11 *Annales Universitatis Paedagogicae Cracoviensis, Studia Poetica*, pp. 97–122; E. Leff, *Political Ecology: Deconstructing Capital and Territorializing Life* (Palgrave Macmillan, 2021), p. 255; M. Svampa, *Neo-extractivism in Latin America: Socio-environmental Conflicts, the Territorial Turn, and New Political Narratives* (Cambridge University Press, 2019).

[28] J.W. Moore, *Capitalism in the Web of Life: Ecology and the Accumulation of Capital* (Verso, 2015).

[29] Hornborg, n. 23 above.

[30] Ibid., p. 131. Hornborg defines 'exergy' as 'the *quality* of energy in a particular substance or context, or, in other words, that part of the energy available for mechanical work'.

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framework bridges world-systems theory and ecological economics to expose the structural nature of a north-south divide.

These frameworks also draw on the concept of metabolic rift – a deep fracture between human society and the biophysical processes that sustain life, accelerated by capitalism.[31] Originally theorized by Karl Marx, the rift emerged from the separation of urban industrial labour from rural agriculture.[32] As food and energy were extracted from the countryside to feed cities, nutrients were not returned to the soil, leading to environmental degradation.[33] This concept helps us to think 'through a singular metabolism of power, nature, and capital'.[34] Moore expands this theory by arguing that capitalism accelerates production through 'shortcuts' that compress the time required for nature's reproduction, causing violent ecological consequences.[35] Climate litigation, viewed through this lens, challenges immediate violations and the deeper rifts between capitalist production and planetary boundaries,[36] as shown by the proliferation of lawsuits brought against high-emitting corporate actors and oil majors.[37]

As a corollary to the phenomenon of the (semi-)periphery as a waste disposal site, the concept of sacrifice zones is central to political ecology.[38] These are regions designated, explicitly or implicitly, for ecological ruin in the name of progress, development, or energy transition.[39] Svampa identifies how Latin American territories, predominantly Indigenous and *campesinos* lands, are systematically turned into sacrifice zones through extractivist policies justified by national development goals and international demand.[40] Framing territories as mere 'productive sites' strips them of relational and cultural meaning, converting living

[31] A. Malm, *The Progress of this Storm: Nature and Society in a Warming World* (Verso, 2020), pp. 15, 190–1.

[32] K. Marx, *Capital: Volume III* (Penguin Books, 3rd edn, 1992), pp. 949–50; B. Clark & J.B. Foster, 'Ecological Imperialism and the Global Metabolic Rift: Unequal Exchange and the Guano/Nitrates Trade' (2009) 50(3–4) *International Journal of Comparative Sociology*, pp. 311–34.

[33] For an extensive discussion of Marx's observation and the significance of metabolic rift in his late writings see K. Saito, *Marx in the Anthropocene: Towards the Idea of Degrowth Communism* (Cambridge University Press, 2022).

[34] Moore, n. 28 above, p. 91 (reviewing the contribution of John Bellamy Foster on the modern conceptualization of the metabolic rift). See J.B. Foster, 'Marx's Theory of Metabolic Rift: Classical Foundations for Environmental Sociology' (1999) 105(2) *American Journal of Sociology*, pp. 366–405. It is also worth noting that the two authors have disagreed on the rift as an analytic and/or epistemological phenomenon. While this disagreement is too extraneous for this article, Saito has carefully mapped the work of historical materialists and ecological Marxists on the metabolic rift in Saito, n. 33 above.

[35] Moore, n. 28 above, p. 103.

[36] K. Richardson et al., 'Earth Beyond Six of Nine Planetary Boundaries' (2023) 9(37) *Science Advances*, article eadh2458.

[37] J. Setzer & C. Higham, 'Global Trends in Climate Change Litigation: 2025 Snapshot', Grantham Research Institute, London School of Economics and Political Science & Columbia Law School Sabin Center for Climate Change Law, 25 June 2025, p. 37.

[38] M. Biocca, 'Introducción: Zonas de Sacrificio: Neo-Extractivismo y Pueblos Indígenas en la Era Post-Neoliberal' (2020) 6(11) *Etnografías Contemporáneas*, pp. 106–12.

[39] D.N. Scott & A.A. Smith, '"Sacrifice Zones" in the Green Energy Economy: Toward an Environmental Justice Framework' (2018) 62(3) *McGill Law Journal*, pp. 861–98.

[40] Svampa, n. 27 above, pp. 7–8.

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spaces into extraction zones. Legal action that reasserts territorial rights, challenges extractivist logic, or asserts environmental personhood thus becomes part of a broader struggle for environmental and epistemic justice.[41]

Decolonial theory offers a complementary, and at times intersecting, analytic that foregrounds the epistemic and racialized foundations of global environmental harm. Aníbal Quijano's concept of the 'coloniality of power' explains how modernity and capitalism are historically entangled with colonial patterns of domination.[42] According to Quijano and Ramón Grosfoguel, racial classification served to justify and naturalize the global division of labour.[43] This logic persists today, both in the racialized distribution of ecological harm and in the privileging of Western legal and scientific epistemologies over Indigenous and subaltern knowledges.[44]

Silvia Rivera Cusicanqui highlights that various voices from earlier generations have recognized that regressive forms of modernity, when imposed on colonial lands, have confronted a baroque, *ch'ixi* ethos that has resisted them and continues to do so.[45] Rivera Cusicanqui asserts that such dialectical encounters have also fostered 'an intelligent magma from which liberating energies could spring'.[46] In that same spirit, Sultana invites us to conceive of decolonization within the climate context as 'rethinking and addressing various institutions and processes at multiple intersecting scales'.[47] Decolonizing climate involves critically examining the complexities of empire, imperialism, and capitalism, and understanding how to de-centre and dismantle them rather than simply doing so metaphorically.[48] Malcolm Ferdinand echoes the ethos of Cusicanqui and Sultana by describing certain struggles as embodying what he calls decolonial ecology – a theory and praxis that condemns environmental colonialism. Decolonial ecology is resisting the imposition of 'a way of using the Earth that usurps common goods for a profit on the one side and results in the degradation of the living

[41] J. Auz, 'The Political Ecology of Climate Remedies in Latin America and the Caribbean: Comparing Compliance between National and Inter-American Litigation' (2024) 16(1) *Journal of Human Rights Practice*, pp. 182–207.

[42] A. Quijano, 'Coloniality of Power and Eurocentrism in Latin America' (2000) 15(2) *International Sociology*, pp. 215–32.

[43] R. Grosfoguel, 'The Epistemic Decolonial Turn' (2007) 21(2–3) *Cultural Studies*, pp. 211–23.

[44] E.D.M. Martínez & J.G. Florêncio, 'El Debate sobre Decolonialidad, Aspectos Indígenas y Medio Ambiente en América Latina: Un Análisis sobre el Estado del Arte' (2018) 58(1) *Foro Internacional*, pp. 131–60.

[45] S. Rivera Cusicanqui, *Un Mundo Ch'ixi es Posible: Ensayos desde un Presente en Crisis* (Tinta Limón, 2018), p. 44. *Ch'ixi* is a concept rooted in Aymara cosmology and decolonial thought that challenges binary and hierarchical modes of thinking imposed by colonial modernity. Rather than promoting the fusion or synthesis of opposing categories – such as Indigenous/Western, traditional/modern, or nature/culture – the *ch'ixi* perspective embraces their coexistence in tension. *Ch'ixi*, for Rivera Cusicanqui, is thus a way of being and thinking where heterogeneous elements exist together without merging, maintaining their distinctiveness while interacting.

[46] Ibid., p. 44.

[47] F. Sultana, 'Urgency, Complexities, and Strategies to Confront Climate Coloniality and Decolonize Pathways for Climate Justice', in F. Sultana (ed.), *Confronting Climate Coloniality: Decolonizing Pathways for Climate Justice* (Routledge, 2024), pp. 1–27, at 6; E. Tuck & K.W. Yang, 'Decolonization Is Not a Metaphor' (2012) 1(1) *Decolonization: Indigeneity, Education & Society*, pp. 1–40.

[48] Sultana (2022a), n. 25 above, p. 6.

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environment for the local inhabitants on the other'.[49] In this sense, legal struggles can serve as resistance tactics within a larger political strategy of emancipatory struggle.[50]

Against this backdrop, a decolonial legal praxis for climate justice, reflected in the 58 climate litigation cases analyzed in the following sections, addresses four aspects that touch on the sensitive fibres of (post-)colonial legal technologies.[51] These aspects are:

- historical and cumulative ecological harm,[52] acknowledging that climate change is not temporally isolated but accumulates over centuries of extractivism fuelling colonial expansion;
- the racial capitalist origins of sacrifice zones, where subaltern territories are regularly sacrificed for the energy demands of the core;
- the convenience of sovereign bordered regimes of ecological harm, which obstruct justice and accountability for subaltern plaintiffs from foreign jurisdictions;[53] and
- the multinational corporate structure, which shields the capitalist ruling class with legal fictions such as subsidiaries and discrete responsibilities in the global value chain.[54]

These aspects will be analyzed further in the context of legal mobilization.

To summarize, political ecology and decolonial theory provide the perspective to place climate litigation within the broader contexts of colonialism, imperialism, and global capitalism. Rather than evaluating these cases based solely on their legal merits or doctrinal coherence, we examine how they act as political interventions to challenge the normative and material foundations of the transnational climate regime. In doing so, we aim to highlight how law can reinforce and resist climate coloniality.

2.2. Decolonizing the Law of Climate Change

Recent scholarship on law and decolonization highlights how legal systems have historically facilitated and continue to sustain global structures of racialized

[49] M. Ferdinand, *Decolonial Ecology: Thinking from the Caribbean World* (Polity Press, 2022), p. 186.
[50] R. Knox, 'Strategy and Tactics' (2010) 21 *Finnish Yearbook of International Law*, pp. 193–229.
[51] For a discussion and contextualization of the notion of 'legal technologies' as mechanisms to govern the colony and the post-colony see S.E. Merry, 'Colonial and Postcolonial Law', in A. Sarat (ed.), *The Blackwell Companion to Law and Society* (Wiley, 2004), pp. 569–88.
[52] In this article, we use the terms 'historical' and 'cumulative' interchangeably because cumulative emissions are inherently historical. The emissions produced during colonial-era plantations in the Caribbean and the Industrial Revolution, predominantly generated by the imperial core, remain present in the atmosphere today. Thus, emissions are cumulative precisely because of their historical nature.
[53] U. Baxi, 'Human Rights Responsibility of Multinational Corporations, Political Ecology of Injustice: Learning from Bhopal Thirty Plus?' (2016) 1(1) *Business and Human Rights Journal*, pp. 21–40.
[54] K. Pistor, *The Code of Capital: How the Law Creates Wealth and Inequality* (Princeton University Press, 2019), pp. 39–42; G. Baars, *The Corporation, Law and Capitalism: A Radical Perspective on the Role of Law in the Global Political Economy* (Brill Nijhoff, 2019), pp. 346–51.

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exploitation and ecological harm.[55] In the context of climate change, this literature calls for a shift away from narrowly framed climate law towards a broader interrogation of legal norms and institutions that enable the climate crisis and its unequal impacts.[56] Such an approach aligns with the framework developed in the previous subsection by treating law as embedded in a world system of capitalist modernity and ecological extraction.[57]

Modern legal systems, shaped by liberal ontologies and epistemologies, have naturalized dispossession through constructs such as property, sovereignty, and the juridical subject.[58] Critics emphasize how these frameworks empower certain areas of knowledge while repressing others,[59] and how legal doctrines – such as the Cartesian separation of subject and object – underpin exploitative relationships between humans and nature.[60] Folúkẹ́ Adébísí, for instance, exposes how European legal epistemologies facilitate the 'property-fication' of nature and support ongoing accumulation grounded in colonial logics.[61]

The racialized character of these legal structures is central to understanding the climate crisis. As Frantz Fanon observed, colonial economies operate through a dialectics of race and class: 'You are rich because you are white, you are white because you are rich'.[62] Eve Darian-Smith similarly argues that whiteness functions as a global legal and epistemic structure legitimating legal practices born in the global north.[63]

[55] F. Adébísí, *Decolonisation and Legal Knowledge: Reflections on Power and Possibility* (Bristol University Press, 2023); E. Blanco & A. Grear, 'Personhood, Jurisdiction and Injustice: Law, Colonialities and the Global Order' (2019) 10(1) *Journal of Human Rights and the Environment*, pp. 86–117.

[56] J. Auz & P. Paiement, 'The Neocolonial Violence of the 1.5°C Threshold', *Open Global Rights*, 5 Oct. 2023, available at: https://www.openglobalrights.org/neocolonial-violence-1-5C-threshold; J. Dehm, 'Carbon Colonialism or Climate Justice? Interrogating the International Climate Regime from a TWAIL Perspective' (2017) 33(3) *Windsor Yearbook of Access to Justice*, pp. 129–61; T.G. Puthucherril, 'Regulating Toxic Chemicals, Pesticides, and Hazardous Wastes: A TWAIL Approach to the BRS Legal Regime for a Detoxified Future', in E. Techera et al. (eds), *Routledge Handbook of International Environmental Law* (Routledge, 2020), pp. 189–202; U. Natarajan & K. Khoday, 'Locating Nature: Making and Unmaking International Law', in U. Natarajan & J. Dehm (eds), *Locating Nature: Making and Unmaking International Law* (Cambridge University Press, 2022), pp. 21–44.

[57] J. Auz, 'The Political Ecology of Earth System Law: Outlining a Lex Capitalocenae' (2023) 40(2) *Wisconsin International Law Journal*, pp. 217–44; J. Santora, 'Lex Capitalocenae: Cheap Nature and the Emergence of Legal Naturalism' (2025) 31(1) *Journal of World-Systems Research*, pp. 308–40.

[58] S. Riley Case, 'Looking to the Horizon: The Meanings of Reparations for Unbearable Crises' (2023) 117 *AJIL Unbound*, pp. 49–54, at 54; A. Anghie, *Imperialism, Sovereignty, and the Making of International Law* (Cambridge University Press, 2007); Blanco & Grear, n. 55 above.

[59] In the context of climate change, Sultana writes that 'decolonizing climate is very much about knowledge production (who is cited, which epistemologies, whose ontologies, and so on), and who is invited to speak, who is heard, and who helps set agendas': Sultana (2022a), n. 25 above, pp. 8–9.

[60] F. Fleurke et al., 'Constitutionalizing in the Anthropocene' (2024) 15(1) *Journal of Human Rights and the Environment*, pp. 4–22, at 7–8.

[61] Adébísí, n. 55 above, p. 10.

[62] F. Fanon, *The Wretched of the Earth* (Grove Press, 2002), p. 5. For an application of Fanon's stretched Marxist approach to racialization and international law see R. Knox, 'Valuing Race? Stretched Marxism and the Logic of Imperialism' (2016) 4(1) *London Review of International Law*, pp. 81–126.

[63] E. Darian-Smith, 'Postcolonial Law', in J.D. Wright (ed.), *International Encyclopedia of the Social & Behavioral Sciences* (Elsevier, 2nd edn, 2015), pp. 647–51; E. Darian-Smith, *Law and Societies in Global Contexts: Contemporary Approaches* (Cambridge University Press, 2013), p. 321.

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Through these racialized 'logics of enclosure', certain territories – often Indigenous, Black, or otherwise subaltern – have historically been transformed into 'zones of nonbeing' or sacrifice zones for the benefit of imperial accumulation.[64] These logics persist today, exposing historically marginalized communities to both the legacy and intensification of ecological exploitation.[65]

In this light, the legal regimes created to manage climate accountability are themselves shaped by colonial asymmetries.[66] As Sarah Riley Case and Stephen Humphreys note, the climate crisis overlays long-standing racial injustices, with legal regimes often exonerating the historical emissions of industrialized states.[67] The result is a differentiated exposure to climate impacts, adaptation burdens, and legal invisibility for those least responsible for emissions.[68]

Nevertheless, scholars have identified avenues for legal resistance. Proposals for climate reparations aim to confront the global north's unaccounted historical emissions,[69] demanding redistribution, land repatriation, and adaptation funding as part of a broader programme of justice.[70] This focus on broader historical reparations may aim to shift the framing and forum for loss and damage in United Nations (UN) climate negotiations away from being the only venue for ventilating issues of climate-related harm.[71] These structural remedial claims are rooted in centuries of atmospheric appropriation, extractivism, and structural violence.[72]

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64 C.G. Gonzalez, 'The Sacrifice Zones of Carbon Capitalism: Race, Expendability, and Loss and Damage', in M. Doelle & S.L. Seck (eds), *Research Handbook on Climate Change Law and Loss & Damage* (Edward Elgar, 2021), pp. 43–59.

65 As Adébísí writes, referring also to the work of K. Wayne Yang, 'Yet logics of enclosure for profit continue to extend themselves necropolitically as bodies on fire fell from the sky. Bodies made illegible and valueless to Euro-modernity. Furthermore, these conditions of life are also the conditions of the planet on fire. The destruction of the planet and unequal vulnerability to climate catastrophe also result from the subjugation of land and nature for the use of humans/bodies legible to Euro-modern legality': Adébísí, n. 55 above, pp. 102–3.

66 This amounts to a racialized approach to issues of climate justice: 'how climate change impacts people differently, unevenly, and disproportionately': Sultana (2022b), n. 25 above, p. 118.

67 Riley Case, n. 58 above, p. 54; S. Humphreys, 'Climate Justice: The Claim of the Past', in A. Grear & C. Gearty (eds), *Choosing a Future: The Social and Legal Aspects of Climate Change* (Edward Elgar, 2014), pp. 134–48.

68 Sultana, n. 47 above, pp. 3–4.

69 S. Mason-Case & J. Dehm, 'Redressing Historical Responsibility for the Unjust Precarities of Climate Change in the Present', in B. Mayer & A. Zahar (eds), *Debating Climate Law* (Cambridge University Press, 2021), pp. 170–89, at 174; Sultana (2022a), n. 25 above, p. 4. Táíwò, in his pivotal justification for a system of reparations as a response to the injustices of colonial dispossessions, slavery and climate coloniality, also connects his analysis to the fundamental problem of unequal ecological exchange: Táíwò, n. 25 above, p. 165.

70 J. Dehm, 'Beyond Climate Due Diligence: Fossil Fuels, "Red Lines" and Reparations' (2023) 8(2) *Business and Human Rights Journal*, pp. 151–79; Mason-Case & Dehm, n. 69 above, p. 189.

71 M.J. Mace & R. Verheyen, 'Loss, Damage and Responsibility after COP21: All Options Open for the Paris Agreement' (2016) 25(2) *Review of European, Comparative & International Environmental Law*, pp. 197–214; Mason-Case & Dehm, n. 69 above, p. 176; S. Adelman, 'Climate Justice, Loss and Damage and Compensation for Small Island Developing States' (2016) 7(1) *Journal of Human Rights and the Environment*, pp. 32–53; J. Dehm, 'Climate Change, "Slow Violence" and the Indefinite Deferral of Responsibility for "Loss and Damage"' (2020) 29(2) *Griffith Law Review*, pp. 220–52.

72 A.L. Fanning & J. Hickel, 'Compensation for Atmospheric Appropriation' (2023) 6(9) *Nature Sustainability*, pp. 1077–86.

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In litigation, legal mobilizations from the global south are increasingly asserting alternative epistemologies and forms of agency.[73] Scholars highlight that Indigenous litigants, although constrained by the liberal frameworks of international and domestic law, have used litigation to contest extractivist logics and defend relational understandings of land and territory.[74] This seemingly contradictory ontology exists also in regional adjudicative bodies, such as the Inter-American Court of Human Rights (IACtHR), described as a 'liminal space' where emancipatory potential coexists with colonial and liberal constraints.[75]

Thus, decolonizing the law of climate change requires more than policy reform. It demands critical engagement with the law's structural complicity in upholding global eco-apartheid.[76] This decolonial understanding of the relationship between law and climate change is situated within broader narratives of agency and responsibility for the rise of global capitalism, including its earlier precursors: colonial trade systems premised on slavery, dispossession, and unequal ecological exchange within the world system. A decolonial climate litigation involves reimagining spatial and temporal opportunities for justice, considering the relationality of legal frameworks, understanding the historical and political role of law in the broader cause of emancipation, and valuing perspectives beyond liberal paradigms. It also emphasizes foregrounding struggles led by racialized and historically dispossessed communities. As the broader framework in this article suggests, law can both reinforce and resist climate coloniality – its role is contingent on how it is mobilized, by whom, and to what ends.

3. Pursuing Decolonial Political Transformations through Climate Litigation

Drawing on 58 climate cases (see Annex 1 in the online Supplementary Materials) across more than 15 jurisdictions, this section highlights decolonial traits in climate

[73] J. Setzer & L. Benjamin, 'Climate Litigation in the Global South: Constraints and Innovations' (2020) 9(1) *Transnational Environmental Law*, pp. 77–101; B. Ohdedar, 'Climate Adaptation, Vulnerability and Rights-based Litigation: Broadening the Scope of Climate Litigation Using Political Ecology' (2022) 13(1) *Journal of Human Rights and the Environment*, pp. 137–56; J. Peel & J. Lin, 'Transnational Climate Litigation: The Contribution of the Global South' (2019) 113(4) *American Journal of International Law*, pp. 679–726; J. Lin & J. Peel, 'The Farmer or the Hero Litigator? Modes of Climate Litigation in the Global South', in C. Rodríguez-Garavito (ed.), *Litigating the Climate Emergency: How Human Rights, Courts, and Legal Mobilization Can Bolster Climate Action* (Cambridge University Press, 2022), pp. 187–205.

[74] S. Bookman, 'Indigenous Climate Litigation in Anglophone Settler-Colonial States: Context, Cases and Caution' (2022) *Verfassungsblog*, 25 Mar. 2025, available at: https://verfassungsblog.de/indigenous-climate-litigation-in-anglophone-settler-colonial-states.

[75] Auz, n. 13 above.

[76] K. Heron, 'Capitalist Catastrophism and Eco-Apartheid' (2024) 153 *Geoforum*, article 103874. As Heron notes, the concept of global eco-apartheid is not intended to downplay existing forms of apartheid, such as that experienced by Palestinians under Israel's settler-colonial occupation. One manifestation of local eco-apartheid in Palestine is the systematic eradication of Indigenous, life-sustaining trees and crops – such as figs, carobs, oaks, hawthorns, almonds, and olives – to make way for European-style pine trees introduced by the Israeli state. See also I. Braverman, *Settling Nature: The Nature Conservation Regime in Palestine-Israel* (University of Minnesota Press, 2023).

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litigation. We identified these cases using public databases of climate litigation, reviewing the literature on international and comparative litigation, and participating in scientific meetings related to ongoing climate litigation proceedings. Cases were included in this collection based on their correspondence with various keywords and concepts identified in the literature on decolonial legal theory and the political ecology of climate change (see Section 2). The collection is not intended to be an exhaustive list of all cases featuring decolonial characteristics. Instead, the cases were collected using a diversity-sampling logic, aiming to develop a comprehensive, though incomplete, account of decolonial claims. As such, the collection aspires to illustrate the diversity of proceedings undertaken in pursuit of decolonial transformation in climate law and politics. To that end, the 58 cases transcend all formal categories of climate litigation. The collection presents cases grounded in human rights, private law (for example, tort and nuisance claims), and public law. Likewise, there are cases brought before domestic courts, transnational cases involving parties in multiple jurisdictions brought before domestic courts, and cases before international adjudicative bodies (such as regional human rights bodies and the International Centre for Settlement of Investment Disputes), and non-binding dispute resolution mechanisms (such as the Organisation for Economic Co-operation and Development (OECD) National Contact Points). They pursue a wide range of remedies, including injunctions against emitting activities and/or related authorizations, declaratory remedies, compensatory damages, and punitive damages.

Furthermore, they pertain to a wide array of climate claims, including cases that seek to impose mitigation obligations upon states or private actors, cases seeking compensation (or reparations) for climate loss and damage, and cases seeking injunctive or compensatory remedies for the harm inflicted by infrastructure projects related to either fossil fuel production and consumption or renewable energy infrastructure. The earliest case in the collection was filed in 2003, while most cases were filed between 2019 and 2023 (Figure 1).[77] As the analysis emphasizes the claims articulated by the plaintiffs in these cases, it includes litigation with both favourable and unfavourable final decisions, as well as litigation still pending a final decision. Taken together, the cases serve as a robust illustration of the decolonial political transformations pursued by climate justice movements through litigation.

Our analysis below identifies a series of characteristics of climate cases that pursue decolonial political transformation. Firstly, we describe the prominent position of racialized individuals and communities and how the cases represent conflicts spanning three types of (post-)colonial political context: settler colonies, (post-)colony/metropole, and core/(semi-)periphery.

[77] We chose to use the litigation in Ecuadorian courts against ChevronTexaco Corporation, filed in 2003, as a starting date for collecting cases for this analysis. There were obvious earlier cases which could have justified an even earlier starting date – including earlier litigation proceedings before United States (US) courts about Texaco's alleged harm to the environment in Ecuador – but the 2003–23 scope offered a more clearly delineated, two-decade period for which to collect and assess cases.

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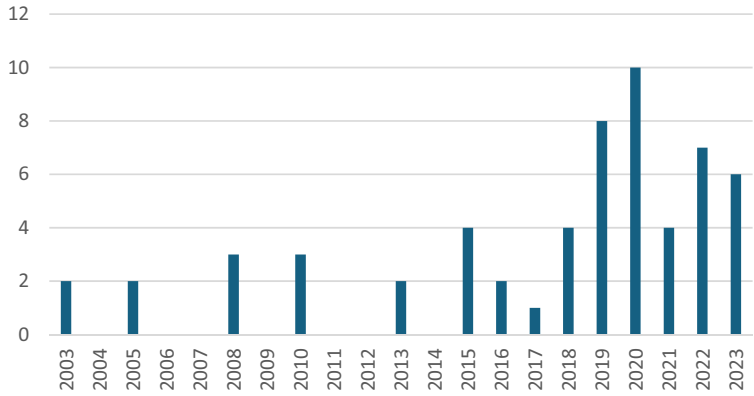


Figure 1. Chronology of Cases (by Filing Date)

We also identify four types of claim that characterize decolonial climate litigation (see Annex 1 in the Supplementary Materials):

- claims that assert obligations stemming from the historic and cumulative emissions ('Historic + Cumulative') of public or private actors;
- claims that assert obligations related to (the risk of) creating sacrifice zone conditions through direct or indirect contributions to climate change or the adaptation thereof ('Sacrifice Zone');
- claims that assert obligations related to the extraterritorial effects of an actor's greenhouse gas (GHG) emissions ('Extraterritorial'); and
- claims that assert obligations regarding the contributions made by subsidiaries and trading partners across global value chains to create adverse conditions of the climate and environment ('Global Value Chain').

These four types of claim were identified abductively, drawing on both the literature of decolonial legal theory and the political ecology of climate change (Section 2), and were further refined through our reading of cases while composing the case list for this analysis. Importantly, these four types of claim are not exclusive categories and might overlap.

3.1. Empowering the Legal Agency of Racialized Subjects through Climate Litigation

One of the case selection criteria for deeming climate litigation cases to be of a decolonial nature is the claimants' self-identification as belonging to historically racialized communities – in settler-colonial, post-colonial, or global periphery contexts. Out of the 58 decolonial cases assessed in this study, all but two involve plaintiffs or claimants who identify as racialized individuals or communities. It is noteworthy that racialized plaintiffs often file claims in conjunction with other individuals or non-governmental organizations (NGOs). For example, the claims developed by Our Children's Trust in the United States usually include Indigenous

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(youth) plaintiffs filing alongside (youth) plaintiffs of other or unspecified ethnic or racial backgrounds.[78] The two cases in which racialized plaintiffs are not directly involved are *Amis de la Terre and Sherpa* v. *Perenco*,[79] and *Les Amis de la Terre France and Others* v. *Préfet des Bouches-du-Rhône and SAS Total Raffinage France*,[80] both introduced under the French Loi de Vigilance (Duty of Vigilance Law).[81] In these cases, there are evident – albeit implied and indirect – connections with racialized communities in the Democratic Republic of Congo affected by Perenco's oil exploitation operations, and in Malaysian and Indonesian regions affected by the rise of palm oil products in Total's value chain. The alleged harm to their local environment is a principal element of the claims against Perenco and Total. For this reason, we have included the cases in the collection of decolonial claims despite the absence of a formally racialized plaintiff.[82]

Some of the earliest climate litigation cases were launched by Indigenous communities living on the frontlines of the changing climate. In this sense, the transnational phenomenon of climate litigation has always held elements of decolonial political transformation.[83] In their 2005 petition to the Inter-American Commission on Human Rights, the plaintiffs in *Sheila Watt-Coultier and Others* v. *United States of America*[84] include the Inuit Circumpolar Conference and dozens of Inuit individuals from the Arctic regions of the United States (US) and Canada, who sought protection from the Commission for the alleged violations of their human rights caused by the impacts of the US contribution to climate change and, in particular, the impacts that they have had on the Arctic environment. Their petition details extensively how

[78] This is found, e.g., in *Held* v. *State of Montana*, No. CDV–2020–307 (Mont. 1st Dist. Ct.) (US), Complaint for Declaratory and Injunctive Relief, 13 Mar. 2020; *Aji P. and Others* v. *State of Washington*, No. 18–2–04448–1 SEA (Wash. Sup. Ct.) (US), Complaint for Declaratory and Injunctive Relief, 16 Feb. 2018; and *Juliana and Others* v. *United States and Others*, Civ. No. 6:15-cv-01517-AA (D. Or.) (US), Complaint for Declaratory and Injunctive Relief, 12 Aug. 2015.

[79] *Amis de la Terre France and Sherpa* v. *Perenco SA*, No 20-22.444, Cour de Cassation (1re civ.) (France), 9 Mar. 2022.

[80] *Les Amis de la Terre France and Others* v. *Préfet des Bouches-du-Rhône and SAS Total Raffinage France*, No 1805238, Tribunal Administratif de Marseille (France), 1 Apr. 2021.

[81] 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 française* (*JORF*), No. 0074, 28 Mar. 2017 (Duty of Vigilance Law).

[82] Ibid., the Duty of Vigilance Law created a procedural opportunity for France-based civil society organizations to raise claims on behalf of racialized communities affected by the operations of France-based corporations, without the direct involvement of the affected parties as plaintiffs. It is, in this sense, a rather unique procedural opportunity for corporate accountability in decolonial climate litigation.

[83] On climate litigation as a transnational phenomenon see H.M. Osofsky, 'The Geography of Climate Change Litigation: Implications for Transnational Regulatory Governance' (2005) 83(6) *Washington University Law Quarterly*, pp. 1789–855; Paiement, n. 11 above; P. Paiement, 'What of Litigation? Domestic Courts and Lawmaking Processes in Transnational Law' (2024) 33(1) *Journal of Transnational Law & Policy*, pp. 41–76, at 68–70; Peel & Lin, n. 73 above; S. Varvastian & F. Kalunga, 'Transnational Corporate Liability for Environmental Damage and Climate Change: Reassessing Access to Justice after *Vedanta* v. *Lungowe*' (2020) 9(2) *Transnational Environmental Law*, pp. 323–45.

[84] Sheila Watt-Coultier and Others, *Petition to the Inter-American Commission on Human Rights Seeking Relief from Violations Resulting from Global Warming Caused by Acts and Omissions of the United States*, Petition No. P-1413-05, 7 Dec. 2005, Inter-American Commission on Human Rights.

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warming weather in the Arctic region – including melting sea ice and glaciers, thawing permafrost, sea-level rise, and habitat shifts – has an impact on Inuit culture, economy, property, and security. Their petition singles out the US as mainly responsible for the alleged violations of the human rights of Inuit peoples based on it being 'currently [in 2005] the largest contributor to greenhouse gas emissions in the world'.[85] Also significant for the decolonial climate litigation thesis, the petition incorporated arguments about the US historic (or cumulative) emissions to further justify their focus on obligations purportedly held by the US – as opposed to other states or actors – for human rights impacts caused by climate change.[86] Although the Commission refused to take up the petition, it was followed by a subsequent petition in 2013 by the Arctic Athabaskan Council detailing similar complaints against Canada for failing to regulate black carbon emissions sufficiently.[87] This petition has been pending for over a decade, during which the IACtHR has rendered two relevant advisory opinions, on the environment and human rights and on the climate emergency.[88] Although neither of these early mobilizations has succeeded, they have been described as offering a 'port of entry' for articulating the rights impacts of climate change faced by Indigenous peoples, specifically in the context of settler colonies.[89]

Claims brought by Indigenous peoples and descendants of historically enslaved peoples related to the harm they purportedly experience as a result of climate change, or through the activities of economic operators significantly contributing to climate change, have become more frequent. Notable examples include *Smith* v. *Fonterra* (New Zealand),[90] *Gwich'in Steering Committee* v. *Bernhardt* (US),[91] and *Daniel Billy and Others* v. *Australia (Torres Islanders Petition)* (UN Human Rights Committee (UNHRC)).[92] Remarkably, the *Smith* and *Daniel Billy* cases represent early legal victories that might catalyze further mobilizing strategies in their respective jurisdictions.[93]

[85] Ibid., p. 6.

[86] Ibid., p. 68.

[87] Arctic Athabaskan Council, *Petition to the Inter-American Commission on Human Rights seeking Relief from Violations of the Rights of Arctic Athabaskan Peoples Resulting from Rapid Arctic Warming and Melting caused by Emissions of Black Carbon by Canada*, 23 Apr. 2013. The petition has been neither decided nor dismissed and is thus, formally speaking, still pending. For more context on the case see A. Szpak, 'Arctic Athabaskan Council's Petition to the Inter-American Commission on Human Rights and Climate Change: Business as Usual or a Breakthrough?' (2020) 162(3) *Climatic Change*, pp. 1575–93.

[88] IACtHR, *Advisory Opinion OC-23/17 on the Environment and Human Rights*, 15 Nov. 2017, IACtHR Ser. A, No. 23; IACtHR, *Advisory Opinion OC-32/25 on the Climate Emergency and Human Rights*, 29 May 2025, IACtHR Series A, No. 32.

[89] H.M. Osofsky, 'The Inuit Petition as a Bridge? Beyond Dialectics of Climate Change and Indigenous Peoples' Rights' (2007) 31(2) *American Indian Law Review*, pp. 675–97, at 697.

[90] *Smith* v. *Fonterra Co-operative Group Ltd* [2024] NZSC 5 (New Zealand).

[91] *Gwich'in Steering Committee and Others* v. *Bernhardt and Others*, No. 3:20-cv-00204-SLG (D. Alaska) (US), Complaint for Declaratory and Injunctive Relief, 24 Aug. 2020.

[92] *Daniel Billy and Others* v. *Australia*, Communication No. 3624/2019, UNHRC, Decision of 22 Sept. 2022.

[93] E. Corlett, 'The Māori Climate Activist Breaking Legal Barriers to Bring Corporate Giants to Court', *The Guardian*, 6 Mar. 2024, available at: https://www.theguardian.com/world/2024/mar/06/mike-smith-maori-climate-activist-right-to-sue-companies; G.M. Lentner & W. Cenin, '*Daniel Billy et al v Australia*

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While the two IACtHR petitions discussed above omit any discussion of the historical marginalization faced by the Inuit and Athabaskan community petitioners, more recent cases brought by Indigenous and Black communities have been more explicit in linking historical marginalization to contemporary exposure to climate change risks. For example, a case filed in 2020 by community leaders of the Wet'suwet'en community in Western Canada against the Canadian federal government articulates that the 'disproportionate deprivations' of the community's constitutional rights arising from Canada's contribution to climate change would 'perpetuate the trauma caused by existing and historical attempts by the defendant to subjugate the plaintiffs' identity, culture, laws and practices', historical actions intended to 'assimilate the plaintiffs' members as individuals into the Canadian mainstream'.[94]

Similarly, a 2023 case brought by environmental justice organizations in St James Parish, Louisiana (US), against local government authorities sought a moratorium on the authorization of additional petrochemical industrial facilities in a region infamously coined 'Cancer Alley' resulting from the disproportionately high rates of cancer among its residents.[95] The plaintiffs in the case described themselves as 'descendants of people who were enslaved on the plantations that flourished in St James Parish, and descendants also of those who endeavoured to make a life for themselves and their families after slavery was legally abolished – despite the continued brutality and exploitation following the end of Reconstruction'.[96] According to the plaintiffs, it is 'a legacy of slavery and white supremacy in Louisiana and St. James Parish specifically to disregard the political voice of Black communities and discount the physical, psychological, and emotional trauma imposed upon them for the profit and benefit of white communities'.[97] While this case does not target climate change directly, it is illustrative of a large body of legal and political mobilizations led by

(Torres Strait Islanders Petition): Climate Change Inaction as a Human Rights Violation' (2024) 33(1) *Review of European, Comparative & International Environmental Law*, pp. 136–43.

94 *Dini Ze' Lho'Imggin and Others* v. *Her Majesty the Queen*, Case T-211-20 (FC), Statement of Claim, 10 Feb. 2020, para. 93. The case was dismissed by the Federal Court on 16 Nov. 2020 and, at the time of writing, is on appeal before the Federal Court of Appeal: *Dini Ze' Lho'Imggin and Others* v. *Her Majesty the Queen*, 2020 FC 1059 (Canada).

95 *Inclusive Louisiana and Others* v. *St. James Parish and Others*, Case 2:23-cv-00987 (E.D. La. 2023) (US), Complaint for Declaratory and Injunctive Relief, 21 Mar. 2023. The case was dismissed by the US District Court for the Eastern District of Louisiana: *Inclusive Louisiana and Others* v. *St. James Parish and Others*, 702 F. Supp. 3d 478 (E.D. La.) (US), 16 Nov. 2023. See a similar articulation of racialized exposure to the industrial infrastructure of oil and gas industries in *Friends of Buckingham* v. *State Air Pollution Control Bd.*, (No. 19-01152) 947 F.3d 68 (4th Cir. 2020) (US), Petition for Review. For an insightful analysis of the impact that this case has on the notion of climate harm and reparations see M. Petersmann, 'Re-Pairing Ecologies of Harm: Resisting the Material and Legal Infrastructures in "Cancer Alley"' (2026 forthcoming) *South Atlantic Quarterly* (manuscript on file with authors).

96 *Inclusive Louisiana and Others* v. *St James Parish and Other*, n. 95 above, Complaint, para. 2.

97 Ibid., para. 11. See also Petersmann, n. 95 above. Another example of the incorporation of historical practices of slavery and its relation to climate change in litigation proceedings is found in *Greenpeace Netherlands and 8 Residents of Bonaire* v. *The Netherlands*, C/09/659832/HA ZA 24-53 (The Hague District Court) (The Netherlands), Plaintiff's Notice of Claim (*Dagvaarding*), 11 Jan. 2024, para. 5.

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Indigenous peoples and communities descended from enslaved peoples against the authorization and further expansion of industrial and infrastructural activities related to oil and gas extraction. It thus indirectly seeks to obstruct economic activities that contribute to and profit from climate change.[98]

In sum, the prevalence of racialized/subaltern plaintiffs in settler-colonial, post-colonial, and global periphery political contexts is a unifying characteristic of decolonial climate litigation. Their positionality also lends itself well to incorporating claims relating to the historical conditions of their territories, which have been forced to become sacrifice zones, and the obligations they seek to assert for the historical emissions of powerful states and private actors, as discussed below.

3.2. Litigating in Various (Post-)Colonial Political Contexts

The decolonial claims assessed here arise across three political contexts reflecting colonialism's historic and ongoing power arrangements. Firstly, some claims arise in settler-colonial political contexts, featuring Indigenous, Black, or historically oppressed and racialized plaintiffs asserting obligations against powerful private economic actors domiciled in, or public authorities associated with, the settler (post-) colony. Examples include many cases from the US,[99] Canada,[100] Australia,[101] New Zealand,[102] and Argentina.[103] A second group of claims arise in the context of power relations between (historic) colonies and their respective metropoles, with plaintiffs in the colony bringing claims against private or public actors in the metropole. This is seen, for instance, in the claim before the United Kingdom (UK) and Dutch courts for harm caused by Shell's operations in the Niger Delta,[104] claims brought by state and local public authorities in Hawai'i and Puerto Rico against oil and gas companies operating in the US,[105] and a claim brought by residents of the Caribbean

[98] A few examples from this large group of mobilizations include *Rosebud Sioux Tribe* v. *U.S. Department of the Interior*, Case No. CV-20-109-GF-BMM-JTJ (D. Montana) (US), Complaint for Declaratory and Injunctive Relief, 17 Nov. 2020; *Wayúu Indigenous Community and Others* v. *Ministry of Environment and Others*, Case No. 11001-0324-000-2019-00107-00 (Consejo de Estado) (Colombia), Request for Precautionary Measures, 22 Feb. 2019; and *Manoomin and Others* v. *Minnesota Department of Natural Resources and Others*, White Earth Band of Ojibwe Court of Appeals, File No. AP21-0516, 10 Mar. 2022 (US).

[99] *Navahine F.* v. *Hawai'i Department of Transportation*, Civil Case No. 1CCV-22-0000631 (Haw. Cir. C.) (US), Joint Stipulation and Order re: Settlement, 20 June 2024.

[100] *Dini Ze Lho'imggin*, n. 94 above, Statement of Claim, 10 Feb. 2020.

[101] *Waratah Coal Pty Ltd* v. *Youth Verdict Ltd & Others (No 6)* [2022] QLC 21, 25 Nov. 2022 (Australia).

[102] *Smith* v. *Fonterra* [2022] NZHC 1693, 15 July 2022 (New Zealand).

[103] *Comunidad Aborigen de Santuario de Tres Pozos and Others* v. *Jujuy Province*, Case No. SJ-19962/2023, Superior Tribunal of Justice, Jujuy Province (Argentina).

[104] *Okpabi and Others (Appellants)* v. *Royal Dutch Shell Plc and Another* [2021] UKSC 3 (United Kingdom (UK)), and *Four Nigerian Farmers and Milieudefensie* v. *Royal Dutch Shell Plc* [2021] ECLI:NL:GHDHA:2021:132 (*Oruma*), ECLI:NL:GHDHA:2021:133 (Goi), ECLI:NL:GHDHA:2021:134 (The Netherlands).

[105] *Municipalities of Puerto Rico* v. *Exxon Mobil and Others*, Case No. 3:22-cv-01550 (D.P.R.) (US), Complaint for Damages, 22 Nov. 2022; and *City and County of Honolulu* v. *Sunoco LP and Others*, Case No. 1CCV-20-0000380 (First Cir. of Hawai'i) (US), Complaint, 9 Mar. 2020.

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island Bonaire against the Dutch state.[106] A third set of claims is pursued within the more generic power relations of global economic core and (semi-)periphery economies, familiarized by world-system theory,[107] with claims from individuals and communities in the global (semi-)periphery brought against public and private actors based in the core countries. Examples of such claims include the loss and damage claim brought in Switzerland by Indonesian islanders against the cement manufacturer Holcim,[108] and the claim brought by a Zapotec Indigenous community in Mexico against EDF for its involvement in a wind farm project that allegedly interferes with the community's land rights.[109] With cases found across all three of these political contexts, it is evident that decolonial climate litigation pursues transformations of diverse colonial power dynamics affecting climate justice.

With these first observations about who is filing decolonial claims and the political contexts of (post-)colonialism in which they are raised, we now turn to four types of claim found in the analysis.

3.3. The Atmospheric Weight of History: Obligations concerning Cumulative Emissions

The first type of claim contributing to decolonial climate litigation articulates obligations or liabilities of states or private actors arising from their historical or cumulative emissions. Such claims run against the grain of international climate law, which has focused principally on future-oriented reduction obligations rather than establishing responsibility for historical emissions.[110] Notably, Sarah Mason-Case and Julia Dehm offer a detailed account of how diverse norms and principles of public international law could serve as a framework for responsibility towards historical emissions.[111] Nevertheless, accountability for historical emissions raises challenging

[106] *Greenpeace Netherlands and 8 Residents of Bonaire* v. *The Netherlands*, n. 97 above, Notice of Claim. The District Court of the Hague delivered its judgment on 28 Jan. 2026, ruling in favour of the plaintiffs and finding that the State of The Netherlands had failed to meet its duty of care with respect to Bonaire's residents in both its climate mitigation and adaptation policy: *Greenpeace Netherlands* v. *The State of the Netherlands* [2026] ECLI:NL:RBDHA:2026:1344.

[107] Hornborg, n. 23 above; S. Amīn, *Imperialism and Unequal Development* (Harvester Press, 1977); S.G. Bunker, *Underdeveloping the Amazon: Extraction, Unequal Exchange, and the Failure of the Modern State* (University of Chicago Press, 1988); W. Rodney, *How Europe Underdeveloped Africa* (Verso, 2018); D. Harvey, 'The "New" Imperialism: Accumulation by Dispossession' (2004) 40 *Socialist Register*, pp. 99–130.

[108] *Asmania and Others* v. *Holcim AG*, Municipal Court of Zug (Switzerland), Decision A1 2023 9, 17 Dec. 2025; see also T. Mockel, 'Litigating Corporate Responsibility for Climate-related Loss and Damage: Insights into the Case of Asmania et al v Holcim', *Völkerrechtsblog*, 14 Nov. 2024, available at: https://voelkerrechtsblog.org/litigating-corporate-responsibility-for-climate-related-loss-and-damage.

[109] *Union Hidalgo and Others* v. *Électricité de France*, n. 19 above.

[110] 'The historic responsibility of developed countries for greenhouse gases that have already accumulated in the earth atmosphere in particular have long been at the center for proposals on how to distribute future emissions rights … The Paris Accord for now has moved away from using historic equity considerations as base for binding county commitments': R. Clémençon, 'The Two Sides of the Paris Climate Agreement: Dismal Failure or Historic Breakthrough?' (2016) 25(1) *The Journal of Environment & Development*, pp. 3–24, at 9–10.

[111] Mason-Case & Dehm, n. 69 above.

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legal issues, including questions about when actors became aware of their contributions to GHG emissions and when their corresponding negative consequences were scientifically established.[112]

Despite the challenges of articulating responsibility for historic emissions and the political character of reparations that are likely to be required to address the corresponding justice demands, climate activists have started to integrate historic emissions claims in litigation against public and private actors. In *Lliuya* v. *RWE*, a case before the Higher Regional Court of Hamm (Germany), the plaintiff Saúl Lliuya referred to the cumulative emissions of RWE from 1751 until 2010 to establish RWE's relative contribution to the causation of a property nuisance in the form of a heightened risk of flash flooding.[113] As such, though the plaintiff claimed that the costs of removing the nuisance amounted to roughly €3.5 million, he sought only a remedy equivalent to 0.47% of those total costs (provisionally estimated) to correspond with RWE AG's relative contribution to global GHG emissions.[114]

A second illustration of incorporating historical emissions in climate litigation is seen in a recently decided lawsuit against the Dutch state, in which Greenpeace Netherlands, acting as a representative of the residents of the Caribbean overseas territory of Bonaire, built on the *Urgenda*[115] jurisprudence to argue that the state is violating the human rights of Bonaire residents through both its insufficient climate adaptation and mitigation frameworks.[116] In their statement of claim, the plaintiffs discuss the issue of accountability for historical emissions in detailing various interpretations of the 'fair share', 'equity', and 'common but differentiated responsibilities' principles of international climate law. They argue, and the Court agreed, that the state has failed to meet its obligation to explain how its national climate framework sufficiently corresponds to its obligation to calculate the state's remaining carbon budget, though the Court had little to say about what would constitute a 'fair share' of effort in mitigating climate change as it relates to calculating a carbon budget.[117]

A third illustration is found in the class action claim brought by the municipalities of Puerto Rico against an open-ended list of carbon majors – currently defined as the

[112] A. Zahar, 'Historical Responsibility for Climate Change Is Political Propaganda', in Mayer & Zahar, n. 69 above, pp. 190–205.

[113] 'The share of RWE AG and its legal predecessors in global historic emissions, i.e. its share in global total emissions from 1751 to 2010 is about 0.47%'; see *Saúl Ananías Luciano Lliuya* v. *RWE AG*, LG Essen (Germany), Statement of Claim, 23 Nov. 2015, para. 8.2 (*Lliuya* v. *RWE*). This case was dismissed by the Higher Regional Court of Hamm after it found that the threat of impairment to the plaintiff's property was insufficiently imminent: OLG Hamm, Case No. 5 U 15/17, Judgment, 28 May 2025.

[114] Ibid., para. 9.

[115] *Urgenda Foundation* v. *State of the Netherlands*, Hoge Raad (Supreme Court of the Netherlands), Judgment of 20 Dec. 2019, ECLI:NL:HR:2019:2007.

[116] See the District Court of the Hague's judgment in *Greenpeace Netherlands* v. *State of the Netherlands*, n. 106 above.

[117] See *Greenpeace Netherlands and 8 Residents of Bonaire*, n. 97 above, Greenpeace Netherlands' Notice of Claim, para. 40.52 ('Simply stating that the climate policy would be more ambitious than the necessary global average, is insufficient. The Netherlands is a very prosperous country, with considerable resources and opportunities for emissions mitigation and relatively high historical emissions' (authors' translation)).

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122 private actors responsible for the largest share of emissions historically and contemporarily. There, the plaintiffs articulate that the defendants are jointly responsible for 39.6% of GHG emitted between 1965 and the present.[118] The plaintiffs' decision to account for historic emissions starting in the 1960s aligns with their claim that throughout the 1950s and 1960s the defendants were repeatedly notified of the possible impacts of increasing GHG in the atmosphere.[119] The internal research of several carbon majors confirmed this scientific conclusion in the same period.[120] The plaintiffs thus argue that this awareness, coupled with public campaigns of denial and failures to warn the public of the risks posed by their products and operations, amount to various unlawful acts of (conspiracy to commit) consumer fraud, racketeering, and design defects and failures to warn that give rise to strict liability.

In summary, litigation incorporating articulations of responsibility for historic and cumulative emissions – stretching back to the 1960s or even as far as 1751 – is shifting the accountability frameworks for climate change liability. These cases are poised to reconfigure, in part, the established international climate law framework, which is oriented principally towards future emissions reduction and adaptation plans and obligations. Such reconfiguration includes evaluating the lawfulness of past emissions activities, their contributory causation to contemporary climate-related harm, and the (failures to) disclosure of awareness of the risks posed by increasing GHG emissions. In doing so, they scrutinize the ongoing coloniality of 'emissions grandfathering' and corporate accountability, focusing exclusively on future-oriented climate plans.

3.4. The Wretched of the Planet: Obligations Concerning Sacrifice Zones

The second type of decolonial claim found through the cases relates to the creation and maintenance of 'sacrifice zones' amid the ongoing climate crisis.[121] These cases emphasize the localized effects of climate change, including the impacts of fossil and renewable energy infrastructures and mitigation offset projects in racialized territories. They are oriented both towards historical actions that have harmed the local environment and the livelihood of individuals and communities who live there, as well as future-oriented claims about obligations related to adaptation and mitigation

[118] *Municipalities of Puerto Rico* v. *ExxonMobil Corp*., n. 105 above, Amended Complaint for Damages, 3 Nov. 2023, para. 73.

[119] Ibid., paras 297–9.

[120] Ibid., paras 301–2.

[121] The use of 'sacrifice zone' for these claims reflects an analytic reading of the cases, as they do not frequently use this terminology explicitly. However, other social scientists have referred to some of these cases as instances of sacrifice zones: e.g., in relation to the wind turbine projects affecting communities in Sápmi (*Statnett SF and Others* v. *Sør-Fosen Sijte and Others*, HR-2021-1975-S, Supreme Court of Norway, Judgment, 11 Oct. 2021 (Norway); *RB and Others* v. *Vattenfall Vindkraft Sverige Aktiebolag*, Case No. M 3359-22, Land and Environmental Court of Appeal, Judgment, 8 Sept. 2023 (Sweden). For commentary see also A. Karam & S. Shokrgozar, '"We Have Been Invaded": Wind Energy Sacrifice Zones in Åfjord Municipality and Their Implications for Norway' (2023) 77(3) *Norsk Geografisk Tidsskrift – Norwegian Journal of Geography*, pp. 183–96; Å. Össbo, 'Back to Square One: Green Sacrifice Zones in Sápmi and Swedish Policy Responses to Energy Emergencies' (2023) 14 *Arctic Review on Law and Politics*, pp. 112–34.

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measures in locations already experiencing heightened risks and harm caused by the changing climate.[122] This was the most common claim found in the selected cases, appearing in all but ten cases. Collectively, they illustrate how specific places, sites, and territories – including mines, oil and gas extraction fields, infrastructure projects, low-lying coastal regions, and semi-arid agricultural areas – are sacrificed as losses to climate change, areas for extractivism, and as sites essential for the energy transition process. Therefore, the logic of the formation and perpetuation of a sacrifice zone is linked inextricably to the political contexts of colony-metropole, periphery-core, and settler-colony relations in which they arise.

In the *Pirá Paraná* case, representatives of Indigenous communities from the Pirá Paraná territory, belonging to the Great Indigenous Reserve of Vaupés in the Colombian Amazon, alleged the violation of their fundamental rights as a result of the imposition of a project under the framework of Reducing Emissions from Deforestation and Forest Degradation (REDD+) in their territory.[123] They argued that private companies, some of which were international, developed such a project without understanding the communities they affected and their ways of life and self-governance structures. They pointed out that these companies relied on a mandate contract with a legal representative who lacked sufficient authority to implement it and accused the Colombian state of omitting social and environmental safeguards. Therefore, the case exemplifies how a corporate conglomerate, in the interest of commodifying the carbon sequestration strategy for offsetting markets, instrumentalized Indigenous territory for capital accumulation without regard for traditional land–community relationships, thus sacrificing territory at the altar of carbon markets.[124]

In the *Greenpeace Netherlands* case, the plaintiffs sought to connect the island's historical economic use as a site of colonial plantations utilizing slave labour to its contemporary underdevelopment and disproportionate vulnerability to climate change.[125] As the plaintiffs argue, 'poverty is a problem for Bonaire because of a structural lack of attention from the Dutch government, and Bonaire, as an island, is

[122] D.R. Boyd & M. Orellana, *The Right to a Clean, Healthy and Sustainable Environment: Non-Toxic Environment* (United Nations Human Rights Council, 2022), p. 27. This understanding aligns with the cited report, in which the special rapporteurs claim that 'the climate crisis is creating a new category of sacrifice zones as a result of unabated greenhouse gas emissions, as communities have become, and are becoming, uninhabitable because of extreme weather events or slow-onset disasters, including drought and rising sea levels'.

[123] *Pirá Paraná Indigenous Council and Association of Indigenous Traditional Authorities of River Pirá Paraná 'ACAIPI'* v. *Ministry of Environment and Sustainable Development and Others*, Constitutional Court (Colombia) Decision T-248/24, 8 July 2024.

[124] Dehm, n. 56 above.

[125] *Greenpeace Netherlands and 8 Residents of Bonaire*, n. 97 above, Notice of Claim, para. 5.14 ('Considering the history of centuries of exploitation and profiting off of persons enslaved for economic gain on Bonaire, and the disadvantage of Bonaire compared to the European Netherlands, established by various authorities and the inhabitants of Bonaire, it would have been understandable and desirable for the State to have made an extra effort, at least after 10 October 2010, to ensure the rights of the inhabitants of Bonaire anno today. However, it is already clear from the foregoing that the State provides less protection and attention to its residents in Bonaire than it does to its residents in the European territory of the Netherlands. This line will also be evident when it comes to the protection of

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very vulnerable to global warming'.[126] Notably, in its ruling the Hague District Court avoided engaging on this historical dimension of the lawsuit, mentioning the historical practice of slavery only once, in passing reference to the climate vulnerability of a historical site featuring former slave houses on the island. Relatedly, the Court found the Dutch state to have discriminated against the residents of Bonaire, but implied that the discriminatory treatment took place on the grounds of geographic residency rather than the ethnic or racial identities of the majority of the islands' inhabitants and the particular vulnerability arising from the island's history of slavery.[127]

Other examples of claims regarding sacrifice zones are found in the cases of *Pabai Pabai and Guy Paul Kabai* v. *Commonwealth of Australia*[128] and *Mataatua District Māori Council* v. *New Zealand*,[129] in which Indigenous Torres Strait Islanders and Māori plaintiffs (respectively) alleged that the failures on the part of Australia and New Zealand to reduce emissions more rapidly amount to violations of the duties of care of the two states to these Indigenous communities. The duties owed by Australia to the applicants are established in an international accord between Australia and Papua New Guinea, dating back to 1978, and those owed by New Zealand arise from a treaty between the Māori and the Crown, dating from 1840. These cases emphasize the contemporary vulnerability of Indigenous peoples from factors arising out of historic economic underdevelopment, such as inadequate access to public health infrastructure, poverty, malnutrition, and their economic and cultural dependence on climate-sensitive primary industries.[130]

Climate claims premised on the creation of sacrifice zones are poised to increase in frequency in the future as many (post-)colonies will (and already are) experiencing the harmful effects of climate change earlier and with greater vulnerability than developed nations, caused in part by their historic and ongoing underdevelopment. Likewise, expanding justiciable rights to a healthy environment offers meaningful procedural tools for communities to hold public and private actors accountable for the local harm caused by their carbon-intensive and energy-transition activities.[131]

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the inhabitants of Bonaire against the major current and expected consequences of climate change' (authors' translation)).

126 Ibid., para. 28.3 (authors' translation).

127 *Greenpeace Netherlands* v. *The State of the Netherlands*, n. 106 above, paras 4.4 (slave houses) and 11.46 (discrimination). A similar contextualization within the historical economic practices of slave labour plantations is evident in the case of *Inclusive Louisiana* v. *St. James Parish*, n. 95 above.

128 *Pabai Pabai and Anor* v. *Commonwealth of Australia*, Federal Court of Australia, Case No. VID622/2021, Statement of Claim, 26 Oct. 2021.

129 *Mataatua District Māori Council* v. *New Zealand*, Case No. WAI 2607, Waitangi Tribunal (New Zealand), Memorandum of Counsel for the Applicant in Support of Urgency Application, 4 July 2017, para. 66 (in which the plaintiffs connect the current vulnerability of the Māori people with the Crown's past breaches in its obligations under the Treaty of Waitangi: 'This vulnerable state can be attributed to past breaches by the Crown of its obligations, in legislating to usurp the ability for Māori to exercise kaitiakitanga and furthermore in implementing an emissions trading scheme that falls short of protecting Māori and the environment from irrevocable harm').

130 *Pabai Pabai & Another* v. *Commonwealth of Australia*, n. 128 above, Statement of Claim, paras 28, 29, 57.

131 J. Lin & J. Peel, *Litigating Climate Change in the Global South* (Oxford University Press, 2024), pp. 141–2.

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3.5. Local Harm from Corporate Unbound: Extraterritoriality of Fossil Capital

The third type of decolonial claim found in the cases is the assertion of extraterritorial obligations of carbon majors for the dispersed adverse effects of climate change.[132] While climate litigation against private actors is becoming increasingly common, some of the first rulings to hold corporations accountable – such as *Milieudefensie and Others* v. *Shell* of the Hague District Court – expressly limit the territorial scope of affected interests in the case to the residents of the Netherlands.[133] This resulted notably in the exclusion of one of the co-plaintiffs in the case, ActionAid, for the reason that 'its operations in the Netherlands are geared towards developing countries, not Dutch residents', making its statutory purpose as a public interest organization too differentiated from the other plaintiff organizations.[134]

In the light of this territorialization of climate claims, decolonial cases pursue the assertion of obligations that explicitly extend the responsibilities of carbon majors away from the jurisdictions of their incorporation to sites of communities living on the frontlines of the climate crisis. This is visible, for instance, in *Asmania and Others* v. *Holcim AG*, in which a group of plaintiffs from Indonesia assert that Holcim, a Swiss-based cement manufacturer, is responsible, in part, for the climate-related harm they experience in Indonesia.[135] Hence, unlike *Milieudefensie and Others* v. *Shell*,[136] this case emphasizes the global nature of the business operations, the allegedly tortious acts and omissions of carbon majors to bring the litigation and, more importantly, the legal interests articulated in the claims to communities facing disproportionate vulnerability and exposure to the risks of climate change. This claim parallels the argument in *Lliuya* v. *RWE* regarding obligations towards the extraterritorial harm caused by one's emissions.[137]

Another illustration of this type of claim is found in the group of cases brought by the Public Prosecutor of São Paolo (Brazil) against major foreign airline companies – including KLM, United Airlines, Delta Airlines, and Emirates Airlines – for the harm

[132] H. Richard, 'Carbon Majors: Accounting for Carbon and Methane Emissions 1854-2010 Methods & Results Report', Climate Mitigation Services, 2014. An updated database is available at: https://carbonmajors.org.

[133] *Milieudefensie and Others* v. *Royal Dutch Shell Plc*, ECLI:NL:RBDHA:2021:5337, District Court of the Hague (The Netherlands), Decision, 26 May 2021. In the District Court's judgment 'the interests of current and future generations of Dutch residents and (with respect to the Waddenvereniging) of the inhabitants of the Wadden Sea area, a part of which is located in the Netherlands, as served in the alternative with the class actions, are suitable for bundling, even though in the Netherlands and in the Wadden region there are differences in time, extent and intensity to which the inhabitants will be affected by climate change caused by CO_2 emissions. However, these differences are much smaller and of a different nature than the mutual differences when it concerns the entire global population and do not stand in the way of bundling in a class action': ibid., para. 4.2.4. See also C. Heri, 'Mattering in the Anthropocene: The ECtHR's Domesticating Framing of Climate Change' (2025) 30(2) *The International Journal of Human Rights*, pp. 422–44.

[134] *Milieudefensie and Others* v. *Royal Dutch Shell Plc*, n. 133 above, para. 4.2.5.

[135] *Asmania and Others* v. *Holcim AG*, n. 108 above.

[136] *Milieudefensie and Others* v. *Royal Dutch Shell Plc*, n. 133 above.

[137] *Lliuya* v. *RWE*, n. 113 above.

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caused by the emissions during flights to and from São Paolo International Airport.[138] The claims, which were ultimately unsuccessful, sought to impose an obligation on airlines to offset these emissions through reforestation projects. Again, the case sought to leverage the global business activities of these companies to enable litigation against foreign companies with significant emissions, premised on the harm their activities cause locally in the global south.

Claims that articulate obligations for extraterritorial harm caused by emissions were the least common type of claim in the cases analyzed here, appearing in just four cases. The infrequency of this type of claim illustrates how jurisdictional doctrines continue to obstruct climate justice claims, as similar loss and damage claims within a national jurisdiction (hence without an extraterritorial dimension to the harm) are considerably more common. In other words, while this category would theoretically comprise loss and damage claims in core-periphery and metropole-colony settings, comparable claims in settler-colony contexts appear more feasible thus far.[139]

3.6. Nothing to Lose but Their Global Value Chains: Obligations of Multinational Corporations

The fourth type of decolonial claim identified in this analysis seeks to reinforce the climate obligations of contemporary multinational corporations, along with their extensive network of subsidiaries and supply-chain partners. Multilayered corporate structures and global value chains face criticism for isolating the liability and responsibility of powerful actors within these complex systems.[140] Currently, climate and environmental advocacy organizations are employing litigation as a means to broaden the scope and extent of responsibilities attributed to lead firms and parent companies regarding the environmental impacts of their extensive operations.

Examples of such cases include the litigation against Royal Dutch Shell that arose from its subsidiaries' operations in the Niger Delta region, where oil spills caused extensive damage to the lives of residents, public health in the area, and the environment, including damage to agricultural fields.[141] The Dutch court found that Shell Nigeria (the subsidiary) was strictly liable for two specific oil spill incidents, and

[138] *Ministério Público do Estado de São Paulo* v. *KLM*, 0082072-08.2010.8.26.0224, Ação Civil Pública (ACP), Dec. 2010 (Brazil).

[139] Examples of comparable claims in a settler-colony context include the litigation brought by public authorities in Hawai'i and Puerto Rico, and the Makah and Shoalwater Bay Indian Tribes, against carbon majors operating in the US, as well as *Smith* v. *Fonterra* in New Zealand. See *City and County of Honolulu* v. *Sunoco LP and Others*, n. 105 above; *Municipalities of Puerto Rico* v. *Exxon Mobil and Others*, n. 105 above; *Makah Indian Tribe* v. *Exxon Mobil and Others*, Case No. 23-2-25216-1 SEA (Wash. S.Ct.) (US), Complaint for Damages and Injunctive Relief, 20 Dec. 2023; *Shoalwater Bay Indian Tribe* v. *Exxon Mobil and Others*, Case No. 23-2-25215-2 (Wash. S.Ct.) (US), Complaint for Damages and Injunctive Relief, 20 Dec. 2023.

[140] IGLP Law and Global Production Working Group, 'The Role of Law in Global Value Chains: A Research Manifesto' (2016) 4(1) *London Review of International Law*, pp. 57–79; D. Katelouzou & P. Zumbansen, 'The Transnationalization of Corporate Governance: Law, Institutional Arrangements, & Corporate Power' (2021) 38(1) *Arizona Journal of International and Comparative Law*, pp. 1–60.

[141] *Four Nigerian Farmers and Milieudefensie* v. *Royal Dutch Shell Plc*, n. 104 above. For a thorough analysis of the cases see L. Roorda, 'Broken English: A Critique of the Dutch Court of Appeal Decision in

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Royal Dutch Shell (the parent company) failed to meet its duty of care to the defendants in its failure to install sufficient leak detection systems. It was thus liable for the harm caused to the plaintiffs in this case, and subsequent negotiations resulted in a compensation agreement of €15 million. The precedent of this decision is momentous, marking 'the first time a court of a home state of a transnational corporation has found a subsidiary located outside of its jurisdiction liable based on harmful acts' as well as 'the first time a [parent company] duty of care under common law has been established on the merits, and not just contemplated as a hypothetical ground for liability'.[142] While the compensation obtained in the case was relatively small in scale, with just four plaintiffs, the case pending before the UK courts – after having received a favourable interim judgment from the Supreme Court on the threshold for jurisdiction – arises from the enjoinment of some 42,500 individuals and thus, if successful, could amount to massive compensation for the structural harm posed to the region by Shell's decades-long operations.[143]

The rise of global value-chain laws – the 2017 Duty of Vigilance Law in France,[144] the 2023 Lieferkettensorgfaltspflichtengesetz (Supply Chain Due Diligence Act) in Germany,[145] and the 2024 EU Corporate Sustainability Due Diligence Directive[146] – offer new openings for transnational legal mobilizations against lead and parent companies for the climate-related harm of their value chains. In France, numerous cases have been filed that seek to expand the accountability of carbon majors and other prominent economic actors operating in the country. Examples include a complaint against Perenco, the French oil company, for its alleged contribution to environmental harm and pollution in the Democratic Republic of the Congo;[147] a complaint against the French supermarket chain Casino for its involvement in the cattle industry in Brazil and Colombia, which contributes to large-scale deforestation and destruction of carbon sinks;[148] and a complaint against the French energy provider EDF for its involvement in a large-scale wind turbine project in Oaxaca (Mexico), a project which allegedly infringed the land rights of the Union Hidalgo Indigenous Zapotec community in the area.[149] These cases offer new articulations of the responsibility that powerful economic actors based in global core economies and historic metropoles hold for the harm caused by the economic activities of their subsidiaries and supply chains in the (post-)colonies and the global periphery. Collectively, they illustrate new ways of imagining lawful forms of responsibility and

Four Nigerian Farmers and Milieudefensie v Shell' (2021) 12(1) *Transnational Legal Theory*, pp. 144–50.

142 Ibid., p. 146.

143 *Okpabi*, n. 104 above.

144 Duty of Vigilance Law, n. 81 above.

145 Gesetz über die unternehmerischen Sorgfaltspflichten zur Vermeidung von Menschenrechtsverletzungen in Lieferketten (Lieferkettensorgfaltspflichtengesetz – LkSG), *Bundesgesetzblatt* (BGBl.) I 2021, S. 2959, adopted 16 July 2021.

146 Directive (EU) 2024/1760 on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937 and Regulation (EU) 2023/2859, OJ L 2024/1760.

147 *Amis de la Terre and Sherpa* v. *Perenco SA*, n. 79 above.

148 *Envol Vert and Others* v. *Casino*, High Court Saint Etienne (France), Complaint of 2 Mar. 2023.

149 *Union Hidalgo and Others* v. *Électricité de France*, n. 19 above.

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liability for climate harm in the contemporary context of global capitalism. In this mode of production, the alienated communities bear the burden of environmental ruin and vulnerability to changing climates, partly as a result of the actions of powerful entities that extract surplus value, often located far from the hidden abode of extraction.[150]

4. Decolonial Litigation and the Restraints of Liberal Legalism

Turning away from the specifics of each case, we posit that the collection of claims engages with a decolonial praxis of climate litigation. This type of tactical litigation appears to be increasing as more cases are filed by racialized individuals and communities. These cases address issues such as the obligations of actors regarding their historic and cumulative emissions, their role in creating sacrifice zones within the climate crisis, the duties of private entities for the extraterritorial effects of their emissions, and the obligations of private actors concerning the emissions and negative impacts of their global value chains. Importantly, these four types of claim are pursued in three political contexts that bind them to decolonial projects: settler colonies, metropole/(post-)colony, and global core/(semi-)periphery. In total, we argue that these cases illustrate how decolonial climate justice demands are articulated through the process and language of litigation.

Our call for attention to decolonial climate litigation requires consideration of several points of restraint within which these efforts have been made. Notably, we unpack four significant issues that could problematize the usage of the form of litigation as a tactic within a broader decolonial strategy for political transformation: (i) the use of legal categories derived from the liberal legalism that decolonial movements problematize and challenge; (ii) the remedies sought in the cases that, if successful, would fall short of the transformative goals of decolonial politics; (iii) inconsistencies among the goals and priorities when viewing individual cases as a collective; and (iv) the role of global north civil society organizations in supporting, both financially and organizationally, purportedly decolonial cases. We will discuss each of these issues in turn.

4.1. Decolonial Encounters with Legal Liberalism

Firstly, it is noteworthy that all of the cases brought here rely fundamentally – albeit in different ways – on liberal legalism.[151] One might argue that litigating is a classically

[150] N. Fraser, 'Behind Marx's Hidden Abode: For an Expanded Conception of Capitalism', in P. Deutscher & C. Lafont (eds), *Critical Theory in Critical Times: Transforming the Global Political and Economic Order* (Columbia University Press, 2017), pp. 141–59.

[151] In short, Sarat and Silbey define liberal legalism as the legal order premised upon an understanding that 'the larger questions of Politics, i.e. how we shall live together and what is the good and just society – are resolved in favor of the free play of self interested ambition; the messy, open-ended questions concerning the meaning of justice, the distribution of property and the definition of public welfare are settled through the adoption of the institutional arrangements of liberalism – i.e. separation of powers, checks and balances, republican forms of government … In this system, the tasks of government are not simply

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liberal mode of disputing conflicts. Regardless, these cases rely on the liberal notion of the individual legal subject, the corporate legal subject, rights, and – more specifically – human rights and liberal notions of property rights and interests. In *Greenpeace Netherlands (Bonaire)*, for example, we find a liberal understanding of discrimination in climate adaptation policymaking, which avoids engaging with the historical legacy of slavery and underdevelopment in Bonaire and their impact on climate vulnerability.[152] In doing so, the cases inadvertently reify conceptual categorizations that have proven problematic in their facilitation of the extractive compulsion underpinning the climate crisis, 'the capitalist world-ecology defined by an onto-epistemology of masterful "humans" who relate to the "nonhuman" through subjugation, control and exploitation'.[153] Criticism of reliance on such legal concepts amid attempts to radically decolonize and transform worlds has previously been expressed in the context of the Rights of Nature movement,[154] with some offering alternative conceptual registers for action that move beyond the problematic legal categorization of subjecthood.[155]

Nonetheless, as the cases discussed in this article demonstrate, it is also difficult to envision how litigating – as a political act – could be conducted without reliance on some part of facets of the modern liberal legal conceptual order implicated in the injustices motivating the litigation and broader decolonial political movements. In the course of litigation, there are often opportunities to subvert and question the legitimacy of such concepts, but avoiding them altogether seems impossible or, at the very least, implausible.[156]

It could be argued that the commitment to a long-term emancipatory strategy from below is not a capitulation to legal liberalism but the principled opportunism manifested in a tactical intervention.[157] In that sense, engaging with the legal liberal tools for decolonial aspirations does not simply reduce law to an instrument for advancing social goals, but rather sees it as both a means and an end in itself, a

narrow but removed from Politics': A. Sarat & S. Silbey, 'The Pull of the Policy Audience' (1988) 10(2–3) *Law & Policy*, pp. 97–166, at 100.

[152] *Greenpeace Netherlands* v. *State of the Netherlands*, n. 106 above, Judgment, para 11.46.

[153] Fleurke et al., n. 60 above, p. 7 (the authors are referring, in this excerpt, to the work of Moore, n. 28 above).

[154] Blanco & Grear, n. 55 above; A. Rawson & B. Mansfield, 'Producing Juridical Knowledge: "Rights of Nature" or the Naturalization of Rights?' (2018) 1(1–2) *Environment and Planning E: Nature and Space*, pp. 99–119.

[155] M. Petersmann, 'In the Break (of Rights and Representation): Sociality Beyond the Non/Human Subject' (2024) 28(8–9) *The International Journal of Human Rights*, pp. 1279–303.

[156] See, e.g., Peter Goodrich's analysis of an injunction hearing amid a dispute between the Haida nation of present-day British Columbia (Canada) and a forestry company seeking to execute a licence to harvest timber on lands historically inhabited and used by the Haida people. In this case, the use of traditional storytelling, song and dance as evidence of the cosmological underpinnings of Haida sovereignty are provocatively compared to the mythology of the Crown's own claim to sovereignty over Haida Gwaii. Yet, equally important is the judge's response to the testimony, which was quickly dismissed as inconsequential to the question of whether an injunction should be imposed to prevent the community from interfering with the timber harvest operations: P. Goodrich, *Languages of Law: From Logics of Memory to Nomadic Masks* (Wiedenfeld & Nicolson, 1990), pp. 179–85.

[157] Knox, n. 50 above.

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pragmatic and complex view often discussed in the socio-legal literature on legal mobilization.[158]

When social movements use mobilization tactics, the structural challenges they face are similar to those encountered in legal mobilization.[159] As such, legal mobilization 'envisions law as essentially neither just a resource nor a constraint for radical action, but rather encourages us to focus on how, when, and to what degree legal practices can be both at the same time'.[160] In summary, engaging in legal mobilization within the terrain of liberal legalism requires a certain degree of awareness when translating the tools provided by the status quo, and careful navigation of litigation aligns with managing the risks associated with extralegal tactics.[161] The decolonial ethos often becomes entangled in the legal structure that it seeks to transform but, to do so, it must initially approach it with a level of awareness that moderates the expectations of social movements.[162]

4.2. Too Little, Too Late? Minimalist Remedies for Structural Harm

The remedies pursued in the decolonial cases described above vary immensely, including declarations of rights violations resulting from climate harm;[163] injunctions against the construction of oil and gas infrastructure projects;[164] injunctions to seize the financing of oil and gas extraction activities;[165] monetary damages for interference with the enjoyment of property rights and other tort claims;[166] orders against private corporations to develop new corporate policies to mitigate their contribution to the climate crisis;[167] and orders against national governments to develop climate adaptation plans.[168] Transcending this diversity, however, is a lack of structural

[158] J. Handmaker & S. Taekema, 'O Lungo Drom: Legal Mobilization as Counterpower' (2023) 15(1) *Journal of Human Rights Practice*, pp. 6–23.

[159] P. Burstein, 'Legal Mobilization as a Social Movement Tactic: The Struggle for Equal Employment Opportunity', in M.W. McCann (ed.) *Law and Social Movements* (Routledge, 2006), pp. 301–25, at 321.

[160] M.W. McCann, 'Legal Mobilization and Social Reform Movements: Notes on Theory and Its Application', in McCann, ibid., pp. 3–33, at 25.

[161] M. Barros & J. Rose, 'Decolonial Social Movements as Translators: Converting Prefigurative Initiatives into Political and Legal Change Tools' (2025) 32(3) *Organization*, pp. 434–63.

[162] R. Merino, 'Decolonial Theory and Comparative Law', in M. Siems & P.J. Yap (eds), *Cambridge Handbook of Comparative Law* (Cambridge University Press, 2024), pp. 408–25, at 420.

[163] *In re Greenpeace Southeast Asia and Others*, Case No. CHR-NI-2016-0001, National Human Rights Commission (The Philippines), Report, May 2022.

[164] See, e.g., *Sustaining the Wild Coast NPC and Others* v. *Minister of Mineral Resources and Energy and Others*, Case No. 3491/2021, High Court of South Africa (Eastern Cape) (South Africa), Judgment, 1 Sept. 2022.

[165] See, e.g., *Kang and Others* v. *KSURE and KEXIM*, Seoul District Court (South Korea), Complaint, 23 Mar. 2022; *Notre Affaire à Tous and Others* v. *BNP Paribas*, RG No 23/14348, Paris Appeal Court (France), Decision, 18 June 2024.

[166] See, e.g., *Lliuya* v. *RWE*, n. 113 above; *Municipalities of Puerto Rico* v. *Exxon Mobil and Others*, n. 105 above; *City and County of Honolulu* v. *Sunoco LP and Others*, n. 105 above.

[167] *Les Amis de la Terre France and Others* v. *Préfet des Bouches-du-Rhône and SAS Total Raffinage France*, n. 80 above.

[168] *Greenpeace Netherlands* v. *The Netherlands*, n. 106 above.

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reparation for climate-related harm and injustice experienced by the communities bringing the cases and whose interests underpin them.[169]

At times, the interests in the cases are limited to small groups of individuals within broader affected communities, as in *Lliuya* v. *RWE*[170] and *Four Nigerian Farmers and Milieudefensie* v. *Shell*.[171] Where class action or public interest proceedings are possible, the remedies sought are logically incapable of resolving the demands of the climate crisis for the plaintiff communities. As such, when viewed in isolation, the claims assert incomplete demands for decolonial political movements engaged with climate injustice. In this respect, the ambitions of these claims substantially differ from the pursuit of structural forms of reparation.

While most courts tend to take a narrow view of reparations, emerging structural remedies related to climate change warrant consideration as alternatives and as means to advance decolonial climate litigation. For example, the IACtHR, in its advisory opinion on the climate emergency, highlighted that climate change stems from interstate disparities and inequalities between social classes, with the most vulnerable suffering the greatest impacts.[172] The Court noted that deep-seated poverty and marginalization must be central to effective climate policies, particularly in adaptation strategies, thus paving the way for structural reparations that address issues of race, class, gender, and ecology collectively.[173] If applied to a specific case on climate justice, the IACtHR could include, in a single award for reparations, different aspects of public policy, from free healthcare to infrastructure investment in Indigenous territories. It could thus address a structural problem that will require follow-up for compliance.[174]

To reflect on the scope of reparations for climate-related harm that some post-colonial states are considering, it is useful to examine their claims before the International Court of Justice (ICJ) during the hearings leading to the advisory opinion on climate change issued in July 2025.[175] Antigua and Barbuda, the African Union, Brazil, Colombia, and Vanuatu called for broad atonement, including technology transfer, capacity-building, and debt relief.[176] These could be seen as structural remedies aimed at addressing the colonial roots of current power imbalances. Others emphasized the connection between compensation and loss and damage, highlighting

[169] Scholarship on climate reparations has already identified how demands for reparations would require political resolution, though public international law may require such resolution; see Mason-Case & Dehm, n. 69 above.

[170] *Lliuya* v. *RWE*, n. 113 above.

[171] *Four Nigerian Farmers and Milieudefensie* v. *Royal Dutch Shell Plc*, n. 104 above.

[172] IACtHR, *Advisory Opinion OC-32/25*, n. 88 above.

[173] Ibid., paras 614, 627.

[174] IACtHR, *Case of the Plan de Sánchez Massacre* v. *Guatemala*, IACtHR, Judgment (Reparations and Costs), 19 Nov. 2004, IACtHR Ser. C, No. 116, p. 125.

[175] ICJ, *Advisory Opinion on the Obligations of States in respect of Climate Change*, 23 July 2025, available at: https://www.icj-cij.org/sites/default/files/case-related/187/187-20250723-adv-01-00-en.pdf.

[176] M.A. Tigre et al., 'A Panoply of Consequences? Remedies and Reparations in the ICJ's Climate Opinion', *Verfassungsblog*, 12 Aug. 2025, available at: https://verfassungsblog.de/a-panoply-of-consequences.

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the need to address both tangible and intangible losses, such as emotional suffering, and promoting non-monetary redress for human mobility caused by climate change.[177] Therefore, even within constraining remedial frameworks, tactical and imaginative litigation could contribute to decolonial praxis – not by a transformative act of anti-colonial worldmaking through a reparative order,[178] but by making the possibilities visible and actionable in ways that can resonate beyond the courtroom.

4.3. Tensions between Collective Struggle in Individual Climate Lawsuits

Building on the previous point, decolonial climate cases seem to embody a discrete and plausibly uncoordinated political agenda. This is unsurprising given the complexity of political struggles over climate justice, which are shaped by divergent priorities, local contexts, and overlapping systems of oppression. Some cases focus primarily on the urgent reduction of GHG emissions, while others foreground struggles against ongoing land dispossession during the renewable energy transition, the discriminatory distribution of environmental risks under carbon capitalism, or the inequities embedded in climate adaptation and development planning.

These diverse agendas reflect what Eve Tuck and K. Wayne Yang describe as the 'incommensurability' of decolonial struggles – different communities articulate justice in ways grounded in their own histories, epistemologies, and relationships with land and nature.[179] The unifying thread across these cases is their shared framing of the climate crisis within the structures of historic and contemporary racial capitalism, as well as the processes of subjugation, dispossession, and exploitation that sustain it.

An illustrative example is the intervention by the State of Palestine – an occupied territory the population of which faces the risk of genocide – in the ICJ proceedings on states' obligations in the context of climate change. Palestine underscored how unlawful occupation, armed conflict, and systematic land grabbing intersect to intensify the climate crisis, including through the destruction of Indigenous flora and agricultural systems and the imposition of ecologically damaging land-use changes.[180] This intervention demonstrates how climate litigation can situate climate harm within broader patterns of settler-colonial domination and environmental apartheid.[181]

The apparent incoherence among demands across cases should not be mistaken for political fragmentation. Rather, it reflects the pluralist character of decolonial movements and the specific histories of injustice to which they respond.[182] As Zapatistas often demand, a 'world in which many worlds fit' – recognizing multiple

[177] Ibid.
[178] E.T. Achiume, 'Race, Reparations, and International Law' (2025) 119(3) *American Journal of International Law*, pp. 397–422, at 408.
[179] Tuck & Yang, n. 47 above.
[180] ICJ, *Request for Advisory Opinion*, n. 1 above, pp. 45–6.
[181] A. Malm, *The Destruction of Palestine Is the Destruction of the Earth* (Verso, 2024).
[182] C.E. Walsh, 'The Decolonial For: Resurgences, Shifts, and Movements', in W.D. Mignolo & C.E. Walsh (eds), *On Decoloniality: Concepts, Analytics, Praxis* (Duke University Press, 2018), pp. 15–32.

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worlds and ontologies – necessarily involves legal and political strategies that resist being reduced to a single doctrinal agenda.[183] In this light, litigation can be a site where different strands of resistance converge, even if they do not coalesce into a unified programme. Climate litigation, despite its doctrinal constraints, can still serve as a platform for reframing state and corporate accountability in ways that expose climate coloniality and articulate redistributive and reparative demands.

Ultimately, the plurality of claims within decolonial climate litigation should be understood as both a challenge and a resource. It complicates the notion of a singular 'movement' but also mirrors the multifaceted nature of climate coloniality itself.

4.4. Global North's Resources for its Own Dismantling?

Many of the cases examined here involve some degree of support, assistance, or even leadership from organizations and movements based in the global north. This support can take multiple forms: strategic and legal advice, campaign coordination, communications support, and direct financial aid. While the specific details of such involvement are often confidential, our familiarity with the proceedings indicates that global north civil society and social movements have played a meaningful role in shaping aspects of this litigation. This reality complicates claims to the cases' decolonial character, as it raises persistent concerns about asymmetries in agenda-setting, decision-making, and narrative framing.

Critics have argued that such dynamics risk reproducing forms of 'white saviorism', whereby global north actors – however well-intentioned – retain disproportionate control over the political direction of campaigns, often privileging strategies and framings legible to Western legal and policy institutions.[184] Similar concerns have been raised in broader debates about transnational advocacy networks, where resource imbalances and donor priorities can subtly reorient grassroots struggles to fit the expectations of funders or audiences in the global north.[185] In the context of decolonial climate litigation, these risks are particularly acute, given the historical role of Northern states and institutions in producing and sustaining the climate crisis.

[183] J. Schacherreiter, 'Un Mundo Donde Quepan Muchos Mundos: A Postcolonial Legal Perspective Inspired by the Zapatistas' (2009) 9(2) *Global Jurist*, article 10.

[184] Using Sultana's astute description, the critical question is whether their influence perpetuates a mode of political action with 'the colonial white gaze that saw non-white Others as inferior and lacking continues to desire to "fix" the "third world" and further white saviorism in climate solutions': Sultana (2022a), n. 25 above, p. 6; see also T. Cole, 'The White-Savior Industrial Complex', *The Atlantic*, 21 Mar. 2012, available at: https://www.theatlantic.com/international/archive/2012/03/the-white-savior-industrial-complex/254843.

[185] A. Ana, 'The NGO-ization of Social Movements: Between Opportunities and Constraints', in A. Ana (ed.), *NGO-ization of Social Movements in Neoliberal Times: Contemporary Feminisms in Romania and Belgium* (Springer, 2024), pp. 1–29; F. Harter, '"A Colonial Mindset": Why Global Aid Agencies Need to Get Out of the Way', *The Guardian*, 7 May 2024, available at: https://www.theguardian.com/global-development/article/2024/may/07/colonial-mindset-global-aid-agencies-costs-localising-humanitarianism-ngo-.

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By employing the concept of strategic essentialism – where internal differences are temporarily minimized and unity is emphasized to reach political objectives – there can be merit in selectively leveraging the resources and platforms of dominant actors, as long as ultimate decision-making power remains with those most empowered and affected.[186] In this sense, global north resources can be deployed in the service of dismantling the very systems from which they derive, though only when power is consciously redistributed and Southern leadership is foregrounded.[187] Partnerships that are genuinely horizontal, transparent in their governance, and accountable to frontline communities can transform potential liabilities into strategic advantages, amplifying demands for climate reparations, recognition of Indigenous sovereignty, and the dismantling of the structural inequalities of carbon capitalism.[188]

From a pragmatic perspective, we treat these dynamics not as categorical disqualifications of the decolonial potential of a case but as analytic matters of concern. A decolonial praxis of climate litigation must remain alert to the dangers of co-optation while also recognizing that the redistribution of resources – from the global north to the south – can contribute to material and political gains in the struggle against climate coloniality. The challenge lies in ensuring that such support strengthens, rather than supplants, the agency of the communities whose futures are most at stake.

5. Conclusion

In this article, we have identified and framed a new category of climate litigation – the decolonial climate case. Rather than classifying cases according to doctrinal form, forum, or remedy, we have foregrounded the political projects that animate them. Across 58 cases, we showed how claims brought predominantly by racialized individuals and communities articulate climate injustice as a function of historical subjugation, unequal ecological exchange, and the enduring structures of racial capitalism. These cases arise across settler-colonial, metropole/(post-)colony, and core/(semi-)periphery contexts, and advance claims concerning historic and cumulative emissions, sacrifice zones, extraterritorial harm, and global value chains. Taken together, they reposition climate litigation as a terrain in which colonial histories and contemporary power asymmetries are made legally legible.

At the same time, these cases reveal internal tensions. They operate through legal categories – rights, property, corporate personality, sovereignty – that are themselves implicated in the production of the injustices they contest. The remedies sought are often partial and fall short of structural transformation. The political agendas they

[186] E. Eide, 'Strategic Essentialism', in N.A. Naples (ed.), *The Wiley Blackwell Encyclopedia of Gender and Sexuality Studies* (John Wiley & Sons, 2016), pp. 1–2.

[187] M.J. Cascant-Sempere, 'Race Matters: The Long Walk to Decolonizing Development NGOs' (2024) 10(1) *Journal of Public and Nonprofit Affairs*, pp. 71–89.

[188] J. Auz, 'Human Rights-Based Climate Litigation: A Latin American Cartography' (2022) 13(1) *Journal of Human Rights and the Environment*, pp. 134–5.

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advance are plural rather than unified, and their mobilization frequently depends, in varying degrees, on institutional and financial infrastructures located in the global north. These tensions do not disqualify the cases from decolonial analysis; rather, they underscore that decolonial climate litigation is a contested and strategic field rather than a coherent programme. Its significance lies precisely in unsettling the assumption – common in climate litigation scholarship – that climate lawyering is teleologically oriented solely towards emissions reduction.[189] The cases examined here demonstrate that litigation may instead centre on reparative justice, historical accountability, territorial sovereignty, and the redistribution of ecological harm.

As Frantz Fanon argues in *The Wretched of the Earth*, decolonization cannot be accomplished by a 'natural cataclysm' or a 'gentleman's agreement', but only through a historically situated struggle in which the colonized reconstitute themselves as political subjects.[190] By rejecting the idea that colonial domination could dissolve on its own, Fanon insists that structural oppression does not correct itself, but that it must be confronted, named, and actively dismantled.[191] This insight is instructive for the climate crisis in that it is usually framed in technocratic or naturalized terms – as an unintended externality of industrial modernity or as an ahistorical planetary emergency bereft of power dynamics. Fanon's intervention lends itself to situate climate coloniality as a historically specific expression of deliberate political and economic choices embedded in racial capitalism. Climate coloniality is the result of a history of extraction, dispossession, and the legal ordering of unequal ecological exchange. In this light, climate litigation becomes intelligible not only as a tactical regulatory device, but also as a site for contesting and rearticulating the history of climate coloniality from situated, localized realities – much as Fanon theorized the broader structure of colonial domination through his lived and political experience in Algeria.

Engaging with Fanon's work offers a reckoning with the magnitude of the project of decolonization writ large, a struggle that has only a modest presence in courts, mainly as spaces to be tactically used, and opportunities that do not exhaust the decolonial repertoire. Fanon himself was deeply sceptical of colonial legal structures and attentive to the limits of reform within them.[192] Decolonial movements have long operated both within and against positive law, at times rejecting its authority altogether.[193] Our claim is narrower. If climate litigation is to modestly bend the arc of justice towards a future that liberates the wretched of the Earth from the atmospheric violence of climate coloniality – by addressing both climate impacts and inequality – it might be wise to challenge the theory and praxis of established categories and compulsions that the law

[189] S. Bookman, 'Catalytic Climate Litigation: Rights and Statutes' (2023) 43(3) *Oxford Journal of Legal Studies*, pp. 598–628, at 609.
[190] Fanon, n. 62 above, pp. 2, 15.
[191] Ibid., p. 15.
[192] Ibid., pp. 170–1.
[193] M. Terretta, 'Anti-Colonial Lawyering, Postwar Human Rights, and Decolonization Across Imperial Boundaries in Africa' (2017) 52(3) *Canadian Journal of History*, pp. 448–78.

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has unquestioningly upheld,[194] such as property,[195] and the gravitational pull of mainstream international environmental law towards imperial eco-modernism.[196]

When racialized communities mobilize legal argument to expose historical emissions, sacrifice zones, extraterritorial harm, or the impunity of global value chains, they do not thereby resolve the contradictions of liberal legality, but at least the totality of their struggle becomes visible and can thus be named. Decolonial climate litigation, in that sense, can function as a moment in a broader 'history-making movement' through which the subaltern asserts political agency, articulates collective memory, and challenges the normative foundations of the existing order.[197] It is a tactical intervention within a larger strategy that does not seek to substitute for or delegitimize extralegal resistance, but to use and repurpose every tool and platform as a terrain of the ongoing struggle against climate coloniality.

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[194] M.J. DeBoom, 'Climate Coloniality as Atmospheric Violence: From Necropolitics Toward Planetary Mutuality' (2022) 99 *Political Geography*, article 102786.

[195] J. Dehm, 'Climate Injustice, Racial Capitalism, and the Contradictions of Property' (2025) 5(4) *Journal of Law and Political Economy*, pp. 652–88.

[196] D. de Castro & Z. Yu, 'Unpacking the Interplay of Class, Production, and Sustainable Development in International Environmental Law Through the Lens of Evgeny Pashukanis' Commodity Theory' (2023) 9(1) *Cogent Social Sciences*, article 2238457; K. Heron, A. Pedregal & N. Lukić, 'For an Anti-Imperialist Ecological Modernity' (2025) 28(4) *Journal of Labor and Society*, pp. 497–551.

[197] Fanon, n. 62 above, p. 2.

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