

Human rights become new battleground in fight for environmental justice

Right to a healthy environment opens new pathway for corporate litigation



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>1,400

climate lawsuits globally since 2015

An upswing in climate litigation using breaches of human rights as their basis is just the beginning of what could be a new era of legal woes for companies in high-emitting and polluting sectors, with energy, mining, agriculture, and manufacturing companies in the firing line.

Activists using human rights-based litigation to advance environmental claims involving a range of issues, such as air, water and noise pollution, and man-made or natural disasters have enjoyed varying degrees of success to date. But, with the UN General Assembly resolution declaring the right to a healthy environment a human right in July 2022 – and then in March adopting a further resolution asking the International Court of Justice to define a country’s legal responsibilities to protect citizens from climate change – momentum is building as a diverse range of stakeholders rally behind the strategy. India, Nigeria, and Indonesia are just some of the nations likely to see a significant increase in cases, according to our data.

For companies already grappling with investor and regulatory demands to show how growing physical risks and declining natural capital threaten investments and strategy, litigation is the next hurdle to clear.

Legal arguments on environmental harms harness human rights to move beyond climate

Climate litigation remains the most pronounced avenue for environmental cases pivoting towards human rights to appear. It has rapidly become a key mechanism for affected groups to force states to abide by their international pledges and keep companies faithful to their emissions commitments. The *Milieudefensie v. Royal Dutch Shell* landmark 2021 case, which sided with Dutch citizens’ assertions that Shell’s contribution to climate change was in violation of its duty of care under Dutch law and human rights obligations, is a case in point.

Since 2015, climate lawsuits have more than doubled, totalling just over 1,400 cases globally. But, as cases have foundered in the courts, litigants have increasingly turned to a burgeoning body of human rights law to seek recourse. Between 2015 and 2020, 40 cases were brought before national and international bodies on such grounds, aided by a host of countries that have guaranteed rights to a healthy environment in their constitutions or national laws. The European Court of Human Rights will hear three separate cases this year, which in concert put over 30 European countries in the dock accused of infringing citizens’ rights by failing to act on climate.

Indeed, the argument is simple – a healthy environment is fundamental to the well-being of humans, and it is a right everyone should enjoy. From protecting populations of crop-pollinating insects and wild fish that are central to nourishing millions, to the air we breathe and the water we drink: activists are beginning to make the case that environmental and human rights harms are impossible to separate.

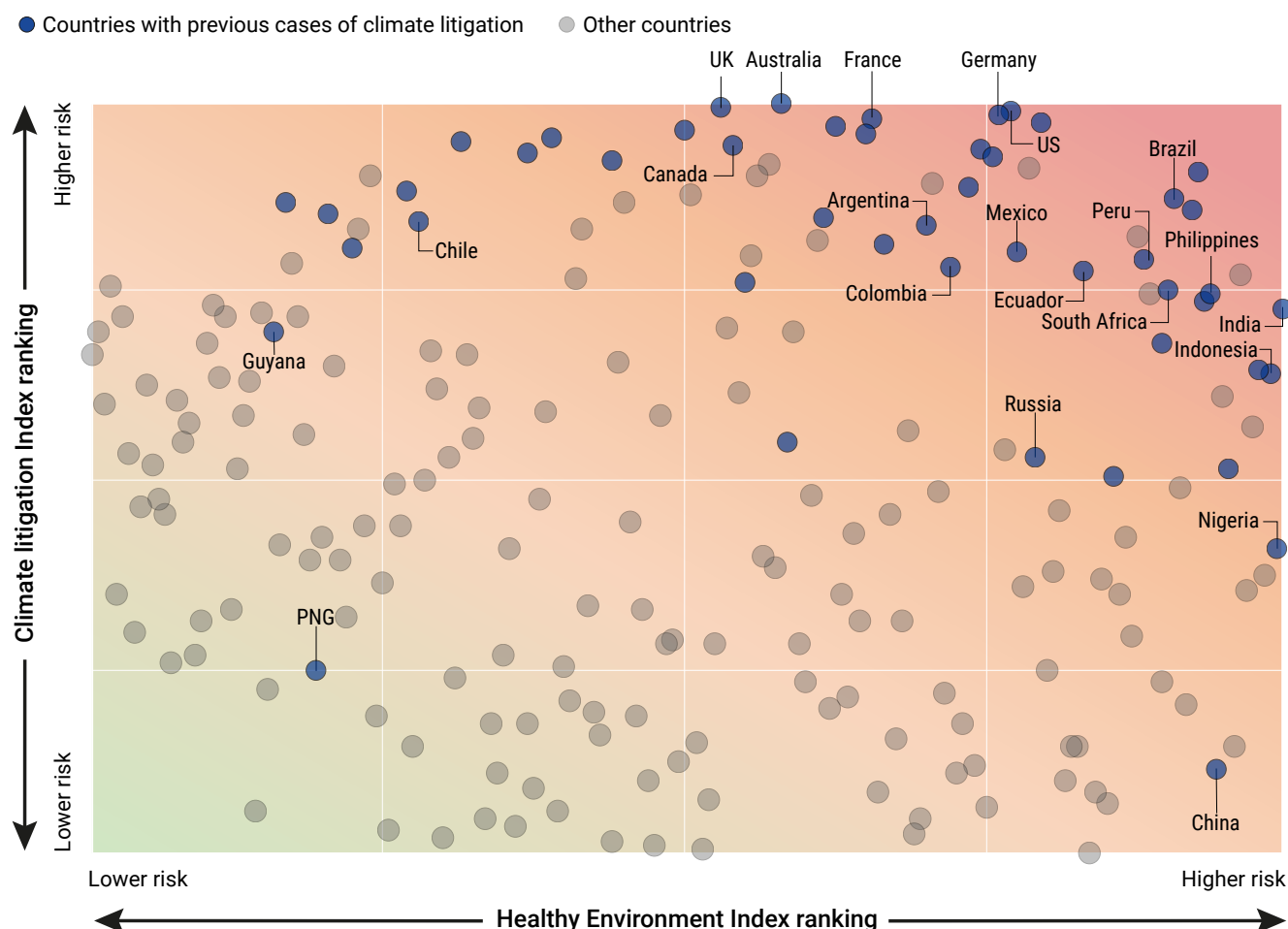
These links have reinforced legal arguments around clean air, healthy and sustainably produced food, access to safe water, non-toxic environments, intact ecosystems and biodiversity, as well as a stable climate. Human rights have been useful to litigate environmental damage and to open the door to regional and international human rights tribunals. But wider recognition of the right to a healthy environment, as heralded by the UN resolution, will streamline the reasoning and increase the chances of success for claimants. They will no longer have to indirectly argue that their right to health, for instance, is affected by environmental destruction or increasing GHG emissions.

India, Nigeria, Indonesia worst performers on Healthy Environment Index, ripe for cases

Understanding where environmental harms affect populations the most and in which locations cases of this kind are most likely to appear offers a window into how and where this new litigation battleground will develop for companies.

Figure 1: New human rights cases likely in countries with high environmental risks and a history of climate litigation

Country rankings, Climate Litigation Index vs Healthy Environment Index





India is the worst performing nation on Verisk Maplecroft's Healthy Environment Index

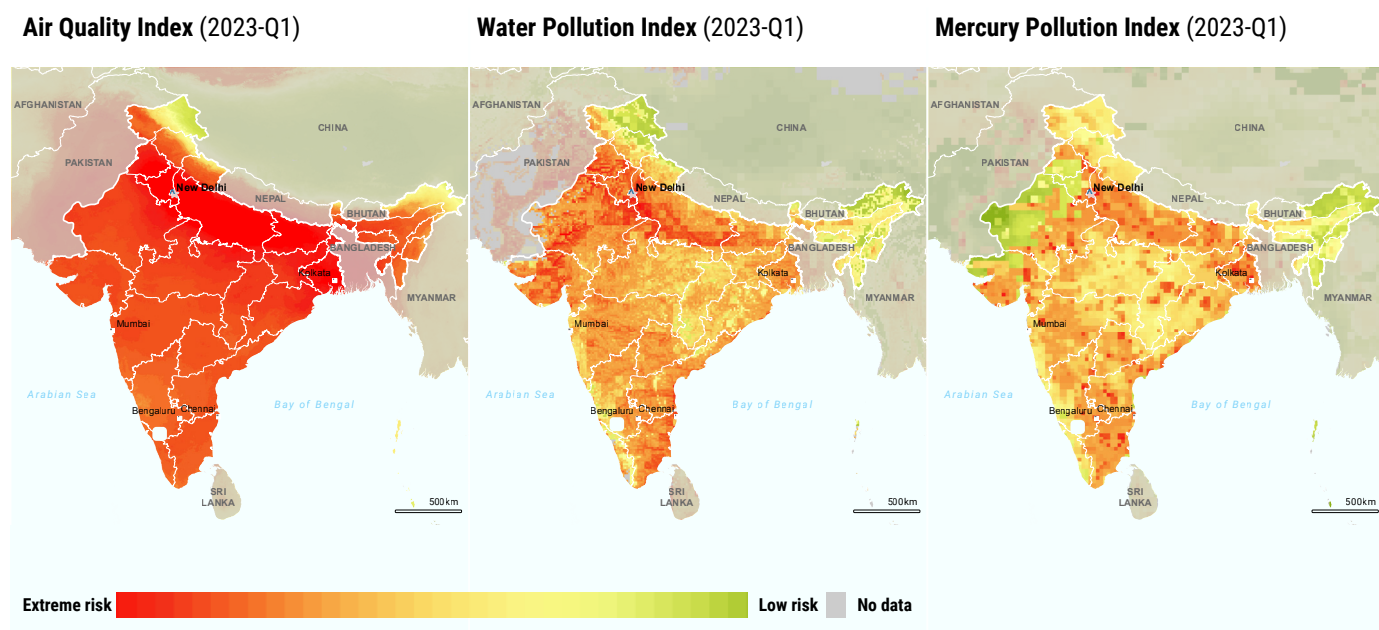
To do this, we mapped our Climate Litigation Index, which assesses 198 countries on the risk of lawsuits being filed and pursued against corporations in relation to climate change, against a new Healthy Environment Index, which combines our data covering Air Quality, Biodiversity, CO₂ Emissions, Climate Change Exposure, Deforestation, Food Security, Water Pollution, Hazardous Waste, Mercury Pollution and Persistent Organic Pollution.

In Figure 1, we can see a host of countries in the risky top right of the graphic where conditions are conducive to cases coming forward.

The maps below provide a snapshot as to why India is the worst performing nation on our Healthy Environment Index. Not far behind are Nigeria, Indonesia, the Philippines, South Africa and a host of major Latin American economies. The Asian countries in this group have a record of climate litigation, making it more likely that we will see a rising number of rights-related cases in the future. Likewise, Latin American countries, such as Colombia, Brazil, Ecuador, and Argentina, with a long trajectory on economic, social, and cultural rights litigation, as well as baked-in constitutional rights to a healthy environment, will prove fertile ground.

Figure 2: India highest risk country for Air Quality and Water Pollution, 14th worst for Mercury Pollution

India, subnational risk scores across select environmental indices



Source: Verisk Maplecroft

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“Mining companies have been targeted by human rights movements for environmental damages in India, Brazil and South Africa

Litigating extraterritorially in jurisdictions with better access to justice can also make them appealing to claimants. As the case against Vedanta Resources in the UK brought by Zambian citizens affected by water pollution from the Nchanga copper mine shows, victims of environmental damage caused by businesses across the developing world are increasingly resorting to tribunals in a company's home country to argue human rights violations. This brings the private sector to the fore of the discussion on the link between environmental harm and human rights. Extraterritorial litigation hubs, including the UK, France, Germany, Canada, the Netherlands and Australia, rank at the top of our Climate Litigation Index. French companies are a particular target because of the 2017 Duty of Vigilance Act that requires them to draft environmental damage vigilance plans, although no court has yet forced a company to change strategic direction.

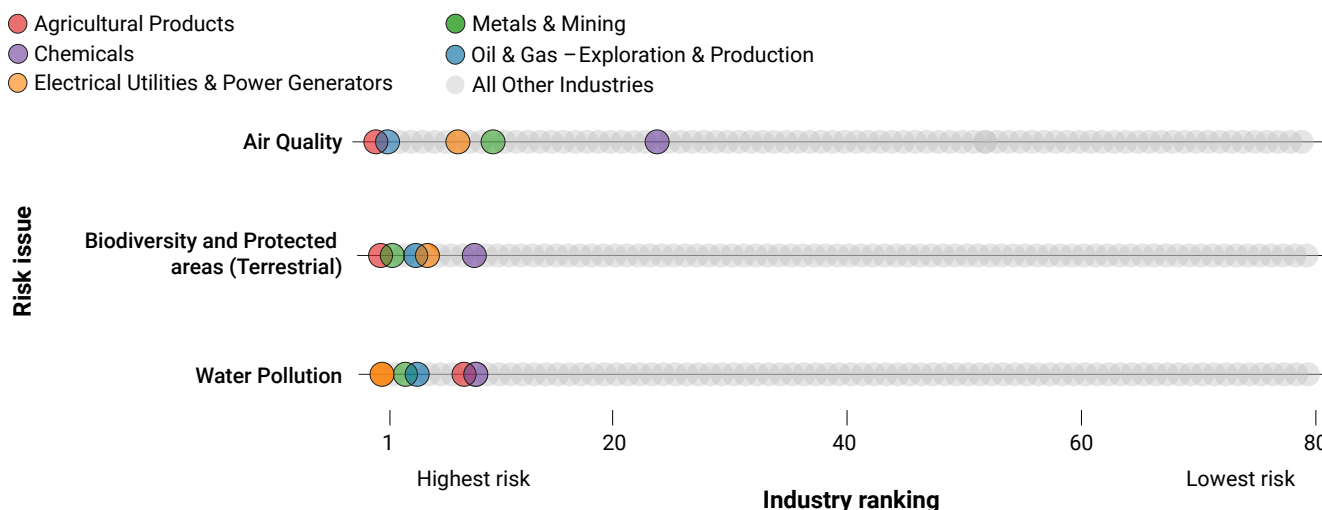
Legal jeopardy transcends natural resources – agriculture, chemicals, utilities at risk

With expansive global footprints, intrinsic operational risks, high emissions and the potential for large-scale, damaging industrial accidents, the oil and gas and mining sectors will remain the main focus of potential lawsuits marrying the E of environmental with the S of social risk.

Mining companies have already been targeted by human rights movements for environmental damages caused by tailings dam failures and water and air pollution incidents in tribunals in India, Colombia, Brazil, Peru, South Africa, and extraterritorially in the UK and Australia. Oil and gas companies have also been sued in Nigeria for spills in the Niger Delta, and activists have used transnational litigation to bring the same case to the Netherlands when justice proved slow at national level.

Figure 3: High-impact industries at frontline of new rights-based environmental litigation

Verisk Maplecroft Industry Risk Analytics, industry rankings across key environmental issues



Source: Verisk Maplecroft

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Litigation is likely to expand into other polluting sectors, including agriculture, chemicals production and manufacturing

But as we see cases linking environmental degradation and human rights accelerate, we will likely see an expansion into other sectors, such as agriculture, chemicals production and some areas of manufacturing, which, as shown in Figure 3, can have damaging polluting impacts on air, soil and water quality.

LkSG supply chain law signals legislators beginning to connect E and S dots

Litigation is, however, not the only legal pitfall facing companies when it comes to connecting the E with the S. Compounding the mounting threat is the advent of new laws, such as the German Supply Chain Due Diligence Act (LkSG) and the EU's Directive on Corporate Sustainability Due Diligence (CSDD), which ask organisations to consider environmental factors alongside their human rights due diligence.

This legislation trend will not only amplify the risk of new jurisdictions entertaining claims of victims of human rights violations caused by environmental harms in a third party, but will also open the door to hefty fines and even administrative penalties against senior executives and mid-level managers.

The LkSG, in particular, links aspects like water pollution and soil contamination to human rights violations regarding access to food and clean water. A cohort of countries in the top right quadrant of Figure 1 perform poorly in our data measuring both Mercury Pollution and Persistent Organic Pollutants, including India, Japan, Peru, Germany, and a host of other European nations.

Litigation risks 'rapidly accelerating'

The trajectory of human rights-based litigation for environmental damage will be reinforced and expanded thanks to the growing recognition of the right to a healthy environment. In countries with a long-standing tradition on marrying these issues it will help advance more complex cases. And in those countries which have yet to recognise it, a more seamless argumentation will push for judicial interpretations accepting this link with greater chances of favourable outcomes for plaintiffs.

Globally, the rate of cases coming forward will vary considerably, but there can be no doubt that the litigation risks to companies within polluting sectors are rapidly accelerating.



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