In Pursuit of Climate Equity:

Unearthing the Battlefronts of Climate Justice Litigation in Colombia, Kenya, and South Africa

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FOREWORD

”The other day
We danced on the street
Joy in our hearts
We thought we were free

Three young folks fell to our right

Countless more fell to our left

Looking up,
Far from the crowd
We beheld
Red hot guns
We thought it was oil
But it was blood”
– Nnimmo Bassey

Author’s description of the turmoil caused by the oil company Shell in Niger Delta, Nigeria

AKCNOWLEDGMENTS

This research project is dedicated to all the environmental and human rights defenders who throughout time have defended land, identity and nature against colonialism, exploitation, and extraction. I thank all my contributors and mentors who have guided, participated, and extended their resources, time, and experiences to this study. This research project would not have been possible without you. A special thank you to family and friends for their invaluable support throughout my academic education.

SUMMARY

Across the world rights-based climate change litigation have been hailed as the new instrument in which societal groups through law may bring about climate action from powerful actors, cure damages of climate change and provide justice against human rights violations. Despite the normative success of rights-based climate litigation, the space for legal mobilisation is not only confronted by political ideologies and bureaucratic barriers, but an inherent tension of structural oppression that affects the space for litigation in the Global South. This project seeks to explore the implications of climate justice litigation in the Global South and what dynamic interactions are involved in legal mobilisation. Through a two-level research design of international organisations and policies, as well as a comparative study of organisations, litigation cases and national law from Colombia, Kenya, and South Africa, this project finds that the space for litigation is conducive yet up against a neo-colonial extractive-development model that favours powerful actors over the livelihoods of communities although protected by law. This study draws on the theories of Third World Approaches to International Law and Socio-legal theory to move beyond a rights-based approach in seeking to deconstruct the type of justice which may be achieved, and what that means for the communities impacted.

ABBREVIATIONS

CCL	Climate change litigation
CJL	Climate justice litigation
CSC	Critical Social Constructivism
HR	Human rights
GHG	Green House Gas Emissions
ICtHR	Inter-American Court of HR
AoIL	Anthropology of International Law
IEL	International environmental law
IHRL	International human rights
TWAIL	Third World Approaches to International Law
UNEP	United Nations Environment Programme
UNFCCC	United Nations Framework Convention on Climate Change

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I. INTRODUCTION

In 2015 the Dutch Urgenda Foundation, and 900 Dutch citizens sued the Dutch government in a demand to do more to prevent global climate change. The outcome of the case achieved landmark judicial decisions that gained extensive media coverage, shaped government policy and inspired litigants in other countries (Beauregard et al., 2021; Peel & Markey-Towler, 2021; Robinson & D' et al., 2021). What followed was an increase in climate change litigation (CCL) in holding States, Governments, and Corporations accountable for their contributions to climate change (Setzer et al., 2021; Otto et al., 2022). Particularly, the United States and Australia are known to have more CCL cases than the rest of the world combined. Although receiving less international attention, Setzer & Higham (2022) finds in their report that in 2022 there were at least 88 cases in the Global South; 47 in Latin America and the Caribbean, 28 in Asia Pacific, and 13 cases in Africa. The most well-known case from the Global South is the 2015 *Leghari v. Federation of Pakistan* where the High Court of Pakistan found that the government's adaptation failures breached citizens' fundamental rights (Guruparan & Moynihan, 2021; Osofsky et al., 2020a; Peel & Osofsky, 2019). Filing a lawsuit against a transnational corporation (TNC) was seen in March 2023 where a lawsuit was brought before a French civil court by East African campaigners against the energy major TotalEnergies over its oil projects in Uganda and Tanzania (Hernandez, 2023).

"Citizens are increasingly turning to courts to access justice and exercise their right to a healthy environment"- Arnold Kreilhuber, Acting Director of UNEP's Law Division (2021). This quote sets the tone for what these cases of CCL have in common as human-induced climate change is not only affecting life-sustaining systems but also has cascading effects for ecosystems and human security (Alogna et al., 2021). Current arrangements have locked the world into a secure, inefficient, and high-carbon energy system in which the transboundary governance of globalisation is affected by competition, incoherence, and counter-productive mechanisms in the name of capitalism and economic growth (Brightman & Lewis, 2017). Although there are several policies, institutions, and frameworks in place to ensure green transitions and sustainable action, not enough are being done to curb the complex and differentiated effects of climate change which are felt all over the world (Guruparan & Moynihan, 2021; Peel & Osofsky, 2020; Shelton, 2011). One of the most recent and historic developments within environmental law was when the Right to a Clean, Healthy, and Sustainable environment

became recognised as a universal right at the United Nations climate change Conference of Parties in November 2022 (UNEP, 2022). With this development there is an extensive international backdrop describing the importance of climate action which influences social movements, non-governmental organisations (NGO) and other political actors to mobilise the law for social change (Buckel et al., 2023). Yet, action through the courts is also confronted with hurdles; including access to justice barriers, difficulties in establishing causality, as well as the conservatism and ideologies of many courts when confronted with contentious policy issues (Peel & Osofsky, 2020). Such hurdles have brought about a rights-based approach in arguments for CCL which relies on constitutional rights or human rights (HR) claims, including alleged violations of rights to life or environmental rights (Peel & Osofsky, 2018; Savaresi & Auz, 2019; Savaresi & Setzer, 2022). Thus, rights-based CCL has been argued to constitute an important 'bottom-up' form of pressure on governments and corporations concerning their climate change contributions, HR violations, or exploitation of workers along global supply chains (Alogna et al., 2021; Buckel et al., 2023; Guruparan & Moynihan, 2021).

The turn to rights-based CCL assists in putting a "human face" to the climate change problem around the world (Alogna et al., 2021). But what this approach also reveals, is that the existing global economic system that centres profit over earth systems and its people are based on power imbalances. These imbalances have allowed inequalities to deepen around the world while also exacerbating environmental damage for those most vulnerable (Brightman & Lewis, 2017; Galperin & Kysar, 2020). In the same vein, the amount of damage caused also divides itself in the Global North and Global South poles of the international system. This is due to the present impact of colonialism that has created the capitalist economic system in which land, resources, and capacities are extracted from colonies and given to the colonial powers for their own advancement (Babatunde, 2020; Chimni, 2006). The Global North and South divide are politicised in the colonial global order and historically situated to replace previous descriptors of colonies in which the Global South include formerly colonised countries in Africa, Latin America, as well as the Middle East, Brazil, India, and parts of Asia (Martins, 2020). This had led to current arrangements of an unfair, globalised economic system that has favoured few based on extractive operations and policies which allows for deterioration of lands and environment, exerting severe impacts on local communities'

territorial rights, leading to their physical and cultural annihilation (Andreucci & Zografos, 2022; Eichler & Bacca, 2020).

While the Global North countries are grappling with this historical responsibility for the current climate change, the Global South countries are the ones who are paying and who will continue to pay the highest price as the impacts of climate change are felt unevenly (Maljean-Dubois, 2018). This is a point the global climate governance regime does not probe further into as the laws and policies rests on the same colonial-capitalist system which has favored few and hindered participation, autonomy, as well as development of Global South countries (Jafry, 2018; Ohdedar, 2022). It, therefore, becomes particularly interesting to explore what rights-based CCL means in the context of the Global South and the inherent tensions highlighted above. It is a context that has been termed "super wicked" as it is difficult to reduce greenhouse gas (GHG) emissions in an era of hyper-industrialisation characterised by the global race to development at the cost of the environment (Ramesh & Jacob, 2022)**.** Such conundrum raises questions on who is mobilising the law to address the climate crisis, why, and with what consequences? Who is not turning to the courts, and what drives this? (Lin & Peel, 2022). These questions rests on a context in which powerful actors and corporations are backed by national Global South governments to explore and extract the resources needed to continue the global growth paradigm and state-building (Bacca, 2019; Brightman & Lewis, 2017). Being up against such actors presents a different kind of fight that is part of rights-based CCL than the one described in the Global North countries about taking responsibility, as it is one against historic, structural oppression and survival. Hence the fight for communities in the Global South is one of safeguarding basic needs, livelihoods, and existence on land while also continuing to develop and alleviate poverty (Rodríguez-Garavito, 2020; Setzer & Benjamin, 2020).

In this sense, Ramina (2018) also argues that the liberal HR paradigm which shapes the global governance scene we see today cannot tackle the colonial foundation for which it was created. The plight which Global South litigants face is thus utilising institutions and structures that once legalised colonialism, which now must protect their rights (Merry, 2006). Such raises questions on the kind of justice project that rights-based CCL may offer, what it serves and who it serves. These global paradigms further trickles into national legal systems in which legal struggles in and around the law brings about capitalist relations of domination, and

where the production of international treaties by transnational elites impacts the localisation on the ground (Buckel et al., 2023; Sarfaty, 2021). Therefore, this rights-turn shouldn't be seen as a panacea; not only because of the complexity and limitations of claims when it reaches court rooms, but also because of general issues typical of each legal system, relating to political decision-making, as well as constitutional and legal hurdles that follows from the global order which prioritises extractive- development models (Alogna et al., 2021). These are equally compounded by the disruptive nature of climate change that highlights even further the incapacity of HR which suggests that climate change can be understood as not only disruptive to legal systems, but also to the frameworks used to identify and assess the impacts of litigation on these systems (Savaresi & Auz, 2019). Therefore, it becomes interesting to probe deeper into the social and legal mobilisation of actors in the Global South as they are up against international actors, development models and national policies, as well as severe impacts of climate change, while also fighting for their cultural and territorial survival (Bacca, 2019; Rodríguez-Garavito, 2020). Existing literature on rights-based CCL is based on Global North debates which offers an incomplete framework for understanding legal mobilisation for climate justice in the Global South. Thus, this project seeks to extent the rights-based CCL approach to include climate justice for marginalised communities in the Global South. This is a mission up against a complicated backdrop of colonialism in the nexus between development, as well as damages caused by violent practices and climate change (Maria et al., 2021; Ramesh & Jacob, 2022). Therefore, this project seeks to investigate the problem formulation; **How do civil society actors in the Global South achieve climate justice through strategic rights-based legal mobilisation?**

With the following guiding questions:

- What legal structures has made climate justice litigation possible in the Global South?
- What issues and strategies are part of pursuing climate justice for local communities in the Global South?
- What are the barriers and implications of pursuing climate justice litigation in the Global South?

This project employs a qualitative multi-method design inspired by anthropology of international law to explore the implications of climate justice litigation in the Global South

and what dynamic interactions are involved in legal mobilisation. This is a field less explored in the traditional legal dogmatic approaches on rights-based CCL, which do not take broader socio-political issues into account, while only referring to the internal workings of the legal system. Thus, this project expands the meaning of CCL in the Global South to one that is critical against the structural power asymmetries also part of climate change and presents a perspective of Glocality regarding the kind of justice to be pursued through legal mobilisation. This is done through databases, document analysis and interviews to understand the space of rights-based CCL in the Global South, the experiences of actors, and what impacts legal mobilisation has on communities taking a legal turn for climate justice (Sarfaty, 2021). This is done through a two-level research design. The first level is a cross-sectional study that seeks to investigate the international trends and discourses of rights-based CCL and how such manifest itself in the local climate justice struggles. The second level is a national comparative study of the Global South countries Colombia, Kenya, and South Africa. The exploration includes what legal grounds exist for climate justice, along with other access issues such as legal standing, costs, and the timelines for recognising HR violations, as well as what interactions and impacts take place due to power asymmetries. The three countries were chosen as cases due to their colonial history, legal pluralism, and vulnerability to climate change. Looking at the Global South experience of rights-based CCL is essential if transnational climate jurisprudence is to contribute meaningfully to global climate governance and, particularly, to ensure that powerful actors are held accountable (Gunderson & Fyock, 2022). A critical social constructivist standpoint and a theoretical framework of Third World Approaches to International law together with Socio-legal theory assist in situating the phenomena to consider the ways litigation may deal with structural inequality.

2. BACKGROUND SECTION – COUNTRY PROFILES

This section seeks to provide general information on the case countries under study to further understand the national context which influences the space for rights-based CCL. The section presents the current government, legal structures, climate vulnerabilities and development rates. The selection of Colombia, Kenya, and South Africa as case countries offers a diverse and representative sample to explore the implications of CJL in the Global South and what dynamic interactions are involved in legal mobilisation. The main three factors worth noting

are because of the countries' climate vulnerability; legal pluralism in which culture, traditions and indigenous cosmologies are recognised, as well as the HR context of the countries explained below (Ohdedar, 2022; Rodríguez-Garavito, 2020).

2.1. Colombia

After Spanish colonial rule of 1819, Colombia's culture reflects the indigenous Indian, Spanish, and African origins of its people. The former rebel fighter Gustavo Petro became Colombia's first left-wing president in June 2022 representing the most diverse government of Colombia ever to be had with liberal, socialist and conservatist parties (BBC News, 2023a). Colombia is a populous country, with an estimated 50.8 million people in 2020 (World Bank Group, 2021a). Despite its middle-income status, Colombia's wealth is heavily concentrated in the country's biggest cities while most rural regions of the country remain severely underdeveloped. Though poverty rates have seen significant improvements since the 2000s, extreme inequalities continue to be significant and the national poverty rate in 2017 was still estimated to be 49.6% (ibid., p. 2). Colombia has substantial oil reserves and is a major producer of gold, silver, emeralds, platinum, and coal, but it is also marked by a highly stratified society which has led to decades-long violent conflict involving armed groups, drug cartels, and gross violations of HR (BBC News, 2023a).

Colombia is recognised as a megadiverse country with a diverse range of ecosystems, such as paramos, mangroves, wetlands, coral reefs, glaciers, oceans, and tropical forests, as well as significant biodiversity and water resources (World Bank Group, 2021a, p. 4). The country is highly vulnerable to the impacts of climate variability and change as the country already routinely experiences damaging droughts and floods. The economically important coffee industry is highly vulnerable to rising temperatures and hydrologic events. Water provision is heavily reliant on glacier melt, which under rising temperatures are projected to continue receding (ibid., p. 6).

Colombia is committed to balancing growth with delivering environmental, climate and sustainability targets, and seeks to reach carbon neutrality by 2050. In dealing with climate change, Colombia has a range of policies that is to ensure sustainable development such as the National Climate Change Decree that coordinate the public sector, private sector, and civil

society, as well as the National Climate Change Policy (2017) and the National Adaptation Plan amongst others (ibid., p. 24).

2.2. Kenya

A former British colony, the republic of Kenya gained independence after the Mau Mau insurgency of the 1950s which has made it a multi-ethnic, multi-racial and multi-religion country. The elected government of August 2022 is Kenya Kwanza, with President William Ruto, a centre-right coalition that has promised a bottom-up economy that will bring growth and development to the people of Kenya (BBC News, 2023b). Kenya, while considered a lower middle-income country, has the largest economy in East Africa. Kenya has since 2010 had a devolved political system consisting of 47 counties (Kenyan Ministry of Foreign Affairs, n.d.). Kenya aims to become a newly industrialized country by 2030, which will require expanding climate change resilience efforts while also increasing its domestic energy production, including the use of renewable sources. Kenya is working to meet these goals and adhere to its climate change strategies by investing in strategic actions such as afforestation and reforestation, geothermal energy production and other clean energy development, as well as climate smart agriculture, and drought management (World Bank Group, 2021b).

The country is also home to very varied geographical landscape from inland lakes, snow-capped mountains, the great rift valley, and sun kissed white beaches (ibid.). Over 84% of Kenya's land area is arid and semi-arid, with poor infrastructure and other developmental challenges, leaving less than 16% of the land area to support 80% of the populations (ibid.). Due to a combination of political, geographic, and social factors, Kenya is recognised as highly vulnerable to climate change impacts, ranked 152 out of 181 countries in the 2019 ND-GAIN Index. Kenya's natural resource base is under increasing strain due to population pressures, coastal erosion, deforestation, poor land management as well as seasonal variability and climate change. These pressures also threaten the country's unique biodiversity, as well as local livelihoods and long-term food security for a significant segment of the Kenyan population (ibid., p. 4). The conditions of Kenya have led to several different important laws for living with climate change. A national climate change council has been established to address and enforce the countries' laws such as Climate Change Act 2016, National Climate Change Action Plan 2018, Climate Change Framework Policy, and a National Policy on Climate Finance (ibid., p. 24).

2.3. SOUTH AFRICA

After decades of international isolation, armed opposition and mass protests against the Apartheid rule and British settlement, the discriminatory laws began to be repealed from the late-1980s onwards (BBC News, 2023c). The African National Congress, supported by the Congress of South African Trade Unions and the South African Communist Party has been South Africa's governing centre-left political party since the establishment of non-racial democracy in April 1994. Cyril Ramaphosa was elected president by parliament in February 2018 after his predecessor, Jacob Zuma, resigned over corruption allegations (ibid.). South Africa is a multi-ethnic, constitutional democracy which comprises a parliamentary republic and nine provinces (The Commonwealth, n.d.). South Africa is an upper middle-income country, with a relatively stable political environment. In 2020, it had a population of 59.3 million people, with an annual population growth rate of 1.3% (World Bank Group, 2021c).

South Africa is especially vulnerable to climate change given its water and food insecurity, as well as the potential impacts for health, human settlements, infrastructure, and critical ecosystem services. The country has integrated its climate change strategies with its development framework in support of robust plans to eliminate poverty and eradicate inequality. A central strategic focus is on the sustainability of the environment, water resources, land management, agriculture, and health (ibid., p. 4). In South Africa, a just transition is core to shifting our development pathway to increased sustainability, fostering climate resilient and low GHG emissions development, while providing a better life for all (The Commonwealth, n.d.).

South Africa's topography varies from desert to semi-desert in the drier North-western region to sub-humid and wet along the country's eastern coast; approximately 50% of the country is classified as arid or semi-arid (World Bank Group, 2021c). Agriculture, forestry, and fisheries sectors are critical in attracting foreign exchange, job creation and production of raw material for the economy (ibid.). In managing climate change and ensuring sustainable development several different policies and laws are in place in which South Africa's Department of Environmental Affairs serves as the country's climate change focal point and is responsible for developing and implementing the Climate Change Strategy that is cross-sectoral (ibid., p. 24).

3. LITERATURE REVIEW

This section presents a literature review on the existing academic debates on rights-based CCL and the space it occupies within the global architecture on climate action. This is done to understand the policies, agreements and governance structures which has made the rights turn to CCL possible and what this means for climate justice to identify inherent system failures, patterns, and gaps. This literature review draws from disciplines such as International Relations, Anthropology, Socio-Ecology, and International Law to explore the implications of CJL in the Global South and what dynamic interactions are involved in legal mobilisation based on existing cases and academic knowledge.

3.1. Climate Change Litigation as Catalyst for Climate Action

The literature on CCL has grown exponentially in the last decade, paralleled by the emergence of a rich legal and social sciences literature assessing cases seeking to foster climate action and justice for those impacted (Setzer & Vanhala, 2019). The literature on CCL has several different focusses: new high-profile judgments; emerging legal avenues, types of actors, litigation objectives, and jurisdictions; as well as additional interdisciplinary analyses (Eskander et al., 2020; Hornung et al., 2020; Maljean-Dubois, 2018, 2019; Mallet & Nagra, 2022; Peel & Osofsky, 2020; Rodríguez-Garavito, 2022b; Sindico et al., 2021; UNEP, 2017) . These together seeks to make sense of the complex issue. The question of how CCL should be defined is still actively debated among scholars and practitioners, and the diversity within the CCL literature about the definition of the phenomenon under study is, in many ways, a reflection of the breadth of climate change itself (Setzer et al., 2021). Within scholarly debates the definition of CCL is divided down the line between a narrow and broader definition. The narrow definition of litigation only covers legal action which directly and expressly raised an issue that is related to climate change or climate change policy (Alogna et al., 2021; Ganguly et al., 2018; Setzer & Vanhala, 2019; Toussaint, 2021). Whereas the broader definition had climate change as an 'additional' or 'secondary' concern, even when not expressly mentioned (Batros & Khan, 2020; Corsi, 2017; Rodríguez-Garavito, 2020; Zhou & Qin, 2021). Peel & Ofosky (2020) adds that these legal claims offer different perspectives on the effectiveness of litigation in achieving social and policy change when brought before international or domestic judicial, quasi-judicial and other bodies.

To date, scholarship, media attention and policy engagement have focused primarily on a subset of CCL known as 'strategic' CCL: cases where the claimants' motives go beyond the concerns of the individual litigant and aim at advancing climate policies, creating public awareness, or changing the behaviour of government or industry actors (Peel & Osofsky, 2020; Peel & Markey-Towler, 2021). Litigants in these cases aim to produce ambitious and systemic outcomes (Osofsky et al., 2020a). These claims push the boundaries of law and shift across scales by engaging local, or sometimes community measures, national, regional, and international obligations (Peel & Markey-Towler, 2021). Desaules (2022) further adds that the strategic dilemmas encountered by activists, grassroots organisations, civil society organisations (CSO) and NGOs span questions of legal opportunity, standing or justiciability, as well as cost and time sensitivity. In this sense, CCL are shaped by the goals of their programme, the nature of the social change they wish to effect, the broader social and political context in which they are operating, legal factors (such as the causes of action available and the existence of potential legal barriers), appetite for risk, and costs (Batros & Khan, 2020; Peel & Osofsky, 2019).

The most recent turn within CCL is grounding claims in HR such as the general right to health and life which is argued to be an advantage because HR treaties are relatively more "robust" than environmental law and climate change treaties (Beauregard et al., 2021; Desaules, 2022; Setzer et al., 2021; Wewerinke-Singh & McCoach, 2021). The rights turn has equally allowed for several actors around the world to have legitimate claim of climatic impacts on their livelihoods as a way of addressing the climate mitigatory and adaptative efforts needed (Savaresi & Auz, 2019). While there is an obvious convergence between the two, there is no doubt that environmental protection encompasses a much wider group of actors and consequences than the HR movement (Savaresi & Setzer, 2022). With this, the anthropology of law scholars, Goodale & Merry (2017) argues that it is important to take note of the ways in which law regulates collective belonging, and what groups can utilise the legal avenue. This raises the issue of what collectives are seen as legitimate and deserving of legal protection (ibid). In this sense, rights-based litigation is a tool with its own challenges and blind spots, including insufficient attention to climate adaptation and the limitations of HR norms in dealing with the complex problem of climate change (Rodríguez-Garavito, 2022). Ohdedar (2022) adds here that structural causes to vulnerability and inaction must also be accounted

for when speaking on impacts of climate change, and how rights-based CCL is to be realised. However, the review of literature shows that the academic debate on CCL pays less attention to the potential impacts of CCL, and the reasons for why filing lawsuits against corporations for climate harms has failed to make a substantial impact thus far (Gunderson & Fyock, 2022; Vanhala, 2022).

The latter becomes particularly interesting when examined within a Global South context where litigation cases reflect a "peripheral" focus on climate change (Alogna et al., 2021). The peripheral focus brings forward limitations of existing academic debates because outlets tend to be dominated by English-speaking, Global North scholars with climate change taking centre stage (Osofsky et al., 2020). This project is also influenced by this limitation and may not fully capture all academic journal articles published on the phenomenon of CCL in the Global South. This argument also becomes interesting when faced with the claim that a rights-turn of CCL is the new steppingstone in ensuring climate action when there are still inherent intricacies and inequalities that are yet to be addressed because they are not captured by orthodox research on CCL (Rodríguez-Garavito, 2020; Setzer & Benjamin, 2020). These are related to the complexity of climate injustice, and who are seen as victims and heroes in the narrative (Gyte et al., 2022). However, climate injustices are many and complex; they involve highly contested questions of responsibility based on historical contributions to climate change impacts, current oppressive actions and who should compensate victims (Foerster, 2019). With the above, it becomes obvious that most orthodox literature from the Global North on CCL is relatively uncritical while disregarding the complexities of the larger global governance systems that is based on colonial-capitalist paradigms regarding power asymmetries and climate injustices that equally impacts the space for rights-based CCL. This must be accounted for when considering the implication of CJL in the Global South.

3.2. International Architecture of Climate Litigation

Commentators look to liberal international law (IL) as a source of constraints on the abuses of hegemonic power of States, as a means of responding to the threats posed to the state by terrorism and economic globalisation, or as a field for global cooperation (Orford, 2006). As the previous section highlighted, achieving the GHG reductions that are factored into climate governance arguably requires new and much more "integrated and aggressive" forms of governance, but where will these new forms originate, how will they diffuse, and what factors

will shape their ability to perform as hoped? (Jordan et al., 2015). These are questions grabbled with by academic discussions on CCL when looked upon within international climate governance (Peel & Lin, 2019). These considerations rests on several decades of inter-state cooperation and international diplomatic fora that has produced climate change treaties such as the 1992 United Nations Framework Convention on Climate Change (UNFCCC), the 1997 Kyoto Protocol and the 2015 Paris Agreememt. All of which contains an abundance of normative elements that has become part and parcel of international environmental law (IEL) (Toussaint, 2021). It is here certain discourses and norms are pushed for a trickle-down into other actor's mandate of why and what needs to be done to address climate change (Barnett, M. Finnermore, 2012). While some hailed the adoption of the Paris Agreement in 2015 as a victory for multilateralism in climate governance due to the clear responsibilities of actors. Others argue that the treaty is another benchmark to measure our failure to deal with global climate change collectively (Buser, 2023; Khan & Roberts, 2018; Toussaint, 2021). Alogna et al. (2021) also argues that despite this multi-level normative framework, the exact responsibilities of States and non-State actors (e.g corporations, financial institutions) with regard to climate change mitigation and adaptation are far from clear (J. Bouwer, 2018). Buser (2023) adds that the current international climate treaty regime lacks several elements of an international rule of law, such as legal bindingness, clarity, and justiciability.

What has recently gained traction within legal literature is the turn to international human rights law (IHRL) to prevent and address the negative consequences of climate change for the enjoyment of HR (Alogna et al., 2021). While a healthy environment is a pre-condition for the enjoyment of rights, the environment is not protected by IHRL (Fraser & Henderson, 2022). With the latter, the Third World-Approaches-to-IL (TWAIL) scholars Chimni (2006) and Ramina (2018) reminds us that such contradiction in IL is best manifested in the field of IHRL as it legitimises the internationalisation of property rights and hegemonic interventions, codifies a range of civil, political, social, cultural, and economic rights which can be invoked on behalf of the poor and the marginal groups. The discussion on whether IHRL can bring about legitimate action also situates itself within a larger discussion of what actors are under its jurisdiction, the responsibilities of said actors and the power asymmetries of the international system which determines what rights are prioritised whereby the already-occurring impacts

of climate change today are not addressed (Doelle & Seck, 2020; Otto et al., 2022; Robinson & D' et al., 2021).

This notion of gaps in IEL and IHRL raises fundamental complexities about due diligence towards nature and earth systems (French & Kotzé, 2019). The premise for which legal order exist within IEL is therefore, described by Chesterman (2019) as a tale of ongoing struggle to ensure that the powerful as well as the weak are subject to it (ibid., p. 125). Paiement (2021) further describes this as a struggle for how or whether existing international institutions can be called into service to address the magnitude of climate change as they stand with the mandate as regulators, facilitators, and enforcers. Against this backdrop, the international courts such as the International Court of Justice, the International Criminal Court, the World Trade Organisation dispute settlement body hold potential. Yet as of current, are only accessible to State disputes if all other means have not worked and by transnational corporations (TNC) who can pursue legal disputes against States for halting their economic activities regardless of climatic damages (Ganguly et al., 2018; Lizarazo-Rodriguez, 2021; Wewerinke- Singh et al., 2021). These are due to the normative state-centric, interpretative character of IL non-accessible for citizens, and because TNCs have no binding obligations (Buser, 2023; Orford, 2006). TNCs' accumulated power allows for creative initiatives and voluntary instruments which provides them the hybridity of regulating themselves while concurrently evading reduction measures (Wouters & Chané, 2013).

This hybrid identity further trickles into Global North-South relations which are characterised by procedural injustice because the TNCS acts to benefit their origins, and the Global North dominates decision-making within the climate governance spaces (Brightman & Lewis, 2017). IEL has generally failed to halt or reverse the rapid deterioration of the planet's life support systems due to conflicts between affluent and poor countries (the North-South divide) over environmental priorities and the allocation of responsibility for environmental harm (Gonzalez, 2015; Toussaint, 2021). Hence, the constellations of IL and its actors raises questions of responsibility and liability (Ohdedar, 2022). Such asymmetry produces a world of legitimate violence that is territorially bounded whereby transnational actors in the name of economic growth may extract, use, and mould land around the world (Crook et al., 2019; Ramina, 2018). This makes Gonzalez (2015) argue that North-South environmental conflicts are reflective of social injustice "because they are inextricably intertwined with colonial and

post-colonial economic policies that impoverished the Global South and facilitated the North's appropriation of its natural resources" (ibid., p. 423). Babatunde (2020) adds that the injustice inherent to the divide of developed and developing countries gives rise to demands for redistributive justice that builds the necessary institutions for countries who have suffered injustice in the past to be able to cope with climate change, a problem for which they have been the least responsible but must now battle (ibid., p. 292).

3.3. Regional Architecture of Climate Litigation

Regional courts have also been triggered by victims of ecological harm and stakeholders to claim compensation against member states that have failed to protect them, even if a non-state economic actor is mainly responsible for the harm (Lizarazo-Rodriguez, 2021). More so, this level of litigation can be accessed through transnational disputes, involving claims by private persons or subnational actors against States, or even private persons against TNCs (Maljean-Dubois, 2018). Regional CCL has been noted to have higher success rates, are more accessible to ordinary citizens and have positive spill-over effects in shaping regional climate governance (Jordan et al., 2015). Yet the courts have a longer history of unsuccessful environmental cases and is also often accused of being too political, meddling in domestic affairs and being a bureaucratic enforcement machinery faced with enormous backlog that prolongs the response time (Willers, 2021). A regional outlook also reveals that regional governance in the Global South are better equipped to take on rights-based CCL than the Global North (Setzer & Benjamin, 2020). Developing countries grapple largely with concerns of HR violations due to the lack of necessary enforcement and oversight of economic activity (Ramesh & Jacob, 2022, p. 196). The main dichotomy that affects the inaction are based on the significance of biodiversity, land and territories which transcends notions of economic wellbeing and strikes at cultural, social, and spiritual identities which are up against the development imperative of economic growth and global competitiveness (Maria et al., 2021). Thus, it is important to note that there is a danger in the seemingly universal definitions of CCL that have been put forward to date which will fail to capture adequately developments occurring outside the Global North (Peel & Lin, 2019). In this sense, the fight around the world is against different systems and structures that have had damaging impacts on people's livelihood and earth systems.

When considering the Latin American region CCL also occurs in national courts, yet a slow rise is taking place within the regional foras (Tigre, 2022). For instance, the Inter-American Court of HR (ICtHR) has jurisdiction over HR cases in the Americas, including those related to environmental issues (Alogna et al., 2021). So far, the ICtHR has protected the environment when protecting the rights of indigenous communities, and recently an advisory opinion made the right to a healthy environment a socio-economic right (Guruparan & Moynihan, 2021; Lizarazo-Rodriguez, 2021). Yet, the potential for CCL in Latin America is counterbalanced by the region's reliance on extractivism; the exploitation of natural resources and export of primary goods at a high volume or intensity, which influences the rule of law where the 'electorate only weakly controls the President and other political actors'(Auz, 2022, p. 117).

Similarly, is found in the African region where the main instrument for rights-based CCL is the African Charter of Human and Peoples' Rights adopted in 1981 (Moodley, 2022). Further, African legislation that may be used in rights-based CCL are the African Convention on the Conservation of Nature and Natural Resources and the African Charter on the Welfare of the Child might also provide a basis for litigation, as well the court avenue of the Economic Community of West African States' Court of Justice and the East African Court of Justice (Adelman, 2021, p. 276). What has impacted rights-based CCL in Africa has been the nexus of industrialisation and mainstreaming effective sustainable development (Maria et al., 2021). This raises questions as to whether HR arguments have been and are likely to be used in CCL in African regional and domestic courts, and if so how (K. Bouwer, 2022). This is against the backdrop of unequal access to and ownership of resources, poor management of resources, weak environmental laws that are subject to manipulation by the executive and lack of implementation of these laws (Lin & Peel, 2022, p. 189). Yet, one of the legacies of colonialism is that legal systems are relatively underdeveloped with weak legislative frameworks for the ability of extending capitalist relations underpinned by racist and colonial ways of seeing populations and territories (Andreucci & Zografos, 2022).

3.4. National architecture of Climate Litigation

On the national level, governing climate change has to do with issues around decision-making of how to respond to scientific uncertainty, how to resolve issues of global versus local responsibility for the problem of global warming, and how far to go in reforming conventional

legal governance approaches (Peel & Markey-Towler, 2021; Savaresi & Setzer, 2022; Toussaint, 2021). It is against this background that plaintiffs need to persuade the courts that climate change impacts are felt today and not in the future, and thus become a matter for all levels of government and the courts (Otto et al., 2022). The ability of claimants to access courts are based on the standing rules that determines the openness or restrictiveness of requirements (Corsi, 2017). To overcome these requirements, the common law and constitutional law has been favoured by legal scholars because they can normatively argue for the disruption of human relations by the environment (Eskander et al., 2020). Rodríguez-Garavito (2020) adds that rights-based CCL does not only rely on domestic legislation but has a multi-level framing based on national law, international treaties, and constitutional norms. Given the advancement of the latter in the era of the Paris Agreement, the national political system matters for how international norms and trends are integrated, as well as the advancement of rights in national constitutions (Setzer et al., 2021). Hence, action through the courts is determined by access to justice, the openness of political systems for implementation of IL, the ideologies of political systems and how this affects priorities within court ruling (Peel & Osofsky, 2020, p. 33). Osofsky et al. (2020) also adds that the level of expansiveness in judgements is dependent on whether there are pathways and resources available to support them (ibid., p.65). Omuko-Jung (2021) argues that this has been the main hinderance for CCL in Kenya. The most known case in Kenya, Save *Lamu* from 2016 where a community-based organisation, and five Lamu residents, together took the Lamu Power Company Limited to court. The National Environment Tribunal in Kenya revoked the Environmental Impact Assessment license issued hindering the displacement of the community (Moodley, 2022). Hence, the Kenyan legal systems provide avenues for CCL through both public, private, and constitutional law for non-compliance with international obligations, failure in decision-making, HR issues as well as negligence, trespass, nuisance and strict liability to sue private entities for climate violations (Omuko-Jung, 2021).

Although national political-legal systems may be challenged by ideas of what function the legal bodies must take, as well as the economic-agenda behind loose judgements, the rights-based argument brought forward has still played a major role in legal outcomes in the Global South (Guruparan & Moynihan, 2021). This is exemplified by the *Earthlife Africa Johannesburg vs Minister of Environmental Affair*s *and Other* in 2017, following the High Court's ruling that

the government's review of plans for a new coal-fired power plant was invalid although pursued after major pushback by plaintiffs (Guruparan & Moynihan, 2021). There are a variety of features of the litigation landscape in South Africa that make it fertile ground for rights-based CCL due to its constitution as the courts are empowered to make any order that is 'just and equitable' in constitutional matters and the Bill of Rights (Field, 2021, p. 175). In Colombia, the 2018 lawsuit *Dejusticia v. Columbian government*, which represented twenty-five young plaintiffs, who sued the Colombian government for failing to fulfil its commitment to limit deforestation in the Amazon, taught both litigators and courts how constitutional rights may be brought to bear on complex situations involving large and diverse victims (Knox & Voigt, 2020). Individuals and groups can bring a case against a public or private actor that allegedly does not comply with national or international climate change obligations, on HR grounds based on Colombia's constitution (del Pilar García Pachón et al., 2021, p. 65).

Yet, the Global South is far from monolithic (Rodríguez-Garavito, 2020), and with the power of actors who are sued, courts are not able to guarantee access to an effective remedy (Lizarazo-Rodriguez, 2021). In Colombia, there is still a long way towards effective litigation since claims are not focused on compensation for climate change damages, but on the lack of public policies and environmental protection rather than against the government itself or private actors (del Pilar García Pachón et al., 2021). Ramesh & Jacob (2022) also argues that for the case of South Africa, the apartheid legacy and the inequities caused have positioned the government to create policies with heavy reliance on fossil fuel energy sources. The latter is also case of the *Federal Court of Nigeria v. Shell* on the violation of HR under the Nigerian constitution which led to persecution of the claimants because the present-day Nigeria was constructed during colonial era for extraction of its oil reserves (Maljean-Dubois, 2018).

Therefore, CCL is also characterised by asymmetries in resources, information, and time that parties have available which risks perverting the legal system, giving an unfair advantage to parties who can afford to drag out proceedings and withhold crucial information (Omuko-Jung, 2021; Peel & Osofsky, 2018). Hence, the role of courts in national climate governance is naturally restricted, and the dominating types of lawsuits usually revolve around the interpretation and compliance with the existing statutes (Varvaštian, 2016). This also makes Vanhala (2022) argue that CCL has to overcome a selection bias often inherent in lawyers and courts' legal analysis of climate change. As most of the Global South jurisdictions are still

rooted in colonialism it has caused a drain on natural resources, ethnic conflicts, corruption, and fragile governance institutions (Lin & Peel, 2022). An important strategic question here is whether there will be effective tools to transform the judgments into tangible action (Osofsky et al., 2020a). To overcome the issues identified, Bucket et al. (2023) suggests that academic debates on CCL should engage with more critical research on social movement in understanding their strategic relationships with legal and state institution for the advancement of the emancipatory potential of law. Goldston (2022) adds to this that CCL and related advocacy must centre the voices of the most marginalised, who, in the climate context, include agriculturalists, forest dwellers, smallholders, Indigenous persons, and people residing on or near coastlines in both the Global South and North.

In view of the limitations of CCL, Batros & Khan (2020) propose an alternative, non-judicial approach for justice: restorative justice. In this connection, the notion of a 'just transition' has been invoked to highlight that the benefits of decarbonisation should be shared, and that those who stand to lose should be supported (Savaresi & Setzer, 2022, p. 7). Eichler & Bacca (2020) adds that what we are seeing is a 'slow violence' underpinned by a variety of economic and developmental policies as well as criminal conducts that eliminate the diversity of eco-systems and people (ibid., p. 471). By underscoring the ways in which climate change reflects unjust power relations, a focus on equality makes it more likely that policy will attend to climate change's causes and help ensure that those most responsible bear the greatest costs of reparation (Goldston, 2022). Therefore, Auz (2022) argues that the problem is that when Global South litigators win cases based on HR and constitutional law against defendant states, those states then need to offer remedies even though they did not engender nor substantially further the global climate crisis as major global GHG emitters (ibid., p. 148).

3.5. Gap in Literature: Implications of Rights-based Climate Change Litigation In the Global South

There is a significant amount of literature on strategic rights-based CCL discussing its potentials, successes, and ways in which it seeks to mobilise international, regional, and national law for the realisation of accountability for both States, governments and corporations against the environmental and HR violations taking place. In this regard, rights-based CCL situates itself within a fragmented multi-governance space based on IEL and IHRL

that has fuelled its ambitions but also left a lot to be desired by those in need of action (Gupta, 2012; Peel & Osofsky, 2019; Preston, 2018). The consensus is that strategic rights-based CCL provides a valuable complement to treaty and legislative action because it fosters needed interaction between fields of law, across levels of government and different time periods illustrated in the figure below that maps and gives an overview of the interrelatedness of factors and mechanisms part of shaping the space of rights-based CCL.

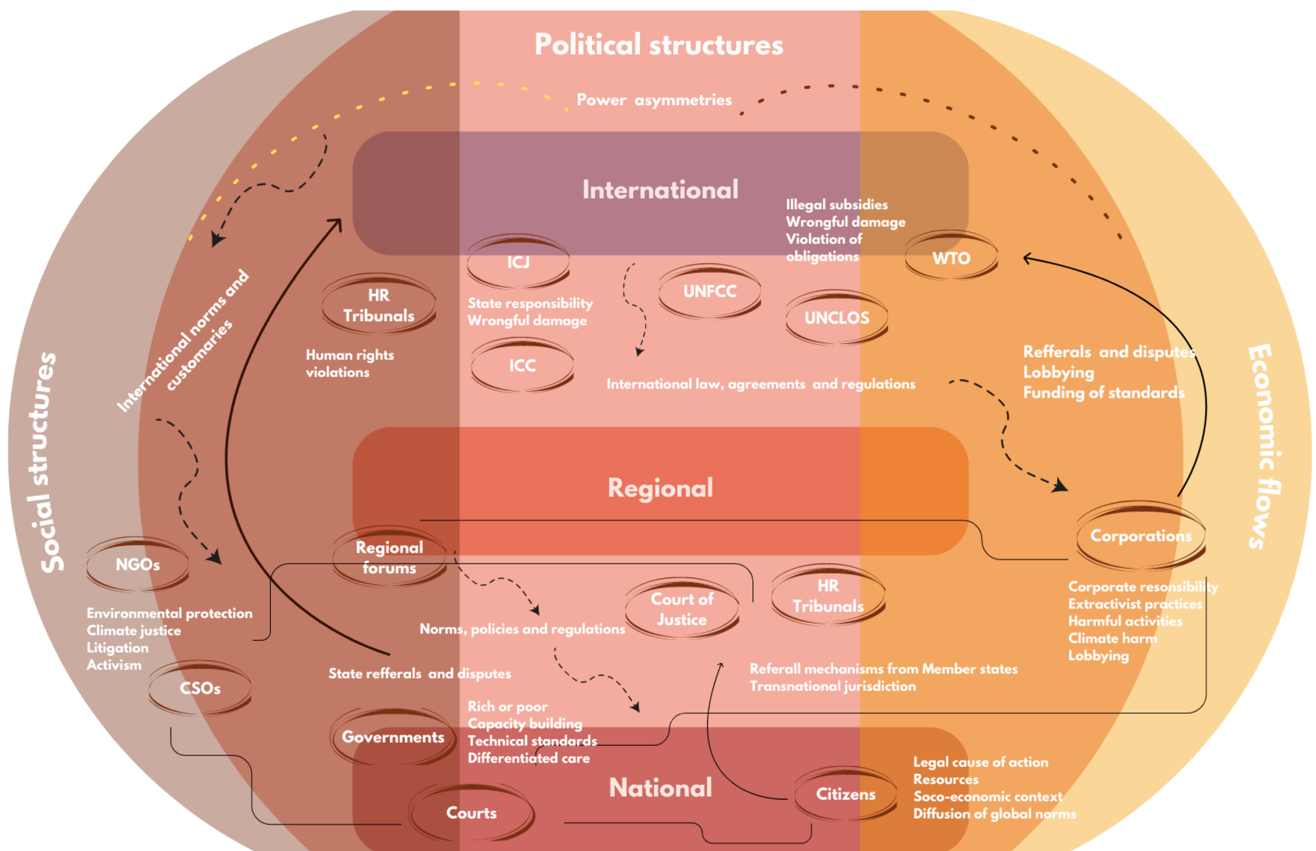


Figure 1. Complex ecosystem of multi-level climate governance for which rights-based climate litigation is based, by Jessica Petersen.

However, what the figure also shows is that the bottom level has been crippled compared to other actors because access to justice is curated by the same said actors who may enforce and influence the different scales showcased in the figure. Hence, strategic rights-based CCL across the world have pitfalls fuelled by political ideologies, capacities of national institutions and courts, as well as global power structures that transcends the court room based on historical and global systemic oppression due to capitalism and by extension colonialism where specific actors are afforded leeway and institutional footing that circumvents the climate justice that people are calling for (Galperin & Kysar, 2020). Based on the latter, the strategic rights-based CCL, although argued to enable local initiative and participation in the

Global South, offers an incomplete framework for justice (Ramina, 2018). The ability for CCL to provide justice for local communities in the Global South countries remains unanswered when viewed against the backdrop presented in the figure here. The universal possibility for climate solutions through the legal turn is up against a diverse and complex world fuelled with tension due to the nature of existing frameworks that positions groups as disempowered victims in need of civilisation. While simultaneously allowing for the oppressor to continue practices of oppression against earth systems and its people (Andreucci & Zografos, 2022; Bacca, 2019; Chimni, 2006; Ramesh & Jacob, 2022). With this, less attention has been directed to the question of how CCL impact these communities, especially in a context that prioritises development and economic growth (Goldston, 2022; Ohdedar, 2022). This requires an analysis of the local; that is, how local communities internalise international norms, and, how these norms interact with local and state norms and shape local institutions (Sarfaty, 2021, p. 136). Thus, this study will for its methodology draw from the discipline of Anthropology of IL (AoIL) to understand the local impacts of global trends within CCL on local groups, their ability to mobilise the laws nationally and unveiling what the latter rests on.

The latter also makes Setzer & Vanhala (2021) note that this is not a question a legal analysis can answer on its own, leaving substantial scope for interdisciplinary literature to fill this gap (Peel & Markey-Towler, 2021). Due to the ecosystem for which strategic rights-based CCL is based, this project seeks to explore the implications of CJL in the Global South and what dynamic interactions are involved in legal mobilisation. This project, therefore, subscribe to the broad definition of CCL which relates to strategic litigation in appreciating an array of legal fields to highlight the intersection between the violation of law and the impacts of climate change felt by social groups (Rodríguez-Garavito, 2020; Savaresi & Setzer, 2022). Hence, "climate justice links HR and development to achieve a human-centred approach, safeguarding the right of the most vulnerable and sharing the burdens and benefits of climate change and its resolution equitably and fairly" (Ramesh & Jacob, 2022, p. 191). A framework for examining CJL within the scope of study will be done through the theories social-legal theory and the theory TWAIL to shed light on the dynamic interactions, abilities, and impacts related to pursuing CJL as it situates itself within global power asymmetries, discourses and national legal structures all of which must be accounted for in deepening the senses of the justice project (Kotzé & Kim, 2020; Sarfaty, 2021).

4. METHODOLOGY

This project explores the implications of CJL in the Global South and what dynamic interactions are involved in legal mobilisation. To examine the tension between the universal claim of protection by IL and the complex and diverse local level, this study takes its epistemological considerations from AoIL to understand impacts and tensions part of CJL in the Global South (Sarfaty, 2021, p. 129). By drawing on anthropological considerations, this study was able to gain insights into how legal mobilisation operates in practice through the local voices and experiences. This was to unveil the disjuncture between how law is written and how they are implemented on the ground, as well as further variations in how they affect different communities which creates identities, meaning and asymmetries within the local contexts (ibid.). The scope of this project is defined by a research design, which triangulates a cross-sectional case study and comparative case study design. The design was chosen because it provides valuable insights into the complex and multifaceted nature of social, economic, and environmental dimensions of CJL. This analytical conceptualisation is a crossing of bottom-up strategic action for climate justice and top-down global norms that shapes the space for strategic right-based CCL (Scandrett, 2012).

The first layer of this design is cross-sectional which explored the dynamic interaction between non-governmental actors and the international space of CCL to understand the actions, trends, discourses, and agreements which shapes the status given to strategic rights-based CCL (Bryman, 2016, p. 61). Hence, the empirical study took outset in what CJL means for the Global South through an examination of international bodies, CSOs and NGOs as well as international policies. The mix between organisations and legal text is to ensure a continual dialogue between 'expert' and 'grassroots' knowledge (Hall et al., 2012). The second layer of this design is a cross-national study in Colombia, Kenya and South Africa that compared the manifestation of CJL in different socio-cultural settings using the same research instruments to carry out the research (Bryman, 2016, p. 65). The case countries were chosen to understand CJL in the respective contexts and the implications the first layer of analysis has on the national context for strategic litigatory action. These taken together produces unique realities and experiences connected to legal struggle and mobilisation that are different from the most popular cases in majority of CCL literature. Hence such a comparative study allowed for a comprehensive analysis of the challenges faced by different regions in the Global South.

The aim was to gain greater insights on the differences and similarities part of what has geographically been coined the Global South as they are not homogenous countries (Rodríguez-Garavito, 2020). It was further to understand the social realities and impacts part of working in the legal space on a contested issue such as CJL (Savaresi & Auz, 2019). The variables under study were (1) the role of legal mobilisation, (2) the chosen strategies and (3) what challenges are part of pursuing litigation within the respective contexts.

4.1. Philosophical standpoint

This project took on a Critical Social Constructivist (CSC) standpoint that informs its research methodology and how to make sense of the problem under study. Social Constructivism focuses on how knowledge and understandings are constructed, and the values connected to knowledge (Bentley et al., 2007). From a Social Constructivism view the world is socially constructed and one's understanding may vary from another's due to different positions, backgrounds, and values (Bentley et al., 2007; Kincheloe, 2005). CSC starts from this understanding but adds the role of power dynamics in the creation of knowledge through culture, institutions, and historical contexts (Das, 2009; Kincheloe, 2005). This standpoint was chosen as CJL centres the impacts of climate change and cases of litigation are based on the different understandings of what must be done to survive the human-induced climate change with cascading effects that disproportionately impact groups (Alogna et al., 2021). These experiences take centre stage in this project as they are determined by power hierarchies and the basis for what implications and tensions are part of CJL (Batros & Khan, 2020; Kelleher, 2022).

The ontological position of CSC is to understand how socio-historic dynamics influence and shape an object of inquiry, and epistemologically CSC explore how the foundations of knowledge of a given context surround an object of inquiry (Das, 2009). In this sense, CSC theorises the connection between power and knowledge in which powerful groups maintain their knowledge construction legitimacy by continuously undermining alternative knowledges (Kincheloe, 2005). CSC is motivated to understand how knowledge creation processes assist to promote individuals in privileged positions or marginalise others (ibid.). From this perspective law is viewed as entangled not only in struggles for political and socio-economic rights, but as an important tool in the development of diverse initiatives of social critique where the impact of law, regulation, its interpretations and how it includes or

excludes groups are examined (Alogna et al., 2021). The role of power in the knowledge creation process means that knowledge cannot be neutral (Kincheloe, 2005). Hence, the role of the researcher cannot be denied for how the issue under study is constructed, explored, and examined. With the latter, the insights of this study were drawn from multiple different realities, and different relations to the issue under study, as well as different local contexts and inherent given legal structures (Zumbansen, 2019).

4.2. Data Production and Collection

This project used virtual ethnography to explore a multi-sited field in which several actors are part of shaping CJL in a local context (Bryman, 2016; Fielding et al., 2012). This was done to uncover the different actors, the discourses, and trends part of CJL, as well as how they are experienced by these actors (Fielding et al., 2012). Virtual ethnography enabled the study of online spaces where CJL discussions, advocacy, and information-sharing occur in real time. It provides an in-depth and nuanced understanding of the social, cultural, and legal dynamics surrounding such cases (Fielding et al., 2012). The method acts as a snow-ball enabler in which websites and posts on social media led me to another site or individual of interest. The online field of exploration consisted of Linkedin, Facebook, Twitter, Youtube and organisational websites. The empirical foundation of this project were webinars, social media posts, interviews, as well as collection of news-articles and organisational documents. To make sense of the online field's richness, a set of criterions based on the problem formulation and research questions were created to guide and systematise the online exploration (Long et al., 2015, p. 4).

Criterions	
1. Organisations and persons working with climate justice, human rights and litigation both transnationally and nationally in Kenya, South Africa and Columbia	▪ What are their contributions in defining and introducing strategic rights-based litigation?
2. Mentions of legal agreements, global norms related to human rights and climate justice	▪ What are the discursive meanings that drive their actions and perspectives?
3. Mentions of actions, methodologies, and legal mobilisation	▪ What responsibilities and strategies are they using and talking about?

Table 1. Criteria for inclusion of empirical material

This research method was further used to establish contact with organisations in the respective countries under study. This is followed by expert interviews and structured interviews with a total of 21 interviewees in which 3 were from transnational organisations, 5 were from Colombia, 7 were from Kenya, and 5 from South Africa. These were carried out via email, phone calls and online meetings from both levels of this project's scope. A full list of contributors can be found in Appendix 4. These act as experts and interlocuters into the different existing realities within the climate governance space in which strategic rights-based CCL is part, as well the experiences with the implications and tensions of turning to strategic rights-based CCL in the case countries (Littig, 2009). Two different interview guides (Appendix 1 & 2) were created to mirror the two-level scope of this project. The questions posed sought to gather insights on potentials, impacts, challenges, and local lifeworld's that together act as a network of capacity, vulnerability, and site for struggle in what is needed to deal with the issue of climate change (Sarfaty, 2021). The conducted interviews were transcribed for analytical purposes (Robben & Sluka, 2007). Yet, gaining contact and responses from individuals were difficult and almost all organisations and individuals from Columbia did not reply. A total of 80 individuals and organisations were studied and contacted with only 21 contributing. Therefore, language barriers became the major challenge of this study.

The empirical study also collected information and documents from organisational websites while sending direct messages to potential contributors from the organisations. The empirical material collected were purposively sampled (Bryman, 2016, p. 420) based on the criterions set in table 1 above, as well as with the three criteria: (1) climate mitigation or adaptation policies, (2) mention of environmental rights and climate justice, and (3) function of national court for environment and land. The primary empirical material consists of organisational documents. A total of 125 documents were extracted from 35 organisations out of the 80 organisations examined. The documents were published within the period of 2015 to 2023 and discovered during the online fieldwork from both levels of this project's scope. They also ranged in format from brochures, policy briefs and strategy reports, grey literature such as social media posts, articles, and YouTube videos (Appendix 5 & 8).

The secondary empirical material consisted of legal case documents from the three case countries. A total of 30 documents from 11 legal cases in the three countries were also analysed for insights into claimants' arguments, proceedings and responses to the arguments

put forward (Kelleher, 2022). The databases on CCL produced by Climate Change Laws of the World by Grantham Research Institute on Climate Change and the Environment as well as the Sabin Center for CCL was utilised to systematically makes sense of the array of information available on CCL, as well as collection of official documents on national climate change laws in Colombia, Kenya, and South Africa. In understanding the international and national legal context of the current trends of the strategic rights-turn in CCL, a total of 14 international and national environmental legal documents were examined (Appendix 7). Also, it is key to note that, the examined organisations varied in size where; 29 operates nationally, 24 regionally, and 21 operates internationally. They also varied in focus, with some centring their work exclusively on climate change and environmental protection, while others focus on development and environmental rights (Appendix 10). The two strands of empirical material consisting of interviews and the array of documents interact in this study by qualifying one another, providing context for what is said, as well as to identify the key patterns to be unveiled.

4.4. Analytical framework

A thematic content analysis was chosen to analyse the produced and collected empirical material (Bryman, 2016). The purpose of the analysis is to explore the two-level scope explained above in its dynamic interaction of actions, trends, discourses, implications, and tensions. The analysis was done on all empirical material through coding in which identified themes and ideas in the problem under study were explored, unpacked, and systematised using the analytical framework below, the theoretical framework and the literature review. The documents and interviews were processed using NVivo12 and the codebook used can be found in Appendix 3. The mapping of spatial data was done to show the geographic patterns of coverage of CCL and frequency of cases around the world. Frequency figures were created to support the theoretical claims and to highlight main issues and topics as described in the empirical material. The analytical framework below is inspired by Lin & Peel (2022)'s framework on modes of legal mobilisation in the Global South, how the act of mobilisation is shaped by certain actors, and what impacts they may face. This was put together to construct a pluralistic sound framework that considers the issues in different regions related to legal, political, economic, and social implications, across different scales that are part of shaping CJL in the Global South (Ohdedar, 2022; Zumbansen, 2019).

ANALYTICAL FRAMEWORK	
Local Strategic Mobilisation Modes of Climate Change Litigation in The Global South by Peel & Lin (2022)	
Grassroot Activist	▪ Local activists and community groups sue governments or companies to realize more ambitious climate action. ▪ Little or no collaboration with actors from other Global South jurisdictions (South-South cooperation) or with actors from Global North jurisdictions (North-South cooperation).
Hero Litigator	▪ Dominant figure – the activist lawyer – drives the litigation strategy and process. ▪ The hero litigator is seen as an unequivocal force for good. ▪ Can be a local lawyer or a foreign lawyer who is inspired to fight for climate justice on behalf of the community.
The farmer	▪ Foundations and other non-profit organizations provide funding to local lawyers and environmental non-governmental organizations to "seed" new climate litigation. ▪ May be the basis for significant local capacity-building, which could have a positive multiplier effect for more climate litigation.
The Engineer	▪ A transnational actor seeks to replicate the success of a particular legal strategy in other jurisdictions deemed to have suitable conditions for successful transplantation. ▪ Builds upon the vast literature on legal transplants. ▪ Advances a new line of enquiry about the suitability of a legal transplant approach in climate litigation.
The Enforcer	▪ Prosecutors or government agencies bring lawsuits to enforce local laws. ▪ Local NGOs may engage with enforcement agencies to support these actions.

Table 4. Analytical framework on the modes of legal mobilisation in the Global South as explained by Peel and Lin (2022).

4.5. Ethical considerations

Prior and during the research, several ethical considerations and limitations became apparent. The practical considerations influence production and collection of the empirical material as well as the general research strategy as it influences feasibility (Bryman, 2016, p. 36). When reflecting on limitations in this study, it is worth noting that the choice of documents as supplement to the interviews and online fieldwork means that the insider perspective of the NGOs and the climate vulnerable persons, they target are only somewhat included in this project (Long et al., 2015). The inclusion of social media posts, news articles and Youtube videos are used to strengthen the insider perspective. The empirical material collected was systematised and mapped out to make sense of the space, how actors are placed and the dynamic interactions between law and those subject to law.

It is also important to note that the official documents analysed were produced by CSOs, NGOs and international bodies with a purpose that could be promotional, educational, or related to advocacy. This project focuses on knowledge creation to uncover framings in discourse, dynamic interactions, and local realities (Sarfaty, 2021). Hence, this study is not a

legal analysis of rights-based CCL but an interdisciplinary study on impacts, experiences and challenges with CJL. Furthermore, the chosen research design also had its limitations as deep integration into the social field under study was not possible. Several disruptors were part of the research due to the slow process of online communication, sense-making of meaning and online networks as well as access to the CSOs and NGOs.

With the latter, there were also ethical considerations in investigating the underlying systemic conditions of which legal challenges emerge locally. Such requires an understanding for the contexts in which competing, alternative explanations can become visible (Zumbansen, 2019). In working with sensitivity, I consulted, recognised, and integrated communities and interlocuters (Igwe et al., 2022, pp. 9–11). Therefore, the methodological approach gives deeper insights, rich details, and understandings. Yet, the knowledge produced in this project is not value- free because of the role language, discourse and meaning play in the understanding of the cases (Robben and Sluka 2007). CSC notes that all knowledge creation is subjective (Das, 2009). The researcher's background as a mixed Liberian-Danish woman were key motivating factors in choosing to look at the topic, the subjectivity was qualified by employing strict codes, themes, and existing research in the analysis of documents. Specifically, the integration of the theoretical-analytical framework allowed for the experiences uncovered to be viewed through the vast array of research presented.

5. THEORETHICAL FRAMEWORK

There are extensive theories seeking to understand legal mobilisation, CCL and its strategic rights-turn as shown in the literature review. The theories Third World Approaches to International Law and Socio-legal theory were chosen to understand the power asymmetries that have made current injustices possible, the interactions in place as well as what this means for the justice project.

5.1. Anthropological Third world approaches to international law

The theory Third World Approaches to International Law (TWAIL) holds many empirical categories but is used in this project as an overarching framework to engage with the structural configurations inherent to the space of climate action and CCL that produces certain impacts and tensions. TWAIL assists in providing alternatives ways of viewing the role

of IL to uncover the implications on the local level. The name comes from its ontological position of viewing the world as constructed and an expansion of Postcolonial International Relations theory in arguing that there is not an 'after period of colonialism, but a 'continuation of colonialism in the consciousness of formerly colonised peoples, and in institutions imposed in the process of colonisation 'where ex-colonies are labelled third world as they were not viewed as part of the 'rich, civilised first world of the colonisers' (Ramina, 2018, p. 262). The theory begins by arguing that IL plays a crucial role in helping legitimise and sustain the unequal structures and processes that manifest themselves in the growing North-South divide due to the deliberate ignorance of uneven development in favour of prescribing uniform global standards (Chimni, 2006). The theory's epistemological foundation is interdisciplinary as it draws from several different fields to inquire on the constructed hierarchies of the world; the exclusion and oppression of ex-colonies on the international legal-political arena.

With this, one strand of TWAIL is people-centric with the aim to "identify and give voice to the marginalised people within Global South states (previous called Third World): women, peasants, workers, minorities (ibid.). This takes directly from the AoIL which shifts our theoretical position from a focus on the hierarchical system of IL with States to how the latter plays out at the local level (Sarfaty, 2021). This is with a focus on the diffusion of international norms across borders and how these become internalised into domestic structures through a diffusion of transnational advocacy networks (ibid., p. 136). Merry (2006) further explains how HR have become "vernacularised" in local settings as they are appropriated and then translated into local terms (ibid., p.139). Norms such as HR frequently need to resonate with local cultural understandings (including institutional and national cultures) if they are to be accepted by community members. At the same time, they must often reflect universal principles if they are to establish their legitimacy and maintain their transformative character (Sarfaty, 2021, p. 137). Hence, social movements become brokers of the local social worlds to that of international legitimacy. Yet are also placed within an international system that has constructed a universal culture allowing HR violations to take place as they are based on Eurocentrism to impose European standards often used as a toll for colonialist or imperialist practices and interventions (Ramina, 2018, p. 264). This makes the TWAIL scholar Mututa state that the existing IHRL paradigm does not tackle the real causes and economic inequality which is the main challenge of the Global South (ibid.).

Ramina (2018) further presents five theoretical propositions based on Opeoluwa Adetoro Badaru's TWAIL contribution on IHRL: (1) to "highlight the historical root causes of the current dismal state of socio-economic rights in the Third World, and thus not to approach HR issues from a mainly formal textual and institutional angle"; (2) to recognise how IHRL can be manipulated to promote and legitimise neo-liberal aspirations, "unveiling the discrepancy between the contradictory languages that IL adopts in its different subject streams, for example, supporting the promotion of HR and at the same time disregarding when the practice of international trade and economic law consistently violates HR"; (3) "to understand the internationalisation of HR violations in the sense of how the activities in one part of the world can have detrimental effects in other parts of the world"; (4) to demystify the assumption that HR have been conceived in the West and hence should be promoted universally disregarding Third World particularities; (5) in the same vein, it helps "to deconstruct the ideology of "savage-victim-saviour" that has permeated IHRL, and to criticise the HR initiative as a preservation of the essential structure of the "civilising mission" of the North" (ibid., p. 266).

With these five theoretical propositions, is an important question on how the complexities of the international systems continues to facilitate the marginalisation of the Global South communities? (ibid., p. 267). This question plays out against a ruling elite of the Global South that benefits from the asymmetries constructed by the international system and allows for skewed welfare in the Global South. Thus, there is an obvious contention between struggles inside the Global South countries and in external fora (Chimni, 2006). This makes Moore (2014) view IHRL as a network of "semi-autonomous social fields," defined by their rulemaking capacity and their vulnerability to outside forces as social worlds, power relations and political systems intersect, overlap and conflict. However, TWAIL unaided is not able to uncover the local interactions, implicit relations, and mobilisation strategies part of the local spaces for CJL due to its level of abstraction.

5.2. Socio-legal theory

In exploring the intersecting systems that are part of law, as well as the dynamic interactions between actors and law, this project also draws from the socio-legal theory by using the responsibility framework by Kathryn Sikkink (2020) and Buckel et al. (2023)'s conceptualisation of legal mobilisation. Socio-legal theory is an interdisciplinary field that

examines the interaction between society and the law to understand how legal institutions and processes are influenced by social, cultural, political, and economic factors, and how they, in turn, shape society (Buckel et al., 2023). Socio-legal theory examines the impact of law on individuals, groups, and communities, and how they perceive and navigate the legal system (Sikkink, 2020). It is the latter which makes it necessary to understand legal mobilisation for marginalised issues in which movements draw on the potential of changing the relations of forces in the political field (Buckel et al., 2023). In this regard, social movements refer both to the fluid processes of identity formation as a collective, and to their autonomous and strategic relationships with legal and state institutions (ibid., p. 2).

Using an actor-centred focus, makes it possible to tell the story of legal-structures from the perspective of the actors who bring the lawsuits, thus revealing the invisible relationships and power dynamics that unfold beyond the domain of the legal matter (ibid.) Adding to this understanding of social hierarchies, Sikkink (2020) adds the influence of *norms* and *practices*. *Norms* are standards of appropriate behaviour as they tell us what is expected, what is right, and what is wrong. In the case of IHRL these are embedded in 'hard law', but many are also part of 'soft law' in various declarations and resolutions. *Practice*s are performances – socially meaningful patterns of actions – that express preferences and beliefs which are rooted in structural meaning (ibid., p. 36). Originating from these two is the concept of responsibility where those who causes harm must be held accountable which often involves litigation and implies legal duties (ibid., p. 39). With this, Sikkink (2020) develops the concepts *back-ward looking responsibilities* and *forward-looking responsibilities* as relational yet argues that with regard to climate change it is no longer sufficient to only focus on who is to blame for global warming. Instead, we need to think about how everyone is connected to the problem and can work together to try to limit emissions as duties and obligations (ibid., 40). Such framing is challenged by TWAIL as the concept of responsibility is a loaded with accountability that is up against those who have not been part of causing climate change yet are impacted the most. What Sikkink (2020) neglects is the retribution for the latter in presenting a flawed equality narrative.

Nevertheless, this project draws from the relationality between the two as basis to understand what impacts the agency of actors, and what lies behind is presented as the four following factors:

- Power: Power refers to the capacity actors have to influence structural processes.
- Privilege: Privilege often follows from power, but there can be groups or people with relatively little power who have a privileged position regarding some injustice issues.
- Interest: Interests do not always need to be seen as contrary to responsibility for justice because sometimes agents' interests coincide with their responsibilities.
- Collective ability: Some agents have more collective ability because they can "draw on the resources of already organised entities and use them in new ways for trying to promote change" (ibid., p. 46).

These factors taken together gives us a nuanced definition of how responsibilities might function in the realm of HR and the environment which involves legal, ethical, and political deliberation and struggle. In legal struggles, collective demands for societal transformation can be carried out by multiple social groups where they encounter allies and support, but also opponents and resistance (Buckel et al., 2023). Hence, the centrality of cooperation between lawyers, CSOs and social movements for legal cases carry the potential for social transformation up against social hierarchies and relations of dominations (ibid.).

5.3. THE INTERPLAY OF THEORIES

By combining the theories and the analytical framework above, this project is able to explore the implications of CJL in the Global South and what dynamic interactions are involved in legal mobilisation, particularly in the case countries Colombia, Kenya, and South Africa. To be effective, rights-based approaches must also stress the responsibilities of a broad range of agents of justice (Sikkink, 2020). The theories singlehandedly would not have been able to uncover all nuances part as they relate to actors, law, institutions, structures, and the interactions between them (Keck & Sikkink, 2019). Thus, the analytical and theoretical framework in conjunction will capture the multiple and interlinked political, economic, and cultural factors influencing legal struggles and the inherent social constellations of power (Buckel et al., 2023, p. 7). The concepts part of social legal theory describes how IEL has made attempts of resolving the back-ward looking component which has made it insufficient for the number of responsible parties as larger structures remains unaddressed. Hence, when we are talking about the impact of climate change, the forward-looking responsibilities of some people matter much more than others because power and privilege matters (ibid., p. 63).

Therefore, its contributions provide clarity on the mechanisms and workings of networks, as well as inherent pooling of resources. The convergence of the analytical and theoretical framework provides a multi-level framing of legal activism, mobilisation, the interactions of actors as well as the influence of the socioeconomic and political contexts of Global South jurisdictions when up against global power asymmetries (Lin & Peel, 2022). It is these structural flows this project seeks to uncover.

6. ANALYSIS

This analysis explores the implications of CJL in the Global South and what dynamic interactions are involved in legal mobilisation. The role of actors, legal structures as well as strategies for mobilisation are also examined across the two-level research scope of the international cross-sectional study, as well as the comparative study of the case countries Colombia, Kenya, and South Africa.

6.1. Role of Legal Mobilisation for Climate Justice

In situating this project within the broader space of rights-based CCL the analysis begins by comparing the rights-based CCL cases examined in this project (6 from Colombia, 4 from Kenya and 4 from South Africa) with the rest of the cases in the Sabin Center for Climate Change Law database. Figure 4 in Appendix 9 shows the frequency of rights-based CCL across the world in which very few cases are found in the Global South, including those studied in this project. This alludes to the point on the ability to capture all cases of CCL due to the criterions of categorisation for what a CCL case should look like in the Global North-based database. Yet, what binds all the cases together is a common interest for social change across the different scales as tackling climate change is a "super wicked" policy problem unable to be solved by a single few (UNEP, 2017; Gupta 2012). These cases push the boundaries of law and shifts across scales by engaging local, or sometimes community measures, national, regional, and international obligations, and standards (Peel & Markey-Towler, 2021). A full mapping analysis of all organisations can be found in Appendix 5 and 10.

6.1.a. Rights & Protections under Law

The space for legal mobilisation in the countries under study consist of an array of legislation, policies, conventions, treaties, and bodies which inform the usage of law to pursue rights-based CCL in the respective countries, as well as the international actors under study. A number of different IEL and IHRL was referenced as being crucial for both international climate governance as well as national. These were the Rio Declaration of 1992, the UNFCCC, the Sustainable Development Goals, Polluters Pay Principle, Kyoto Protocol, Aarhus Convention (Kenya Case 5; Colombian 2050 Vision; Kenyan Climate Change Act; Earthlife; Youth & Environment Europe; United Nations Environment Programme; International Development Law Organisation; International Union for Conservation of Nature). The figure below sheds light on the most mentioned laws and agreements part of shaping the space for rights-based CCL across the different levels.

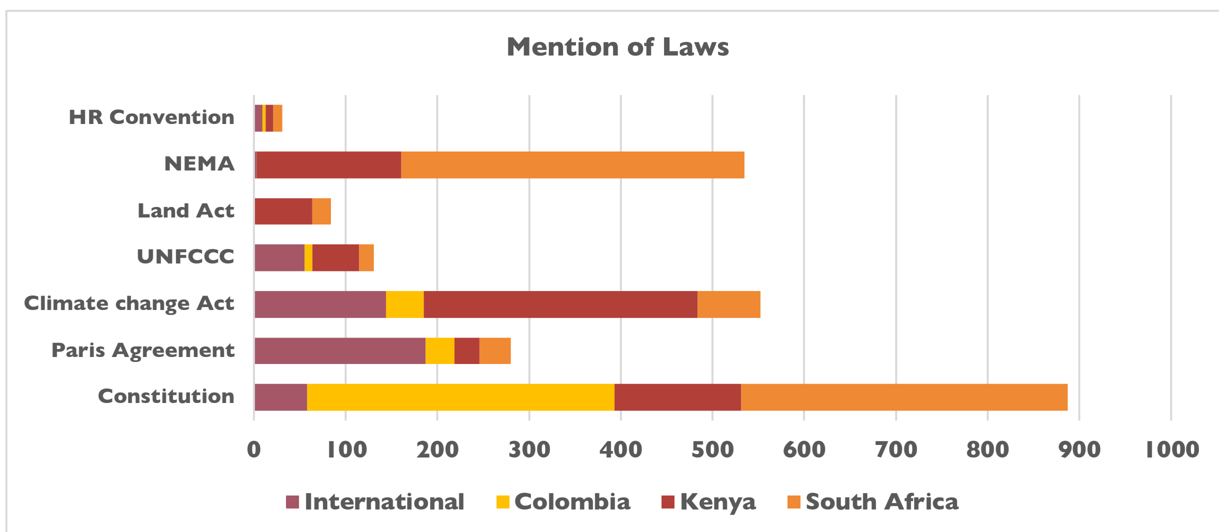


Figure 3. Mentioned Laws across sources of data, by Author

As figure 3 shows, the most mentioned IEL across all documents and interviews were the Paris Agreement and the UNFCCC. This is related to the obligation of states under IL and how special duties are given to actors because of these (Paris Agreement 2015; UNFCCC; Business & Human Rights Resource Center). Several international actors agree that the Paris Agreement was a key milestone, yet transformative action has been pushed to the far distance (International Union for Conservation of Nature; International Development Law Organisation; Earthlife). These are points echoed by several scholars who adds that IL is far from clear as the global response to climate change depends on the coherence of climate change policy in each member state (Maljean-Dubois, 2018; Orford, 2006; Peel & Osofsky,

2019). To this, IEL is only relevant when 'nationalised' (International Union for Conservation of Nature; ILEG). The International Development Law Organisation adds here that it expands the capabilities of the 'rule of law' and creates a robust legal framework against the risks of climate change. In this sense, the actors nationally and in the international space for CCL use IL as principles and norms that States must follow (Colombia Case 6, South Africa Case 1, Earthlife, Geneva Graduate). Similar is argued by Barnet & Finnemore (2012) in that norms are pushed into the mandate of actors.

Part of forming the mandate of actors through IL happens through language and framing. It was found in the Paris Agreement that climate justice is described as a marginal issue: "*Noting the importance of ensuring the integrity of all ecosystems, including oceans, and the protection of biodiversity, recognised by some cultures as Mother Earth, and noting the importance for some of the concept of "climate justice*" (Paris Agreement 2015). Such framing allows openness in who takes serious the issue of climate justice, and hereby differentiates the issue as a cultural matter which separates itself from the duties of all actors. In this sense, IEL has set the precedence for what must be changed, and how change is to be achieved which constructs these normative instruments only to be followed by some (Alogna et al., 2021; Goodale & Merry, 2017). The struggle described is from a socio-theory perspective fuelled by power asymmetries of the internal system which determines what rights are prioritised whereby the already-occurring impacts of climate change today are not addressed (Doelle & Seck, 2020; Otto et al., 2022; Robinson & D' et al., 2021). The role of local actors in advancing and changing the norms of IL is through AoIL presented as a circular relationship whereby law impacts the local level as norms are diffused across borders and internalised into domestic structures which then are enforced in advocacy networks (Sarfaty, 2021).

To this, all three countries studied take pride in their progressive and relatively new constitutions which is the most referenced legal document across all levels (mentioned 335 times in Colombian documents; mentioned 138 times in Kenyan documents; mentioned 356 times in South Africa). Yet there is a consensus between the interviewees and documents analysed that the aspiration of the constitution is carried out in a complex national context that grapples with sustainable development (Kenya Climate Change Act 2016; Kenya National Climate Change Action Plan 2018; South African Climate Change Bill 2002; National Environmental Management Act 2002; Colombian 2050 Vision; Colombian Low-Carbon Law

2021). For South Africa that is also facing the effects of apartheid structures (Social Justice Coaltion; Climate Justice Coalition). What lies beneath is a legal structure that revolves around land issues between customary law and private tenure (ILEG; AIDA; Earthlife; ILEG). In overcoming the latter, the constitutions in all three countries put forth that public participation and informed consent by communities is required before any development or extractive project can begin (Amadiba Crisis Committee). To this, the Kenyan climate change lawyer Emmaqulate Kemunto argues that: "*The challenge, though, is that beyond the Constitution, there have been judicial decisions on what public participation entails which may not be meaningful public participation*". Similar is the case in Colombia where the regional Escazú Agreement 2018 seeks to provide a legal backdrop to ensure public participation and recognising the relationship between HR and the environment in Colombia (del Pilar García Pachón et al., 2021; Guruparan & Moynihan, 2021; Lizarazo-Rodriguez, 2021).

Therefore, all three countries have diverse laws in place to deal with climate change in a manner that is sensitive to the rights of its citizens, but that is only one part of the legal structures in place. What also becomes evident is how political narratives drive priorities and the interpretations of the legal structures. Many of the actors examined describe the institutions, courts, and judiciaries as 'guardians of the rule of law' (International Union for Conservation of Nature; International Development Law Organisation; Youth & Environment Europe; Geneva Graduate). Equally important is the role of lawyers appearing before judicial officers since the nature of judgements largely depends on the quality of the arguments presented before the court (ILEG). To this, the Colombian Doctor of Environmental Law Pilar García explains that: "*environmental law and the problems faced by communities in Colombia are not sufficiently known by judges and it shows in the court rulings, for example in one case it was ordered that the government should eliminate mercury from our rivers in the period of three years. That's impossible for the current capacity of Colombia [..], and so the sentence is not based on real perspectives".* This is an argument echoed by other contributors in which the Peace and Security officer, Makena Kirima Rusconi, from the Royal Danish Embassy in Kenya and the Legal Officer, Renée Gift, from the United Nations Environment Programme also explain that part of their development efforts is to exchange, support and train the Kenyan and other member states' judiciary on the implementation of environmental rule of law. These findings echo Peel et al. (2012) on how the current governance systems have

brought about issues of justice and how to act according to climate change. Osofsky et al. (2020) also adds that level of expansiveness in judgements is dependent on whether there are pathways and resources available to support them (ibid., p.65). This is explained by Lin & Peel (2022) and Andreucci & Zografos (2022) as the Global South being based on underdeveloped legal systems due to legacies of colonialism with weak legislative frameworks to make sound decisions that can grasp the diversity of the countries. TWAIL and socio-legal theory explains this as competing social worlds and power relations within political systems that presents a struggle between classes of society (More, 2014; Chimni, 2006).

6.1.B. Litigation for Justice

Court cases from across the world narrates a tale for which those on the ground are looking for ways to expand the awareness of the impacts of climate change. These are amplified by international actors where there has been attempts at having relevant actors experience for themselves what is happening. One elder from Archipelago describes "*The main reason I am taking the court out to my island [is] so they will see I am telling the truth"* (Torres Strait Island elder in Business & Human Rights Resource Centre). This was also the case in Colombia where an international mission as part of Colombia Case 3 went to speak to the Wayúu communities (AIDA). Similar was found during the Kenya Case 2 – Turkana Wind Power Project where the CSO Natural Justice among others visited the indigenous communities. The Lawyers for Human Rights South Africa adds to this that the stories of community members shed light on the failures to provide development and justice. Bringing the stories closer to those who will decide against or on behalf of those impacted is a crucial element in shaping the exposure of the judiciary to cases of climate change (Batros & Khan, 2020). This is particularly important in countries like Colombia wherein the Chilean lawyer from the Climate Program at AIDA, Florencia Ortúzar, explains that "*There are two Colombias: Bogota, Chipco and the big cities with rich people, and then there is the Amazon with extreme poverty, so you can write great laws but if the action is not close to the reality, then it is impossible to change the lives of people*". This is a point echoed by the Colombian interviewees García, Bacca and Arias. Equally is explained by the Australian lawyer David Barden "*There can be a disconnect between the legal services available to marginalised communities. We have made an effort to travel to the communities to give access*". What this alludes to are legal institutions ill-equipped to cater to the diversity of society. Therefore, legal priority needs to move closer to the communities

they want to serve to adequately reflect our society (Systemic Justice). With this, the concept of *forward-looking responsibilities* from socio-legal theory sums up the perspectives presented here as it entails the connectedness between us and directly extending efforts to highlight the duties of judiciaries and the obligations those with power and privilege have to advance those with less (Sikkink, 2020). Hence, action through the courts is determined by access to justice, the openness of political systems for implementation of IL, the ideologies of political systems and how this affects priorities within court ruling on contentious policy issues (Peel & Osofsky, 2020, p. 33).

Therefore, what becomes evident is that across the different countries are issues of neglect, little representation and a fight against the climate and civilisation crisis. The exploration finds that CJL in the Global South is against the capitalist development model consisting of mining projects, energy production and to curb corporate impunity for territorial autonomy and enforceability of rights through legal channels (Dejusticia; Colombia Case 1; CORDATEC; Amadiba Crisis Committee; CER; CJC). The Scholar-Activist of Human Ecology Vasna Ramasar also adds here that part of this legal-structure in South Africa is a hostile environment of a "*problematic development narrative of creating jobs and economic growth [..] so it's going to bring economic upliftment to an area through these projects which are often not understood in a context of sustainability*". The South African lawyer Ona Nomveliso Xolo also adds to this that "*political influence and resistance remains one of the main challenges to environmental justice cases – for the most part in all cases that deal with the* government". Similar is the case for Colombia where corruption and powerful interests influence judgments and accountability (Third Generation Project; Geneva Graduate). Figure 5, Appendix 10 shows frequency of problems mentioned. Many host communities are crying foul that the 'development model' is overriding community interests particularly in the access and acquisition of land for extractives projects (ILEG; Kemunto; Odega; Asuwa; Babatunde; Xolo; Social Justice Coalition). These projects have brought with them forced displacement, pollution (notably of air, water sources and soils), chronic health conditions, traumatisation, intimidation, and criminalisation. All accounts also portray a troubling capture of state power by these companies, which is frequently used to reinforce the above (People's Health Tribunal; Climate Change Lawyers Café; United Nations Environment Programme). TWAIL sheds light on these issues as ones that are intended by current structures and to this, the

existing legal paradigm play a crucial role in sustaining the unequal structures and deliberate ignorance of uneven development in favour of prescribing uniform global standards (Chimni, 2006). Brightmann & Lewis (2017) adds here that the paradigm locks the world into an insecure, inefficient, and high carbon energy system. It is against this background that plaintiffs need to persuade the courts that climate change impacts are felt today and not in the future (Otto et al., 2022).

Specifically in the cases analysed the case issues raised are 1) inaction of government, 2) pollution of water, soil, and air, 3) land-grabbing, 4) lack of climate change assessments and 5) HR violations. A full mapping of CCL cases is presented in Appendix 9. In this sense, CCL cases found in the Global South goes beyond the CCL cases of the Global North as these cases are playing out in territories high in mineral resources, with diversity of communities and with issues of ensuring basic needs. Thus, the Kenyan legal consultant Mark Odega explains that what plays out in these cases are questions of: "*how would they affect community land interest? Will there be compensation, were there displacement in terms of economic activity or even physical displacement? How is that accounted for, and how does this then either strengthened or weakened community resilience to climate impact?*". Questions like these are contended in which the investors of Lake Turkana Wind Power project in Kenya Case 2 are set to lose 623 million Euros if the land is reverted to the community because the power company acquired the land deeds irregularly. The Colombia Case 4 has also been described to have historic impact on CCL because the Constitutional Court recognised the legal rights of the Atrato River which has been part of fuelling the international CCL movement. Gaining transnational impact is also the case for the Kenya Case 1 which turned into a regional dispute between a Ugandan NGO, the Kenyan CSO Kenyan Peasants League as well as by Kenyan lawyers. Together they argue that the Kenyan government's decision to lift the ban on genetically modified crops in November 2022 has violated the East African Community Treaty, which requires East African countries to protect natural resources as the lift pose a threat to the biodiversity of crops and create dependence on international seed-pattens.

However, there are also less successful cases in terms of the court's competencies in setting actionable rulings where three of the CCL cases from Colombia are a continuation of a dispute filed in 2015 by the Wayúu community. This is due to a decade long fight with mining companies on issues of pollution, displacement, and lack of environmental assessment in

which the national Ombudsman's office has been involved, several different ministries and different courts have been part, because of concerns that the government bodies nor the companies involved have any intention of compliance (Colombia Case 1, 3 & 6). Similar disputes are found in South Africa where London School of Economics and Political Science in their June 2023 webinar on CCL estimates that there will only be an increase in such cases due to the Ukraine-Russia war leading to an increased demand in coal from European countries. Hence, the national political-legal systems may be challenged by ideas of what function the legal bodies must take, as well as the economic-agenda behind loose judgements (Guruparan & Moynihan, 2021).

As highlighted above an array of communities and actors are involved in rights-based CCL. The analysis of all levels identified 23 Grassroots, 14 Hero Litigators, 11 Engineers, 8 Enforcers and 13 Farmers from the Peel & Lin (2022) framework (figure 5, Appendix 10). Most international organisations were identified to be Engineers that seek to amplify voices on the ground and take on projects that will create new inquiries into CCL (Business & Human Rights Resource Center; Climate Litigation Accelerator; Pacific Islands Climate Action Network; Worlds Youth 4 Climate Justice; International Development Law Organisation, Third Generation Projects; International Union For Conservation Of Nature). Figure 4, Appendix 10 shows frequency of focus areas of actors analysed. At the national level, the grassroots identified are youth and communities that are claiming they face life-threatening challenges and adverse impacts to their health, education, livelihoods, food, and water supplies due to climate change (Colombia Cases 1-6; Business & Human Rights Resource Center; Climate Litigation Accelerator). The same level also consists of collectives of community groups reclaiming land (Kenya Case 4 & 2; Asuwa; Amadiba Crisis Committee; Climate Justice Coalition), fighting against Government action (Kenya Case 1; Earthlife), and defending human rights (Coalition of Human Rights Defenders; Kenya Case 3; Social Justice Coalition; Ramasar; South Africa Case 3-4). The space also consists of Hero litigators who support and legitimise the voices of the grassroot level as they file and take disputes to court (Barnden; Systemic Justice; EarthJustice; CCALCP; Dejusticia; Kemunto; Odega; Mwangi; Sheria; Lawyers for Human Rights; Legal Aid South Africa; Attorneys for Climate and Environmental Justice). Indirectly related to the ability of CCL to be pursued within the countries are the Farmers who provide funding and local capacity-building for more CCL (Censat Agua Viva; AIDA; ILEG;

Natural Justice; Pan-African Climate Justice Alliance; Center for Environemntal Rights; Legal Resource Center). This ecosystem of actors involved are part of constructing the abilities of pursuing CJL in the Global South and strengthens the ability of local communities to have their voices heard to establish and enforce national and international legal protections for the environment and public health. Goldston (2022) adds to this that CJL and related advocacy must centre the voices of the most marginalised, who, in the climate context, include agriculturalists, forest dwellers, smallholders, Indigenous persons, and people residing on or near coastlines. In this sense, the legal-socio theory brings forward the invisible relationships and power dynamics that unfold beyond the legal matter in this complex cooperative action of litigation and how political and self-interest deliberations are equally negotiated to the change that might be created (Buckel et al., 2023).

The cases studied paints a picture of a mixed landscape for what legal mobilisation can achieve pertaining to the Colombia Case 1 which took outset in understanding the case issue as a structural problem that requires the adoption of complex measures. Similar is the case for the Colombia Case 5's ruling on the REDD+ projects, a UN initiative that extends special duties to businesses, who in this case infringed on indigenous rights when carrying out their decarbonisation project in Colombia. This makes the head of national coalition and activist from the Kenyan CSO Coalition for Human rights defenders, Kamau Ngugi argue that: "*Litigation when successful has a number of positive outcomes: the judgement set precedence; provide basis for advocacy and effective communication and builds solidarity with community*". Such cases confirm the ability of Global South countries to be better equipped in taking on rights-based CCL than the Global North (Setzer & Benjamin, 2020). But are largely about concerns of HR violations due to the climate injustices prevalent as a lack of necessary enforcement and oversight of economic activity to address the challenges of the vulnerable communities (Ramesh & Jacob, 2022, p. 196).

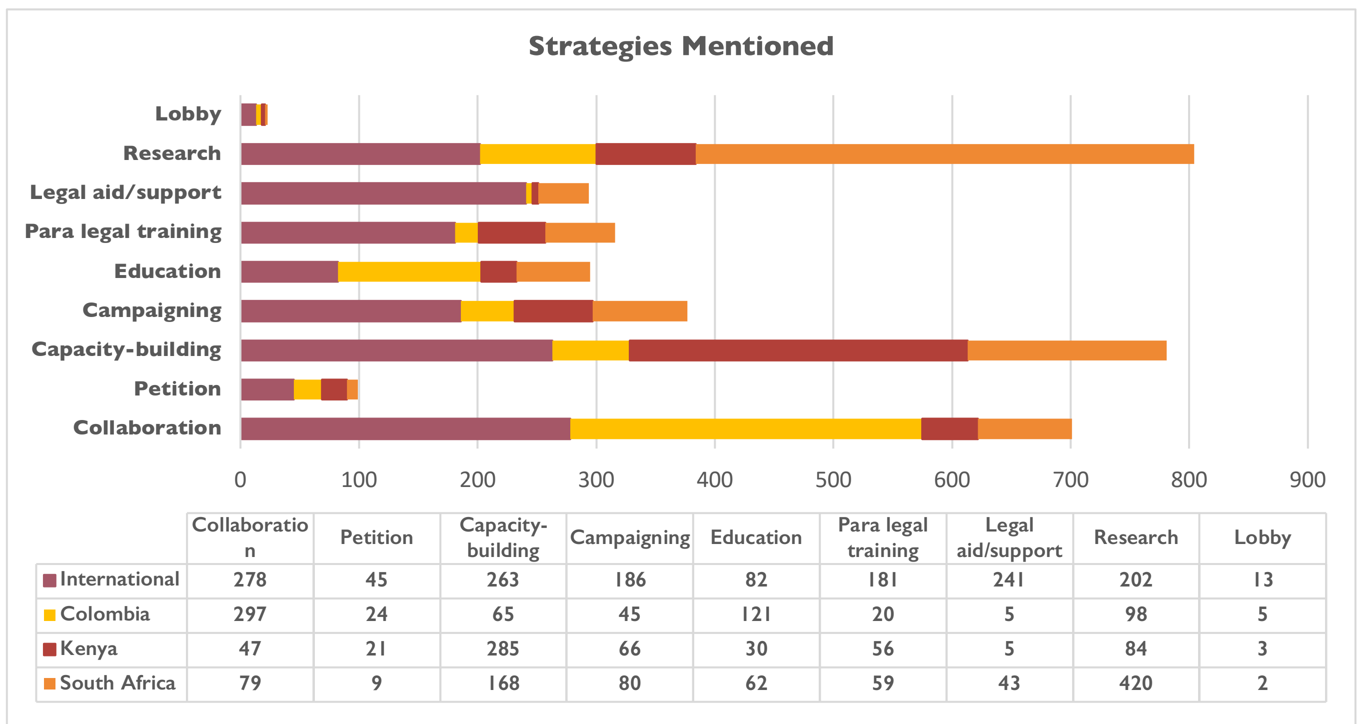
Based on the problems communities are up against the potentials for litigation reflect larger efforts of building a different kind of society that seeks to live up to the standards set in legal documents. Therefore, the international level speaks on an intergenerational-climate justice in which legal responsibility is attached to actors who fail to play their part (International Union for Conservation of Nature; International Development Law Organisation; London School of Economics and Political Science; World's Youth 4 Climate Justice). To this, Barden

explains: "*In some matters courts reflect society's standards, so as society changes its expectations with respect to climate change, we expect some aspects of litigation to be better*". The NGO Systemic Justice adds to this that: *"while it is hard to unlearn narratives and beliefs derived from traditional legal education, training, and even pop culture, this is an important step towards looking at the role of litigation in bringing about systemic change in a more holistic way*". Therefore, cases from the Global South are part of changing the narratives for which our current systems are based, the inherent skewness as well as whether the general equilibrium can be achieved as claimed by neo-liberalism. Socio-legal theory explains this as legal struggles for what collective to serve in terms of the societal transformation to be carried out (Buckel et al., 2023). This is a key aspect of TWAIL in which the scholar Ramina (2018) furthers this point in adding that the current HR paradigm is not adequate to protect Global South countries against imperialist and neo-colonialist practices. What this points to is also that litigation is only one very small part of the efforts to achieve climate justice.

6.2. Chosen Strategies in The Fight for Climate Justice

The analysis identified several different key strategies across all four levels that are used in the pursuit for CJL which consist of collaborations, education and administration, legal mobilisation, petitioning, legal, advocacy, research, and direct mobilising on the ground. Almost all actors analysed here utilise more than one strategy to synthesise efforts and fill gaps (Business & Human Rights Resource Center; Climate Litigation Accelerator). Most national actors analysed here have direct responses in place to defend their territories and collective rights (CCALCP; CORDATEC; Censat Agua Viva; Kenyan Peasants League; Climate Justice Coaliton; Amadiba Crisis Committee; Coalition of Human Rights Defenders). In speaking about chosen strategies part of their collaborations with local communities, Dejusticia's deputy director Paulo Illich Bacca explains that: "*litigation requires a lot from the groups pursuing and with the kind of pressure needed, sometimes even international, it can be difficult, so the strategy tends be more complex and based on social mobilisation*". These are directly exemplified by the mobilising strategies part of the South African Case 4 where protests, petitioning and advocacy work was done simultaneously with the court hearings (Amadiba Crisis Committee), and the People's Health Tribunal who gathered outside Shell's

Annual General Meeting to protest fossil fuel extraction while also disrupting their internal meeting. A full overview of strategies mentioned in the data is presented in the figure below.



	Collaboration	Petition	Capacity-building	Campaigning	Education	Para legal training	Legal aid/support	Research	Lobby
International	278	45	263	186	82	181	241	202	13
Colombia	297	24	65	45	121	20	5	98	5
Kenya	47	21	285	66	30	56	5	84	3
South Africa	79	9	168	80	62	59	43	420	2

Figure 6. Breakdown of key strategies and tools identified

These are clear communication strategies in establishing clear footing on the mandate and interest of CSOs. This is echoed by several of those interviewed who describe their work as raising awareness, building intersectional coalitions, and ensuring every person enjoy their HR (Yaman; Baduza; Ngugi). What becomes evident is the frequent reference made to claims of HR and other eco-social agreements as a source of legitimisation. The AoIL scholar Merry (2006) adds that the integration of HR into local actors' basis for advocacy as they resonate with larger universal issues which adds depth to the issues faced by communities. They have become "vernacularised" in local settings as they are appropriated and then translated into local terms. From the perspective of TWAIL such usage of HR within local movements also makes the oppressive system look milder and simultaneously legitimises the same systems they are fighting (Ramina, 2018).

6.3. Challenges Part of Pursuing Litigation

As the analysis has alluded to pitfalls also exist in the space of climate governance in the Global South countries under study, and by extension the space for litigation. These are both structural as well as practical challenges that affects the ability of actors to pursue climate

justice for the general wellbeing of the communities and the biodiversity of land. Considering the context of development that the Global South is dealing with, these are complex issues of dealing with poverty alleviation, human security, and economic growth in a top-down, decentralised governance space fuelled with development aid, corporate interest, and state-capture whilst also feeling the impacts of climate change the most (NUS Graduate School).

6.3.A. Gaps in legal structures

In this regard, what becomes apparent is that legal systems are at a critical crossroad where it must consider the context in which it was created and what that means for this anthropogenic period. Odega explains that for the Kenyan context, it is not only about understanding environmental principles but also based on the administrative function of courts in which: "*the court system has delays; building a huge backlog of cases, especially in the environment and land court. And so, by the time you get into court, the construction has started, the vegetation has been cleared*". These pitfalls are also identified in the rest of the world regardless of development context (Willers, 2021). For the context of Colombia, García explains the main problem is the lack of transparency and corruption which: "*affects different public services, public contract and the decisions of judiciaries"*. Asuwa adds here that "*we didn't even try to reform our legal land structure. So, they're still very colonial in nature, anti-people and that's why documents like the constitution still serves the interest of a few people that are anti-people*". These examples make the Kenyan Peasants League member Susan Owiti argue that:" *Those responsible for climate change are the same people coming up with solutions making it difficult to curb the situation*". The explanations given are similar to arguments of TWAIL in which HR violations are allowed to take place because they are based on Eurocentric standards in which a fundamental tension exists between rights of the community and economic rights (Ramina, 2018, p. 264). With the latter, these systems are doing what they were constructed to do, and thus, does not service the people on the ground but only the ruling elites.

What, therefore, also becomes evident is that the legal systems are up against actors whose mandate goes beyond any form of jurisdiction. Most evident is the mandate of corporations to also bring States to court for blocking their profit-maximisation exemplified by the TNCs Glencore suing Colombia in an international Investor-State arbitration tribunal to continue exploiting the Bruno Stream (AIDA). Therefore, the South African Deputy Secretary Mbali

Baduza from Climate Justice Coalition adds that "*a major challenge is the fact that big companies do not have any financial constraints. This sometimes leads to prolonged back and forth deliberations that has become too technical to implement on the ground*". Ramasar adds to this that this conundrum is about "*the nuances of weighing cost benefit, but also, who really benefit? [..] The community benefits very little. But I would say at the heart of it, the reason for this kind of conflicts, it's always about power, right*". The South African professor Elkanah Babatunde extends that: "*Climate litigation, especially in African countries, can barely force the hand of these multinational corporations to take climate change or environmental rights seriously*". Therefore, TWAIL argues that what is happening is a manipulation of IHRL that promotes neo-liberal aspirations due to inherent power asymmetries that has detached the bottom level from the top (Chimni, 2006). This notion of gaps in IEL and IHRL raises fundamental complexities about due diligence towards nature and earth systems (French & Kotzé, 2019).

6.3.B. Ability and impacts of legal mobilisation

The ability of legal mobilisation is, therefore, dependent on the capacities of actors and the number of actors involved who are up against economic and political interest described as huge resources that are able to make corporation influential in their negotiations with governments, misinformation and ability to disrupt advocacy and litigation through bribery and threats (Ngugi; Amadiba Crisis Committee; CORDATEC; Censat Agua Viva; Business & Human Rights Resource Cente; EarthJustice). The above also brings about implications for actors who have chosen to pursue legal mobilisation. Figure 6, Appendix 10 shows frequency of impacts mentioned. When successful the actors agree that litigation has both direct effects of compensation, influencing regulatory changes, and indirect effects, raising public awareness and supporting non-litigation strategies (NUS Graduate School; Systemic Justice; Ngugi; Bacca). Yet, most actors analysed also speaks on the main implication being threats to lives and murders. Claimants and defenders continue to be criminalised and subjected to violent attacks within a shrinking operating space for civil society (Amadiba Crisis Committee; Earthlife; United Nations Environment Programme; Escazú Agreement; The Third Generation Project; Natural Justice). Both García, Bacca and Ramasar both add the layer of race because there is a difference in treatment between White middle-class activist and the rural, indigenous, and Black communities defending territory on land. In this sense, through the lens

of TWAIL what CJL also brings forward are questions of stereotypes related to the neo-colonial project wherein Whites are understood as saviours of the planet while Black, Indigenous, and Brown Communities are understood as savages or victims in need of saving from their lifeworlds through law or civilisation projects (Ramina, 2018, p. 266). What this introduces is a compromise in who the law can protect. The Australian-Indian paralegal coordinator Varsha Yaman also argues that the same structures are behind "*the lack of representation in the legal field which means that marginalised group do not see their needs met".* TWAIL explains that what we are part of today is a continuation of colonialism in the consciousness of formerly colonised peoples, and in institutions (Ramina, 2018, p. 262).

In this regard, the actors and cases analyses here speak of a justice project that is much necessary for their survival but as of current is far out of reach. Hopes and answers are given to what change they imagine in which the protection of fundamental rights not only involves the individual but implicates the other, the unborn and nature (Colombia Case 4; Youth & Environment Europe; World's Youth 4 Climate Justice; Pacific Islands Climate Action Network; Earthlife). This requires an improvement of public participation and to make voices of communities stronger (International Development Law Organisation; International Union for Conservation of Nature; United Nations Environment Programme; Yajman: García; Kemunto; Odayar). Other actors also speak on a more structural change needed which involves developing, refining, and mainstreaming paradigms, norms, strategies, activities, and thought leadership that create a pathway for re-embedding humanity within the larger web of life that nourishes and sustains us (MOTH Project; Climate Litigation Accelerator; Attac Austria; Climate Change Lawyers Café). Therefore, climate justice for the actors in the Global South becomes a complex struggle tackling injustices of colonialism, racism and capitalism. It seeks to create a world where people — especially those who have contributed the least to the climate crisis — are liberated from all forms of oppression and are able to live based on principles of social justice (AIDA; CORDATEC; Ngugi; Systemic Justice; Xolo; Ramasar). Therefore, CJL presents backward and forward-looking responsibilities from socio-legal theory for what damages have been committed in the past and how they have and continue to impact those with least power in the hierarchical system (Buckel et al., 2023, p. 7). Figure 7 below highlights what pre-conditions are needed for litigation to work.

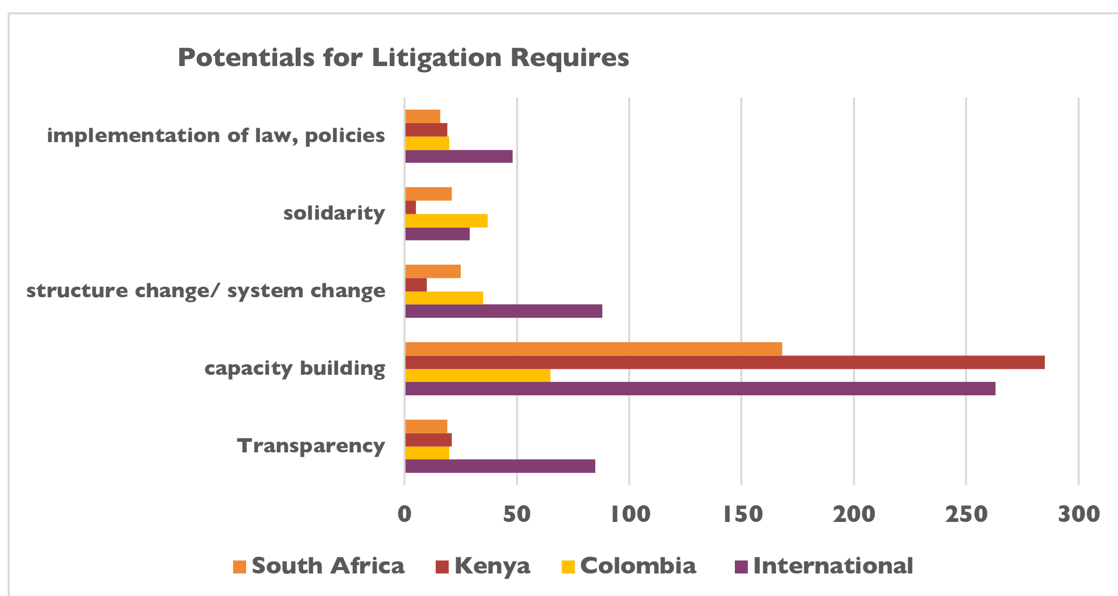


Figure 7. Frequency of requirements mentioned for litigation to become potential

7. DISCUSSION

This study aimed to explore the implications of CJL in the Global South and what dynamic interactions are involved in legal mobilisation. One of the main threads from the interviews is that CJL is an important vehicle for countering the damages and inaction by governments and corporations all over the world. For the three countries under study here, CJL can be realised through the existing legal structures as they extend rights to diverse communities and to nature which positions claimants from the Global South in a better position than claimants in the Global North in using rights-based claims for legal cases. In this sense, rights-based CCL has been somewhat successful in the Global South countries under study as they have created awareness, precedence internationally for what a rights-based approach may be able to do, as well as through the court rulings recognising the rights of communities and nature while also forcing climate action to be taken. These are based on both international and regional agreements on sustainable development and rights to civil society, local communities, and corporations. However, what quickly became apparent is that there is a need to distinguish between the fights of the Global North and the Global South because they look much different in terms of the time and space as well as severity of damage for which cases are based (Peel & Lin, 2019; Rodríguez-Garavito, 2020).

Interestingly, the case studies show that the legal structures of a country, although important for litigation, is not the main factor for whether cases reach the court and are successful in the Global South. The ability of actors to utilise legal mobilisation is dependent on the privileges, resources, and power they hold (Sikkink, 2020; Buckel et al. 2023). In this sense,

there are strategic dilemmas encountered by activists, grassroots, CSOs and NGOs which span questions of legal opportunity, access to institutions, as well as cost and time sensitivity (Desaules, 2022). So, unless configurations between Grassroots, Hero Litigators and Farmers take place, it is very difficult for grassroots to access courts as they are not part of the 'developed' institutional systems of countries mainly found in the big cities, and not in the underdeveloped corners of Colombia, Kenya, and South Africa. This creates an imbalance and gap between claimants and defendants in their ability to comfortably exploit courts and legal mobilisation in reaching climate justice as these are typically marginalised communities against government bodies and corporations (Batros & Khan, 2020; Peel & Osofsky, 2019).

It was not possible through the empirical material of this study to fully grasp how the local communities are viewed by the judiciary and government bodies. It is worth exploring the diversity of actors involved in CJL and their local realities for what climate justice requires in understanding what duties and responsibilities can be realised. CJL, therefore, is not the favoured option by all interviewed and the organisational material explored because they are up against a political system with inherent inequalities that has severe impacts on the ability of actors to achieve any form of climate justice even after the court ruling have been given. This goes back to the point on who is deemed to suffer and who will win under the existing arrangements uncovered in this project. Therefore, through the lens of TWAIL, we need to consider the questions of what sustainable development means and what kind of justice project it is interested in creating. Can it achieve what it has set out to do when operating within a neo-liberal, capitalist paradigm, which not only makes poorer countries dependent on either aid or foreign investment from private actors, but also leaves the public sectors underdeveloped? Thus, the civilisation project that is titled "international liberal HR" paradigm for which international development is based has crippled Global South countries because preconditioned notions of what must be sustained sets the direction for national governments, and the access local actors have to cures when injustices are done.

In going back to the point raised about the kind of fight that CJL takes on, the analysis revealed that for the Global South it is one related to protection of land, protection of biodiversity, protection of culture and a struggle to keep the little livelihood of local communities which is against the broader development discourse that fuels government policies and the development partners they take on. It presents a complex conundrum in which the neo-

liberal economic paradigm fuels the intentions of economic growth, and the sacrifices States are willing to make to develop (Ramina, 2018). This adds the layer of a structurally violent narrative rooted in colonialism where some countries have attained privileges and modernity by sacrificing other countries. These sacrifice zones are burdened with environmental degradation, pollution, and negative impacts due to various development projects, industrial activities, resource extraction, particularly for the accumulation of wealth and resources by powerful actors regardless of the rights given (Brightman & Lewis, 2017). Gonzalez (2015) also argues that North-South environmental conflicts are reflective of social injustice "because they are inextricably intertwined with colonial and post-colonial economic policies that impoverished the Global South and facilitated the North's appropriation of its natural resources" (ibid., p. 423). The exploration of case countries and organisations in this study strengthens this argument as communities are crying out loud for justice and for the government to see the damages caused by their policies and economic partnerships.

Such asymmetry produces a world of legitimate violence that is territorially bounded in which transnational actors in the name of economic growth may extract, use, and mould land around the world (Crook et al., 2019; Ramina, 2018). These sacrifice zones highlight the injustices that have been suffered due to environmental devastation because of industrial development (Censat Agua Viva). This shows that we are dealing with legal structures that should not be understood as ill equipped but rather were designed to facilitate continual access to natural resources by TNCs from the Global North (Andreucci & Zografos, 2022). This is exemplified by the Nigerian Shell Case in which the TNC through its deep connections and influence in the formation of the Nigerian government since 1958 have been able to continue its oil exploration despite decades of protest by local communities (Maljean-Dubois, 2018). This case is also the epitome of what a sacrifice zone entails as the present-day Nigeria was constructed by the British and its TNCs for resource extraction and is the main reason for Shell's deep roots with the elite of Nigeria, and in the Niger Delta that makes HR violations go unnoticed.

In this regard, the kind of justice project that is being fought for by local communities in the case studies presented here is one that calls for restoration, calls for redistribution and gives rise to demands that build the necessary institutions for countries to be able to cope with climate change (Babatunde, 2020; Ramesh & Jacob, 2022). This makes Lizarazo-Rodriguez

(2021) argue that CCL based on HR issues, rather than on environmental science may increase the chances of litigating transnationally against TNCs and States. The theory TWAIL becomes even more important here as it critiques the existing systems that has sprung out of colonialism because what we have in place are anti-people laws in anti-people systems (Chimni, 2006) as argued by the interviewees Asuwa, Owiti, Ramasar and Babatunde.

What this calls for are efforts that does not treat climate change as symptomatic patchwork as exemplified in this study for how the climate governance space has failed to halt the rapid deterioration of the planet's life support systems which can also be categorised as the sacrifice zones (Gonzalez, 2015; Toussaint, 2021). What is apparent is that IEL does recognise the common but differentiated responsibilities of climate action in which the Global North is obligated to slow down its economic activities that produces GHG and allows for the Global South to pursue sustainable development (UNFCCC 1992; Paris Agreement 2015). But what is not highlighted is how global supply chains are dependent on the resources of the Global South and therefore, neglects the kind of growth created and what that means for the solutions to be put forward (Gupta, 2012). Therefore, the tension at hand for CJL in the Global South is two-folded in which the first problem is that the burden of climate injustices are left at the bottom instead of holding the right emitters, polluters and violators accountable. What this means is that when Global South litigators win cases against defendant States, those states then need to offer remedies even though they did not engender nor substantially further the global climate crisis as major global GHG emitters (Auz, 2022, p. 148). Also brought forward by Kemunto on how the lack of climate finance for loss and damage to Global South countries by Global North are already putting Global South governments in a vulnerable position.

The second tension is the main dichotomy that affects the inaction are based on the significance of biodiversity, land and territories which transcends notions of economic wellbeing and strikes at cultural, social, and spiritual identities which are up against the development imperative: to close the infrastructure and development gap to spur economic growth and global competitiveness (Maria et al., 2021). The analysis showed how this trickle into the domestic court rulings that are described to be too broad and detached from the realities on the ground (García; Baduza; Xolo). Thus, Jordan et al. (2015) argues that what is required are new and much more integrated forms of governance, but the question remains:

how will structures shape their ability to perform, as well as transform the judgments into tangible action (Osofsky et al., 2020a). Ramesh & Jacob (2022) as well as Galperin & Kysar (2020) seek to answer this by suggesting that there is a need to envision ecosystems of governance where virtues such as redundancy, diversity, and resilience are prised over a single-minded quest for optimal allocation of decision-making authority (Galperin & Kysar, 2020). This calls for systems-thinking and re-learning the understandings of nature and its positions. Bacca explains this as efforts that connects with the lifeworld's and cosmologies of those marginalised in which systemic lawyering becomes a powerful tool for extending the perspectives of those made voiceless, made victims or savages into the legal systems and the practices of judiciaries (Gyte et al., 2022). What this teaches is that land and earth systems become more than dead material with economic value to be exploited; it has an identity, builds community, and has connections to ancestors and spirituality which creates due diligence and gives it rights (French & Kotzé, 2019). In this sense, unless the power asymmetries which determine what rights are prioritised, CJL may not be able to achieve much as insufficient attention is given to the context for which decisions are made as well as the history involved (Rodríguez-Garavito, 2022). This is also why actors analysed prefer combining different strategies than solely relying on litigation as they need to counter the privileges of powerful actors in a manner that can be up against these privileges (Sikkink, 2020).

This also brings forward different ways of understanding what kind of justice litigation offers and what it means to provide legal remedies to victims in a momentous way (Foerster, 2019). Especially when the defendant are corporations or TNCs. Bringing about transformative change for communities impacted and their territories involves holism that goes beyond state borders and thus become a matter for all levels of governance and law (Otto et al., 2022). Batros & Khan (2020) propose an alternative; restorative justice that encourages dialogue and collaboration between affected communities, corporations, and governments to find meaningful ways to address the consequences of climate change. Such approach opens up for discussions on the kind of solidarity extended from Global North organisations who Peel & Lin (2022) identify as vital implicit actors to increase the legitimacy level of local grassroots but may also be seen as complicit in creating victims of the Global South in need of their 'saving' as the HR project is a neo-colonial project of civilisation that places power in the hands

of the international system and its organisations (Ramina, 2018; Ohdedar, 2022). This is a point this project was not able to investigate further.

Therefore, when evaluating the chosen research design and the multi-sited field explored, the methods were effective in bringing forward the complexities and dynamic interactions part of the space for litigation in the Global South, and what that means for the ability to pursue climate justice. The theoretical framework provided the relevant backdrop to understand the cases, laws, and perspective from contributors presented in this project. Yet, as this research design sought to generalise and compare issues across the three different countries, intricate details of each country were not uncovered. Physical fieldwork and more attempts of connecting with the local grounds in terms of both CSOs as well as national courts would have provided a deeper sense of understanding for what empowers, capacitates and how they make use of their network of stakeholders which would clearly map their form of power against that of the defendants. Although the cases studied in this project are in the Global South, I am aware of the complexities of a globalised world and the categorisation presented in this project of the geographical Global North and South are simplified. It is important to note that marginalised indigenous, Brown, and Black communities in the Global North are also suffering due to the same structures. Such litigation cases of environmental racism in the Global North have not yet to be studied.

8. CONCLUSION

As the world faces several climate-related challenges, systematisation of IL and national responses has become of utmost importance. Strategic rights-based CCL is part of increasing the level of responsibility given to climate action as climate change affects the basic HR of all people around the world. Yet as impacts of climate change are felt disproportionately and intensified by structural oppressions, the magnitude of current actions of corporate actors and governments, calls for an entirely new dimension of rights-based CCL. This new dimension must be able to grasp the power asymmetries part of the international system and call out the contradictions of the HR paradigm when special rights are given to corporations for the expansion of economic growth and profit at the expense of the environment and ordinary citizens. This new dimension must provide climate justice as it calls for a reimagining of IL and climate governance to ensure that responses to climate change are just, equitable,

and responsive to the specific concerns and needs of countries and its people. Climate justice not only recognise the unequal distribution of the impacts of climate change and the responsibility for addressing these impacts but also seeks to address the structural inequalities and historical injustices that have shaped the current vulnerability of Global South countries to climate change impacts.

Even though the concept of CCL is still new in most developing nations, legal mobilisation has played a crucial role in the environmental movements of the Global South. This is due to not only the expansive liberation fights during colonial era, but also the construction of progressive constitutions in the decolonisation era that is inclusive of the legal pluralism and diverse population of countries such as Colombia, Kenya, and South Africa. The legal structures of these countries are also extensive based on the contributions of IEL, IHRL and national climate change laws which in conjunction allow civil society actors to utilise strategic rights-based CCL to achieve climate justice when the right conditions are in place. Cases of CCL continues to contribute with legal standing, institutional memory, and international coalition building. Yet, realising these cases are determined by the conditions of having the right networks for legitimacy, having enough resources and being capable enough to pursue legal measures while also fighting for one's survival as the violence and HR violation permeates.

Thus, the main issue that litigators of the Global South face is being up against powerful actors that can plague the judiciaries, mainstream media, and other relevant actors with economic- and political narratives that favours them based on an extractive development model. While also silencing and bribing those already victim to the damages and HR violations. Litigation across the world is a costly and lengthy pursuit towards justice. It is here the fairy-tale of strategic rights-based CCL ends because attempts of holding the right actors accountable and responsible has been ineffective due to the larger political and economic context that plaintiffs are up against. This context has diluted the kind of justice to be achieved by litigation as it is based on access to legal systems that have been made elitist and intricate due to colonial legacies that prioritises capitalist domination and makes it difficult for local ordinary citizens to access. Litigation is not the "end all be all" for climate justice. Has justice really been served when it requires the death of people and biosystems by TNCs and governments before anything is done? Rather it shows the little value given to the life and souls of earth

systems on the ground. And when given a monetary value, it is not close to the value of corporate industrialised land. Therefore, although the legal documents of the countries studied in this project protects the rights of its citizens and nature, the openness for interpretations and contradictions of existing legal structures based on a capitalist and neo-colonial regime have excluded the realities on the ground. Grassroot actors and those impacted by these actions are left behind with doubt on whether the legal turn for climate justice is worthwhile because it neither takes into consideration the issue of creating systems that foster equity between the Global North and South divide, nor within the context of historical inequalities and power dynamics. This makes rights-based CCL the last resort.

To conclude, the two-level research scope of a cross-sectional study of international trends and discourses of rights-based CCL and how such manifest itself in the local climate justice struggles in the national comparative study of the Global South countries Colombia, Kenya, and South Africa, teaches that we must take the diversity of knowledge systems that comes from indigenous, marginalised and racialised seriously. This can happen through systemic lawyering and mainstreaming climate change into the political system of countries in a holistic manner. The legal structures must be closer to the people it seeks to serve because as climate change intensifies so will the cases of rights-based CCL, and it will come with a force never seen before as more groups will seek compensation and a cure for the damages caused. Therefore, this project encourages further research on CJL and regardless of the direction this new field takes, there is a fundamental conversation to be had on access and the elitism that follows this kind of endeavour being created as it is costly and requires resources unimaginable to those in poverty and/or marginalised. How do we bring forward these voices and shift power? Hence, by explicitly using the term equity in the context of re-imagining the global development system, we make explicit the fact that a rebalancing of power relations and global resources is necessary if we are to achieve a more equal global system.

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