Socio-environmental Movements and LFFU

Framing, Tactics and Court Cases

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3. Socio-environmental Movements and LFFU: Framing, Tactics and Court Cases

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Abstract

This chapter examines how actors such as socio-environmental movements can promote through a variety of tactics a niche change in one area which can possibly ripple into a regime or landscape change. The chapter presents a number of fossil fuel-oriented social movements and identifies lessons learnt from criteria for successful social movements. Successful movements operated in politically open states, focused on states and companies, mobilized grievances, had clear local and economic frames, used lobbying and court cases. There are hundreds of court cases globally, but in the Global South these are just beginning. Most court cases led to decisions that could enhance mitigative action and are more successful than the other strategies of social movements. Courts flourish better in more democratic countries, however, so far they have tended to be niche ideas or sometimes regime-change events.

Keywords: fossil fuels, climate change, social movements, court cases, success stories

3.1. Introduction

A key bottom-up actor is a social movement. Local to global socio-environmental movements are growing, protesting injustices and socio-ecological exclusion. Many of these movements focus on energy-related conflicts, like

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coal mining, oil drilling or financial incoherence. The key gaps in knowledge include: the mechanisms with which socio-environmental movements successfully drive change at the niche (e.g. stop or promote an activity), regime (e.g. changes in precedent with further impacts) and landscape (e.g. changes in policy) levels; the characteristics of successful campaigns; and why and how they are increasingly using the court system, and how such use of the courts can actually enable a niche idea to become a regime or even landscape idea. Although we take a global perspective, we focus on the Global South and explore whether we can identify key trends and assess relationships with the SDGs.

Against this background, this chapter addresses the following questions: How are socio-environmental movements worldwide addressing the challenge of leaving fossil fuels underground (LFFU), with a particular focus on their role in changing legislation and using the court system? This chapter first builds on the theoretical elaborations in Chapter 2 (see 3.2), presents an overview of environmental movements to LFFU worldwide and lessons learnt (see 3.3), discusses how socio-environmental movements use courts to promote change (see 3.4), before drawing conclusions (see 3.5).

3.2. Building on the analytical framework

Chapter 2 presented an inclusive development approach to the energy transition and discussed theoretical approaches on socio-environmental movements. We now look at how socio-environmental movements can promote a *niche* change in one area which can possibly ripple into a *regime* or *landscape* change. A regime change could be, for example, when a legal precedent that derives from a court case has impact on other similar court cases. A landscape change is when the social movement is also able to change regional, national or even global policy.

Despite the growing urgency of addressing the climate emergency, local to global governments appear to be reacting too slowly. This has spurred a reaction from socio-environmental movements, which are increasingly collaborating to oppose fossil fuel extraction, production and use (Piggot, 2018). These movements are "glocal" (local + global) in nature and have a strong counter-hegemonic role (Giugni, 1999). They may focus on discursive issues—e.g. *buen vivir* and post-extractivism in Latin America; *ubuntu* and eco-feminism in Africa; human rights and well-being in India; and the degrowth and Occupy movements in the Global North. These discursive issues aim to "reconstruct the humanity–nature relation along truly sustainable

lines that place human flourishing and grassroots democratic control at the centre" (Carroll & Ratner, 2010, p. 20) and challenge existing knowledge systems by emphasising "ancient worldviews with current relevance, or new frameworks and visions that present systemic alternatives for human and planetary well-being," or push for the "decolonisation of knowledge systems and epistemologies" (Demaria & Kothari, 2017, p. 2589). Increasingly, socio-environmental movements are using scientific agendas to justify their action. They may also be more pragmatic and focus on specific principles and instruments that they think are inappropriate and demand change.

Moreover, socio-environmental movements in relation to LFFU focus either on the lack of environmental commitment in policies or action, on the unjust way in which such policies are crafted either at local level (Bond, 2018), or the lack of credible implementation of the common but differentiated responsibilities and respective capabilities principles at the global level (Bos & Gupta, 2016).

As stated in Chapter 2 and illustrated in Figure 3.1, socio-ecological movements aim to: (a) change policy and precedent through lobbying with legislators, advocacy with administrators and litigation in courts (Piggot, 2018, p. 946); (b) educate the public through information campaigns, media campaigns and stunts, and campaigns to change social norms and attitudes by the stigmatisation of the fossil fuel industry; and (c) more direct action that can range from boycotts of consumer products to violent tactics such as criminal activities which may physically harm people and property (Chenoweth & Stephan, 2011) or physically stopping extraction by stopping construction and/or blocking access to fossil fuel infrastructure or its development, particularly through the use of "soft blockades" (Piggot, 2018, p. 946; Bond, 2018). Protestors often risk repression and violence, and in 10% of the cases assessed are even assassinated (Temper et al., 2020); the stakes are clearly skyrocketing. Despite personal risks, local movements are increasingly successful in ensuring that at least a quarter of fossil fuel projects opposed are suspended or delayed (Temper et al., 2020). Protests have not only focused on fossil fuel, but also other low carbon energy (e.g. hydropower, biomass, renewable energy) projects, where roughly one-third of these face high-intensity conflicts. About half of such projects involve Indigenous rights (Temper et al., 2020) where specific groups of people are forced to sacrifice their rights and where local people are forced to sacrifice their well-being for the energy needs of society—creating unequal risks and benefits (Tramel, 2016; Borras & Franco, 2018). Social movements have focused on a combination of social (participation, racism, Indigenous exploitation) and ecological (energy justice, climate justice) issues.

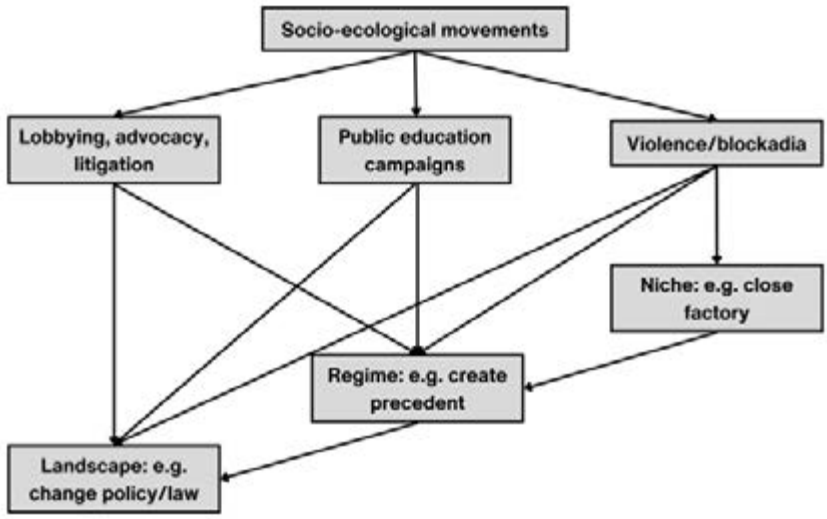

Figure 3.1. How socio-ecological movements influence niches, regimes and landscapes.

We focus here on campaigns to change policy and precedent predominantly through lobbying, advocacy and litigation. Socio-environmental movements can use advocacy to change policies or lobbying to change the way legislation is developed, but if either of these approaches fail (for example, because of competing vested interests), they can use the judiciary. Research has shown that rich lobbyists have huge influence on legislative processes (Presthus, 1974), for example, the five largest fossil fuel companies use $200 million annually to put pressure on governments, spending $2 million on social media ads in the US alone to promote fossil fuel production (Laville, 2019). Social movements can scarcely compete with such lobbying processes and instead often use the court system. Using the court system is strategic and potentially effective because it sets a precedent that can have an impact on future such cases (regime change), and in the best-case scenario can lead to a change in national laws and policies (landscape change). Hence, since 2000, there have been a growing number of court cases on climate change that are relevant for LFFU (Gupta, 2007; Gupta, 2014; Peel & Osofsky, 2015; Martine & Alves, 2019). However, there are also increasing numbers of SLAPP (strategic lawsuit against public participation) court cases where companies are suing NGOs and others in such a way that they become afraid, or financially unable, to use the court system.

While policy is normally made by the legislative and executive arms of government, especially in common law countries, courts will entertain

a lawsuit if they feel that the legislature and executive are failing to protect the rights of the people. In civil law countries, the courts are more reluctant to intervene, but even here there is a growing trend of cases. Recognising that "the courtroom doors are always open" (Peel & Osofsky, 2015, p. 340) enables socio-environmental movements and non-governmental organisations (NGOs) to bring their complaints into a legal forum. Courts are becoming important players in multilevel climate governance (Peel & Lin, 2019) and since they can also be used to promote the domestic implementation of nationally determined contributions (NDCs) (Rajamani, 2016), scrutinising them becomes vital. The judiciary is technically objective and is not expected to be swayed by power politics. It will look at the legal arguments and see how to bring about an objective judgement on the issues before it. This implies that the courts can be seen as sitting in a happy medium between top-down regulatory processes and bottom-up protests (Li, 2019; Peel & Lin, 2019). However, in many countries, politicians are trying to control the composition of the judiciary, and this affects its independence. Generally, in climate change court cases, there are claimants, defendants and adjudicators. Socio-environmental movements that go to court usually coalesce around an organisation—like an NGO—which are either the litigants or else providing supporting evidence on behalf of the people affected (Peel & Osofsky, 2015; Setzer & Byrnes, 2019). An example includes the recent court case against Shell; here a Dutch appeals court ruled that the parent company is responsible for its Nigerian subsidiary's role in numerous oil leakages in Nigerian farmland—which was spearhead by Milieudefensie (Friends of the Earth Netherlands) (Meijer, 2021).

The ability of socio-environmental movements to use the judicial system depends on the legal opportunity structure (LOS) (Andersen, 2006; Vanhala, 2012; see Chapter 2). The LOS of a country enables social movements to demand justice through the courts. LOS includes the legal stock of substantive norms and rules, the procedural rules determining legal standing or whether someone is eligible to go to court e.g. to represent someone else or a tree/river, etc., and the rules on legal costs (Andersen, 2006; Vanhala, 2012). In some countries (e.g. England), the losing side has to pay the full costs of the process and this can have a "chilling" effect on the plaintiff's willingness to go to court (Vanhala, 2012). Changes in LOS can influence the distribution of power in democratic societies (Wilson & Cordero, 2006). The theory of regulatory outcomes (Peel & Osofsky, 2013) shows that court cases can have direct (changing precedents that change policy rules—i.e. landscape) and indirect outcomes (influencing markets), where the indirect

outcomes influence how decisions are taken (Parker & Braithwaite, 2003; Peel & Osofsky, 2013). Indirect influences can be more transformative (Lin, 2012) and lead to game-changing phenomenon (Markell & Ruhl, 2010)—in this context, long-term changes to the existing landscape. There is growing cooperation between actors in the Global North and Global South in developing such court cases—such as collaboration with Dejusticia in South America (Peel & Lin, 2019) or litigants from the Global South using courts in the Global North (Sands, 2016; Jacobs, 2005; Bodansky, 2017), like the ongoing case against French multinational Total S.A. challenging their plans to construct the East African Crude Oil Pipeline, a mega-project set to run over 1,500 km from inland Uganda to the Tanzanian coast; the case has been filed in the French court system by two French NGOs (Friends of the Earth France, Survie) and four Ugandan NGOs (AFIEGO, CRED, Friends of the Earth Uganda, NAVODA).

Our method followed two distinct stages. We first used the EJAtlas (Global Atlas of Environmental Justice) (see 3.3.2) to identify the array of socio-environmental movements that explicitly focus on fossil fuel extraction, transformation or production issues. From this shortlist, we selected "successful" movements for further analysis. For the purposes of this research, "successful" movements are defined as movements that eventually led to policy change and implementation at the national level—i.e. movements that potentially provoked a regime change. We then analyse them further from the perspective of the inclusive energy transition (see Chapter 2) and draw conclusions. In total, 153 documents pertaining to the successful movements were analysed along with 23 semi-structured interviews to determine the key characteristics and conditions under which movements successfully prompted environmental policy change (see 3.3).

Second, we used the Global Climate Change Litigation Database of the Sabin Centre for Climate Change Law (2020) and the Climate Change Laws of the World Database of the Grantham Research Institute on Climate Change and the Environment (2020) to identify 36 relevant cases to analyse that embody both a North–South and energy focus. We subsequently identified an additional 26 cases to include in our analysis through a systematic literature review, and four additional cases after reviewing ECOLEX (2020)—the largest online global environmental law platform—as a potential additional depository for climate litigation. Furthermore, reviewing the actors involved in climate change litigation (CCL) in South Africa, an additional four cases were discovered in the virtual library of the Centre for Environmental Rights in South Africa (2020), and a final case in the Philippines was also uncovered through exploratory discussions

with interviewees. These 81 cases were subsequently analysed using the inclusive energy transition theory (see Chapter 2) to explore how litigation and court systems are (successfully) used to drive environmental change and LFFU (see 3.4).

3.3. Environmental movements and climate change: Success stories

3.3.1. Introduction

Environmental movements—movements with a predominantly environmental focus—have covered a wide range of issues, including energy-related conflicts. This section first presents an overview of recent environmental movements covering a broad range of issues and identifies those that had a focus on fossil fuel-related issues (see 3.3.2); we then discuss which of those were successful in prompting policy change and thereby wider regime change (see 3.3.3); and finally we identify key lessons from successful movements in relation to the inclusive energy transition theory (see 3.3.4).

3.3.2. Overview: Environment–energy justice conflicts

The EJAtlas (Global Atlas of Environmental Justice)[1] contains a quasi-exhaustive global inventory of environmental movements that have taken place since 1970. Figure 3.2 presents an overview of the range of issue areas that movements from the EJAtlas focus on.

Movements driven by nuclear energy, fossil fuel energy and climate justice conflicts summed to 588 unique cases (almost 500 targeted fossil energy, with the remaining 90 or so nuclear centred) (see Figure 3.2). Over 20% of all movements have coalesced around energy conflict issues. Mineral ores and building materials (roughly 550 cases), biomass and land conflicts (400 cases) and water management (330 cases) along with fossil energy comprise the top four most popular focuses of these movements. The purple plot in Figure 3.2 also shows that on average, movements from within these four areas were able to stop roughly 15% of the projects that they were contesting.

1 For an elaboration of the EJAtlas and its varied application, see Martinez-Alier (2021), Martinez-Alier et al. (2014), Pérez-Rincón et al. (2019), Scheidel et al. (2020), Temper et al. (2015) and Temper et al. (2018).

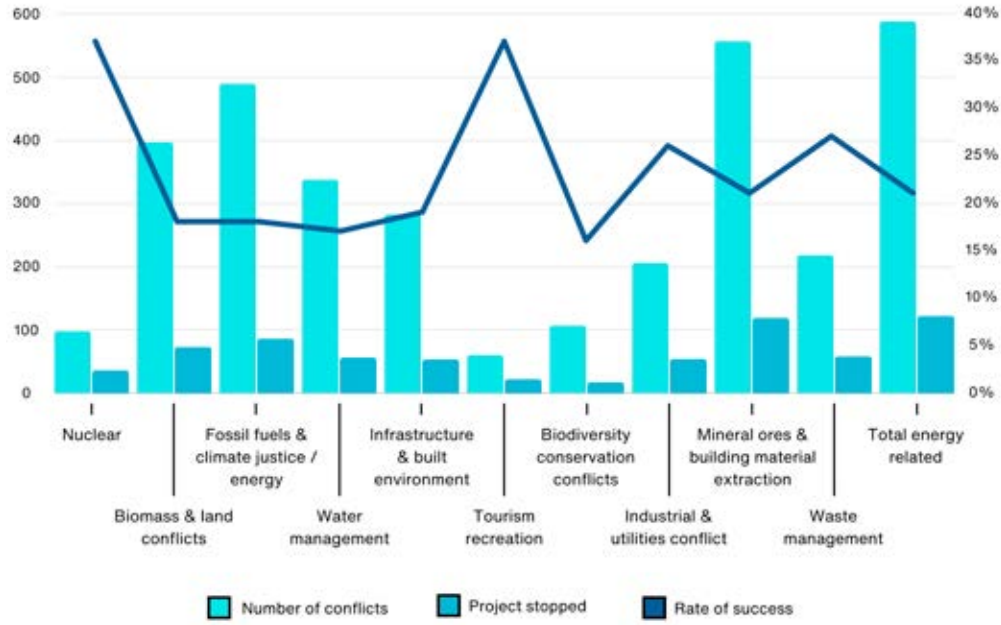

Figure 3.2. Environmental justice conflicts, 1970–2020.
Source: Building on data from EJAtlas.

Figure 3.3. Map of energy-related environmental movements.
Source: EJAtlas.

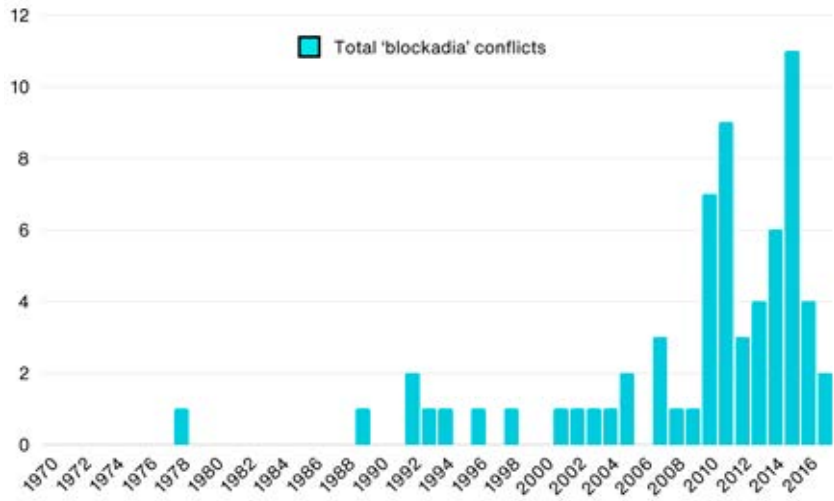

Figure 3.4. Total number of "blockadia" conflicts.
Source: Authors' calculation based on figures from the EJAtlas.

The spatial distribution of energy movements is reflected in Figure 3.3; many are in Latin America, India and Africa but there are also quite a substantial number in the Global North—mainly in Europe and the US. Of these, few were successful in achieving what they had aimed for. Since 1970, 14 environmental movements successfully promoted landscape/regime change: 2 against nuclear, 9 in LFFU, and 3 against water management. Moreover, only 9% of successful energy-focused movements also advocated for and developed alternative renewable energy sources—equivalent to only 2% of all energy-related conflicts. Figure 3.4 shows that many energy-related conflicts escalated to "blockadia" conflicts—a term popularised by Naomi Klein (2015), used to describe conflicts in which protesters "put their bodies on the line" for the movement.

Since 1970, 86 (18% of) movements aspiring to LFFU successfully halted a project and thereby promoted niche level changes; 52 of them were deemed successful by the movements themselves, while the others did not attribute the cessation of the project directly to the movement (see Figure 3.4). When juxtaposed with domestic coal, oil and gas extraction and production rates pertaining to the countries in which these movements to halt fossil fuel projects were situated, we find that net national extraction decreased only in 33% of cases five years after the movement's "success," and thus net extraction increased by 67% of the time (see Figure 3.5). This suggests that environmental movements—particularly targeting the fossil fuel

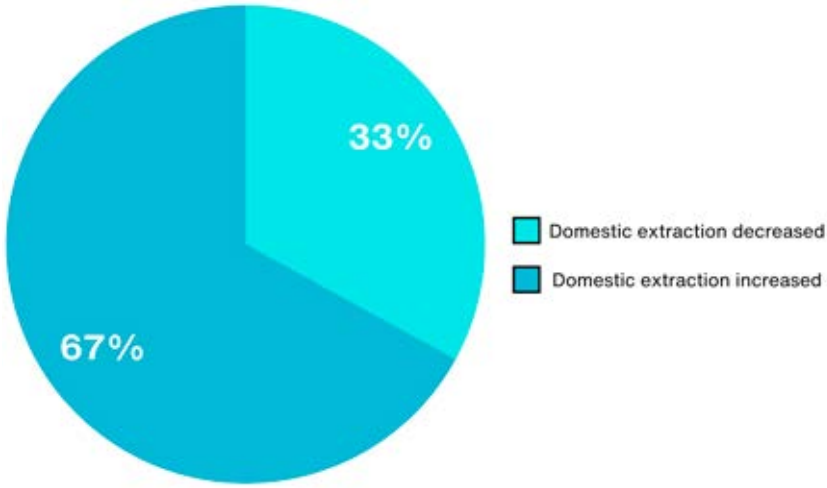

Figure 3.5. Domestic extraction change five years after the fossil fuel project was stopped. Source: Authors' calculation based on figures from the EJAtlas.

industry—struggle to translate these niche level changes into wider regime and landscape-level changes.

Only 10 of these environmental movements that halted a fossil fuel project were able to translate the change at the niche to the regime or landscape level and promoted new legislation influencing the exploration and extraction, transportation and consumption of fossil fuels. These movements were situated both in the Global North and the Global South. The next section explores the intricacies of these movements, drawing key lessons in the context of the Global South and Global North to identify the characteristics that contribute to a truly "successful" environmental movement at the regime and landscape level.

3.3.3. Environmental movements and climate change: Success stories

The 10 successful movements analysed began as early as 1996 (the Mexican maritime space dispute) and ended as late as 2019 (Spain's fracking ban) and lasted for six years on average; four movements were situated in the Global South (all in Latin America) and six in the Global North (one in Europe, two in Australia and three in North America) (see Table 3.1). Of these, only two were able to promote landscape-level change (both of which were in the Global South—Costa Rica and Belize), whereas the other eight (and therefore all six of the movements in the Global North) were only able to prompt regime-level change. The 10 identified movements are briefly contextualised subsequently (see Table 3.1).

In Costa Rica, about a hundred grassroots groups from Limón opposed the 1994 Hydrocarbon Bill, which defined "oil exploration and exploitation as 'public interest'" and mandated the government to grant concessions for oil exploration (Oilwatch Costa Rica, 2005). This ultimately led to a 1999 court case where the Constitutional Court decided that the environment impact assessment (EIA) prepared by Harken Energy was inadequate and subsequently the Supreme Court ruled that concession contracts obtained by Harken were "null and void" (Oilwatch Costa Rica, 2005, p. 5). In 2002, another Harken Energy request for permission to exploit the resource was rejected as it was incompatible with national environmental law, and later a moratorium was enacted that bans oil exploration and extraction. The moratorium was renewed and is now valid through 2050 (Rico, 2019).

In Belize, following an offshore oil discovery in 2008, NGOs (starting with 6 and growing to 41 organisations) began campaigning for an oil moratorium. This coalition united NGOs from various backgrounds—e.g. Citizens Organised for Liberty through Action (COLA), advocating for political voice and rights, and Oceana, pursuing marine ecosystem safety and conservation. In 2007, the Belizean government unanimously passed the Petroleum Operations (Offshore Zone Moratorium) Bill, placing an indefinite moratorium in Belize's waters (Gomez, 2018).

Other successful movements were not able to ensure national level change. In Colombia, Indigenous groups partnered with international actors like Oxfam and successfully objected to oil and coal extraction by Ecopetrol in the Catatumbo River Basin near the Venezuelan border and home to the Moliton Bari Indigenous people. Ecopetrol is a former state-owned company "responsible for administering the nation's hydrocarbon resources," and privatised in the early 2000s (Temper et al., 2013, p. 86). In Mexico, the offshore oilfield Canatrell, owned by state-owned Petróleos Mexicanos (Pemex)—the 10th-largest oil company and responsible for approximately 86% of Mexico's oil production (Quist, 2019)—is located in the biodiversity rich Bay of Campeche with artisanal fishing producing red snappers, prawns, oysters and snooks (Quist, 2019). Local fishermen protested against continued expansion of an exclusion zone by the oil company (Soto et al., 2009) for 13 years before the state decided to reopen an area of 10,000 km^2, which had been formerly part of the 15,900 km^2 exclusionary zone (Quist, 2019).

In the Global North, social movements have had limited success. Spain's desire for energy independence (i.e. to reduce its oil and gas imports) (Burgen, 2014; Lin, 2014a, p. 1046) led to a policy to promote fracking and by 2014, 70 permits had been granted and a further 40 were pending (Burgen, 2014). A protest ("Assembly against Hydraulic Fracking") was organised by mostly

local NGOs and citizen assemblies and multilateral players campaigned that "Gas Is Not the Solution" (WWF, 2018). In April 2020, the Spanish government announced its intent to ban fracking at the national level through a new law for climate change and transition (Spanish News Today, 2020). Cantabria—with Santander as its capital on the north coast of Spain—was the first autonomous community to bring about new legislation to prohibit fracking.

In Australia, Friends of the Earth (FoE) Melbourne mobilised people through its "Quit Coal" campaign to ban fracking for onshore unconventional gas and successfully acquired a moratorium on conventional gas exploration and drilling in Victoria (Walker, 2016). Victoria was already a heavy coal producing and extracting region; this campaign was part of a broader "No New Fossil Fuels in Victoria" movement, which also prevented several planned coal mines from being constructed (Friends of the Earth Melbourne, 2019). At the same time, the Yes2Renewables (Y2R) movement in Victoria opposed brown coal consumption and advocated for transitioning towards renewable energy sources. Brown coal (the most polluting coal) is extracted from Victoria's Gippsland Basin and used in its power stations (Hughes, 2018, p. 1). A 2014–2016 campaign resulted in a commitment of the state government to a Victorian Renewable Energy Target (VRET) of 25% by 2020 and 40% by 2040 (Ewbank, 2016).

In Canada, the world's fourth-largest oil producer (US Department of Energy, 2019), and Alberta, home to the third-largest global oil reserves in the form of tar sands (Temper et al., 2013, p. 115), Indigenous groups (the Yinka Dene Alliance) and large international NGOs protested against the expansion and by 2016 had successfully prevented the proposed Enbridge Northern Gateway Pipelines (to carry tar sands oil from Alberta to Kitimat) from being built. Canada is also the third-largest global natural gas producer (Ritchie, 2017; EIA, 2019). During the 2012–2013 "gold rush of natural gas" with 18 proposals to transport fracked liquefied natural gas (LNG) from north-eastern British Columbia to the coastal areas in Prince Rupert and Kitimat (Friends of Wild Salmon, n.d.), a public campaign challenged the LNG export facility owned by Petronas, and in 2017 Petronas withdrew its application. This campaign was spearheaded by salmon scientists, climate scientists and "Friends of Wild Salmon" (which includes local businesses and fishers).

In the US, between 2002 and 2012, grassroots and larger environmental NGOs campaigned in Chicago to close the two old and highly polluting coal plants, Fisk and Crawford, and for Chicago to commit to a 100% renewable energy target (Germanos, 2019). This movement organised itself as the

Table 3.1. Contextual information on 10 case studies

Movement	Costa Rica oil moratorium	Belize offshore moratorium	Colombia oil and coal extraction	Mexico maritime space dispute	Cantabria, Spain, fracking ban	Victoria, Australia, UCG fracking ban	Yes 2 Renewables #VRET, Victoria, Australia	Enbridge Northern Gateway Pipelines	Gitwilgyoots LNG export facility	Chicago coal power plants
Country & region	Costa Rica, DC, Global South	Belize, SIDC, Global South	Colombia, DC, Global South	Mexico, DC, Global South	Spain, IC, Global North	Victoria, Australia, IC, Global North	Victoria, Australia, IC, Global North	British Columbia, Canada, IC, G7, Global North	British Columbia, IC, G7, Canada, Global North	Illinois, US, G7, Global North
Energy market: importer/ exporter, domestic fossil fuel production TWhs	Net importer, N/A	Net importer, N/A	Net exporter, Coal: 658.33 Oil: 543.1 Gas: 129	Net exporter, Coal: 72.22 Oil: 1,103.7 Gas: 332.16	Net importer, Coal: 12 N/A	Net exporter, Coal: 3,652.78 Oil: 239.6 Gas: 1,499.61	Net exporter, Coal: 3,652.78 Oil: 239.6 Gas: 1,499.61	Net exporter, Coal: 308.33 Oil: 3,197.1 Gas: 1,691.1	Net exporter, Coal: 308.33 Oil: 3,197.1 Gas: 1691.1	Net exporter, Coal: 3,972.22 Oil: 8,684.12 Gas: 8,996.68
Democracy score	8.13	6.13[25]	7.13	6.09	8.29	9.09	9.09	9.22	9.22	7.96
Relevant elections	2002 General election: small majority for incumbent Social Christian Union Party (centre right)	2015 General election: UDP (centre right) won 3rd term	Governor of Norte Santander Department 2003–2007, went on to run National Hydrocarbons Agency	State Campeche Governor 1997–present, Institutional Revolutionary Party (PRI)	2015 & 2019 Cantabrian elections: People's Party (conservative) & Regionalist Party	2014 state election: Conservatives lost to Labor Party	2014 state election: Conservatives lost to Labor Party	2011–2017 Liberal Party (centre right) in BC state: 2017 BC state election won by NDP & Green Party	2011–2017 Liberal Party (centre right) in BC state: 2017 BC state election won by NDP & Green Party	Chicago mayoral election 2011: Rahm Emmanuel (Democrat) beat incumbent, 2008: Obama implemented pollution regulations
Dates	1999–2003	2010–2017	2002–2006	1996–2017	2011–2019	2011–2016	2013–2016	2010–2016	2015–2017	2002–2012
Commodity	Crude oil	Crude oil	Crude oil, coal	Crude oil	Shale gas fracking	Unconventional gas fracking	Coal, electricity	Crude oil, natural gas, bitumen	Liquid natural gas	Coal
Stage in fossil fuel life cycle	Exploration & extraction	Exploration & extraction	Exploration & extraction	Exploration & extraction	Exploration & extraction	Exploration & extraction	Extraction / alternatives	Transportation	Transportation	Consumption
Success level	National policy change	National policy change	Regional policy change	Regional policy change	Regional policy change	Regional policy change	Regional policy change	Regional policy change	Regional policy change	Regional policy change

Chicago Clean Power Coalition in 2010 growing from 6 to 60 organisations. In doing so, and given the socioeconomic diversity of its members, it also focused on "health, economic and equity issues."

All the above movements were in politically "open" states (The Economist, 2019). Seven out of 10 movements were at the "extractive frontier" opposing the extraction of coal, oil and gas. The other three were in the Global North: two in Canada against the transportation of gas and a movement in Chicago opposed fossil fuel consumption (Scheidel & Schaffartzik, 2019). This discrepancy hints at the "uneven and combined" nature of capitalist development as conflicts in industrialised countries occur further along the fossil fuel life cycle (Scheidel & Schaffartzik, 2019). Seven of the cases used local arguments (local pollution) to mobilise people to protect their own health, using "not in my back yard" (NIMBY) arguments. Economic arguments were utilised in four cases to mobilise support and persuade policymakers. None of the cases emphasised global climate change issues. More often, and particularly in the Global South, local air, water and soil pollution and accompanying ecological and social ramifications were the leading arguments for opposing fossil fuel projects rather than a global climate change narrative. The next section further unpacks the key themes and lessons spanning these 10 movements.

3.3.4. Key common features of successful movements

Frames

We now derive lessons from the successful movements discussed above. The framing of an issue is key to the success of a movement. Structured and robust frames help to mobilise people and groups by amplifying grievances, mobilising resources, capitalising on political opportunity and building on cultural perspectives (Snow, 2013, p. 6).

Six distinct frames were employed by 10 movements, namely; green local environmentalism; economic ideas; climate change; Indigenous rights; health; and conservationism (see Figure 3.6). The "economic" frames mostly centred around employment vis-à-vis tourism and fishing; "green local environmentalism" targets concerns over local air, water and soil pollution and its subsequent impacts on food security and access to drinking water and sanitation; climate change focuses on the global challenges; Indigenous rights focus on the way in which their lands and waters were damaged; health focuses on the health impacts of the environmental consequences; and conservationism focuses on the need to conserve and protect nature.

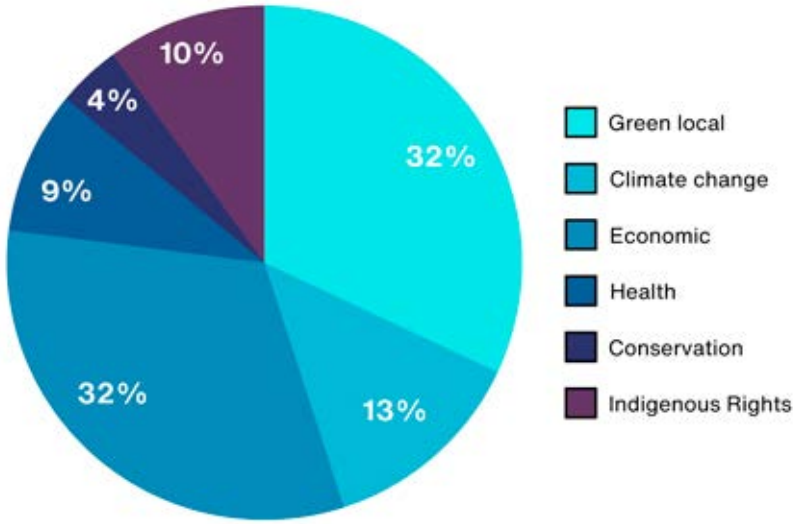

Figure 3.6. Dominant frames of successful movements on LFFU.
Source: Authors' calculation based on figures from the EJAtlas.

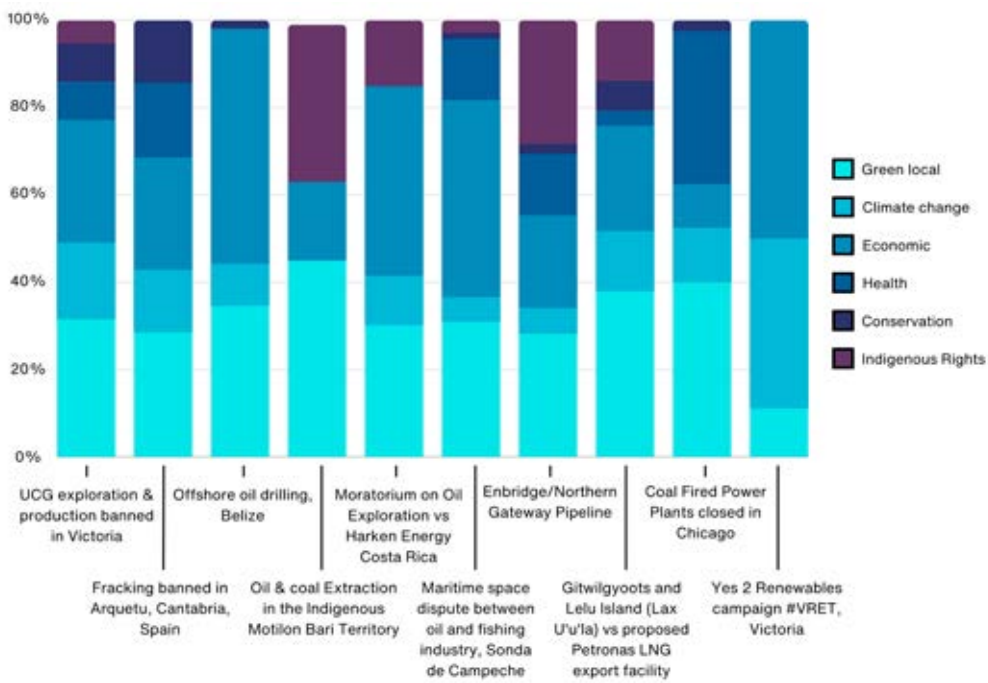

Figure 3.7. Breakdown of the key frames used per movement.
Source: Authors' calculation based on figures from the EJAtlas.

Figure 3.7 demonstrates the breakdown of frames within the 10 movements, illustrating that all included economic frames and arguments to some extent (illustrated in purple), although it was the overpowering frame for a subset; the dispute in Mexico centred around fishing, in Belize and Costa Rica it focused on fishing and tourism, and the Y2R campaign in Victoria centred on jobs lost in the renewable energy sector. A local frame was also consistently present and often the main frame. Two cases concerned fracking—in Spain also framed as NIMBY. Once broad mobilisation was achieved, both campaigns tied in climate change. Three movements on Indigenous territory, two in Canada against fossil fuel transportation and one in Colombia used frames of local impacts on the land, such as detrimental effects on biodiversity, Indigenous food supplies and local economies and culture, rather than centring on Indigenous rights. What is clear with framing is that local arguments are needed to mobilise people and global arguments can then piggyback on this process. Moreover, four movements (Belizean, US and both Canadian movements) strategically selected frames that differed from those needed to mobilise people (i.e. a focus on local arguments) from those needed to persuade policymakers (drawing on economic arguments). The movements in Belize and against the Enbridge pipeline were both mobilised to act in the wake of the 2010 BP Deep Horizon oil spill, but rather than focusing on the global issue of climate change, the campaigns respectively focused on the impacts on Indigenous people and economics (see Figure 3.6).

Tactics

Social movements predominantly target their efforts at the state, although in the case of movements against extraction, they may also target other powerful groups and institutions such as multinational corporations and the media. The success of a movement can be linked to its strategies and tactics, depending on its vulnerability to delegitimisation or openness to influence (Adams & Shriver, 2016; Walker et al., 2008). When the target is the state, the political structure determines tactical repertoires; political opportunities are less frequent in authoritarian states which lack avenues for engagement and repress people often pushing movements to use extra-institutional means (Adams & Shriver, 2016, p. 896; Osa, 2001). Where states have civic space and allow engagement, social movements can use a range of strategies. Second, the more challenging a demand is from the policymaker's perspective, the greater the degree of assertiveness needed by the social movement (Amenta et al., 2010; Skrentny, 2006, p. 1764). Third, all 10 movements used educational outreach programmes (consisting of training and informative

events, publishing scientific reports and door-to-door canvassing) to mobilise activists; this enabled awareness building among members of the public and communicating grievances. For instance, the Colombian NGO CODACOP (Corporación de Apoyo a Comunidades Populares) aims to mobilise peasants and Indigenous people through capacity building via training.

Fourth, the three most prominent tactics employed to persuade policy-makers were: lobbying, legal recourse and extra-institutional tactics such as marches and soft blockades. Lobbying (and advocacy) was employed at local, state and national levels, though it was much more prevalent in the former. For instance, the Chicago movement sought to close the two polluting coal facilities (Fisk and Crawford) by passing a city-level policy to impose pollution reductions). Sympathising aldermen of Chicago's city council adopted the movement's plea, and eventually the movement was able to sway enough public support to convince 35 of the 50 council members to support the proposed reductions. Eight movements used lawsuits as a tactic, which was particularly effective for the three movements that involved Indigenous people and rights infringement. For instance, in Costa Rica, the grassroots environmental group ADELA (Acción de Lucha Anti-Petrola) appealed to the Constitutional Court to revoke an exploration concession on the grounds that it violated the International Labour Organization's Convention on Indigenous and Tribal peoples (Oilwatch Costa Rica, 2005, p. 6). Finally, marches and media stunts were used by all movements and soft blockades. For example, local groups in the Australian movement against unconventional gas held public events to attract media attention and declaring themselves "gasfield free"; the protesters locked themselves to the gates and undertook tours of the country. In the anti-Enbridge pipeline campaign, protestors made sure that the pipeline could only be built if the protestors were arrested, increasing the transaction costs for the company and government.

Common features

Common features of the successful movements include that they were all in politically open states which allow protest and focused mostly on the state and sometimes companies. The successful movements were able to bring together large coalitions by "mobilising grievances" and perceptions of injustice. Six of the 10 movements studied actively involved Indigenous communities, although they are only 5% of the global population; this over-representation of Indigenous people reflects their existence at the extractive frontier and exploitation by fossil fuel projects (Gupta & Vegelin, 2016; Harriss-White, 2006). Successful movements had clear frames focusing on local environmental arguments and/or economic arguments (e.g. fishing

and tourism unemployment) that were underpinned by scientific reports, but only occasionally linking to climate change, suggesting that "climate change" is in and of itself not an impactful catalyst for environmental movements. Local and economic frames were most successful because they touched on local issues and because local elites may support them (Skrentny, 2006); however, an economic frame is also limited as it inhibits movements from demanding and achieving the structural changes necessary to LFFU. Moreover, lobbying at the local and state government level (all 10 movements) and court cases (8 of 10) were particularly effective while protest marches and soft blockades were the only non-institutional tactics used. Fifth, in order to actually mobilise policy change at national level (Belize and Costa Rica) this was easier as the business interests in fossil fuel were less important than the business interests in tourism and fishing. This also implies that the higher the business interests in fossil fuel the more difficult it is to get policy change (Muttitt & Kartha, 2020, p. 4). Sixth, in terms of temporality and spatiality, the strict definition of success (i.e. policy change, *not* simply halting a fossil project) this study uses only scrutinises about 2% of all environmental justice movements since 1970 (see 3.3.2). However, the above results are probably valid because they cover a long period, covered the Global North and Global South, and resonate with the literature.

3.4. Socio-environmental movements and court cases

3.4.1. Introduction

Eight of the 10 movements in the earlier analysis filed lawsuits and pursued legal action throughout their campaigns (see 3.3.3), 2 of which succeeded in passing policies at the national level that challenged fossil fuel production at the extractive frontier—contributing to efforts to LFFU. This section builds on this finding by exploring documented court cases to study the use of courts by socio-environmental movements in pursuit of LFFU. Many court cases are initiated by NGOs which are not strictly speaking social movements and may not always be demanding "environmental justice." This may also reflect why the database of these court cases may vary from the database of environmental justice movements. Moreover, the database may have an English-language bias and may not have included cases that were not explicitly referred to as "climate change cases."

As of July 2020, the database of the Sabin Centre for Climate Change Law (2020) included 1,576 CCL court cases. A preliminary assessment of these

reveals that most cases have been filed in the US (1,214 cases) and the Global North more broadly, creating a "Global North Bias" (Setzer & Vanhala, 2019, p. 12). Box 3.1 provides a short case study of a UK case.

Box 3.1. A recent UK case

A landmark decision in *R (on the application of Friends of the Earth Ltd and others) v. Secretary of State for Business Energy and Industrial Strategy* (2022) results from three separate lawsuits by (1) Friends of the Earth (FoE), (2) Client Earth and (3) the Good Law Project along with Johanna Wheatley against the Secretary of State for Business Energy and Industrial Strategy. The claimants challenged the legality of two policies in October 2021: (1) the Net Zero Strategy and (2) the Heat and Building Strategy, claiming that these violated the UK's Climate Change Act of 2008 (CCA), the Equality Act of 2010 and the Human Rights Act of 1998. The court ultimately ordered that the secretary of state lay before Parliament a fresh report complying with the CCA by March 2023. This case represents a victory for climate justice as the High Court, in this momentous decision, not only upheld the spirit and intent of the CCA, but enforced its provisions as well as the principles of transparency, accountability and equality.

Four waves of scholarship on socio-environmental movements and court cases can be identified. In the first, scholars focused on the range of potential legal arguments that could be used in different jurisdictions (Gupta, 2007) and the scholarship was dominated by legal scholars (Setzer & Vanhala, 2019). Following this, social movements and NGOs started to use the court system, and the second wave developed typologies of litigants, arguments used and the forum or the type of court. These cases quantified emissions and addressed major carbon-emitting corporations (Ganguly et al., 2018). A third wave examined the impact of litigation on society (Peel & Osofsky, 2013). A fourth wave focused on the differences in geographies and the ways in which social movements worldwide learn from each other.

We focus here on the court cases in the Global South. After exploring and presenting an overview of the documented court cases in the Global South (see Figure 3.8), we draw on these four theoretical waves of scholarship in unpacking the predominant actors, objectives and focuses of the sampled CCL cases.

3.4.2. Overview: CCL cases in the Global South

Figure 3.8 presents the global distribution of documented CCL court cases in the Global South, denoting the range of cases per country using a gradient

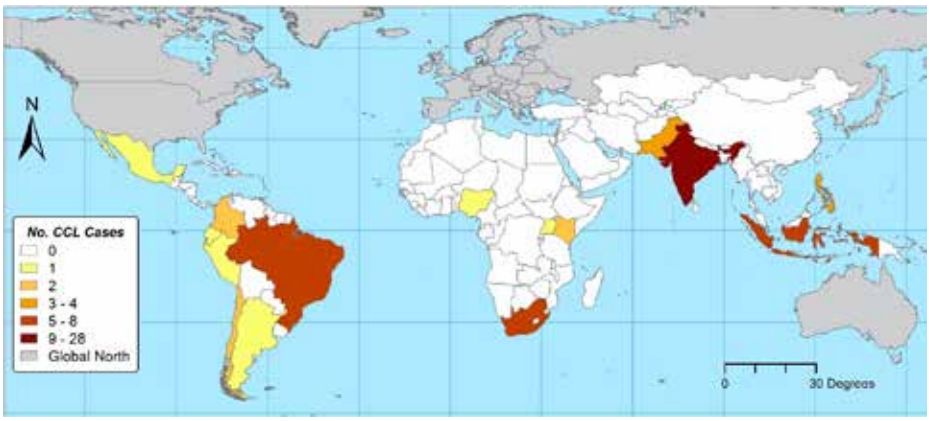

Figure 3.8. Map of climate change cases in the Global South.
Source: Authors' calculation based on figures from the EJAtlas.

scale. For instance, out of our data set, India documented the greatest frequency of CCL cases in the Global South (between 9 and 28), while the next frontrunners (Brazil, South Africa and Indonesia) hosted between 5 and 8 cases each. More generally, CCL court cases were identified in only 15 countries; while it is well emphasised that litigation may be significantly under-reported across many of these jurisdictions (Setzer & Vanhala, 2019; Peel & Lin, 2019), this lack of empirical evidence suggests that at present, CCL is not utilised to its greatest potential as a regulatory tool widely across the Global South. It could also reveal that the database is not complete as our court cases in Belize and Costa Rica are not reported here—implying that there may be an English-speaking bias in the database. Moreover, if court cases focus on local issues, these may not be classified as "climate change cases." Peel and Lin (2019) identified CCL cases in 11 countries in the Global South in 2018; this research indicates a noteworthy geographical expansion, particularly given that the four additional countries in which we identified CCL case claims have been filed in Latin America. This resonates with the earlier analysis of the four successful environmental movements for LFFU from the Global South—all of which were in Latin America (see 3.3.3, and also Chapters 4 and 8)—potentially implying that, while courts are currently not widely used across the entire Global South, actors from specific regions may be recognising its potential in regulating climate action and transnationally disseminating and sharing knowledge and information.

We note that court cases occur more frequently in countries with somewhat stable economies and institutions and that a lack of capacity

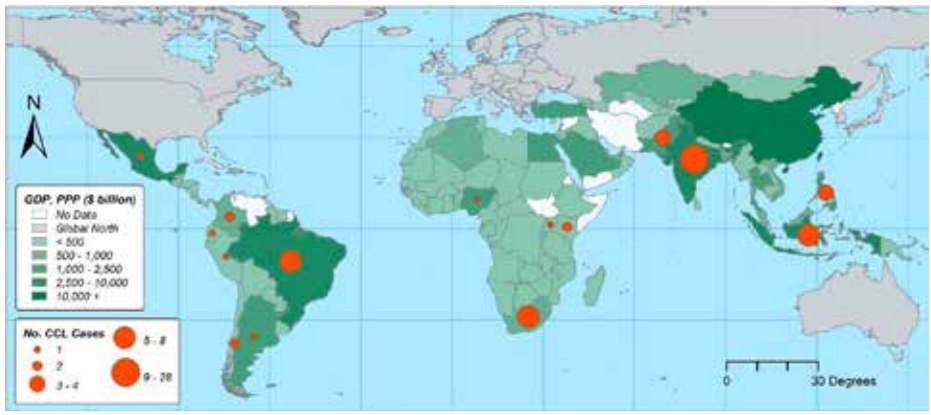

Figure 3.9. Map of climate change cases linked to GDP.
Source: Authors' calculation based on figures from the EJAtlas and World Bank (2020) data.

and the need to focus on immediate concerns may lead local actors not to use these courts (Setzer & Benjamin, 2020; Setzer & Byrnes, 2019). To explore whether this applies throughout the CCL cases in the Global South, Figure 3.9 overlays national GDP (PPP, billions $) data (as a crude estimate of "economic development") onto the distribution of CCL cases from Figure 3.8. Notably, the three leading nations in terms of the pure number of filed CCL cases—India, Brazil and South Africa—are members of the BRICS intergovernmental organisation and are more industrialised than others in the sample—again, purely from a crude, GDP-based angle.

Another factor that may encourage the use of courts is the degree to which a country is democratic and has civic space for local actors. Generally, in democratic countries, courts are seen as a place to "uphold and enforce the law and make the theoretical processes of democracy work more effectively in practice" (Preston, 2016, p. 14; Osofsky, 2005). This could imply that there would be less scope for court cases in authoritarian regimes such as China (Li, 2019, p. 160). Figure 3.9 assesses this by examining whether climate change court cases occur in democracies by matching their distribution. Figure 3.10 show these cases in terms of how the country's rank in terms of the Democracy Index 2019 (EIU, 2020). This superimposition of maps shows that of all the cases, only Chile is identified as a "full democracy," while the other cases have occurred in "flawed democracies" or "hybrid regimes." It is interesting to note that the highest-ranked democracies in the Global South (e.g. Uruguay, Mauritius) had no climate cases in the databases and that no cases appear to have occurred in "authoritarian regimes." This suggest that a democratic society

Figure 3.10. Map of climate change cases linked to the Democracy Index 2019.
Source: Authors' calculation based on figures from the EJAtlas and The Economist Intelligence Unit (EIU, 2020).

may be necessary for social actors to use the court system, but that merely being a democracy does not imply that there will be climate change court cases.

Another possible factor that could influence the location of court cases could be the vulnerability of the country concerned or the degree to which it emits greenhouse gases. We have assessed this by overlaying the distribution of cases onto a map with national CO_2 emissions in millions of tonnes (see Figure 3.11), and onto a map that assesses climate vulnerability using the Notre Dame Global Adaptation Initiative Country Index (ND-GAIN, 2019) (see Figure 3.12). This shows that countries with high emissions were also countries with climate litigation (GCA, 2020). India's CO_2 emissions in 2018 accounts for 7% of global emissions (ranking third among the chief global emitters on a total basis, i.e. not a per capita basis) and so it seems logical that 40% of the climate litigation cases studies were in India. This may imply that there is more climate litigation in countries with high emissions.

However, we do not find a similar relationship with respect to vulnerability. Figure 3.12 shows that the most vulnerable countries are not necessarily the ones where there is more litigation. For example, the least vulnerable country in the Global South (Chile, ranking 21st globally) had as many court cases as the most vulnerable (Kenya, ranking 150th globally). Thus, while vulnerability may influence individual actors to use the national courts, it is the mitigation potential that draws these actors to use the courts more (Setzer & Benjamin, 2020; Peel & Lin, 2019).

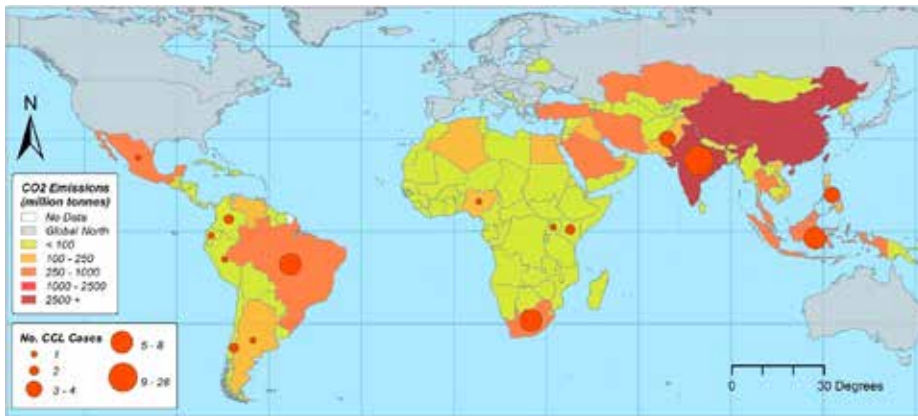

Figure 3.11. Map of climate change cases in relation to total emissions.
Source: Authors' calculation based on figures from the EJAtlas and the GCA (2020).

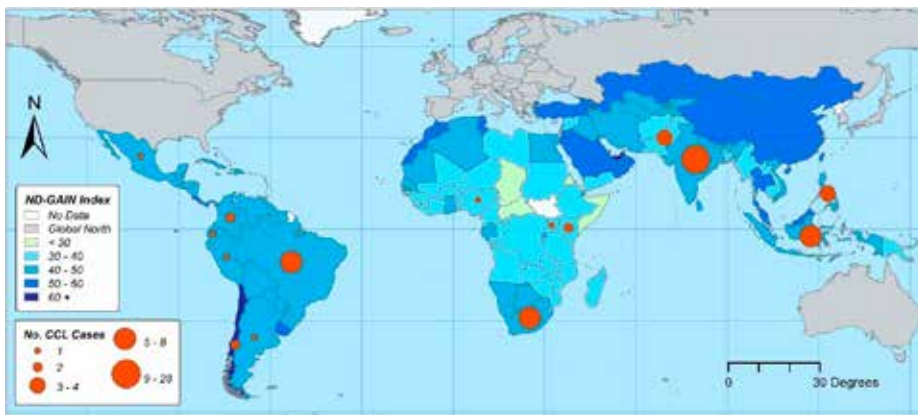

Figure 3.12. Map of climate change cases in relation to vulnerability.
Source: Authors' calculation based on figures from the EJAtlas and the Notre Dame Global Adaptation Initiative (ND-GAIN, 2019).

3.4.3. Key common features of the court cases

In terms of actors (both plaintiffs and defendants) in the court cases in the Global South, we explore both the top-down and bottom-up nature of regulation through the judiciary by adopting a typology from similar studies (Osofsky, 2005; Markell & Ruhl, 2012). We categorise actors into (i) government; (ii) NGO; (ii) individual; and (iv) corporation; along with an additional class (v) court. While courts are part of the judiciary, this was selected to see if courts were willing to act on their own accord with regard to climate change issues.

Out of the 71 cases included in our study, 50 were filed by citizen groups (NGOs: 19; individuals: 40).[2] This shows that citizen's groups were most active in litigating on climate change. In only 14 cases, the governments also acted as plaintiffs; in 4 cases corporations were the plaintiff. Top-down participation in such cases did not occur much and was geographically concentrated in Brazil and Indonesia. Instead, the courts were used from "below" implying that it was citizens who used the courts to challenge regional and national policies. This is in line with others who have studied climate cases and argue that litigation is used as a bottom-up phenomenon to address government (or corporate) failings (Wilensky, 2015; Peel & Lin, 2019).

In terms of defendants, governments and (to a slightly lesser extent) corporations were indisputably the most frequently targeted groups in the climate court cases. About 59 cases focused on the state and 29 on the corporations and sometimes they were both simultaneously the defendant. Only 4 of the 71 cases focused on citizen's groups as the defendant. This shows that at this stage of the court cases, it is mostly citizens who are objecting to the greenhouse gas emissions of the state and corporations.

In terms of arguments and approaches, most climate cases from the Global South (60/71, or 84%) focused on climate change mitigation (e.g. calling for the closure of coal-fired power plants), while only 4 cases (6%) focused on adaptation (e.g. challenging land use); the remaining 7 cases focused on options that would address mitigation and adaptation. The projects that focused on mitigation prioritised energy and development projects (25) and coal was the most important focus (14/25). Eighteen cases focused on mitigation via challenging deforestation and land-use violations and 15 questioned contradictions within mitigation policies. Of the 71 cases, 63 (89%) were proactive in nature, and only 7 were inherently "anti-regulatory" (i.e. reactively challenging existing legislation).[3] This leads us to conclude that the climate change cases in the Global South mostly focus on catalysing positive and proactive change on the climate change mitigation frontier.

Juxtaposing these findings with those of the predominantly involved actor groups indicates that overall, such court cases in the Global South tend to be driven by coalitions of NGOs and/or affected individuals (as plaintiffs) who challenge governments and/or corporations for climate-related violations, the end result of which would very likely yield positive implications for LFFU and thus climate change mitigation. Finally, at the time of research, 57 of the 71 cases had reached a final verdict; 47/57 resulted in "successful" rulings

2 Note that these do not sum to 50, because multiple litigants (and defendants) may exist in any given CCL case

3 The final case was neither proactive nor anti-regulatory

supporting LFFU (in which the court either ruled in favour of the litigants of a proactive CCL case, or against the litigants of the anti-regulatory case), while only 10/57 were deemed unsuccessful by the same metric. Altogether this seems to indicate that in the Global South, courts have thus far offered a promising and effective platform for civil society to mobilise and pursue bottom-up change, synergising with both LFFU and climate change mitigation. Box 3.2 presents some insights from court cases in Africa.

Box 3.2. Court cases in Africa

Most climate relevant court cases in Africa (about 14) have been in five countries. Courts have tried to balance fundamental human rights with socio-economic rights, as fossil fuels are an energy source authorised by existing laws and policies for addressing energy security and poverty alleviation (*Save Lamu and Others v National Environmental Management Authority and Amu Power Co. Ltd.*, 2019; *Earthlife Africa Johannesburg v Minister of Environmental Affairs and Others*, 2017). Most plaintiffs are NGOs on behalf of vulnerable communities and individuals, and most cases occur where there is some civic space and laws do not impede their activities (Poppe & Wolff, 2017; Buyse, 2018). Most defendants are private companies and government agencies that authorise their projects without regard for socio-ecological consequences. NGOs have argued that such projects: (i) violate fundamental human rights (*Gbemre v Shell Petroleum Development Company of Nigeria Limited and Others*, 2005); (ii) have been authorised without (a) a proper investigation of climate change impacts (*Earthlife Africa Johannesburg v Minister of Environmental Affairs and Others*, 2017); (b) proper public participation (*Save Lamu and Others v National Environmental Management Authority and Amu Power Co. Ltd.*, 2019); (c) regard for international environmental law and treaty obligations (*Centre for Food and Adequate Living Rights Limited et al. v Attorney General of the Republic of Uganda et al.*, 2020); and (iii) demonstrate the government's climate inaction (*Mbabazi and Others v The Attorney General et al.*, 2012). Resort to human rights often serves as a "gap filler," in the absence of laws that specifically provide redress for climate change impacts (Savaresi & Auz, 2019). NGOs have sought (i) compensatory damages and (ii) declarations to mitigate climate change impacts. Courts have consistently upheld the requirement for entities to conduct environmental impact assessments properly before the state may issue permits *(Save Lamu and Others v National Environmental Management Authority and Amu Power Co. Ltd.*, 2019*; Earthlife Africa Johannesburg v Minister of Environmental Affairs and Others*, 2017). However, they are not likely to go so far as to forbid fossil fuel investments as long as these are legally permissible.
Source: Mugga et al. (2023).

3.5. Conclusion

This chapter has discussed successful LFFU social movements worldwide and climate change litigation primarily in the Global South (because of the huge coverage in the literature in the Global North). We now link the findings from the socio-environmental movements (see 3.3) and climate change court cases from the Global South (see 3.4) to our broader inclusive energy transition theory (see 2.2.3), by inferring their respective implications for the landscape, regime and niche levels and identifying arguments and approaches spanning social, ecological and relational dimensions of inclusiveness.

First, in order to be able to create a social movement, economic and local framings are needed to convince local actors to participate in the process. Across all 10 movements in the analysis, the two most successful frames were those that embodied "economic" arguments and "local environmental" arguments. The former centres around the implications that fossil fuel production has on local fishing/tourism and other jobs, which can be understood as threats to the livelihoods of local community members through reduced employment and food access (socially exclusive) and disruptions in local ecosystems (ecologically exclusive). The "local environmental" frames championed arguments such as protecting local water, soil and air resources from fossil-related pollution, which would also inherently disrupt ecosystems (be ecologically exclusive) and indirectly threaten human livelihoods and health (socially exclusive).

Second, our evidence suggests that successful socio-environmental movements and courts in the Global South have been able to make niche changes in terms of closing down individual coal-fired plants or arresting deforestation.

Third, in order to make a regime change, these movements have often used the courts to challenge state policy and to set a legal precedent. Generally speaking, public protests raise consciousness but may not lead to a change in policy. The court cases are more effective in this regard. The vast majority of court cases led to decisions that could reduce greenhouse gas emissions and had higher "success rates" (rendering verdicts in favour of such mitigative implications in 47/57 cases) than the wider set of actions adopted by the socio-environmental movements. This may suggest that using courts is a more effective way to achieve a better result. However, courts can mostly be used in countries where there is some degree of democracy and space for civic actors, and in countries with some level of institutionalisation. Though these successful court cases in promoting climate mitigation may

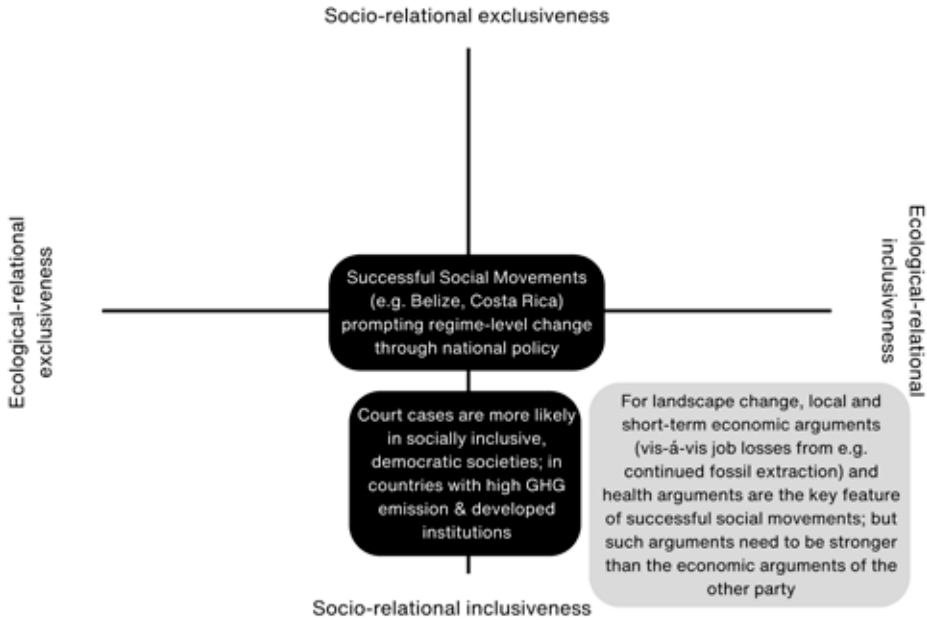

Figure 3.13. Social movements, courts and inclusive transitions.

offer promising prospects as precedents that can eventually shape the regime (and landscape) of fossil fuel-related court cases, it seems that such a regime may be bound by contextual factors, like national economic capacity and national emissions rates. Such court decisions either lead directly to new policy at the state level, or indirectly by encouraging other social actors to build on the legal precedent and to object to fossil fuel production (shaping the regime). Regime change seems to be in its nascent stages, seeing as only 10 environmental movements since 1970 were successful in enforcing policy change, and of those only two did so most impactfully at the national level. Moreover, since none of the six movements from the Global North succeeded in implementing national-level policy change (likely due to the home economies' reliance on fossil fuel exporting and existing infrastructure), continued efforts to catalyse niche-level events (like the two coal-fired power stations closed in Chicago) may have to be both amplified and fine-tuned to eventually rattle the regime level.

Fourth and finally, we are yet to see a landscape change where the rise of social movements and their repertoire of actions, including court cases, eventually influences the relevant landscape (i.e. international/multilateral policies banning coal, oil and gas extraction/production). The role of social movements and courts is key to facilitating the energy transition.

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