

Evaluating Strategic Litigation as a Tool for Climate Change Mitigation

A photograph of a field of yellow flowers in the foreground with four wind turbines in the background against a sunset sky. The sun is low on the horizon, creating a warm orange and yellow glow. The wind turbines are silhouetted against the sky.

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Evaluating Strategic Climate Litigation

- Grantee: ClientEarth
- Grantor: Children's Investment Fund Foundation (CIFF)
 - new strategy to fund litigation
- Evaluation Team:
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What is strategic climate litigation?

- Strategic litigation = use of litigation (usually in combination with other legal and non-legal methods) to seek legal and social change
- Strategic *public* climate litigation aims to influence public policy or policy decisions with climate change implications
- Strategic *private* climate litigation cases launched with the explicit aspiration to influence corporate behaviour and strategies in relation to climate change
- (Ganguly 2018)



CIFF Climate Program

Phase I, 2014-2017

LITIGATION

- 3-year grant to ClientEarth for program of strategic climate litigation in Europe
- 3 workstreams:
 - **Air Quality** - To drive cities and countries to improve air quality by complying with European air quality regulations, as a means to achieve co-benefits for climate change mitigation
 - **Company and Financial** - To motivate behavioural change by companies, investors, and other financial actors to disclose and manage climate-related business risks
 - **European Energy and Coal** - To accelerate the phase out of coal power in Europe and put the continent on track for the transition to a clean, flexible, and competitive energy system

POLICY

- ECF grant for promoting European climate leadership and pathway to 80-95% emissions reduction
- Focused on improving existing regulation and advocating for new, more stringent standards

ENGAGEMENT

- CDP grant to drive corporate emissions reductions
- Focused on compiling evidence base to strengthen investor engagement with companies

Accelerate low carbon transition to keep global warming <1.5°C

Scope of Evaluation

- Recognition that litigation has long timelines and impacts take time to manifest fully
- OECD DAC criteria as organizing frame:
 - relevance, efficiency, effectiveness, impact, sustainability
- Evaluation also focused on *strategic* questions around value of litigation tool



<https://www.greenbiz.com/article/are-countries-legally-required-protect-citizens-climate-change>

Theory of Change

Activities and outputs that seek to:

- Establish legal compliance risk
- Create credible litigation threat
- Enforce law through litigation



Potential outcomes:

- Change business culture: climate change = material financial risk
- Improve compliance with EU environmental & competition law to reduce coal/ increase clean energy
- Ensure compliance with EU air quality legislation with climate co-benefits (decarbonization of transport and heating sectors)
- Shift public/political attitudes in favour of stronger climate laws



Overall impacts of:

- Reducing GHG emissions and climate change mitigation
- Implementation of EU law consistent with 2°C or lower pathway

Assumptions

Internal:

- Clear and coherent strategy
- Efficient management
- Synergies and co-benefits maximized
- Good communication channels used
- Grant substantive and well-targeted

External:

- Effective partners
- Receptive courts
- Timely judgments
- Constructive engagement with litigation by other stakeholders

Mixed Methodology



- Desktop research – global climate law and litigation
- Document review – quarterly progress reports and updates, internal M&E (*activities, outputs, outcomes*)
- Two phases of semi-structured interviews:
 - Inception: Internal (*objectives, expectations, likely challenges*)
 - End Point: Internal, Partner, External (*causal links – activities, outputs, outcomes, impact*)
- Media/comms analysis (*visibility > impact of litigation*)
- Qualitative analysis of interview & other data

Challenges

- Establishing causal links – indirect effects, intervening factors, long timeframes
- Accounting for breadth of activities & understanding relationships between them
- What is success?
 - Winning cases?
Establishing precedent?
 - Profile vs incremental change



Implications – program design

- Value of Theory of Change
- Combine showpony & workhorse cases
- Funding approach
 - support and time for foundational work as well as media and communications activities.
- Flexibility to adapt strategy in response to opportunities, changing circumstances, learnings
- Longer-term funding to give initiatives sufficient time to mature.

Implications - evaluation

- Quantification difficult, often inappropriate
- Holistic evaluation useful
- Longer-term evaluation approaches allow clearer assessment of impact
- Explore emerging iterative and adaptive approaches to evaluation for programmes that involve complex and evolving interventions



Next Phase...

- 2018-2020 - new funding commitment – consolidation and expansion of legal interventions and geographies
- Evaluation will build on Phase I – longitudinal approach
- Plus - more adaptive, iterative method + strategic input
- Regular strategy testing sessions to consider:
 - changes in external environment, shifts in interests or relationships among key stakeholders, progress made or obstacles encountered
 - opportunities to transform learning from implementation into immediate actions and course correction

Q&A

