



## **Human Rights and Climate Change Litigation – International Developments**

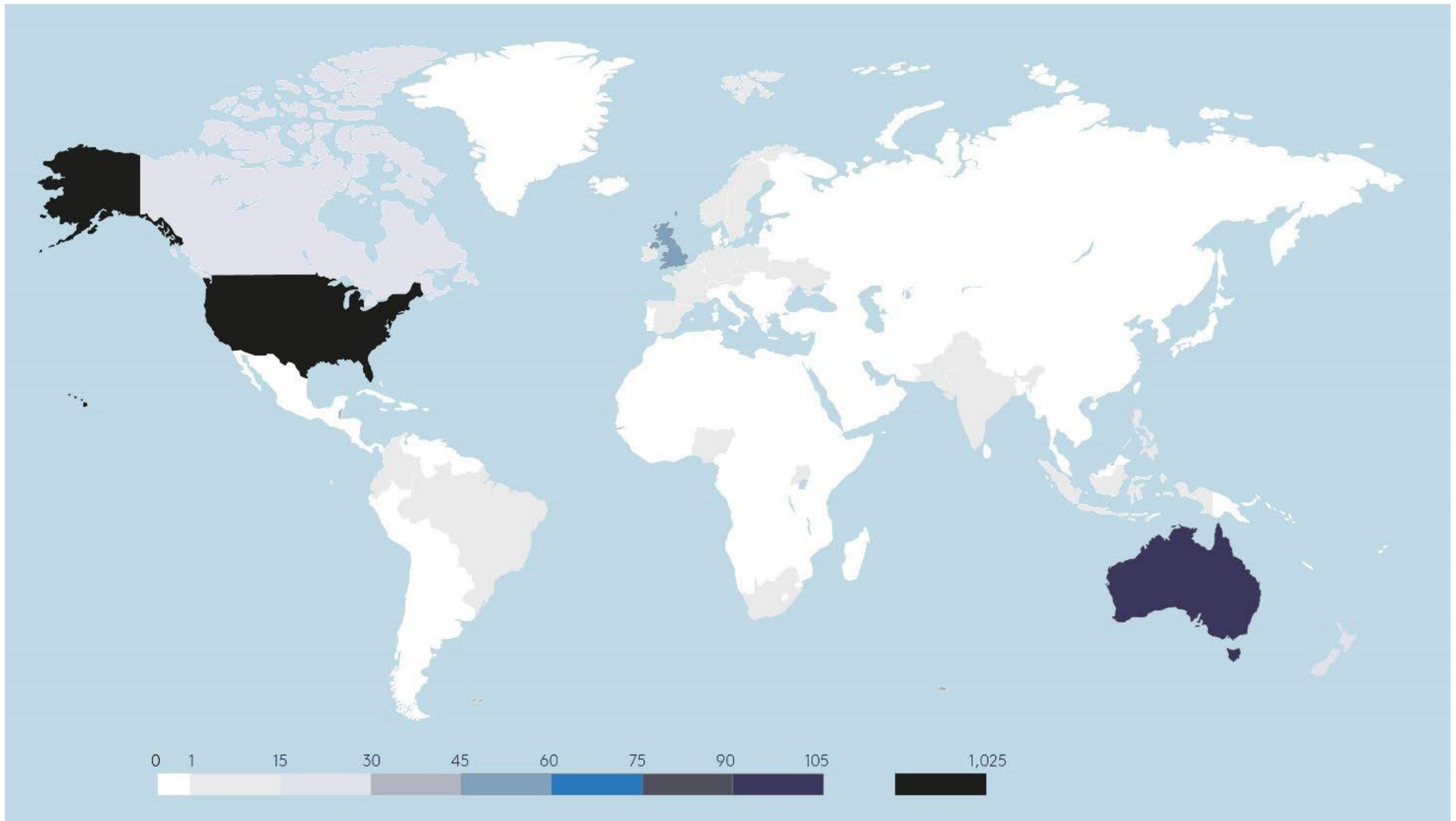
**Bianca Kabel, Level Twenty Seven Chambers**

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*"Climate change is a reality that now affects every region of the world. The human implications of currently projected levels of global heating are catastrophic. Storms are rising and tides could submerge entire island nations and coastal cities. Fires rage through our forests, and the ice is melting. We are burning up our future – literally."*

Michelle Bachelet, United Nations High Commissioner for Human Rights, 9 September 2019, Opening Statement to the 42<sup>nd</sup> session of the Human Rights Council



Source: J Setzer and R Byrnes “Global trends in climate change litigation: 2019 snapshot”, Policy Report July 2019, [http://www.lse.ac.uk/GranthamInstitute/wp-content/uploads/2019/07/GRI\\_Global-trends-in-climate-change-litigation-2019-snapshot-2.pdf](http://www.lse.ac.uk/GranthamInstitute/wp-content/uploads/2019/07/GRI_Global-trends-in-climate-change-litigation-2019-snapshot-2.pdf)

# >> Timeline: Key Developments

## > 2015 – *Urgenda*

- *Positive duty owed by the State*
- *State obliged by court order to achieve a result – the reduction of emissions*

## > 2015 – *Leghari v Federation of Pakistan*

- *Held that State’s delay in implementing climate change policy offended the fundamental rights of its citizens*

## > 2015-2019 – *Urgenda*

- *Unsuccessful appeals by the Dutch Government to the Court of Appeal and Supreme Court*
- *Supreme Court adopts precautionary principle and “high degree of plausibility” standard to overcome lack of scientific certainty*
- *Rejects market substitution defence*

## > 2019 – *Juliana v U.S.*

- *The Ninth Circuit exercises some restraint*

## >> Impacts on developments or projects?

> *Ali v Federation of Pakistan (pending)*

> *IPC Petroleum France SA v France*

> *Greenpeace v Norway (pending appeal)*

## >> Key takeaways

- > Significant increase globally in climate change litigation
- > Increased human rights focus – the “rights turn”
- > Domestic courts showing greater willingness to:
  - recognise the link between climate change and fundamental rights
  - recognise consequential duties and obligations upon State actors
  - adopt different or novel arguments to overcome difficulties in proof of causality and impact
  - apply the precautionary principle in dealing with scientific uncertainty
  - hold governments to their international commitments to climate change as part of domestic law
  
- > Australia: late to the party, but soon to be at the forefront?

**Bianca Kabel**

T +61 7 3008 3999

E [BIANCA.KABEL@LEVEL27CHAMBERS.COM.AU](mailto:BIANCA.KABEL@LEVEL27CHAMBERS.COM.AU)

[level27chambers.com.au](http://level27chambers.com.au)