

# ICJ AO Litigation Notes

## Digest

February, 2026



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# About this publication

## Background

On 23 July 2025, the International Court of Justice (ICJ) delivered its historic unanimous advisory opinion (AO) on States' obligations in relation to climate change. Following the landmark climate advisory opinions from the International Tribunal for the Law of the Sea and the Inter-American Court of Human Rights, the ICJ provided exceptional clarity regarding the scope and content of States' duties under international law in the context of the climate crisis. This clarity has the potential to substantially enhance and inform ongoing climate cases as well as future claims before domestic, regional, and international courts. Indeed, since its issuance, the opinion has already been quietly and pervasively taken up across the litigation landscape.

To translate the ICJ AO's normative clarity into practical litigation tools, a coalition of climate litigation practitioners have developed this compendium of structured "Litigation Notes". These notes are designed to assist lawyers in integrating relevant conclusions of the ICJ AO into ongoing and future cases before domestic, regional, and international courts and quasi-judicial bodies towards advancing climate justice.

The litigation notes break down the opinion by topic, prioritizing topics particularly charged in courts at present and/or critical for evolving strategies and the next "generation" or phase of climate litigation. The notes do not aim to be comprehensive in scope. Each contains sections on:

- Key excerpts (including paragraph numbers and specific references) of the most relevant text from the opinion
- Situating the core findings in examples from the broader jurisprudential landscape to highlight what types of cases and claims could use such excerpts

The compendium also includes a list of selected excerpts of overarching importance.

# Litigation Note on Government Framework Cases

Authors: Joe Udell and Floris Tan<sup>1</sup>

Reviewer: Ahmed Elseidi<sup>2</sup>

## Introduction

The International Court of Justice (ICJ)'s Climate Advisory Opinion (AO) features a range of pronouncements that could significantly advance government framework litigation. Framework cases target the overall emissions reduction targets that governments adopt, and the regulatory framework to support them (or lack thereof).<sup>3</sup> These types of cases generally challenge governments' insufficient mitigation ambition (also known as "Ambition Gap cases") or governments' failure to implement measures to meet their climate targets (also known as "Implementation Gap cases"). The ICJ AO is highly relevant to these cases because (1) most such cases challenge emissions reduction targets that are based on, or reflected in, governments' Nationally Determined Contributions (NDCs) under the Paris Agreement, and (2) plaintiffs often rely, directly or indirectly, on governments' obligations under international law, which forms the basis of the Opinion.<sup>4</sup>

Over the last ten years, there have been a number of groundbreaking decisions in government framework litigation, where national and regional courts have found governments' insufficient climate policies in breach of their legal obligations. The ICJ AO builds on these precedents and provides greater clarity on some of the most contentious aspects of framework cases, in particular the standards against which a State's compliance with its climate obligations must be assessed. The following note illuminates these key findings and explains how they are relevant to government framework litigation.<sup>5</sup> Two sections follow: key excerpts from the AO and categories of climate litigation for which those excerpts may be relevant.

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<sup>1</sup> Climate Litigation Network (CLN)

<sup>2</sup> Egyptian Foundation for Environmental Rights (EFER)

<sup>3</sup> Catherine Higham, Joana Setzer & Emily Bradeen, *Challenging government responses to climate change through framework litigation* (LSE Grantham Research Institute on Climate Change and the Environment, Sept. 2022), [www.lse.ac.uk/granthaminstitute/wp-content/uploads/2022/09/Challenging-government-responses-to-climate-change-through-framework-litigation-final.pdf](http://www.lse.ac.uk/granthaminstitute/wp-content/uploads/2022/09/Challenging-government-responses-to-climate-change-through-framework-litigation-final.pdf) (last accessed Dec. 12, 2025).

<sup>4</sup> This note draws from the following blog: Joe Udell and Floris Tan, *New Standards in Government Framework Litigation: Legal Implications of the ICJ Advisory Opinion on Climate Change* (Sabin Center for Climate Change Law, Aug. 5, 2025), [blogs.law.columbia.edu/climatechange/2025/08/05/new-standards-in-government-framework-litigation-legal-implications-of-the-icj-advisory-opinion-on-climate-change](https://blogs.law.columbia.edu/climatechange/2025/08/05/new-standards-in-government-framework-litigation-legal-implications-of-the-icj-advisory-opinion-on-climate-change) (last accessed Dec. 12, 2025).

<sup>5</sup> Lucy Maxwell and others, *Laying the foundations for our shared future: How ten years of climate cases built a legal architecture for climate protection* (Climate Litigation Network, 2025), [climatelitigationnetwork.org/wp-content/uploads/Laying-the-foundations-for-our-shared-future-Climate-Litigation-Net-work-ONLINE.pdf](https://climatelitigationnetwork.org/wp-content/uploads/Laying-the-foundations-for-our-shared-future-Climate-Litigation-Net-work-ONLINE.pdf) (last accessed Dec. 12, 2025).

## Relevant Excerpts from the ICJ AO

The ICJ AO's findings address several topics common to government framework litigation. Notably, the ICJ clarified governments' binding mitigation obligations under the climate treaty regime; definitively stated that 1.5°C is the temperature limit of the Paris Agreement; affirmed a "stringent" due diligence standard of care regarding mitigation action; stressed the importance of the principle of common but differentiated responsibilities and respective capabilities (CBDR-RC) in determining States' NDCs; confirmed that human rights obligations apply to climate change; advanced the principle of intergenerational equity; and strengthened the legal foundation for broader climate remedies.

### A. Scientific basis of the Advisory Opinion

*Reports of the Intergovernmental Panel on Climate Change (IPCC) represent the best available science on the causes, nature, and consequences of climate change.*

**Para. 74:** States agreed that IPCC reports "constitute the best available science on the causes, nature and consequences of climate change."

**Para. 76:** "According to the IPCC, climate change refers to '[a] change in the state of the climate that . . . may be due to natural internal processes or external forcings such as modulations of the solar cycles, volcanic eruptions and persistent anthropogenic changes in the composition of the atmosphere or in land use' (IPCC 2023 Glossary, p. 122).

For the purposes of this Advisory Opinion, the Court notes that this definition is consistent with that of [Article 1, paragraph 2](#), of the UNFCCC, which characterizes climate change as 'a change of climate which is attributed directly or indirectly to human activity that alters the composition of the global atmosphere and which is in addition to natural climate variability observed over comparable time periods'."

**Para. 78:** "The IPCC has determined that approximately 3.3 to 3.6 billion people are highly vulnerable to climate change."

**Para. 284:** "The Court is aware that scientific research on climate change is well developed. In this regard, reports by the IPCC constitute comprehensive and authoritative restatements of the best available science about climate change at the time of their publication (see paragraphs 74, 77–83 and 277–279 above)."

## B. Mitigation obligations under the United Nations Framework Convention on Climate Change (UNFCCC)

*States must take action that is actually capable of mitigating climate change under the UNFCCC.*

**Para. 208:** “[I]t cannot be said that an obligation of result, such as an obligation [under [Article 4.2\(a\)](#)] to ‘adopt national policies and take corresponding measures on the mitigation of climate change’, will be met merely by the adoption of any policies and the taking of corresponding measures. To comply with this obligation of result, the policies so adopted and the measures so taken must be such that they are able to achieve the required goal. In other words, the adoption of a policy, and the taking of related measures, as a mere formality is not sufficient to discharge the obligation of result.”

## C. Paris Agreement temperature goal

**Para. 224:** The ICJ definitively concluded that 1.5°C is “the parties’ agreed primary temperature goal for limiting the global average temperature increase under the Paris Agreement.”

## D. Mitigation obligations under the Paris Agreement

### **Nationally Determined Contributions (NDCs)**

*States’ NDCs must (1) represent an adequate contribution to the global effort for 1.5°C, (2) collectively add up with other NDCs to achieve that goal, and (3) be fair and ambitious, in line with CBDR-RC – and thus historic responsibility.*

**Para. 236:** “[T]he mere formal preparation, communication and maintenance of successive NDCs is not sufficient to comply with the obligations under [Article 4](#) [...]. The content of the NDCs is equally relevant to determine compliance.”

**Para. 240:** Although [Article 4, paragraph 3](#), of the Paris Agreement uses “will” rather than “shall” in relation to the content of NDCs, the Court explained that this provision “is not to be read as merely hortatory.” Instead, “‘will’ is used here in a prescriptive sense, reflecting the expectation that ‘successive nationally determined contributions will represent a progression’ and ‘reflect [a party’s] highest possible ambition’, without prescribing precisely what constitutes a progression, or what reflects a party’s highest possible ambition.”

Accordingly, the ICJ took it upon itself to – in its own words – “shed light” on the substantive content and obligations related to NDCs. *This is significant as the Court’s findings counter the notion that NDCs are purely procedural, voluntary, and/or aspirational.*

### **Substantive NDC content**

**Para. 226:** The principle of CBDR-RC plays a “key role” in the interpretation and implementation of the Paris Agreement;

**Paras. 240–241:** The provision in [Article 4, paragraph 3](#), that “[e]ach Party’s successive nationally determined contribution will represent a progression” over its current NDC, “means that a party’s NDCs must become more demanding over time;”

**Para. 242:** “[A] party’s NDCs must reflect ‘its highest possible ambition;”

**Para. 242:** The content of an NDC “must [. . .] be capable of making an adequate contribution to the achievement of the temperature goal,” which is to “hold the increase in the global average temperature to below 1.5°C;”

**Para. 243:** “NDCs must be ‘informed by the outcomes of the global stocktake;”

**Para. 244:** NDCs must be sufficiently transparent;

**Para. 245:** “[T]he discretion of parties in the preparation of their NDCs is limited;”

**Para. 245:** States must collectively ensure that “when taken together, [their NDCs] are capable of achieving the temperature goal” of 1.5°C;

**Para. 247:** Assessing NDCs “will vary depending, *inter alia*, on historical contributions to cumulative GHG emissions, and the level of development and national circumstances of the party in question;”

**Para. 248:** The [Paris Rulebook](#) “requires each party to provide information together with its NDCs on how it considers the NDCs fair and ambitious in light of its national circumstances, including in relation to ‘[f]airness considerations’ and ‘equity’.”

### **Due diligence**

*States must adhere to a “stringent” due diligence standard and do their “utmost” to carry out their highest possible ambition in line with CBDR-RC and historical responsibility.*

**Para. 246:** “[T]he **standard of due diligence** to be applied in preparing the NDCs is **stringent** [...]. This means that each party has to do its utmost to ensure that the NDCs it

puts forward represent its highest possible ambition in order to realize the objectives of the Agreement.” (*emphasis added*)

**Para. 247:** There “exists a link between the concept of due diligence and the principle of common but differentiated responsibilities and respective capabilities in light of different national circumstances [...]”

**Para. 252:** Each Party must exercise stringent “due diligence in its efforts and in deploying appropriate means to take domestic mitigation measures, including in relation to activities carried out by private actors.” (see also **para. 254**)

### **Implementing NDCs**

*All States must individually and proactively pursue measures that are reasonably capable of implementing their NDCs.*

**Para. 251:** “The obligation that parties ‘shall pursue domestic mitigation measures’ is substantive in nature. The obligation is incumbent on ‘[p]arties’, which must be read as ‘all parties’, thus creating individual obligations for each party to the Agreement.”

**Para. 253:** “What is required of parties under [Article 4, paragraph 2](#), is not a guarantee that communicated NDCs will be achieved, but rather that they will make best efforts to obtain such a result. The Court considers that the obligation to ‘pursue domestic mitigation measures’ that aim to achieve the objectives of their NDCs requires States to be proactive and pursue measures that are reasonably capable of achieving the NDCs set by them. These measures may include putting in place a national system, including legislation, administrative procedures and an enforcement mechanism, and exercising adequate vigilance to make such a system function effectively, with a view to achieving the objectives in their NDCs.”

**Para. 254:** “[T]he standard of due diligence attaching to the obligation to pursue domestic mitigation measures is stringent on account of the fact that the best available science indicates that the ‘[r]isks and projected adverse impacts and related losses and damages from climate change escalate with every increment of global warming (very high confidence)’ [...]”

## **E. Customary international law**

*States have independent customary international law duties to take climate action on the basis of the duty to prevent significant transboundary harm and the duty to cooperate, regardless of the diffuse nature of climate change or whether they are party to the climate change treaties.*

**Para. 278:** “The determination of ‘significant harm to the climate system and other parts of the environment’ must take into account the best available science, which is currently to be found in the reports of the IPCC.”

**Para. 279:** “Accordingly, the Court considers that the diffuse and multifaceted nature of various forms of conduct which contribute to anthropogenic climate change does not preclude the application of the duty to prevent significant harm to the climate system and other parts of the environment. This duty arises as a result of the general risk of significant harm to which States contribute, in markedly different ways, through the activities undertaken within their jurisdiction or control.”

**Paras. 280–300:** The Court reaffirmed (**para. 280**) “that States must fulfil their duty to prevent significant harm to the environment by acting with due diligence. Due diligence is a standard of conduct whose content in a specific situation derives from various elements, including the circumstances of the State concerned, and which may evolve over time.” The Court then explained that the following elements are relevant to determining what is required of a State in the climate context: appropriate measures; scientific and technological information; relevant international rules and standards; different capabilities; the precautionary principle and respective measures; risk and environmental impact assessments; and notification and consultation.

**Para. 292:** “While developed States, in the context of climate change, must take more demanding measures to prevent environmental harm and must satisfy a more demanding standard of conduct, the standard required in each case ultimately depends on the specific situation of each State, namely ‘all the means at its disposal’.”

**Para. 305:** “The duty to co-operate takes on a special importance in the context of the need to reach a collective temperature goal (see, in the context of treaty obligations, paragraphs 224–229 above). States must co-operate to achieve concrete emission reduction targets or a methodology for determining contributions of individual States, including with respect to the fulfilment of any collective temperature goal. The duty to co-operate is applicable to all States, although its level may vary depending on additional criteria, first and foremost the common but differentiated responsibilities and respective capabilities principle.”

**Para. 306:** “The Court recognizes that the duty to co-operate leaves States some discretion in determining the means for regulating their GHG emissions. However, this discretion cannot serve as an excuse for States to refrain from co-operating with the required level of due diligence or to present their effort as an entirely voluntary contribution which cannot be subjected to scrutiny. The duty to co-operate is founded on the recognition of the interdependence of States, requiring more than the transfer of finance or technology, in particular efforts by States to continuously develop, maintain and

implement a collective climate policy that is based on an equitable distribution of burdens and in accordance with the principle of common but differentiated responsibilities and respective capabilities.”

**Para. 314:** “[C]ompliance in full and in good faith by a State with the climate change treaties, as interpreted by the Court [...], suggests that this State substantially complies with the general customary duties to prevent significant environmental harm and to co-operate. This does not mean, however, that the customary obligations would be fulfilled simply by States complying with their obligations under the climate change treaties [...]. While the treaties and customary international law inform each other, they establish independent obligations that do not necessarily overlap.”

**Para. 315:** “Customary obligations are the same for all States and exist independently regardless of whether a State is a party to the climate change treaties.” *The Court’s ruling on the obligations of non-party States here is relevant when assessing the obligations of countries that are not parties to, or have withdrawn from, relevant climate treaties.*

## F. Human rights

*States must take effective climate action in order to fulfill their human rights obligations.*

**Para. 403:** “Taking into account the adverse effects of climate change on the enjoyment of human rights, the Court considers that the full enjoyment of human rights cannot be ensured without the protection of the climate system and other parts of the environment. In order to guarantee the effective enjoyment of human rights, States must take measures to protect the climate system and other parts of the environment. These measures may include, *inter alia*, taking mitigation and adaptation measures, with due account given to the protection of human rights, the adoption of standards and legislation, and the regulation of the activities of private actors. Under international human rights law, States are required to take necessary measures in this regard.”

**Para. 404:** “[I]nternational human rights law, the climate change treaties and other relevant environmental treaties, as well as the relevant obligations under customary international law, inform each other .... States must therefore take their obligations under international human rights law into account when implementing their obligations under the climate change treaties and other relevant environmental treaties and under customary international law, just as they must take their obligations under the climate change treaties and other relevant environmental treaties and under customary international law into account when implementing their human rights obligations.”

## **On the right to a clean, healthy, and sustainable environment**

**Para. 393:** “[U]nder international law, the human right to a clean, healthy and sustainable environment is essential for the enjoyment of other human rights.”

### **G. Intergenerational equity**

*States must take intergenerational equity into account when defining and carrying out their climate actions.*

**Para. 157:** “Due regard for the interests of future generations and the long-term implications of conduct are equitable considerations that need to be taken into account where States contemplate, decide on and implement policies and measures in fulfilment of their obligations under the relevant treaties and customary international law.”

### **H. Remedies**

*Courts have a strong legal foundation to require States to adopt an NDC consistent with the Paris Agreement, as well as order broad climate remedies, including cessation, non-repetition, and full reparation.*

**Para. 445:** “[B]reaches of States’ obligations under question (a) may give rise to the entire panoply of legal consequences provided for under the law of State responsibility. These include obligations of cessation and non-repetition, which are consequences that apply irrespective of the existence of harm, as well as the consequences requiring full reparation, including restitution, compensation and/or satisfaction.”

**Para. 446:** “[I]n the case of a State party setting an inadequate NDC under [Article 4](#) of the Paris Agreement, a competent court or tribunal could order that State to perform its obligations by adopting an NDC consistent with its obligations under the Paris Agreement.”

**Para. 448:** “The duty of cessation may also require States to employ all means at their disposal to reduce their GHG emissions and take other measures in a manner, and to the extent, that ensures compliance with their obligations.”

## **Categories of Climate Cases Relevant to the Excerpts**

The ICJ’s aforementioned findings have the potential to positively bolster government framework cases – particularly but not limited to challenges of inadequate ambition as expressed in NDCs assessed against the best available science – although their

authoritative weight will vary by jurisdiction and legal system. This section highlights the most likely types of cases and claims that the AO will support. The examples provided are for illustrative purposes only and do not suggest that the ICJ AO has been invoked or applied in those proceedings. Please note that the case categories are not mutually exclusive, and cases can fall into one or more of the following categories.

## “Ambition Gap” framework cases

The Court’s findings strengthen litigation challenging governments’ weak mitigation ambition, as such cases frequently challenge the sufficiency of emissions reduction targets based on or reflected in NDCs, pursuant to domestic law. As States’ 2035 NDCs are largely insufficient – both individually and collectively – to hold global temperature rise to 1.5°C,<sup>6</sup> these submissions could provide the basis for new framework litigation subject to the standards described above. For example, claims could relate to:

- Failure of a government to set its NDC in line with holding global temperature increase to 1.5°C;
- Failure of a government to take into account its historical contributions to climate change and the principle of CBDR-RC in setting its NDC;
- No assessment by the government that its NDC represents its “highest possible ambition” (in terms of both reductions and removals on its territory);
- Lack of transparency in the details of its NDC (including how reductions or removals will be achieved);
- Evidence that a country’s NDC is a downgrade in ambition, compared to previous targets (including via changes in baseline years); or,
- Absence of interim targets on the road to net zero, which suggests that the burden of emissions reductions is not spread fairly over time, leading to higher cumulative emissions and causing a negative impact on intergenerational equity (see further below).

These “Ambition Gap” claims are often grounded in human rights law and contain arguments regarding intergenerational equity, which are discussed separately below. Additionally, “Ambition Gap” cases often involve “Implementation Gap” claims, which are also bolstered by the ICJ’s conclusion that States’ implementing measures must be “reasonably capable” of achieving their NDC, and indicating that anything short of their “best efforts” to do so falls short of their obligations.

Examples: [Verein KlimaSeniorinnen Schweiz and Others v. Switzerland](#),<sup>7</sup> where the European Court of Human Rights determined that Switzerland violated [Article 8](#) of the European Convention on Human Rights (ECHR) due to the absence of a national carbon

<sup>6</sup> See e.g., United Nations Environment Programme, *Emissions Gap Report 2025: Off-Target*, p. xiii (UNEP, Nov. 4 2025), [www.unep.org/resources/emissions-gap-report-2025](http://www.unep.org/resources/emissions-gap-report-2025) (last accessed Dec. 12, 2025).

<sup>7</sup> *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland*, App no 53600/20 (European Court of Human Rights).

budget or other equivalent quantification in its climate regulatory framework (including its NDC); [Do-Hyun Kim et al. v. South Korea](#),<sup>8</sup> where the Constitutional Court of Korea required the government to adopt targets for the 2031–2049 period in line with scientific facts and international standards; and [VZW Klimaatzaak v. Kingdom of Belgium & Others](#)<sup>9</sup> and [Urgenda Foundation v. State of the Netherlands](#),<sup>10</sup> where the respective courts mandated specific emissions reduction orders as existing targets were insufficiently ambitious, in light of best available science and fairness principles.

## Government framework cases invoking human rights law or the domestic right to a healthy environment

The ICJ’s findings will particularly strengthen rights-based challenges, both on the merits and potentially to obtain access to courts and remedies. Moreover, the Court’s conclusion that States must take their international climate change obligations into account when implementing their human rights obligations adds significant weight to findings by other courts that in order to effectively safeguard human rights, governments must adopt mitigation and adaptation measures, including fair and ambitious emissions reductions targets (e.g., *KlimaSeniorinnen*, *Urgenda*), and paves the way for other courts to reach similar conclusions in the future. Finally, the ICJ’s willingness to interpret the right to a healthy environment as a binding norm of international law will likely bolster national framework cases that rely on this right. As the right to a healthy environment is enshrined in the laws and constitutions of over 100 countries (**para. 391**), this finding has great potential to bolster framework cases in a range of jurisdictions.

*Examples:* *KlimaSeniorinnen* and *Urgenda* demonstrate how human rights law – here, the ECHR – can help plaintiffs hold a government responsible for doing “its part” to address climate change. Examples of cases where plaintiffs successfully leveraged the domestic right to a healthy environment include the [Hungarian Climate Case](#),<sup>11</sup> where the Constitutional Court declared a key provision of the country’s climate law unconstitutional and ordered the government to adopt a more ambitious 2030 target; [Future Generations v. Ministry of the Environment and Others](#),<sup>12</sup> where the Supreme Court of Colombia recognized the Amazon rainforest as a subject of rights and ordered the creation and implementation of deforestation plans to protect the human rights of the youth plaintiffs;

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<sup>8</sup> *Do-Hyun Kim et al. v. South Korea* [2024] 2020HunMa389, 2021HunMa1264, 2022HunMa854, 2023HunMa846 (Constitutional Court of Korea).

<sup>9</sup> *VZW Klimaatzaak v. Kingdom of Belgium & Others* [2023] 2022/AR/891 (Brussels Court of Appeal).

<sup>10</sup> *State of the Netherlands v. Urgenda Foundation* [2019] ECLI:NL:HR:2019:2007 (Supreme Court of the Netherlands).

<sup>11</sup> *Decision of the Hungarian Constitutional Court in case II/3536/2021 (on the constitutionality of Article 3(1) of the Climate Protection Act)* [2025] Case No. II/3536/2021 (Constitutional Court of Hungary).

<sup>12</sup> *Future Generations v. Ministry of the Environment and Others (Demanda Generaciones Futuras v. Minambiente)* [2018] 11001 22 03 000 2018 00319 00 (Supreme Court of Justice of Colombia).

and [Shrestha v. Office of the Prime Minister et al.](#),<sup>13</sup> where the Supreme Court of Nepal ordered the government to introduce new legislation to remedy climate inaction.

## Government framework cases and intergenerational equity

The ICJ's conclusion that the sufficiency of governments' climate commitments must now be considered through an intergenerational equity lens will likely give a boost to framework cases featuring youth plaintiffs and other cases highlighting the disproportionate impacts of both climate change and mitigation measures, and experience by younger generations. This is further reinforced by the [Inter-American Court of Human Rights' Advisory Opinion](#), which considered that "States should ensure an equitable distribution of the burden of climate action and climate impacts (...) [which] should avoid the imposition of disproportionate burdens on members of both future and present generations."<sup>14</sup> This principle would be violated if "climate action is unjustifiably postponed, leaving the damage and cost to future generations."<sup>15</sup>

*Examples: KlimaSeniorinnen, the Hungarian Climate Case, Do-Hyun Kim, Future Generations, and Shrestha* all relied on intergenerational equity considerations to help determine that the government defendants had violated their respective legal obligations. Another such case is [Neubauer et al. v. Germany](#),<sup>16</sup> where the German Constitutional Court determined that achieving the 2050 net-zero goal without intermediate climate targets would impose a disproportionate burden of emissions reductions on future generations.

## Remedies

Courts presiding over these cases could rely on the strengthened legal basis in the AO, and the ICJ's findings on remedies, for example, to order the defendant government to set more ambitious targets or to reduce its emissions by a specific amount, as in the *Hungarian Climate Case*, as well as *Klimaatzaak* and *Urgenda*, respectively.

However, as the remaining global carbon budget consistent with limiting warming to 1.5°C (50% chance) is virtually exhausted – and most States have already exceeded their fair share carbon budget under even the most lenient equal per capita methodology – legal

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<sup>13</sup> *Advocate Padam Bahadur Shrestha v. The office of the Prime Minister and Council of Ministers, Singhadurbar, Kathmandu and others*, Decision no 10210, NKP, Part 61, Vol 3) (Supreme Court of Nepal).

<sup>14</sup> *Climate Emergency and Human Rights*, Advisory Opinion AO-32/25, Inter-American Court of Human Rights Series A No 32, para. 310 (May 29, 2025).

<sup>15</sup> *Ibid.*

<sup>16</sup> *Neubauer and Others v. Germany* [2021] 1 BvR 2656/18, 1 BvR 96/20, 1 BvR 78/20, 1 BvR 288/20, 1 BvR 96/20, 1 BvR 78/20 (German Constitutional Court).

teams, such as those in [France](#)<sup>17</sup> and the [Netherlands](#),<sup>18</sup> have asked that governments assess and aim for their highest possible ambition in domestic reductions and sustainable carbon removals on their territory, and compensate for any mitigation shortfall with emissions reductions abroad.<sup>19</sup> In the latter [Bonaire](#) case, the Hague District Court relied on the ICJ AO in part to find multiple violations of the ECHR and ordered the Netherlands to set new legally binding mitigation targets within 18 months for the period up until 2050, including intermediate targets and pathways, and quantify the remaining emissions space for that timeframe – in accordance with climate treaty obligations.<sup>20</sup> This court further considered that the Netherlands should submit its own NDC, as it considered the EU NDC to fall short. The ICJ’s conclusions could continue to play a crucial future role in the framing of similar novel requests as well as in the determination of corresponding remedial orders.

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<sup>17</sup> See e.g., the climate case against the French Government launched December 2025, which focuses on the carbon budget for 1.5°C, and the different measures to reduce its emissions. The case asks that France meet its Land Use, Land-Use Change, and Forestry (LULUCF) target and take all measures to stay within a 1.5°C carbon budget: [www.linkedin.com/posts/paul-mougeolle-a47b95b9\\_202511-document-presse-ppi-activity-7402302367947366400-2E4v/?utm\\_source=share&utm\\_medium=member\\_desktop&rcm=ACoAABS1n68BZF-vQK4y1tBBW2GWSo3OcvBQko8](https://www.linkedin.com/posts/paul-mougeolle-a47b95b9_202511-document-presse-ppi-activity-7402302367947366400-2E4v/?utm_source=share&utm_medium=member_desktop&rcm=ACoAABS1n68BZF-vQK4y1tBBW2GWSo3OcvBQko8).

<sup>18</sup> See e.g., the climate case against the Dutch Government brought by the people of Bonaire (a press release on their October 2025 hearing [www.greenpeace.org/international/story/79117/bonaire-climate-case-a-fight-for-justice-in-dutch-court](https://www.greenpeace.org/international/story/79117/bonaire-climate-case-a-fight-for-justice-in-dutch-court)). The case demands that the Netherlands reduce emissions in line with its fair share to hold global emissions to 1.5°C, and that because this fair share is already, or will soon be depleted, that the Government support emissions reductions – including negative emissions – outside of its territory. In addition, the case demands that territorial net-emissions are reduced to zero in 2040, which includes a share of negative emissions on its own territory.

<sup>19</sup> See e.g., Roda Verheyen & Johannes Franke, *The 2040 EU Climate Target – Legal benchmarks and obligations following from International Court of Justice’s Advisory Opinion on Climate Change* (Rechtsanwälte Günther), [cdn.table.media/assets/europe/legal-opinion-2040-target.pdf](https://cdn.table.media/assets/europe/legal-opinion-2040-target.pdf) (last accessed Dec. 12, 2025).

<sup>20</sup> *Greenpeace Netherlands v. The State of the Netherlands*, (2026) ECLI:NL:RBDHA:2026:1344 (The Hague District Court (Rechtbank Den Haag)).

# Litigation Note on Adaptation

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## Introduction

Adaptation litigation resists easy categorization as it can involve a multitude of legal pathways from constitutional and human rights law to administrative and environmental law. According to the Grantham Research Institute, “of the more than 2,500 climate change cases” identified worldwide in 2024, “only 205 touch on the issue of adaptation, most of which have been brought in US and Australian courts.”<sup>23</sup> As devastating climate harm intensifies across the world, adaptation — preparing for and adjusting to present and future climate impacts — is vital to protect rights and ecosystems. Yet, adaptation remains under-emphasized in both multilateral processes and climate litigation, although recent years show a discernible uptick in related claims, including in many Global South countries.<sup>24</sup>

The following litigation note distills key findings of the International Court of Justice (ICJ)’s Climate Advisory Opinion (AO) relevant to adaptation litigation, acknowledging that the overview provided herein is not intended to be comprehensive. Two sections follow: key excerpts from the AO and categories of climate litigation for which those excerpts may be relevant.

## Relevant Excerpts from the ICJ AO

The ICJ AO has clear findings helpful for adaptation litigation: both direct findings on States’ legal obligations regarding climate adaptation, and overarching findings, which, while not expressly about adaptation, are highly relevant to it.

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<sup>21</sup> ClientEarth, Center for International Environmental Law (CIEL), and Natural Justice, respectively.

<sup>22</sup> Climate Litigation Network (CLN).

<sup>23</sup> Joana Setzer & Catherine Higham, *Global trends in climate change litigation: 2024 snapshot*, p. 34 (Grantham Research Institute, 2024),

[www.lse.ac.uk/granthaminstitute/wp-content/uploads/2024/06/Global-trends-in-climate-change-litigation-2024-snap-shot.pdf](http://www.lse.ac.uk/granthaminstitute/wp-content/uploads/2024/06/Global-trends-in-climate-change-litigation-2024-snap-shot.pdf) (data as of June 2024).

<sup>24</sup> At COP30, countries approved a list of indicators against which to measure, review, and track progress on the Global Goal on Adaptation under Article 7 of the Paris Agreement. Global Goal on Adaptation, Decision 12/CMA.7 (Nov. 22, 2025), [unfccc.int/sites/default/files/resource/cma2025\\_L25E.pdf](http://unfccc.int/sites/default/files/resource/cma2025_L25E.pdf).

## A. States' Obligations on Adaptation under the Climate Treaties

*The climate treaties impose binding legal obligations to adopt and support adaptation measures.*

### **UNFCCC Adaptation Obligations**

**Para. 209:** “[A]dapting to the adverse effects of climate change is, along with mitigation, a major area of action for parties under the Framework Convention. Adaptation is defined by the IPCC as ‘the process of adjustment to actual or expected climate and its effects, in order to moderate harm or exploit beneficial opportunities’ (*IPCC 2023 Glossary*, p. 120).”

#### *On relevant adaptation plans*

**Para. 210:** All parties must “[f]ormulate, implement, publish and regularly update national and, where appropriate, regional programmes containing measures to...facilitate adequate adaptation to climate change” under [Article 4, paragraph 1\(b\)](#).

#### **On obligations to cooperate**

**Para. 210:** Parties must under [Article 4, paragraph 1\(e\)](#) “[c]ooperate in preparing for adaptation to the impacts of climate change; develop and elaborate appropriate and integrated plans for coastal zone management, water resources and agriculture, and for the protection and rehabilitation of areas, particularly in Africa, affected by drought and desertification, as well as floods.”

#### **On a just transition**

**Para. 210:** Parties must under [Article 4, paragraph 1\(f\)](#), “[t]ake climate change considerations into account, to the extent feasible, in their relevant social, economic and environmental policies and actions” and “employ appropriate methods, for example impact assessments” to minimize adverse effects of adaptation projects.

#### **On climate finance and technological transfer obligations**

**Para. 211:** Annex II developed country parties, as per [Article 4, paragraph 4](#), “shall assist the developing country parties that are particularly vulnerable to the adverse effects of climate change in meeting the costs of adaptation. **This is a legally binding obligation on all parties that are listed in Annex II.**” (*emphasis added*)

**Para. 212:** There are more obligations in relation to funding, insurance, and the transfer of technology to developing countries under Article 4, paragraphs 8 and 9, especially considering the specific needs and special situations of least developed countries and developing countries.

### **Nature of obligations: discretion does not detract from the binding character**

**Para. 210:** “[A]ll provisions in [Article 4, paragraph 1](#), are introduced with the term ‘shall’ and are legally binding in nature.”

**Para. 213:** The phrases “give full consideration” and “take full account” give parties “some discretion in the implementation.” “However, this discretion does not detract from their character as legally binding obligations.”

### *Paris Agreement Adaptation Obligations*

**Para. 255:** The Court observes that according to [Article 2, paragraph 1 \(b\)](#), “adaptation is one of the core objectives of the Paris Agreement, which aims to increase the parties’ ability to adapt to the adverse impacts of climate change and foster climate resilience.”

### **On relevant plans**

**Para. 256:** Under [Article 7, paragraph 9](#), “[E]ach Party shall, as appropriate, engage in adaptation planning processes and the implementation of actions, including the development or enhancement of relevant plans, policies and/or contributions.’ This provision, introduced with the terms ‘[e]ach Party shall’, imposes a **legally binding obligation** upon the parties to undertake adaptation planning actions.” (*emphasis added*)

### **Forms of adaptation actions**

**Para. 257: Forms of adaptation** under [Article 7, paragraph 9](#) include: “the implementation of adaptation actions, undertakings and/or efforts’ (Article 7, paragraph 9 (a)); the formulation and implementation of national adaptation plans (Article 7, paragraph 9 (b)); the assessment of climate change impacts and vulnerability, with a view to formulating nationally determined prioritized actions, taking into account vulnerable people, places and ecosystems (Article 7, paragraph 9 (c)); monitoring, evaluating and learning from adaptation plans, policies, programmes and actions (Article 7, paragraph 9 (d)); and building the resilience of socio-economic and ecological systems, including through economic diversification and the sustainable management of natural resources (Article 7, paragraph 9 (e)).”

**Para. 258: On forms of adaptation**, the Court also observed, “IPCC noted in 2023 that adaptation is a particularly pressing challenge in responding to climate change and that adaptation options exist that are effective in reducing climate risks in certain contexts, such as **restoration of ecosystems, the creation of early warning systems, and resilience-enhancing infrastructure**. (see IPCC, Climate Change 2023: Synthesis Report, pp. 55–56, section 2.2.3). These options, as well as others such as **regenerative farming, crop diversification, weatherproofing of buildings, and managing land to reduce wildfire risk**, implemented by parties through the deployment of appropriate measures and the

exercise of best possible efforts, could, in the Court’s view, meet the adaptation obligations of parties under [Article 7, paragraph 9](#), of the Paris Agreement.” (*emphasis added*)

### **Standard of compliance**

**Para. 258:** “The fulfilment of adaptation obligations of parties is to be assessed against a standard of due diligence” requiring parties to “use their best efforts, in line with the best available science” to achieve objectives of “enhancing adaptive capacity, strengthening resilience and reducing vulnerability to climate change,” as required by [Article 7, paragraph 1](#) of the Paris Agreement.

### **Nexus with mitigation**

**Para. 259:** “[T]he adaptation obligations under the Paris Agreement complement the mitigation obligations in preventing and reducing the harmful consequences of climate change. This interlinkage is explicitly recognized in Article 7, paragraph 4, of the Paris Agreement, which states that ‘greater levels of mitigation can reduce the need for additional adaptation efforts’.”

### **On finance and technology transfer**

**Paras. 264–265:** The Court found “[d]eveloped country Parties shall provide financial resources” under Article 9 of the Paris Agreement and this is “**legally binding**”, including in relation to adaptation. (*emphasis added*). “While the Paris Agreement does not specify the amount or level of financial support that must be provided, the Court considers that, in line with the customary rules of treaty interpretation, this obligation must be interpreted in light of other provisions in the Agreement, including the collective temperature goal provided for in Article 2.” It also found that the level of financial support “can be evaluated on the basis of several factors, including the capacity of developed States and the needs of developing States.” (**Paras. 266–267** provide for more general obligations on technology transfer and capacity-building that would apply to adaptation measures.)

**Para. 264:** The Court further pointed to the “legally binding obligations for developed parties to communicate information on projected climate finance” under [Article 9, paragraphs 5 to 7](#).

Read together, these findings clarify that the provision of financial assistance is legally binding, as is the transparent communication thereof. Knowing the (projected) levels of financial assistance is relevant in assessing their adequacy for assisting developing States in fulfilling their mitigation and adaptation obligations. Thereby, the Court has emphasized the legal guardrails that exist in determining both ambition and compliance by States, including on adaptation.

## **Erga omnes character of these obligations**

**Paras. 440–441:** “In the treaty context, the Court recalls that the UNFCCC and Paris Agreement acknowledge that climate change is ‘a common concern of humankind’ (UNFCCC, first preambular paragraph; Paris Agreement, eleventh preambular paragraph), requiring ‘a global response’ (Paris Agreement, Article 2). They seek to protect the essential interest of all States in the safeguarding of the climate system, which benefits the international community as a whole. As such, the Court considers that the obligations of States under these treaties are obligations *erga omnes partes*.” This finding by the Court has implications for State responsibility, including who can invoke a State’s responsibility, including for adaptation.

## **B. States’ Obligations on Adaptation under Human Rights Law**

*States must adopt timely and appropriate measures to prevent climate-related harm, thereby encompassing obligations of adaptation within the duty to protect human rights.*

### **Right to privacy and home life**

**Para. 381:** “[A] State’s failure to implement timely and adequate adaptation measures to address the adverse impacts of climate change may violate the right to privacy, family and home (see *Daniel Billy and others v. Australia (Torres Strait Islanders Petition)*, 21 July 2022, UN doc. CCPR/C/135/D/3624/2019, paras. 8.9–8.12).”

*While adaptation is expressly referenced in para. 381, the broader reasoning in paras. 369–404 concerning States’ duties under international human rights law is also pertinent to argue that failure to implement adequate adaptation measures may constitute a breach of obligations under human rights law. These paragraphs demonstrate the adverse impacts of climate change on the enjoyment of human rights, illustrating why adaptation is central to State duties.*

## **C. Other overarching findings relevant to climate adaptation litigation**

*The ICJ’s findings on science, attribution, and remedies are particularly relevant for adaptation litigation.*

### **On the centrality of the best available science**

**Para. 258:** To fulfil their adaptation obligations, parties must “use their best efforts, in line with the best available science.”

## **No prima facie technical or legal bar to invoking responsibility in the context of adaptation**

**Para. 430:** Countering the “drop in the ocean” argument, the ICJ made clear that the existence of a plurality of contributors to climate harm does not exempt individual States from responsibility, for example, when States have failed to take adequate adaptation measures in breach of legal obligations. As the Court underlined, “the rules on State responsibility under customary international law are capable of addressing a situation in which there exists a plurality of injured or responsible States.” The Court considered that **(para. 431)** “each injured State may separately invoke the responsibility of every State which has committed an internationally wrongful act resulting in damage to the climate system and other parts of the environment. And where several States are responsible for the same internationally wrongful act, the responsibility of each State may be invoked in relation to that act.”

**Para. 429:** The Court rejected State arguments that the diffuse and cumulative nature of climate change undermines State responsibility for its consequences, relying on scientific evidence to the contrary, as well as findings of other courts and tribunals on the links between climate change and the adverse effects suffered by individual litigants. Confirming the feasibility of linking State conduct to climate change and resultant impacts, the Court emphasized that, “it is scientifically possible to determine each State’s total contribution to global emissions, taking into account both historical and current emissions.”

## **Relevance of remedies outlined under legal consequences for breach of climate obligations**

**Paras. 444–455:** The findings of the ICJ in relation to legal consequences, and in particular the forms of remedies available, are relevant for adaptation litigation (*cf. Litigation Note on Remedies and Reparations*).

## **Categories of Climate Cases Relevant to the Excerpts**

The following categories and examples of adaptation litigation illustrate key contexts in which States’ and corporate actors’ adaptation obligations have been or could be litigated, and in which the aforementioned excerpts may be relevant. These examples are provided for illustrative purposes only and do not suggest that the ICJ AO has been invoked or applied in those proceedings. The authoritative weight of the ICJ AO conclusions will vary by jurisdiction and legal system. Please note that the case categories below are not mutually exclusive; cases can fall into one or more of them.

## Human Rights–Based Climate Cases

The aforementioned excerpts are relevant to litigation arguing that a failure to adopt adequate adaptation measures constitutes a breach of human rights obligations. Such cases use human rights arguments to challenge “governmental inaction or inadequate response to known and foreseeable climate risks.”

Examples: [Billy et al. v. Australia](#),<sup>25</sup> where the UN Human Rights Committee found that Australia violated the rights of Torres Strait Islanders by failing to take timely adaptation measures to protect their homes, culture, and livelihoods. Another notable human rights-based climate adaptation case is [José Noé Mendoza Bohórquez et al. v. Department of Arauca et al.](#)<sup>26</sup> (Colombia), where the Court “recognised the connection between climate change and displacement and acknowledged the State’s duty to provide protective and adaptive responses for populations at risk.” In early 2026, the District Court of the Hague found in favor of residents of Bonaire, a small Caribbean island that is a part of the Kingdom of the Netherlands. The ruling in [Greenpeace Netherlands v. The State of the Netherlands](#) made clear that the Dutch state had violated the residents’ human rights by, amongst others, failing to take ambitious climate action, including sufficient and timely adaptation measures.<sup>27</sup>

## Litigation Targeting National Climate and Adaptation Planning

The key excerpts are relevant to litigation directly contesting the legality, adequacy, and implementation of national climate laws and policies, including national adaptation plans (NAPs) and nationally determined contributions (NDCs).

Examples: [Leghari v. Pakistan](#),<sup>28</sup> where the Court ordered implementation of the National Climate Change Policy and Framework, including adaptation components; and the pending case [‘Sinistrés Climatiques’](#)<sup>29</sup> (France) contesting the insufficiency of the *Plan National d’Adaptation au Changement Climatique (PNACC)*. In [Do-Hyun Kim et al. v. South Korea](#),<sup>30</sup> where the plaintiffs successfully challenged the adequacy of the national climate change law (the Framework Act on Carbon Neutrality and Green Growth for Coping with Climate Crisis), the Court clearly recognized that the State has a human rights obligation to reduce harm by adapting to climate change. Similarly, in [Shrestha v. Office of](#)

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<sup>25</sup> U.N. Human Rights Committee, *Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 3624/2019*, U.N. Doc. CCPR/C/135/D/3624/2019 (Sept. 18, 2023).

<sup>26</sup> *José Noé Mendoza Bohórquez et al. v. Department of Arauca et al.*, Colombian Constitutional Court [2024] Sentencia T-123.

<sup>27</sup> *Greenpeace Netherlands v. The State of the Netherlands*, (2026) ECLI:NL:RBDHA:2026:1344 (The Hague District Court (Rechtbank Den Haag)).

<sup>28</sup> *Leghari v. Pakistan*, (2015) W.P. No. 25501/2015 (Lahore High Court) (Pak.).

<sup>29</sup> ‘*Sinistrés Climatiques*’, Filed April 8, 2025 (Conseil d’État).

<sup>30</sup> *Do-Hyun Kim et al. v. South Korea* [2024] 2020HunMa389, 2021HunMa1264, 2022HunMa854, 2023HunMa846 (Constitutional Court of Korea).

[the Prime Minister](#) in Nepal, the Supreme Court ordered the government to enact comprehensive climate change legislation and implement adaptation and mitigation measures, recognizing the State's constitutional and human rights obligations to address climate impacts.

## Corporate Accountability Cases

While the above cases concern State responsibility, the ICJ AO made clear that States are also responsible for regulating corporate conduct (*for more detail, see Litigation Note on Corporate Conduct*). The above excerpts are therefore directly relevant to claims of corporate accountability in the context of adaptation. They clarify the types of conduct that impair the climate, the scope of State obligations to regulate corporate conduct that contributes to foreseeable climate harm, and provide authoritative guidance on applicable laws and principles, which may be particularly pertinent in the context of State-owned enterprises. Of particular relevance to adaptation claims against corporations is the affirmation that the existence of multiple contributors does not negate individual responsibility, and that courts are competent to adjudicate claims arising from diffuse and cumulative climate impacts. The aforementioned excerpts could thus be relevant for cases seeking to hold corporations accountable for climate harm and seek remedies that include recovering adaptation costs.

Examples: In [Saúl Luciano Lliuya v. RWE](#)<sup>31</sup> (Germany) and the pending case [Asmania v. Holcim](#)<sup>32</sup> (Switzerland), claimants allege corporate responsibility for adaptation costs and loss and damage caused by climate impacts. In the pending case of [Town of Carborro v. Duke Energy](#),<sup>33</sup> the town of Carrboro, North Carolina, brought a claim against Duke Energy, arguing it used a deception campaign in relation to the risk of fossil fuel activities, and has a responsibility to take on some of the costs of adaptation measures for the town.

## Project-specific or Infrastructure-related Adaptation Cases

The key excerpts above are relevant to cases challenging infrastructure and development projects that do not adequately take climate adaptation into account.

Examples: In a South African case, [Philippi Horticultural Area Food & Farming Campaign v. MEC for Local Government, Environmental Affairs and Development Planning & Others](#),<sup>34</sup> approvals for a planned development were remanded with a request to consider water scarcity and supply in the context of climate change. Another African case with both

<sup>31</sup> [Saúl Luciano Lliuya v. RWE](#), (May 2025) Case No. 2 O 285/15 (Landgericht Essen), Appeal case I-5 U 15/17 (Oberlandesgericht Hamm, Germany).

<sup>32</sup> [Asmania et al v. Holcim](#), filed Jan. 31, 2024 (Cantonal Court of Zug, Switzerland).

<sup>33</sup> Complaint, [Town of Carborro v. Duke Energy](#), No. 24 CV 003385-670, filed Dec. 4, 2024 (N.C. Super. Ct.).

<sup>34</sup> [Philippi Horticultural Area Food & Farming Campaign v MEC for Local Government, Environmental Affairs and Development Planning & Others](#), (Feb. 17, 2020) Case No. 16779/17 (High Court of South Africa, Western Cape Division).

mitigation and adaptation relevance includes [Green Belt Movement v. Honourable Attorney General & 9 others; Law Society of Kenya & 3 others](#) (Interested Parties),<sup>35</sup> a matter involving the construction of the Nairobi expressway, where the Tribunal held that the project proponents failed to conduct a climate change analysis.

## Inter-State and Advisory Proceedings

Recent climate advisory opinions have addressed adaptation as part of States' international obligations.

*Examples:* The [Inter-American Court of Human Rights \(IACtHR\) Advisory Opinion](#)<sup>36</sup> clearly affirms States have an obligation, derived from a broad range of substantive rights, to adopt adaptation measures in response to the impacts of climate change. Pursuant to the principles of equality and non-discrimination, the Court held that States must take into account, in their adaptation plans and strategies, the differentiated impacts of climate change on various population groups (paras. 384, 595). One of the questions at the heart of the pending [African climate advisory opinion](#)<sup>37</sup> addresses the applicable obligations of African States in the implementation of adaptation, resilience, and mitigation measures in response to climate change.

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<sup>35</sup> *Green Belt Movement v Honourable Attorney General & 9 others; Law Society of Kenya & 3 others*, Environment and Land Petition E042 of 2024, [2025] KEELC 5945 (KLR) (14 August 2025) (Judgment) (Ken.).

<sup>36</sup> *Climate Emergency and Human Rights*, Advisory Opinion OC-32/25, Inter-American Court of Human Rights Series A No 32 (May 29, 2025).

<sup>37</sup> *Request for Advisory Opinion No. 001 of 2025: In the matter of a request by the Pan African Lawyers Union (PALU) for an Advisory Opinion on the Obligations of States with respect to the Climate Change Crisis*.

# Litigation Note on Remedies and Reparations

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## Introduction

Remedy and reparation for climate harm are central to climate justice, yet remain insufficiently addressed in law and policy. Meanwhile, litigation pathways to secure climate-related remedies and reparations are still developing. This has meant that the actors most responsible for climate harms resulting in devastating economic and non-economic loss and damage have not been held to account. This trajectory is now beginning to change. According to NYU's Climate Law Accelerator, 53 cases worldwide currently address climate-related loss and damage.<sup>41</sup>

Litigation relating to climate remedy and reparation is rooted in numerous sources of law and spans a wide range of fora. It involves diverse claimants, including States, local governments, Indigenous Peoples, individuals, and civil society, as well as diverse defendants, including States and corporate actors. Current litigation seeks to overcome legal hurdles, advance understanding of conduct triggering responsibility, and determine appropriate forms of remedy and reparation.

Against this backdrop, the International Court of Justice (ICJ)'s Climate Advisory Opinion (AO) delivers unprecedented clarity on State obligations in relation to climate change and the legal consequences, namely remedy and reparation, arising from States' internationally wrongful acts in relation to climate change.<sup>42</sup> This normative precision provides critical support to the evolving climate remedy and reparation-related litigation landscape.

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<sup>38</sup> Center for International Environmental Law (CIEL), ClientEarth, and World's Youth for Climate Justice (WYCJ), respectively.

<sup>39</sup> Pacific Island Students Fighting Climate Change (PISFCC).

<sup>40</sup> Notre Affaire à Tous (NAAT).

<sup>41</sup> NYU Climate Law Accelerator database (last updated 08/04/2025),

[docs.google.com/spreadsheets/d/1kjr-GfCk9o-Ldaiz-UDILR3Kqy\\_3SVcHZt1V9pE6M7w/edit?gid=0#gid=0](https://docs.google.com/spreadsheets/d/1kjr-GfCk9o-Ldaiz-UDILR3Kqy_3SVcHZt1V9pE6M7w/edit?gid=0#gid=0) (last accessed Feb. 20, 2025); Joana Setzer & Catherine Higham, *Global trends in climate change litigation: 2025 snapshot* (Grantham Research Institute, 2025),

[www.lse.ac.uk/granthaminstitute/wp-content/uploads/2025/06/Global-Trends-in-Climate-Change-Litigation-2025-Snapshot.pdf](https://www.lse.ac.uk/granthaminstitute/wp-content/uploads/2025/06/Global-Trends-in-Climate-Change-Litigation-2025-Snapshot.pdf) (last accessed Feb. 20, 2025).

<sup>42</sup> *Obligations of States in Respect of Climate Change, Advisory Opinion*, 2025 I.C.J. Rep (July 23),

[www.icj-cij.org/sites/default/files/case-related/187/187-20250723-adv-01-00-en.pdf](https://www.icj-cij.org/sites/default/files/case-related/187/187-20250723-adv-01-00-en.pdf).

This litigation note distills key findings of the ICJ AO relevant to climate-related remedy and reparations litigation, without claiming to be comprehensive. Two sections follow: key excerpts from the AO and categories of climate litigation for which those excerpts may be relevant.

## Relevant Excerpts from the ICJ AO

The ICJ AO clarifies the legal obligations and standards that States must comply with and against which their conduct is to be assessed. The ICJ AO also affirms that failure to comply with said obligations may constitute an internationally wrongful act, thereby triggering the legal responsibility of a State. While the ICJ's conclusions are highly relevant to inter-State litigation, the clarity provided by the ICJ also provides critical guidance for litigation brought by communities against States or corporations.

### A. Relevant Law Governing States' Responsibilities to Provide Remedy and Reparation for Significant Climate Harm

*Legal consequences for significant climate harm arise for States that have breached any relevant obligations related to climate change, and are to be ascertained on the basis of the primary rules and the customary rules on State responsibility.*

#### **On Applicable Law**

In **paras. 405–407**, the ICJ clarified generally that legal consequences may arise for States that breach any of the obligations in relation to climate change identified under question (a) of the request for an advisory opinion.<sup>43</sup> The legal consequences that arise for such internationally wrongful acts of States “are to be ascertained on the basis of the primary rules and the customary rules on State responsibility.”

and

**Para. 420:** Which is of specific relevance to loss and damage, “responsibility for breaches of obligations under the climate change treaties, and in **relation to the loss and damage associated with the adverse effects of climate change**, is to be determined by applying the well-established rules on State responsibility under customary international law.” (*emphasis added*)

Of relevance: the obligations the Court identified in relation to climate change under conventional and customary legal sources include: the UN Charter, climate and

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<sup>43</sup> For the two questions posed in the request, see *ibid.* at pp. 8–9.

environmental law treaties, human rights law, law of the sea, the duty to prevent significant harm to the environment, the duty to cooperate, and the cross-cutting principles of sustainable development, common but differentiated responsibilities and respective capabilities, equity, intergenerational equity, and the precautionary approach or principle.

**Para. 111:** The ICJ affirmed that other legal sources can apply in relation to determining State responsibility for significant climate harm, if this is explicitly provided for, clarifying “whether or not individuals have any entitlement to invoke the legal responsibility of States, or to make a claim in a particular circumstance involving injury or harm arising from climate change, is dependent on the relevant primary obligations of States.... The Court notes in this regard that certain treaties enable actors other than States, such as individuals or other private actors, to bring claims against States on the international plane.” *The wording in this paragraph leaves it open to be used for litigation in the interest of climate-vulnerable communities.*

**Para. 419:** “...the climate change treaties do not derogate from or displace general international law of State responsibility.” *Here, the Court was clear that responsibility for breaches of climate obligations, including under the climate treaties, is governed by the law of State responsibility.*

*On relevant conduct breaching climate obligations and triggering legal consequences*

#### Material scope

**Para. 94:** “[T]he relevant conduct ... is not limited to conduct that, itself, directly results in GHG emissions, but rather comprises all actions or omissions of States which result in the climate system and other parts of the environment being adversely affected by anthropogenic GHG emissions.” The Court considered that the “material scope of its inquiry encompasses the full range of human activities that contribute to climate change as a result of the emission of GHGs, including both consumption and production activities.”

**Para. 427:** In making the point that “the internationally wrongful act in question is not the emission of GHGs per se”, the Court clarified that the internationally wrongful act constitutes the “breach of conventional and customary obligations identified under question (a) pertaining to the protection of the climate system from significant harm resulting from anthropogenic emissions of such gases.” A State’s failure to take appropriate action to protect the climate system — including in relation to fossil fuel production and consumption, the granting of exploration licences, or the provision of subsidies — may therefore constitute an internationally wrongful act.

This responsibility extends to acts and omissions concerning non-State actors within a State’s “jurisdiction or effective control” (**para. 95**). As the Court further noted, a State may incur responsibility “where, for example, it has failed to exercise due diligence by not taking

the necessary regulatory and legislative measures to limit the quantity of emissions caused by private actors under its jurisdiction” (**para. 428**).

### Temporal Scope

**Para 423:** While the Court acknowledged that the breach of a climate obligation does not necessarily occur through “one, temporally contained, action or omission”, it concluded “the issue of temporal scope of the obligations, and the related issue of breach of those obligations, comprise elements of an *in concreto* assessment for the determination of State responsibility...”

In the case of *in concreto* State responsibility assessments (which the Court did not go into, but nevertheless pointed out), requiring a determination of when an obligation crystallised on a specific State or groups of States, the Court noted at **para. 97**: “The determination of when obligations arose, in the case of customary obligations, or entered into force, in the case of treaty obligations, may also be affected by other legal rules and factual questions, such as the principle of non-retroactivity enshrined in Article 28 of the Vienna Convention on the Law of Treaties of 1969 in respect of treaty obligations, the emergence of the relevant rules of customary international law, and questions of sufficient scientific understanding of the causes of climate change and its adverse effects in respect of obligations under general international law.”

### ***The erga omnes nature of climate obligations***

**Paras. 440–442:** In relation to customary international law, the Court found that “States’ obligations pertaining to the protection of the climate system and other parts of the environment from anthropogenic GHG emissions...are obligations *erga omnes*.” As regards the climate treaties, the ICJ affirmed that “the obligations of States under these treaties are obligations *erga omnes partes*.” Recalling that obligations *erga omnes* are “[b]y their very nature . . . the concern of all States,” the Court concluded that “responsibility for breaches of such obligations, such as climate change mitigation obligations, may be invoked by any State when such obligations arise under customary international law. When such obligations arise under the climate change treaties, all parties to the treaty may invoke such responsibility, since every party is deemed to have a legal interest in the protection of these obligations.”

Notably, the *erga omnes* character of a State's obligations has implications on the form of remedy that may be claimed. Specifically, **para. 443**: Only injured States may claim reparation for breaches of obligations *erga omnes (partes)*. Non-injured States cannot seek remedies in their own interest but can only make a claim for cessation and ask for guarantees of non-repetition. Offending States have a duty to continue performing their obligations irrespective of injury (**para. 446**).

## B. Determination of State Responsibility in the Climate Change Context

*Neither scientific uncertainty nor technical deficiencies/challenges make remedy and reparation impossible.*

### **Relating to attribution**

**Para. 432:** The Court was clear that “[f]actual questions arising in the context of attribution and apportionment of responsibility are to be resolved on a case-by-case basis,” but did nevertheless provide guidance in relation to attribution issues.

**Para. 430:** Countering the “drop in the ocean” argument, the ICJ made clear that a plurality of contributors to climate harm does not exempt individual States from responsibility, which includes the duty to make reparation, underlining that “the rules on State responsibility under customary international law are capable of addressing a situation in which there exists a plurality of injured or responsible States.”

**Para. 429:** To set aside State arguments that tried to undermine responsibility in the context of climate change by referring to the diffuse and cumulative nature of climate change, the ICJ relied on scientific evidence to the contrary, as well as findings of other courts and tribunals on the links between climate change and the adverse effects suffered by individual litigants. It emphasized that “it is scientifically possible to determine each State’s total contribution to global emissions, taking into account both historical and current emissions.”

**Para. 431:** Thus, “each injured State may separately invoke the responsibility of every State which has committed an internationally wrongful act resulting in damage to the climate system and other parts of the environment. And where several States are responsible for the same internationally wrongful act, the responsibility of each State may be invoked in relation to that act.”

### **Relating to causation**

**Para. 433:** The Court begins by observing that the causation of damage is not a requirement for the determination of responsibility as such. For a finding of State responsibility, what is required is an internationally wrongful act that can be attributed to a State. Whether the act causes damage is irrelevant to this assessment. “Causation or causality is a legal concept that plays a role in determining reparation. Since reparation implies the existence of damage, causation must be established between the wrongful act of a State — or group of States — and particular damage suffered by the injured State or, in

the case of a breach of obligations under international human rights law, by the injured individuals.”

**Para. 435:** The Court further recalled, “the fact that the damage was the result of concurrent causes is not sufficient to exempt [a State] from any obligation to make reparation.”

**Para. 436:** In determining the standard of causation, the Court recalling its own past jurisprudence, affirmed causation can be established in the presence of “‘a sufficiently direct and certain causal nexus between the wrongful act...and the injury suffered...’ (Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua), Compensation, Judgment, I.C.J. Reports 2018 (I), p. 26, para. 32; Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda), Reparations, Judgment, I.C.J. Reports 2022 (I), p. 48, para. 93).”

**Para. 438:** The Court concluded that while the “causal link between the wrongful actions or omissions of a State and the harm arising from climate change is more tenuous than in the case of local sources of pollution, this does not mean that the identification of a causal link is impossible” but left the granular assessment of establishing such a causal link to *in concreto* assessments in the future.

### C. Legal consequences arising from wrongful acts – Forms of remedy and reparation

*State responsibility for significant climate harm may give rise to wide-ranging legal consequences, namely cessation, non-repetition and reparation- including restitution, compensation and/or satisfaction.*

#### **Entire panoply of legal consequences**

**Para 445:** The ICJ was clear that breaches of States’ climate-related obligations “may give rise to the entire panoply of legal consequences provided for under the law of State responsibility. These include obligations of cessation and non-repetition, which are consequences that apply irrespective of the existence of harm, as well as the consequences requiring full reparation, including restitution, compensation and/or satisfaction. The Court also notes that breaches of States’ obligations do not affect the continued duty of the responsible State to perform the obligation breached.”

### **Obligation of cessation & non-repetition**

**Paras. 446–448:** Aside from the general duty of performance, a responsible State has a duty to cease the wrongful conduct, provided the underlying obligation remains in force. According to the Court, this “may require a State to revoke all administrative, legislative and other measures” that led to the breach (**para. 447**). In addition, a State may have to “offer appropriate assurances and guarantees of non-repetition” (**para. 448**). *Given how the Court outlined relevant conduct, these forms of legal consequence (cessation and assurances of non-repetition) can be interpreted to require mitigation action as well as the creation of a regulatory environment that encourages meaningful mitigation.*

### **Duty to make reparation**

**Para. 450:** States are responsible for remedying damage resulting from their internationally wrongful acts. Injured states may be able to claim, in descending hierarchy, restitution, compensation, satisfaction (citing *Factory at Chorzów*).

### **Restitution**

**Para. 451:** “[T]he Court considers that, in the circumstances of climate change caused by emissions of GHGs, restitution may take the form of reconstructing damaged or destroyed infrastructure, and restoring ecosystems and biodiversity. Whether or not these special forms of restitution are appropriate as reparation for damage suffered by States in relation to climate change is to be determined on a case-by-case basis,” and “cannot be made in the abstract.”

### **Compensation**

**Para. 452:** States are obliged to compensate all “financially assessable damage” where restitution is impossible.

**Para. 453:** On compensation for environmental damage, the Court notes that “compensation will be due for both damage caused to the environment, ‘in and of itself’ — which may include ‘indemnification for the impairment or loss of environmental goods and services in the period prior to recovery’ — and expenses incurred by injured States as a consequence of such damage (*Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)*, *Compensation, Judgment*, *I.C.J. Reports 2018 (I)*, pp. 28–29, paras. 41–43).”

**Para. 454:** Evidential difficulties do not preclude compensation, “where there is uncertainty with respect to the exact extent of the damage caused, compensation in the form of a global sum, within the range of possibilities indicated by the evidence and taking into account equitable considerations, may be awarded on an exceptional basis (see

*Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda), Reparations, Judgment, I.C.J. Reports 2022 (I), p. 52, para. 106.*”

### **Satisfaction**

**Para. 455:** “Whether satisfaction is warranted for a violation by a State or States of obligations regarding the emission of GHGs, and what form that satisfaction could take, will depend on the nature and circumstances of the breach. It is possible for satisfaction to take the form of expressions of regret, formal apologies, public acknowledgments or statements, or education of the society about climate change. In the past, the Court has also recognized that a formal declaration by an international court or tribunal of the wrongfulness of State conduct is a potential form of satisfaction (*Corfu Channel (United Kingdom v. Albania), Merits, Judgment, I.C.J. Reports 1949, p. 35.*”

## **Categories of Climate Cases Relevant to the Excerpts**

The following categories and examples of climate cases seeking remedy and reparation for climate-related harm illustrate key contexts in which States’ and corporate actors’ remediation obligations have been, or could be, litigated, and in which the aforementioned excerpts may be relevant. These examples are provided for illustrative purposes only and do not necessarily indicate that the ICJ AO has been invoked or applied in those proceedings. Some of the cases, in fact, predate the ICJ AO.

While the ICJ did not directly address corporate duties, its conclusions on the types of conduct that impairs the climate, the feasibility of linking such conduct to infringement of rights and other injury, and the State obligation to regulate such harmful conduct and ensure those injured have access to effective remedy, affirm the role of courts in adjudicating claims seeking climate reparations from corporations as well as States. The authoritative weight of the ICJ AO conclusions will vary by jurisdiction and legal system. Please note that the case categories below are not mutually exclusive; cases can fall into one or more of them.

### **Human Rights–Based Right to Remedy Cases against States**

The aforementioned excerpts are relevant to litigation arguing that a breach of human rights obligations in the climate context requires remediation.

Examples: [Billy et al. v. Australia](#),<sup>44</sup> where the UN Human Rights Committee found that Australia violated the rights of Torres Strait Islanders by failing to take timely adaptation measures to protect their homes, culture, and livelihoods, and granted remedies including compensation for harm suffered and asked Australia to consult meaningfully with affected communities to assess needs.

## Corporate Accountability Cases

The excerpts above are relevant to claims seeking to hold major polluters accountable for climate harm and to seek remedies that include compensation for loss and damage incurred. The ICJ's legal conclusions have clear and transferable force in corporate accountability litigation. In particular, the Court's confirmation that the plurality of contributors to climate harm does not dilute individual responsibility, its recognition that climate harm gives rise to obligations of remedy, and its focus on remedial forms, together with its explicit scrutiny of climate-destructive corporate conduct, can be drawn upon in claims against corporate actors.

Examples: Cases against corporate actors for climate-related loss and damage have proliferated in recent years, including the pending Swiss case of [Asmania v. Holcim](#), filed in 2022, in which Indonesian claimants are demanding that the Swiss company reduce its emissions, compensate for (financial and non-financial) damage that has already occurred, and finance adaptation measures needed to protect their island from floods.

In 2024, [a Belgian farmer](#) filed a suit against TotalEnergies for its role in climate change, which has caused him huge losses. He is seeking damages from Total, including compensation. He is also asking the court to order the company to halt its investments in new fossil fuel projects (gas, oil, coal), reduce its GHG emissions, and reduce its oil and gas production. In August 2025, a few weeks after the ICJ issued its AO, [six Korean farmers](#) facing escalating climate-related losses filed a lawsuit against Korea Electric Power Corporation (KEPCO), a state-owned utility company, seeking compensation for substantial economic losses and for the mental and emotional suffering they had suffered as a result of the climate crisis. [The Odette Case](#) was filed by 103 Filipinos in December 2025 against Shell in the UK. Following 2021 Super Typhoon Odette, the claimants are seeking financial compensation for the damage suffered on the basis of Shell's contribution to climate change. In line with the polluter pays principle, the claimants are seeking damages for losses including property damage, personal injury, psychological trauma, bereavement, and loss of earnings.

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<sup>44</sup> U.N. Human Rights Committee, *Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 3624/2019*, U.N. Doc. CCPR/C/135/D/3624/2019 (Sept. 18, 2023).

Finally, another case currently pending is that of 43 [Pakistani farmers](#). The suit was filed in December 2025 against two of Germany's largest emitters (RWE and Heidelberg Materials) for damage incurred during the catastrophic 2022 floods. The farmers argued that the companies violated their duty of care and that, as the actors responsible for the climate harms, they must compensate for the damage. This case follows the legal precedent set by the judgment in [Saúl Luciano Lliuya v. RWE](#) (delivered in May 2025). While the Peruvian farmer and mountain guide's claim in [Lliuya v. RWE](#) was ultimately dismissed on the basis that the risk melting glaciers posed to the claimant was not sufficiently concrete/certain, it nonetheless confirmed that large emitters can, in principle, be held liable under German civil law for their contribution/share to climate change and the damages this causes extraterritorially.

Other (concluded) cases in this field include [Federal Public Prosecutor's Office v. Nilma Félix](#) (and 3 related cases) concerning climate damage resulting from illegal deforestation in Brazil.

## Inter-State and Advisory Proceedings

Recent climate advisory opinions have addressed loss and damage as part of States' international obligations.

*Examples:* The [Inter-American Court of Human Rights \(IACtHR\) Advisory Opinion](#) provides clear guidance on repairing climate harm, considering not only State responsibility, but also critical access-to-justice dimensions. The pending request for an [African climate advisory opinion](#) invites the Court to elaborate on States' applicable human rights obligations regarding climate change, including duties to compensate for loss and damage and, more broadly, to provide reparations.

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# Litigation Note on the Right to a Healthy Environment

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## Introduction

The International Court of Justice (ICJ)'s unanimous conclusion in its Climate Advisory Opinion (AO) that the right to a clean, healthy, and sustainable environment [constitutes a binding norm of international law](#) is of critical importance, as is the Court's affirmation that this right is a precondition for the enjoyment of many other human rights. As noted by the ICJ, the right to a healthy environment is deeply embedded in national constitutions and legal systems worldwide. The ICJ's recognition of this right as part of the applicable legal framework governing States' climate obligations provides a critical entry point for rights-based climate litigation, not only at the international and regional levels, but also before domestic courts across jurisdictions.

This litigation note distills key findings from the ICJ AO relevant to the right to a healthy environment, without claiming to be comprehensive. Two sections follow: key excerpts from the AO and categories of climate litigation for which those excerpts may be relevant.

## Relevant Excerpts from the ICJ AO

The ICJ AO clarifies States' legal obligations and standards in relation to climate change, including with respect to the right to a healthy environment and, through it, the broader range of rights protected under international law.

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<sup>45</sup> Inter-American Association for Environmental Defense (AIDA) and World Youth for Climate Justice (WYCJ), respectively.

<sup>46</sup> University of British Columbia and Center for International Environmental Law (CIEL), respectively.

## A. State Obligations on Climate Change and the Right to a Clean, Healthy and Sustainable Environment

*The right to a clean, healthy, and sustainable environment is a binding norm of international law, a precondition for the enjoyment of many other human rights, and part of the applicable legal framework governing State obligations in relation to climate change.*

### **Climate System as an Element of the Environment**

**Para. 75:** The Court begins from a definitional premise that the climate system is an element of the environment. Accepting the IPCC definition, it observes that the climate system comprises “the atmosphere, the hydrosphere, the cryosphere, the lithosphere and the biosphere and the interactions between them,” and that this definition is substantially equivalent to that of the UNFCCC. This characterization situates climate protection squarely within the broader framework of environmental protection.

### **Interdependence between environmental protection and human rights**

**Para. 144:** The Court recognizes that protection of the environment and protection of human rights have generally been identified as legally interdependent since at least the Stockholm Declaration of 1972, pointing also to the preamble to the Paris Agreement, which calls for human rights obligations to be taken into account when addressing climate change.

**Para. 145:** In relation to States’ climate obligations, the ICJ considered that the core universal human rights treaties, including the International Covenant on Economic, Social and Cultural Rights (ICESCR), International Covenant on Civil and Political Rights (ICCPR), and other human rights recognized under customary international law, constitute part of the most directly relevant applicable law.

**Paras. 372–386:** Following a detailed assessment, the Court concludes that the adverse effects of climate change “may impair the effective enjoyment of human rights.”

### **The right to a clean, healthy, and sustainable environment as a human right**

**Para. 392:** The ICJ identified a growing recognition of the right to a clean, healthy, and sustainable environment and summarized its consolidation through universal and regional agreements and other instruments, and national constitutions/legislation. It also recognized General Assembly Resolution 76/300 (2022), which declares it a human right.

**Para. 393:** Upon analysis, the Court concluded that “**a clean, healthy and sustainable environment is a precondition for the enjoyment of many human rights**, such as the right

to life, the right to health and the right to an adequate standard of living, including access to water, food and housing. The right to a clean, healthy, and sustainable environment results from the interdependence between human rights and the protection of the environment. Consequently, **in so far as States parties to human rights treaties are required to guarantee the effective enjoyment of such rights, it is difficult to see how these obligations can be fulfilled without at the same time ensuring the protection of the right to a clean, healthy and sustainable environment as a human right.** The human right to a clean, healthy and sustainable environment is therefore inherent in the enjoyment of other rights. The Court thus concludes that, under international law, the human right to a clean, healthy and sustainable environment is essential for the enjoyment of other human rights.”  
(*emphasis added*)

### ***Obligations of States under international human rights law to protect the climate system and other parts of the environment***

**Para 403:** Taking into account the adverse effects of climate change on the enjoyment of human rights, the ICJ considers that the full enjoyment of human rights — and, necessarily, the right to a clean, healthy and sustainable environment — cannot be ensured without the protection of the climate system and other parts of the environment. The ICJ considered that in order to guarantee the effective enjoyment of human rights, “States must take measures to protect the climate system and other parts of the environment. These measures may include, inter alia, taking mitigation and adaptation measures, with due account given to the protection of human rights, the adoption of standards and legislation, and the regulation of the activities of private actors.”

Thus, through integrated reasoning, the Court recognizes the human right to a clean, healthy, and sustainable environment as part of international human rights law, which it identifies as among the most directly relevant applicable law governing States’ climate obligations. The Court’s affirmation that a clean, healthy, and sustainable environment is a precondition for the enjoyment of multiple human rights (life, health, adequate standard of living, water, food, and housing) and is essential for their full realization is a broad-based entry point to human rights claims in relation to climate change.

### ***On relevant conduct breaching climate obligations — including the right to a healthy environment — and triggering legal consequences***

#### Material Scope

**Para. 94:** “[T]he relevant conduct... is not limited to conduct that, itself, directly results in GHG emissions, but rather comprises all actions or omissions of States which result in the climate system and other parts of the environment being adversely affected by

anthropogenic GHG emissions. The Court considers that the material scope of its inquiry encompasses the full range of human activities that contribute to climate change as a result of the emission of GHGs, including both consumption and production activities.”

**Para. 427:** In making the point that “the internationally wrongful act in question is not the emission of GHGs per se,” the Court clarified that the internationally wrongful act constitutes the “breach of conventional and customary obligations identified under question (a) pertaining to the protection of the climate system from significant harm resulting from anthropogenic emissions of such gases.” A State’s failure to take appropriate action to protect the climate system — including in relation to fossil fuel production and consumption, the granting of exploration licences, or the provision of subsidies — may therefore constitute an internationally wrongful act.

This responsibility extends to acts and omissions concerning non-State actors within a State’s “jurisdiction or effective control” (**para. 95**). As the Court further noted (**para. 428**), a State may incur responsibility “where, for example, it has failed to exercise due diligence by not taking the necessary regulatory and legislative measures to limit the quantity of emissions caused by private actors under its jurisdiction.”

#### Temporal Scope

**Para. 423:** While the Court acknowledged that the breach of a climate obligation does not necessarily occur through “one, temporally contained, action or omission,” it concluded “the issue of temporal scope of the obligations, and the related issue of breach of those obligations, comprise elements of an *in concreto* assessment for the determination of State responsibility...”

#### ***Systemic integration and the rejection of *lex specialis****

**Para. 169:** The ICJ clarified that the Court cannot identify “a discernible intention of the parties to the climate change treaties generally to displace other possibly applicable rules or principles.” Thus, the Court concluded that the principle of *lex specialis* does not lead to a general exclusion of other rules of international law — including the right to a healthy environment — by climate treaties.

**Para 404:** Notably, the Court affirmed a systemic integration approach to applicable law, making clear that international human rights law, climate treaties, other environmental treaties, and relevant customary obligations inform one another, and that States must implement their obligations in an integrated manner. Accordingly, when invoking the AO in relation to the right to a healthy environment, it is important to consider other relevant aspects of the Opinion that may apply to the specific claim, including the customary duty to prevent significant environmental harm, to which the Court confirmed a stringent standard of due diligence applies.

## B. International Responsibility and the Right to a Healthy Environment

*Legal consequences arise where States breach any relevant primary obligations related to climate change, including obligations relating to the protection of the right to a clean, healthy, and sustainable environment.*

### **On Applicable Law**

**Paras. 405–407:** The ICJ clarified generally that legal consequences may arise for States that breach any of the obligations in relation to climate change identified in relation to question (a) of the request for an advisory opinion.<sup>47</sup> As detailed above, the Court concluded that such obligations encompass the right to a clean, healthy, and sustainable environment. The legal consequences that arise for such internationally wrongful acts of States “are to be ascertained on the basis of the primary rules and the customary rules on State responsibility.”

**Para. 445:** The Court recalled that every internationally wrongful act gives rise to responsibility and that violations may give rise to the full set of consequences provided for by the law of responsibility: cessation and non-repetition (even without damage) and full reparation (restitution, compensation, and/or satisfaction), without extinguishing the continuing duty to comply with the violated obligation.

**Para. 450:** With regard to full reparation, the Court reiterates the classic standard of international law, according to which reparation must “remove all consequences” of the unlawful act and restore the situation that would probably have existed had the act not been committed. In addition, it addresses the elements of full reparation, which are not limited exclusively to financial compensation, but also include, among others, restitution and satisfaction, in accordance with the characteristics of each case.

For further details on the nature of legal consequences, attribution, and causality as well as forms of redress, *cf. Litigation Note on Climate Reparations*.

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<sup>47</sup> For the two questions see *Obligations of States in respect of Climate Change* (Advisory Opinion), 2025 I.C.J. Rep., pp. 8–9 (July 23, 2025), available at [www.icj-cij.org/sites/default/files/case-related/187/187-20250723-adv-01-00-en.pdf](http://www.icj-cij.org/sites/default/files/case-related/187/187-20250723-adv-01-00-en.pdf).

# Categories of Climate Cases Relevant to the Excerpts

The following categories and examples of cases, including claims based on the right to a healthy environment, illustrate key contexts in which States' and corporate actors' corresponding obligations have been, or could be, litigated, and in which the aforementioned excerpts may be relevant. These examples are provided for illustrative purposes only and do not necessarily indicate that the ICJ AO has been invoked or applied in those proceedings.

The ICJ consolidates an integrated reading of climate change as an issue of environmental protection and human rights. In this framework, the right to a healthy environment is recognized as a foundational norm. In effect, (i) it defines climate as part of the environment in a systemic sense; (ii) it rejects an exclusionary *lex specialis* interpretation; (iii) it strengthens customary obligations such as the duty to prevent significant harm to the environment; (iv) it affirms that the full enjoyment of human rights requires protection of the climate system; and (v) it articulates international responsibility and its remedies of cessation and full reparation. The cases set out below complement the Court's reasoning by highlighting how this right has been recognized and given content in judicial and quasi-judicial proceedings, and in which types of cases the excerpts above might be drawn upon. The examples provided are for illustrative purposes only and do not suggest that the ICJ AO has been invoked or applied in those proceedings.

The authoritative weight of the ICJ AO conclusions will vary by jurisdiction and legal system. Please note that the case categories are not mutually exclusive, and cases can fall into one or more of the following categories.

## The right to a healthy environment as an autonomous right

The relevance of the aforementioned excerpts to litigation arguing a breach of the right to a healthy environment as an autonomous right.

*Examples:* Judicial recognition of the right to a healthy environment as a fundamental and autonomous right has emerged across jurisdictions. In [\*Minors Oposa v. Secretary of the Department of Environment and Natural Resources \(Philippines\)\*](#), the Supreme Court affirmed that the right to a “balanced and healthful ecology,” although located among constitutional principles and policies rather than within the traditional bill of rights, is of fundamental importance, as it concerns human self-preservation and survival and may be understood as predating governments and constitutions. The Court emphasized that its constitutional recognition reflects the framers' concern that, absent a clear mandate, the

State might fail to protect the environment and public health, to the detriment of present and future generations, and clarified that the right entails a correlative duty on the State and other actors to refrain from environmental harm.

Similarly, in [Advisory Opinion OC-23/17](#), the Inter-American Court of Human Rights affirmed that the right to a healthy environment is an autonomous right, protecting environmental components such as forests, rivers, and seas as legal interests in themselves. The Court stressed that environmental protection is required not only because of its utility to human beings or its connection to other human rights, but also because of the environment's intrinsic value and its essential role in sustaining life and other living organisms. These decisions underscore the independent legal status of the right to a healthy environment and its foundational role in protecting present and future generations.

### **Litigation linking the right to a healthy environment with environmental degradation and/or the rights of nature**

This category includes cases and authoritative findings that articulate the causal and normative relationship between environmental harm and violations of human rights, and/or those recognizing nature as a rights-bearing subject. Although not addressed in the ICJ AO, litigation around the rights of nature is often closely linked to the right to a healthy environment.

*Examples:* In [Judgment T-622 of 2016](#) (Colombia, Atrato River case), the Colombian Constitutional Court found that illegal mining and the use of toxic substances severely affected the rights to life, health, water, food security, culture, territory, and a healthy environment of ethnic communities. The Court recognized the interdependence between environmental protection and human rights within the framework of biocultural rights, and held that nature should be conceived not only as the environment of human beings but also as a subject of rights in its own right. Similarly, in [Inhabitants of La Oroya v. Peru](#), the Inter-American Court of Human Rights found that severe environmental contamination generated a systemic risk to the health, life, and personal integrity of the inhabitants of La Oroya, and held that the State's failure to prevent ongoing contamination and provide adequate care to affected individuals constituted a violation of the collective dimension of the right to a healthy environment under Articles 11 and 26 of the American Convention. Likewise, in [SERAC & CESR v. Nigeria](#), the African Commission on Human and Peoples' Rights held that the right to a satisfactory environment imposes clear obligations on States, including duties to prevent pollution and ecological degradation, promote conservation, and ensure ecologically sustainable development and use of natural resources.

## Litigation on the interdependence, indivisibility, and interrelation of human rights and the environment

This category covers jurisprudence affirming that a clean, healthy, and sustainable environment is a precondition for the effective enjoyment of multiple human rights and is inherent in their protection. Because of its very relevant conclusions in this context, the ICJ AO is especially pertinent for these types of cases.

*Examples:* In [Advisory Opinion OC-23/17](#), the Inter-American Court of Human Rights clarified that the right to a healthy environment has both collective and individual dimensions. Collectively, it constitutes a universal value owed to present and future generations; individually, its violation may directly or indirectly affect rights such as health, personal integrity, and life, owing to its interconnection with other rights. The Court concluded that environmental degradation may cause irreparable harm to human beings, rendering a healthy environment fundamental to human existence.

Similarly, in the [Santurbán Páramo Case](#) (Colombia), the Tribunal emphasized that the protection of ecosystems such as páramos is essential to guaranteeing the right to health under Article 12 of the ICESCR and the right to a healthy environment. It highlighted the ecological functions of the ecosystem and justified its inclusion under a regime of reinforced constitutional protection, supporting its recognition as a subject of rights. Likewise, in [M.K. Ranjitsinh & Ors. v. Union of India & Ors. \(2024\)](#), the Supreme Court of India ruled that the right to a healthy environment includes the right to be free from the adverse effects of climate change, explicitly linking environmental protection to the right to life and the right to equality.

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# Litigation Note on Corporate Conduct

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## Introduction

The International Court of Justice (ICJ)'s Climate Advisory Opinion (AO) was primarily concerned with the obligations of States under international law relevant to the protection of the climate system. As a result, most of the findings by the Court in relation to corporate conduct are in relation to the duties of States to act with due diligence and to regulate private actors.

Importantly, one of the most progressive findings of the Court was that States that fail to prevent significant harm to the climate system and other parts of the environment as a result of fossil fuels (including their production, consumption, licensing, and subsidizing) could be in breach of their international legal obligations. This unusual singling out of the fossil fuel industry, albeit unsurprising considering its role in the climate crisis, should nonetheless not go unnoticed by litigators and signals a potential path forward in the new era of climate litigation post-Advisory Opinions. Two sections follow: key excerpts from the AO and categories of climate litigation for which those excerpts may be relevant.

## Relevant Excerpts from the ICJ AO

The ICJ AO includes important findings on corporate conduct, even if framed in terms of States' primary obligations for breaches of international law caused by private actors under their control and jurisdiction. The ICJ confirmed that the conduct (actions/omissions) of non-state actors fall within the scope of states' international legal obligations.

**Para. 94:** "In this regard, the Court is further of the view that the relevant conduct for the purposes of these advisory proceedings is not limited to conduct that, itself, directly results in GHG emissions, but rather comprises all actions or omissions of States which result in the climate system and other parts of the environment being adversely affected by anthropogenic GHG emissions. The Court considers that the material scope of its inquiry encompasses the full range of human activities that contribute to climate change as a result of the emission of GHGs, including both consumption and production activities. This interpretation is confirmed by the understanding of most of the participants who replied to

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<sup>48</sup> Greenpeace International, Greenpeace International, and Natural Justice, respectively. Author names are in alphabetical order.

<sup>49</sup> University of Cambridge and Center for International Environmental Law (CIEL), respectively.

<sup>50</sup> Greenpeace International.

the question posed by a Member of the Court concerning ‘the specific obligations under international law of States within whose jurisdiction fossil fuels are produced’. **These participants submitted that obligations pertaining to the protection of the climate system do not rest exclusively with consumers and end users, but also include activities such as ongoing production, licensing and subsidizing of fossil fuels.**” (*emphasis added*)

**Para. 95:** “The Court’s inquiry must therefore have a broad material scope encompassing States’ obligations concerning all actions or omissions of States, and of non-State actors within their jurisdiction or effective control, that result in the climate system and other parts of the environment being adversely affected by anthropogenic GHG emissions.”

## **A. State obligations to act with due diligence and regulate the conduct of private actors**

### **Stringent due diligence**

*States must exercise stringent due diligence, in line with the best available science, to ensure that private actors under their control and jurisdiction do not cause significant harm to the climate system and other parts of the environment. This entails not only regulating private actors, but also monitoring and enforcing regulations under “stringent due diligence.”*

**Para. 132:** “[a] State is . . . obliged to use all the means at its disposal in order to avoid activities which take place in its territory, or in any area under its jurisdiction, causing significant damage to the environment of another State’ (*Pulp Mills on the River Uruguay (Argentina v. Uruguay)*, *Judgment*, *I.C.J. Reports 2010 (I)*, p. 56, para. 101).”

**Para. 138:** “Under these circumstances, the Court recognizes that the standard of due diligence for preventing significant harm to the climate system is stringent .... Moreover, as the Court has explained, due diligence ‘entails not only the adoption of appropriate rules and measures, but also a certain level of vigilance in their enforcement and the exercise of administrative control’ (*Pulp Mills on the River Uruguay (Argentina v. Uruguay)*, *Judgment*, *I.C.J. Reports 2010 (I)*, p. 79, para. 197). As concerns climate change, a heightened degree of vigilance and prevention is required.”

**Para. 282:** “As far as climate change is concerned, such appropriate rules and measures include, but are not limited to, regulatory mitigation mechanisms that are designed to achieve the deep, rapid, and sustained reductions of GHG emissions that are necessary for the prevention of significant harm to the climate system. Adaptation measures reduce the risk of significant harm occurring and are therefore also relevant for assessing whether a State is fulfilling its customary obligations with due diligence. **These rules and measures must regulate the conduct of public and private operators within the States’ jurisdiction**

**or control and be accompanied by effective enforcement and monitoring mechanisms to ensure their implementation.”** (*emphasis added*)

### **Best available science**

**Para. 284:** “The standard of due diligence may also become more demanding in the light of new scientific or technological knowledge. The Court is aware that scientific research on climate change is well developed. In this regard, reports by the IPCC constitute comprehensive and authoritative restatements of the best available science about climate change at the time of their publication.”

**Para. 283:** “The Court considers that the availability of, and the need to acquire and analyse scientific and technological information is another important factor. Scientific information may provide the necessary evidence to assess the probability and seriousness of possible harm, informing the required standard of due diligence. Thus, where there is generally recognized scientific evidence that it is highly probable that significant harm will occur, the standard of due diligence will be more demanding for all States (see paragraph 138 above).”

### **Temperature Target**

*The relevant temperature threshold for private actors such as fossil fuel companies to aim for in their GHG emissions reduction plans is below 1.5°C, as the primary temperature goal under the Paris Agreement.*

**Para. 242:** “...the object and purpose of the Agreement set out in Article 2, i.e. to hold the increase in the global average temperature to below 1.5°C, which the Court has interpreted to be the primary temperature goal under the Agreement (see paragraph 224 above).”

### **Domestic obligations to achieve NDC targets**

*Under the Paris Agreement, a Party’s Nationally Determined Contributions (NDCs) create binding legal obligations, including to adopt domestic measures and to regulate private actors in order to meet the NDC targets.*

**Para. 252:** “Accordingly, since the domestic mitigation obligations under Article 4, paragraph 2 [of the Paris Agreement], establish an obligation of conduct, parties are required to act with due diligence in taking necessary measures to achieve the objectives set out in their successive NDCs. Thus, a party’s compliance with its obligations to pursue domestic mitigation measures under Article 4, paragraph 2, is to be assessed on the basis of whether the party exercised due diligence in its efforts and in deploying appropriate means to take domestic mitigation measures, **including in relation to activities carried out by private actors**. Indeed, as ITLOS observed, the ‘obligation of due diligence is

particularly relevant in a situation in which the activities in question are mostly carried out by private persons or entities' (*Climate Change, Advisory Opinion, ITLOS Reports 2024*, p. 90, para. 236)." (emphasis added)

### **Cumulative harm**

*States must consider the cumulative environmental harm caused by their own actions and by private actors, including the fossil fuel industry, since individually minor activities can collectively produce significant damage.*

**Para. 276:** "The Court is of the view that a risk of significant harm may also be present in situations where significant harm to the environment is caused by the cumulative effect of different acts undertaken by various States and by private actors subject to their respective jurisdiction or control, even if it is difficult in such situations to identify a specific share of responsibility of any particular State. States must assess the possible cumulative effects of their acts and the planned activities under their jurisdiction or control. Although such 'activities may not be environmentally significant if taken in isolation, . . . they may produce significant effects if evaluated in interaction with other activities' (*Climate Change, Advisory Opinion, ITLOS Reports 2024*, p. 128, para. 365)."

## **B. Fossil fuel production, consumption, licensing, and subsidizing**

*States that do not act diligently to prevent significant harm to the environment through the production, consumption, licensing, or subsidizing of fossil fuels may be in breach of their international obligations.*

**Para. 427:** "Failure of a State to take appropriate action to protect the climate system from GHG emissions — including through fossil fuel production, fossil fuel consumption, the granting of fossil fuel exploration licences or the provision of fossil fuel subsidies — may constitute an internationally wrongful act which is attributable to that State. The Court also emphasizes that the internationally wrongful act in question is not the emission of GHGs per se, but the breach of conventional and customary obligations identified under question (a) pertaining to the protection of the climate system from significant harm resulting from anthropogenic emissions of such gases."

### **Attribution and international responsibility**

*States can be held responsible where they fail to take adequate regulatory or legislative measures to limit their GHG emissions caused by private actors under their jurisdiction.*

*While climate change is caused by cumulative GHG emissions, it is scientifically possible to determine major fossil fuel companies' total contribution to global emissions.*

**Para. 428:** “In relation to private actors, the Court observes that the obligations it has identified under question (a) include the obligation of States to regulate the activities of private actors as a matter of due diligence. Therefore, attribution in this context involves attaching to a State its own actions or omissions that constitute a failure to exercise regulatory due diligence. In such circumstances, the question of attributing the conduct of private actors to a State does not arise. The legal standard to assess compliance with the obligation to regulate, as well as the nature of the actions or omissions that lead to attribution, has been set out by the Court in several cases .... Thus, a State may be responsible where, for example, it has failed to exercise due diligence by not taking the necessary regulatory and legislative measures to limit the quantity of emissions caused by private actors under its jurisdiction.”

**Para. 429:** “The Court further notes that some participants submitted that it is difficult to invoke responsibility in the context of climate change, given that the wrongful conduct is cumulative in nature, involving different States over a period of time, and involving a plurality of States that cause injury to a plurality of injured States. In this respect, the Court observes that while climate change is caused by cumulative GHG emissions, it is scientifically possible to determine each State’s total contribution to global emissions, taking into account both historical and current emissions.”

### C. International Human Rights Law

*States must take several measures, including regulating the activities of private actors, in order to meet their international obligations to guarantee the effective enjoyment of human rights.*

**Para. 403:** “Taking into account the adverse effects of climate change on the enjoyment of human rights, the Court considers that the full enjoyment of human rights cannot be ensured without the protection of the climate system and other parts of the environment. In order to guarantee the effective enjoyment of human rights, States must take measures to protect the climate system and other parts of the environment. These measures may include, inter alia, taking mitigation and adaptation measures, with due account given to the protection of human rights, the adoption of standards and legislation, and the **regulation of the activities of private actors**. Under international human rights law, States are required to take necessary measures in this regard.” (*emphasis added*)

## D. Rights and obligations of private actors

### **Standing to bring suits**

*It is possible for individuals and private actors to bring claims against States for breaches of their climate obligations, although the standing to do so depends on specific treaties or legal instruments that have not been analysed in the Advisory Opinion.*

**Para. 111:** “The Court notes in this regard that certain treaties enable actors other than States, such as individuals or other private actors, to bring claims against States on the international plane. Thus, whether individuals are entitled to invoke a State’s responsibility for failure to comply with obligations identified under question (a) depends not on the general rules on State responsibility, but on the specific treaties and other legal instruments that create procedural and substantive rights and obligations governing the relationship between the States and individuals concerned.”

### **Polluter-pays principle**

*The polluter-pays principle, enshrined in the Rio Declaration, may still apply in the context of climate harms, despite not being reflected in the main climate treaties. Sector-specific treaties and national laws play a role in filling this gap in the climate treaties.*

**Para. 160:** “[The recommendation of Principle 16 of the Rio Declaration] has been followed by States in certain sector-specific treaties and various types of national legislation, mostly in the form of strict liability of private actors for specific hazardous activities. However, the principle “that the polluter should, in principle, bear the cost of pollution” is not envisaged or reflected in any of the climate change treaties. ... This does not preclude the possibility that forms of strict liability for hazardous acts and other kinds of acts that are not wrongful under international law are developing.”

## Categories of Climate Cases Relevant to the Excerpts

The following categories of corporate climate litigation highlight key contexts in which harmful corporate conduct and/or the obligations of States to regulate such corporate conduct (especially, in relation to fossil fuels) have been or could be litigated, as well as how the aforementioned excerpts could be relevant. The authoritative weight of the ICJ AO conclusions will vary by jurisdiction and legal system. Please note that the case categories are not mutually exclusive; cases can fall into one or more of the following categories.

## Licensing cases

Licensing cases are, for the most part, focused on decision-makers' approval of fossil fuel or hydrocarbon developments, especially due to failing to consult local communities or to consider scope 3 emissions in their environmental impact assessments.

Examples: [R \(Finch on behalf of the Weald Action Group & Others\) v. Surrey County Council \(& Others\)](#), the series of cases involving Norwegian decisions ([Greenpeace Nordic and Others v Norway \(People v. Arctic Oil\)](#)) App no 34068/21 (ECtHR, 22 December 2022); [Case E-18/24 The Norwegian State v Greenpeace Nordic and Nature and Youth Norway](#) [2025] EFTA Court; [Greenpeace Nordic & Nature and Youth v Norway](#) [2025] Bogarting Court of Appeal); and [Sustaining the Wild Coast NPC and Others v. Minister of Mineral Resources and Energy and Others](#) (2021).

Despite the AO's recent issuance, some courts have already applied its findings in licensing cases. The Ninth Federal Court of Porto Alegre, in Brazil, extensively cited the ICJ AO and the Inter-American Court of Human Rights (IACtHR) Advisory Opinion (AO) in its decision on the **Amigos da Terra ACP**,<sup>51</sup> regarding the licensing of a thermoelectric plant and a coal mine, which were found to be incompatible with Brazil's climate plans. Referencing the ICJ AO, the judge noted, *inter alia*, (i) that IPCC reports were reflective of the best available climate science; (ii) that the most important obligation for States in climate matters was the obligation to prevent significant harm to the climate system; (iii) that environmental impact assessments (EIAs) for activities that can impact the climate system must take into account the "specific nature of the respective climate risk"; (iv) that States can be held legally responsible for their omissions to act in relation to the production, consumption, licensing, and subsidizing of fossil fuels; (v) that the duty to protect the environment extends to the climate system, which in turn must be protected for present and future generations; and (vi) that the 1.5°C threshold of the Paris Agreement was a legal standard. Referencing the IACtHR AO, the judge also noted that (i) EIAs were key for a State to evaluate whether it was meeting their mitigation goals; (ii) in order to guarantee the right to a healthy climate, States must regulate, supervise, monitor, request, and approve EIAs; (iii) that mitigation measures must consider 1.5°C as a maximum limit, and take into account considerations of justice, CBDR-RC, and intra- and inter-generational equity; and (iv) that high-polluting States (such as Brazil) must make a "proportionate emissions mitigation commitment".

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<sup>51</sup> *Núcleo Amigos da Terra Brasil and others v. Federal Government (União) and others, Ação Civil Pública (ACP) n. 5050920-75.2023.4.04.7100*, Judgment (Sentença, Aug. 22, 2025), Ninth Federal Court of Porto Alegre, p. 42. [Amigos da Terra ACP]. Note that this decision was appealed and partially amended on Oct. 16, 2025 (*Embargos de Declaração*); however, the court reiterated its understanding of the ICJ and IACtHR opinions in its reformed decision.

## Duty to regulate cases

In duty to regulate cases, claimants may wish to rely on the ICJ's statements that States must take action to halt climate change by deploying appropriate measures to achieve deep, rapid, and sustained reductions of GHG emissions (**para. 282**), including by regulating the conduct of public and private operators within their jurisdiction or control (**paras. 282, 403, 496, 529(a)**), with effective monitoring and enforcement (**paras. 282, 359**). Particular emphasis should be placed on the responsibility of a State for failing to exercise due diligence in regulating the emissions of private actors under its jurisdiction. The Court found that, because these duties also emerge from customary international law, they apply to all States, regardless of whether they are parties to the UN climate treaties (**paras. 315, 394**), which is but one source of law applicable to the climate crisis (**paras. 114, 173, 315, 394**). For duty to regulate cases, issues relating to the attribution of private conduct to the State do not arise, but a State may nevertheless be responsible for its failures to exercise due diligence in the regulation of private conduct, including omitting to limit the quantity of emissions caused by private actors under its jurisdiction (**para. 428**).

Regarding Scope 3 emissions, claimants can rely on the ICJ's rejection of the argument that only activities directly generating GHG emissions would be covered under its Advisory Opinion (**paras. 94–95**). Claimants may further rely on the [Joint Declaration of Judges Bhandari and Cleveland](#), which further expands on the obligations to consider Scope 3 emissions:

“13. The Advisory Opinion accordingly acknowledges that assessments of potential risk of significant harm to the climate system must take into account the cumulative effect of all relevant activities occurring within a State's jurisdiction or control, including risks resulting from fossil fuel production, licensing and subsidies and the foreseeable 'downstream' consequences of such activities in other jurisdictions.

14. Fossil fuels are produced in order to be burned. Numerous participants emphasize that States within whose jurisdiction fossil fuels are produced know the destination and intended final use of the coal, oil and gas that they export, and must therefore factor these consequences into their assessment of the harms that such production contributes to the climate system.

15. We agree. In order to fulfil their obligations under Articles 2 and 4 of the Paris Agreement, as well as their stringent due diligence obligations under customary international law, States are required to account, in their assessments of environmental risk, for the increased concentration of GHGs in the atmosphere that will foreseeably result from, inter alia, production, licensing and subsidy activities.”

The Joint Declaration clarifies that EIAs must include Scope 3 emissions from fossil fuel burning in the EIA of a fossil fuel project, citing both the UK Supreme Court’s decision in *Finch* and the *EFTA Advisory Opinion* (paras. 16–17, **Separate Opinion Bhandari and Cleveland**).

## Litigation Targeting Corporate Frameworks

In corporate framework climate cases, where claimants are seeking to hold companies accountable for their contributions to climate change by challenging group-wide policies, governance structures, and decision-making processes, the ICJ AO can be supportive in the following ways.

*Examples:* [Milieudefensie et al. v. Royal Dutch Shell](#) (Netherlands), [Greenpeace Italy and others v. ENI, the Italian Ministry of Economy and Finance and Cassa Depositi e Prestiti S.p.A.](#) (Italy), and [Notre Affaire à Tous et al v. Total](#) (France), where the plaintiffs allege that the defendant fossil fuel companies (and majority shareholders) must assess and mitigate climate-related risks and impacts across their full value chains, including Scope 3 emissions. The excerpts relating to the primary temperature goal of the Paris Agreement (**para. 242**) can support the argument that the relevant threshold for corporate defendants’ obligations to reduce is also below 1.5°C, where this is still a defence brought by the defendant, as in **Notre Affaire à Tous v. Total**.

Furthermore, in contesting the defendant’s arguments that they provide an essential function in ensuring energy security (energy trilemma argument), claimants may wish to rely on the ICJ AO’s statements that protection of the climate system is crucial to guarantee the effective enjoyment of human rights (**para. 470**). The ICJ AO states that the environment “is the foundation for human life, upon which the health and well-being of both present and future generations depend” (**para. 373**) and that the degradation of the climate system and other parts of the environment impairs numerous human rights (**para. 375**). In contesting the energy trilemma argument from corporate defendants, claimants may wish to rely on the right to a healthy environment as a norm of international law (**para. 392**), as a precondition for the enjoyment of many other human rights (**para. 393**), and its protection for both present and future generations (**paras. 233, 273, 373**), particularly in light of the urgent and existential threat posed by climate change (**paras. 73, 168**). This is particularly relevant where the national law imposes an open duty of care or a similar non-contractual obligation that can be derived from obligations under other areas of law, such as human rights law or international law, as in **Milieudefensie et al v. Shell**.

The ICJ AO’s statement that the plurality of actors responsible for GHG emissions does not undermine the determination of responsibility, as it is scientifically possible to determine each actor’s contribution to global emissions, taking into account both historical and

current emissions (**para. 429**) can also be applied to emissions by private entities (see explanation below).

## Corporate Accountability Cases

Relevance to cases seeking to hold major polluters accountable for climate harm and seek remedies.

Examples: [Saúl Luciano Lliuya v. RWE](#) (Germany) and the pending case [Asmania v. Holcim](#) (Switzerland), where claimants allege corporate responsibility for adaptation costs and loss and damage caused by climate impacts. The newly filed [Odette case](#), filed in England in December 2025 against Shell by over 100 Filipinos who were impacted by Typhoon Odette, also benefits from the ICJ's statements on the panoply of full legal consequences applicable, as well as the finding that 1.5°C is a legal threshold that requires commensurate GHG emissions reductions.

## Greenwashing cases

The ICJ AO can also have relevance to corporate cases challenging inaccurate corporate narratives regarding contributions to the transition to a low-carbon future.

Examples: [Australian Securities and Investments Commission's \(ASIC\) v. Mercer](#) or [Greenpeace France and others v. TotalEnergies SE and another](#), [2025] Tribunal Judiciaire de Paris, 23 October 2025.

The ICJ's clear pronouncement on the global temperature threshold of 1.5°C will contradict corporate defenses that, under a "well below 2°C" trajectory, their statements are not misleading. This is what the Paris Judicial Tribunal found in **Greenpeace France and others v. Total** in 2025. Further, the relevance of the sections referring to the incompatibility of new fossil fuels with the government's climate obligations (**para. 427**) can be used to justify why corporate fossil fuel expansion, while claiming net zero by 2050, is deceptive, as found by the Paris Judicial Tribunal in **Greenpeace France and others v. Total**.

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# Litigation Note on Challenging the Financing of Climate-Destructive Conduct

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Reviewer: Nikki Reisch<sup>53</sup>

## Introduction

The recent International Court of Justice (ICJ) Climate Advisory Opinion (AO) clarifies international law and the legal obligations of States to prevent environmental harm. The ICJ confirmed that international law imposes legal obligations on States to address climate change. The ICJ found that all States, even those not party to one or more of the climate agreements, have a duty to prevent significant harm to the environment, are required to take action to mitigate climate change, and have a duty to co-operate for the protection of the environment in good faith and with due diligence. In doing so, the ICJ stated (**para. 427**) that the “[f]ailure of a State to take appropriate action to protect the climate system from GHG [greenhouse gas] emissions . . . may constitute an internationally wrongful act which is attributable to that State.”

The AO has implications for the public and private financing of climate-destructive conduct, and clarifies the legal obligations of developed States to provide finance to developing countries for climate change adaptation and mitigation. The AO may also assist in the conduct of ongoing and new litigation concerning the finance sector’s support for the fossil fuel sector, and the failure of States to facilitate funding for mitigation and adaptation consistent with reducing greenhouse gas (GHG) emissions. Two sections follow: key excerpts from the opinion and categories of climate litigation for which the excerpts are relevant.

## Relevant Excerpts from the ICJ AO

The AO includes clear findings that will impact the financing of GHG-emitting industries, notably, the fossil fuel sector. The ICJ’s findings suggest that States have legal obligations to cease providing public finance to the fossil fuel sector, through subsidies or otherwise. The AO also provides that States should regulate the ongoing emission generating

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<sup>52</sup> Milieudefensie (Friends of the Earth The Netherlands) and Center for International Environmental Law (CIEL), respectively.

<sup>53</sup> Center for International Environmental Law (CIEL).

conduct, and therefore suggests that the private-sector financing to the fossil fuel industry that facilitates the emission of GHGs should be regulated.

This Litigation Note concerns the ICJ's observations on the provision of finance that facilitates climate-destructive conduct, as well as the funding of alternative low-GHG or zero-emitting technologies, industries, and activities. Finally, the Litigation Note also addresses the obligation of developed States to provide finance to developing countries to adopt adaptation and mitigation measures.

### **A. States' obligations to take appropriate action to protect the climate system from GHG emissions include ceasing funding for fossil fuel activities**

*The failure of a State to take "appropriate action" to reduce fossil fuel emissions by, for example, ending subsidies may constitute an internationally wrongful act which is attributable to that State.*

**Para. 427:** "Failure of a State to take appropriate action to protect the climate system from GHG emissions — including through fossil fuel production, fossil fuel consumption, the granting of fossil fuel exploration licences or the provision of fossil fuel subsidies — may constitute an internationally wrongful act which is attributable to that State."

#### ***Fossil Fuel Subsidies***

The Court specifically recognized that the failure of a state to cease providing "fossil fuel subsidies" may constitute an internationally wrongful act (**para. 427**). States subsidize fossil fuel production both directly and indirectly.<sup>54</sup> States may directly subsidize the production of fossil fuels, and therefore increase emissions, by making cash payments, grants, low-interest loans, investments or by providing insurance. Indirect subsidies include tax breaks, exemptions, regulation waivers, land grants, discounted leasing of public land for exploration, and minimum purchase agreements. Subsidies for the fossil fuel sector are intended to lower the cost of fossil fuel energy production, raise the price received by oil, gas, or coal companies, or lower the price paid by consumers. Furthermore, they reduce the financial risks of expansionary fossil fuel projects, thereby increasing their viability.

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<sup>54</sup> States also implicitly subsidize the fossil fuel sector by ignoring its external costs, including contributions to climate change through GHG emissions, local health damages (primarily pre-mature deaths) through the release of harmful local pollutants like fine particulates, and traffic congestion and accident externalities associated with the use of road fuels. See International Monetary Fund (IMF), *Climate Change: Fossil Fuel Subsidies*, [www.imf.org/en/topics/climate-change/energy-subsidies](http://www.imf.org/en/topics/climate-change/energy-subsidies).

States provide finance to the fossil fuel sector through government-controlled export credit agencies and export-import banks (ECAs) such as the Export-Import Bank of the United States (EXIM), Export Development Bank Canada, Korea Development Bank, the Export-Import Bank of Korea, China Development Bank (CDB), the Export-Import Bank of China (CEXIM), Japan Bank for International Cooperation (JBIC), and Nippon Export and Investment Insurance (NEXI).<sup>55</sup> The new, continued and ongoing provision of finance by ECAs to fossil fuel projects, such as exploration projects, the construction of refining facilities, or the development of export terminals, is a “[f]ailure of a State to take appropriate action [the cessation of finance] to protect the climate system from GHG emissions” and “may constitute an internationally wrongful act which is attributable to that State” per the ICJ AO (**para. 427**).

ECAs are generally government administrative agencies and organs of the State. The ICJ specifically noted (**para. 427**) that it is a “well-established rule of international law” that “the conduct of any organ of a State must be regarded as an act of that State.” The ICJ also emphasized “that the obligation to put an end to the wrongful act may require a State to **revoke all administrative**, . . . measures that constitute an internationally wrongful act of that State” (**para. 447**) (*emphasis added*). ECAs are administrative agencies, and the failure of a State to revoke the mandate of ECAs that enables them to provide funding to the fossil fuel sector may “constitute an internationally wrongful act of that State” (**para. 447**).

The “**appropriate action**” (**para. 427**) (*emphasis added*) States should undertake to protect the climate system, and accord with the AO, is to cease funding fossil fuel production or exploration by way of public subsidies, low-interest loans, guarantees, investments, and tax breaks to the industry, as well as end the provision of indirect subsidies. States should also cease encouraging fossil fuel use through price regulation and consumption funding.

## B. States must use all means at their disposal to reduce GHG emissions

*States have an international legal obligation to use all means at their disposal to reduce their GHG emissions, including eliminating the provision of public finance to the fossil fuel sector.*

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<sup>55</sup> See EXIM, *List of Known Official Export Credit Agencies*, [img.exim.gov/s3fs-public/documents/List%20of%20Known%20Official%20Export%20Credit%20Providers.pdf](https://img.exim.gov/s3fs-public/documents/List%20of%20Known%20Official%20Export%20Credit%20Providers.pdf). See also Claire O’Manique, Bronwen Tucker & Kate DeAngelis, *At A Crossroads: Assessing G20 and MDB International Energy Finance Ahead Of Stop Funding Fossils Pledge Deadline*, (Oil Change International & Friends of the Earth U.S., Nov. 2022), [oilchange.org/wp-content/uploads/2022/11/G20-At-A-Crossroads.pdf](https://oilchange.org/wp-content/uploads/2022/11/G20-At-A-Crossroads.pdf).

**Para. 447:** “Under customary international law, a State responsible for an internationally wrongful act is under an obligation to cease that act if it is continuing and if the breached obligation is still in force. ... In this context, the Court is of the view that the obligation to put an end to the wrongful act may require a State to **revoke all administrative, legislative and other measures that constitute an internationally wrongful act of that State.**” (*emphasis added*) (internal citations omitted).

**Para. 448:** “The duty of cessation may also require States to employ all means at their disposal to reduce their GHG emissions and take other measures in a manner, and to the extent, that ensures compliance with their obligations.”

### **Making Public Finance Consistent with Reducing GHG Emissions**

The ICJ specifically observed that the failure of a state to cease providing “fossil fuel subsidies” may constitute an internationally wrongful act (**para. 427**). The Advisory Opinion also confirms (**para. 448**) the duty of States to reduce their GHG emissions through **all** means at their disposal in the context of the duty of cessation. Pursuant to the express finance obligations of both the Paris Agreement and the UNFCCC, this could require States to subsidize or finance the transfer of, or access to, environmentally sound technologies and know-how, and otherwise provide financial support to developing countries to meet the challenges of climate change adaptation.

Accordingly, in addition to decreasing or eliminating financial support, direct and indirect, for fossil fuel activity, States also have the “means” to reduce their GHG emissions by redirecting subsidies and public finance to alternative sustainable energy providers, and low-GHG or zero-emitting industries and activities, thereby reducing demand for fossil fuel consumption. States therefore have a duty to use direct subsidies (cash payments, grants, or low-interest loans, tax breaks, and exemptions to low-GHG or zero-emitting sectors) to accelerate the transition to a low-carbon economy and thereby reduce GHG emissions.

## **C. States must regulate the conduct of private actors that harm the environment**

*States have an international legal obligation to regulate private actors so as to prevent significant harm to the environment and use all means at their disposal to reduce GHG emissions.*

**Para. 281:** The Court observed that States must use due diligence, which requires a State to “use all the means at its disposal in order to avoid activities which take place in its territory, or in any area under its jurisdiction, causing significant damage to the environment of another State’ (*Pulp Mills on the River Uruguay (Argentina v. Uruguay)*, Judgment, I.C.J. Reports 2010 (I), p. 56, para. 101).”

**Para. 282:** “As far as climate change is concerned,” States should utilize “regulatory mitigation mechanisms that are designed to achieve the deep, rapid, and sustained reductions of GHG emissions that are necessary for the prevention of significant harm to the climate system” and “must regulate the conduct of public and private operators within the States’ jurisdiction or control and be accompanied by effective enforcement and monitoring mechanisms to ensure their implementation.”

**Para. 428:** “. . . a State may be **responsible where, for example, it has failed to exercise due diligence by not taking the necessary regulatory and legislative measures to limit the quantity of emissions caused by private actors under its jurisdiction.**” (*emphasis added*) (internal citations omitted)

**Para. 457(B)(a):** “States have a duty to prevent significant harm to the environment by acting with due diligence and to use all means at their disposal to prevent activities carried out within their jurisdiction or control from causing significant harm to the climate system and other parts of the environment. . . .”

### ***Making Private Finance Consistent with Reducing GHG Emissions***

States have an international legal obligation to take the necessary regulatory and legislative measures, in accordance with due diligence, to limit the quantity of emissions caused by private actors under their jurisdiction. Financing fossil fuel businesses, whether through debt or equity, contributes to climate change by enabling the ongoing production and combustion of fossil fuels. Private lending institutions, investors, asset managers, and other financiers cause fossil fuel emissions through the financing of fossil fuel enterprises, and a State, in exercising its due diligence, should take the necessary regulatory or legislative measures to eliminate or at least substantially limit the finance provided to the fossil fuel actors by the private sector (**para. 428**).

States, “employ[ing] all means at their disposal to reduce their GHG emissions,” (**para. 448**) should also utilize public entities, such as central banks and financial industry supervisors, to discourage the provision of private finance to the fossil fuel sector, or alternatively, encourage private investment in low-GHG or zero-emitting sectors. Central banks and industry regulators could utilize monetary policy, capital regulation, and their collateral framework, informed by stress testing, to discourage lending to, and investment in, and precipitate divestment from, fossil fuel and carbon-intensive

businesses.<sup>56</sup> These same mechanisms could also be utilized to encourage investment in low or zero-emitting energy providers to accelerate the transition to a low-carbon economy and thereby reduce GHG emissions.

## D. States' affirmative obligations to provide finance for mitigation and adaptation under the climate treaties

There are binding legal obligations to provide finance to support mitigation and adaptation measures under the climate treaties.

### ***UNFCCC Obligations to Provide Finance for Mitigation and Adaptation***

**Para. 211:** The ICJ held that Article 4, paragraph 4 of the UNFCCC imposed a legal obligation on State parties listed in Annex II of the Convention to “assist the developing country parties that are particularly vulnerable to the adverse effects of climate change in meeting the costs of adaptation to those adverse effects. This is a legally binding obligation on all parties that are listed in Annex II.”

**Para. 212:** The ICJ also noted that the UNFCCC, in Article 4, paragraph 8, “obliges parties to give full consideration ... to ‘what actions are necessary under the Convention, including actions related to funding, insurance and the transfer of technology, to meet the specific needs and concerns of developing country Parties arising from the adverse effects of climate change and/or the impact of the implementation of response measures’.” The Court similarly noted that “Article 4, paragraph 9, further requires that ‘Parties shall take full account of the specific needs and special situations of the least developed countries in their actions with regard to funding and transfer of technology’.”

**Para. 213:** The Court held that despite the phrases “give full consideration” and “take full account” in paragraphs 8 and 9, which provide State parties with some discretion in the implementation of their commitments under Article 4 of the UNFCCC, the “discretion does not detract from their character as **legally binding obligations.**”  
(*emphasis added*)

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<sup>56</sup> Through quantitative easing (QE), central banks can prioritize the purchase of bonds, securities, and other assets designated “green,” with the aim of stimulating economic activity in the renewable energy sector. Central banks and regulatory authorities may also utilize their collateral frameworks (the set of rules and criteria that determines the eligibility of assets that can be used as security for loans) to create incentives for commercial banks to lend more to environmentally friendly businesses. Unlike ECAs, central monetary authorities and financial regulators generally have a modicum of independence and are therefore, for the most part, not “organs” of the State. However, for the purposes of attribution in international law, central banks are considered organs of the State, and accordingly, the acts and omissions of central banks, as State organs, are attributable to the State. Accordingly, the Advisory Opinion implicitly suggests that a failure of a central bank to exercise due diligence in the regulation of private financiers to “prevent [causing] significant harm to the climate system and other parts of the environment” may amount to an internationally wrongful act attributable to the State (para. 409).

The ICJ found that the UNFCCC imposed a legal obligation on State parties to provide financial support to developing countries to meet the challenges of climate change adaptation (**para. 199**). The Advisory Opinion also notes that Article 4, paragraph 4 provides that certain parties “shall” assist vulnerable developing country parties in meeting the costs of adaptation, and that assistance includes actions related to funding, insurance and the transfer of technology.” Article 4, paragraph 5 of the UNFCCC provides, in similar terms as paragraph 4, that “[t]he developed country Parties and other developed Parties included in Annex II shall take all practicable steps to promote, facilitate and finance, as appropriate, the transfer of, or access to, environmentally sound technologies and know-how to other Parties, particularly developing country Parties, to enable them to implement the provisions of the Convention” (UNFCCC, Art. 4, para. 5). The objective of the UNFCCC is the “stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system” (UNFCCC, Art. 2). Although the ICJ did not specifically address paragraph 5 of Article 4 of the UNFCCC, adopting the ICJ’s reasoning in regard to Article 4, paragraphs 4, 8, and 9, it appears that paragraph 5 also imposes a legal obligation on State parties to finance access by developing states to environmentally sound technologies.

### ***Paris Agreement Obligations to Provide Finance for Adaptation and Mitigation***

**Para. 223:** The ICJ observed that “[t]he object and purpose of the Paris Agreement, reflected in its Article 2, paragraph 1, is to ‘strengthen the global response to the threat of climate change’ by... ‘(c) ‘Making finance flows consistent with a pathway towards low greenhouse gas emissions and climate-resilient development.’”

**Paras. 264–265:** The ICJ noted that Article 4, paragraph 5 of the Paris Agreement, requires support to be provided to developing State parties for the implementation of their mitigation obligations. The Court also observed that “[d]eveloped country Parties shall provide financial resources to assist developing country Parties” under Article 9 and held this obligation to be “legally binding,” including in relation to mitigation and adaptation. Article 9 of the Paris Agreement further provides that “[d]eveloped country Parties shall provide financial resources to assist developing country Parties with respect to both mitigation and adaptation”. The ICJ noted that the use of “shall” indicates the legally binding character of the obligation. “While the Paris Agreement does not specify the amount or level of financial support that must be provided, the Court considers that, in line with the customary rules of treaty interpretation, this obligation must be interpreted in light of other provisions in the Agreement, including the collective temperature goal provided for in Article 2.” It also found that the level of financial support “can be evaluated on the basis of several factors, including the capacity of developed States and the needs of developing States.”

In ensuring that the provision of finance is consistent with reducing GHG emissions, the Advisory Opinion suggests that States should directly provide financial support, and incentivize private actors to provide finance, for the development and implementation of environmentally sound technologies, as well as to low-GHG or zero-emitting sectors, to accelerate the transition to a low-carbon economy and thereby reduce GHG emissions. Importantly, developed States provide public funding and facilitate and precipitate private finance to developing countries for mitigation and adaptation.

## Categories of Climate Cases Relevant to the Excerpts

The following categories of litigation involving financial sector participants highlight key contexts in which States' and other actors' obligations have been or could be litigated, and where the aforementioned excerpts could be relevant. The case examples are provided for illustrative purposes and do not suggest that the ICJ AO has been invoked or applied in those proceedings. The authoritative weight of the ICJ AO conclusions will vary by jurisdiction and legal system. Please note that the case categories below are not mutually exclusive; cases can fall into one or more of them.

### Litigation against public agencies for the provision of finance for emission activities

Relevance of the aforementioned excerpts to litigation against public agencies for the provision of finance for emitting activities, arguing that it is a violation of international law to subsidize or otherwise finance fossil fuel production.

*Examples:*

**[Friends of the Earth U.S. et al v. EXIM](#)**: Friends of the Earth U.S. challenged the approval of a \$4.7 billion loan by the EXIM. The loan is for a liquefied natural gas (LNG) project in Mozambique. The plaintiffs argued that EXIM's renewed 2025 approval — following a force majeure declaration by leading company TotalEnergies when insurgents attacked a nearby town, reportedly killing hundreds of residents, including project contractors — violated the Administrative Procedure Act and the Export-Import Bank Act, including statutory limits on subsidies and environmental due diligence requirements. The federal district court for the District of Columbia dismissed the case on standing grounds, and the case is now on appeal; oral argument is scheduled for February 26, 2026.

**[Kang et al. v. KSURE and KEXIM](#)**: It is a case filed in 2024 where Korean ECAs are planning to provide financial support to the development project for the Mozambique Coral South

Floating Liquefied Natural Gas (FLNG) project. The plaintiffs assert that the project will result in long-term fossil fuel lock-in, contribute substantially to global GHG emissions, and exacerbate the climate crisis. The plaintiffs are seeking an injunction against the ECAs to prevent them from providing any financial support for the project. The case is pending.

## **Litigation against central banks for failing to exercise monetary policy to prevent significant environmental harm**

In accordance with the ICJ's finding (**para. 448**) that States may have to “employ all means at their disposal to reduce their GHG emissions,” litigators can argue that central banks and industry regulators should utilize the collateral framework and capital regulation, informed by stress testing, to discourage lending to, and investment in, and precipitate divestment from fossil fuel and carbon-intensive businesses.

*Example:*

**[ClientEarth v. Belgian National Bank](#)**: In 2021, ClientEarth filed suit against the Belgian National Bank for failing to meet environmental, climate, and human rights requirements when purchasing bonds from fossil fuel and other greenhouse-gas-intensive companies. ClientEarth alleged that the Belgian National Bank purchased bonds issued by greenhouse-gas-intensive sectors, thereby exacerbating GHG emissions in contravention of EU climate policy and emissions targets. While the appeal procedure was pending, ClientEarth announced that it would withdraw its case “after the European Central Bank (ECB) accepted its legal obligations to consider the climate in quantitative easing reforms,” remedying the violations ClientEarth had alleged against the Belgian National Bank.

## **Liability of private actors for financing climate-destructive conduct**

The ICJ noted that States have the obligation to regulate the activities of private actors as a matter of due diligence (**para. 428**). Although the subjects of international law are primarily States, the AO suggests potential indirect liability for financial institutions. If States are responsible for failing to regulate private actors as a matter of due diligence, and banks finance these actors, especially in the fossil fuel sector, then the AO could assist litigants in filing claims against financial institutions for financing fossil fuel projects.

There is a growing consensus that private actors have a responsibility to do their part in ceasing climate-destructive conduct. The UN Working Group on Business and Human Rights, for example, responded to a 2021 complaint by ClientEarth regarding the responsibilities of the financial backers of the oil company Saudi Aramco under the UN Guiding Principles on Business and Human Rights (UNGPs). It concluded that the financial

institutions supporting Aramco's expansion might be violating international human rights norms and standards.<sup>57</sup> The existence of a climate mitigation duty for private actors has also been confirmed in climate litigation, for example, in the [Milieudéfensie v. Shell](#) climate case. The ICJ AO can strengthen the legal argumentation in these cases as domestic courts rely on international law to interpret the duty of care of private (financial) actors.

Examples:

[Milieudéfensie v. ING](#): The Dutch NGO Milieudéfensie filed a case against ING Bank in March 2025 before the Amsterdam District Court. Milieudéfensie alleges that ING, which is one of the Netherlands' largest banks, violates its duty of care under Dutch civil law by failing to reduce its financed emissions in line with the Paris Agreement. The summons contains four demands: (1) ING is to halve its total emissions in 2030 and continue reducing its emissions in the years thereafter in line with science; (2) ING is to reduce its emissions in 8 polluting sectors that ING finances, such as steel and aviation, in line with the reduction pathways of the NZE scenario of the International Energy Agency; (3) ING is to stop financing companies that are developing new oil and gas projects; and (4) ING is to ask that all large companies that ING finances provide a good climate plan.

[Notre Affaire à Tous et al. v. BNP Paribas](#): Notre Affaire à Tous filed their summons before the Judicial Court of Paris on February 23, 2023, claiming that BNP Paribas violated the loi sur le devoir de vigilance of 2017 (duty of vigilance law). The summons details multiple violations of the law. The violations relate not only to how BNP Paribas' climate plan is drafted, but also the lack of clarity concerning the reporting of information about investments and loans, and the shortcomings of the measures that the bank allegedly implements to respect the parameters of the Paris Agreement.

[Catherine Rossiter v. ANZ Group Holdings Limited](#): Mrs. Rossiter filed an affidavit and an application for preliminary discovery in the Federal Court of Australia, on November 9, 2023. The application sought information about ANZ's internal risk management framework, based on her concerns that the bank was not properly managing the risks posed by climate change and biodiversity loss. Australia's regulation of the financial sector requires banks to maintain a risk management strategy that addresses material risks (Australian Prudential Regulation Authority's Prudential Standard CPS 220 Risk Management). Neither climate change nor biodiversity loss appeared to be sufficiently identified or addressed in ANZ's risk management strategy. Accordingly, ANZ may have been failing to adequately measure, evaluate, monitor, control, and mitigate those risks.

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<sup>57</sup> ClientEarth complaint concerning Saudi Arabian Oil Company (Saudi Aramco) et. al. (Summary), [www.clientearth.org/media/144by31b/clientearth-complaint-concerning-saudi-arabian-oil-company.pdf](http://www.clientearth.org/media/144by31b/clientearth-complaint-concerning-saudi-arabian-oil-company.pdf). The list of letters from the UN Working Group on Business and Human Rights to the financiers and the responses from the financiers are available on the OHCHR website using the search function, a list is available here, [spcommreports.ohchr.org/TmSearch/RelCom?code=SAU%203/2023](https://spcommreports.ohchr.org/TmSearch/RelCom?code=SAU%203/2023).

The case was discontinued after ANZ acknowledged, in its 2023 report, the materiality of climate risk and its commitment to managing it. ANZ also announced that it will no longer provide project finance to new or expanded oil and gas projects, ruling out its involvement with the Papua LNG project.

## **Breach of Directors' Duties by Investors and Pension Plans**

Directors' duties, or fiduciary duties, evolve to compel corporate decision-makers to respond to emerging financial risks, such as climate change. The AO's confirmation of the reality of climate change and its endorsement of climate science reinforces the obligation of corporate decision makers to address and ultimately mitigate climate risk. Climate change litigation for a violation of directors' duties has focused on pension plans.

*Examples:*

**[Hirji et. al. v. Canada Pension Plan Investment Board](#)**: In October 2025, four young Canadians, who will retire and receive pension benefits after 2050, sued the Canada Pension Plan Investment Board (CPPIB), Canada's largest pension fund manager, for violating its fiduciary duties. They allege that CPPIB has violated said duty by mismanaging climate-related financial risks, increasing the risks to the entire portfolio by continuing to invest in fossil fuel expansion, and by misrepresenting and failing to disclose its approach to climate-related financial risks. The plaintiffs alleged that the Board's violation of their fiduciary duties is placing their benefits at risk.

**[Kim Min et al. v. Kim Tae-Hyun et al.](#)**: On February 22, 2024, 35 pension holders of the National Pension Service (NPS) filed a civil claim against certain managers, directors, and the auditor of the NPS for violating their fiduciary duties. The plaintiffs argued that the defendants have failed to address climate-related risks in the management of pension funds, particularly by failing to implement the 2021 "coal phase-out" policy. The plaintiffs have claimed 20,500,000 KRW in damages for their financial loss and health impacts caused by such failure.

**[McGaughey & Davies v. Universities Superannuation Scheme Limited](#)**: This case was a derivative action by The University Superannuation Scheme ("the Scheme"), one of the largest private occupational pension schemes in the UK. Plaintiffs sought permission to proceed on behalf of the Company against its directors for breaches of their duties, alleging that the Scheme continued to invest in fossil fuels and its directors had no divestment plan. In doing so, it was alleged that the Scheme's long-term interests could only be met by "an immediate plan for disinvestment" and that the only "rational action" that the directors could take to comply with their fiduciary duties was to "devise and implement such a plan as soon as possible." The derivative claim was rejected on the basis of standing because the plaintiffs could not establish any immediate financial loss.

## Litigation for failure to disclose climate information and “greenwashing”

In the Advisory Opinion, the ICJ acknowledged that “it is scientifically established that the climate system has undergone widespread and rapid changes” and that climate change is caused by the accumulation of GHGs and, furthermore, that “it is scientifically established that the increase in concentration of GHGs in the atmosphere is primarily due to human activities . . . ” (para. 72). Accordingly, the AO could assist in cases asserting that certain climate change information should be disclosed, or that disclosed climate change information is misleading. Litigation against investors and financial institutions has sought disclosure of climate change information, and alleged that certain climate representations made by financial institutions are misleading and amount to greenwashing, often undertaken by corporate regulators. Applicants have also filed complaints against financial institutions with National Contact Points under the [OECD Guidelines for Multinational Enterprises](#).

*Examples:*

**McVeigh v. Retail Employees Superannuation Trust**: In 2018, a fund member filed suit against the Retail Employees Superannuation Trust (REST) in the Federal Court of Australia, alleging that it had violated legislation by failing to provide information on climate change business risks and any plans to address the same. On November 2, 2020, the parties reached a settlement where the Australian pension fund agreed to incorporate climate change financial risks in its investments and implement a net-zero-by-2050 carbon footprint goal. In particular, REST agreed to measure, monitor, and report climate progress in line with the Task Force on Climate-related Disclosures, ensure investee climate disclosure, and publicly disclose portfolio holdings.

**Complaints to the UK Advertising Standards Authority in respect of advertising by HSBC**: HSBC advertised that it was “aiming to provide up to \$1 trillion in financing and investment globally to help our clients transition to net zero” and “we’re helping to plant 2 million trees which will lock in 1.25 million tonnes of carbon in their lifetime.” However, HSBC was also continuing to significantly finance investments in businesses and industries that emitted notable levels of carbon dioxide and other greenhouse gases. The advertisements did not reference the bank’s ongoing financing of climate-destructive enterprises. The authority considered that this information was material and likely to affect consumers’ understanding of the overall message, and so should have been included in the advertisements. The authority concluded that the bank omitted material information, rendering its statements misleading.

**ClientEarth complaint against BlackRock:** In March 2025, ClientEarth filed a complaint with the French financial regulator (AMF) against BlackRock, alleging misleading sustainability claims. Based on research by Reclaim Finance, the complaint focused on 18 “sustainable” retail funds holding over US\$1 billion in fossil fuel investments. BlackRock subsequently announced fund reclassifications to comply with new fund-naming guidelines.

**Jubilee v. EFA and NAIF:** An Australian NGO filed a claim in Australia’s federal court, seeking to force government bodies that subsidize fossil fuel use to disclose full impact assessments of those investments.

## **OECD National Contact Point Complaints**

Another relevant arena to establish the responsibility of private actors in financing climate-destructive conduct is a complaint under the OECD Guidelines before a National Contact Point (NCP). There are currently three pending cases before NCPs against financial actors.

*Examples:*

**The Philippine Movement for Climate Justice, et. al. Complaint to the U.K. NCP against Standard Chartered plc:** In February 2024, the Philippine Movement for Climate Justice, Inclusive Development International, Recourse, and BankTrack filed a complaint on behalf of local Filipino communities against Standard Chartered plc with the UK NCP. The complaint focuses on Standard Chartered’s financing of four coal-fired power plants in the Philippines.

**Complaint with the US NCP against Marsh:** In 2023, civil society organizations filed a complaint with the US NCP under the OECD Guidelines for Multinational Enterprises against Marsh, a US-based insurance broker, for its reported role in arranging insurance for the East African Crude Oil Pipeline (EACOP). The complaint alleges that the project entails severe and unavoidable human rights, environmental, and climate harms, including land acquisition abuses, threats to defenders, biodiversity loss, and significant greenhouse gas emissions. The complainants argue that these impacts are inherent to the project and cannot be adequately mitigated.

**Greenpeace Luxembourg v. Fonds de Compensation de la Sécurité sociale SICAV FIS:** On March 11, 2024, Greenpeace Luxembourg filed a complaint against Fonds de Compensation de la Sécurité sociale (FDC) SICAV FIS (“the Fund”) to the Luxembourg NCP. The complainant alleges that the Fund does not align with the OECD Guidelines due to its lack of a risk-based human rights and environmental due diligence policy. The complaint also alleges that the Fund has not implemented measurable objectives, targets, and strategies for addressing climate change and thus does not align with the

Paris Agreement goals. The complaint also points to misleading claims about the sustainability of its investments.

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# Litigation Note on Challenging Speculative or Harmful Climate Interventions and Offset-Based Climate Mitigation Measures

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## Introduction

As the climate crisis worsens and the pressure to phase out fossil fuels mounts, States and private actors have increasingly turned to scientifically uncertain technological fixes and other risky strategies to avoid taking the steps that science shows are necessary and most effective to prevent climate chaos: ending expansion and rapidly decreasing the production and use of oil, gas, and coal. Among the dangerous distractions from these necessary mitigation measures are geoengineering technologies that aim to deflect sunrays or remove carbon dioxide from the atmosphere, carbon capture schemes that claim to catch and seal away carbon dioxide before it's ever emitted, and carbon offsets that purport to balance out continued emissions in one place with climate action in another. Despite their proponents' claims, carbon capture and credit schemes have failed to produce climate mitigation results, and speculative solar and marine geoengineering technologies have under-performed or simply do not exist.<sup>61</sup> What's more, many pose new and scientifically proven or highly foreseeable, serious – and in some cases potentially

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<sup>58</sup> Center for International Environmental Law (CIEL).

<sup>59</sup> World's Youth for Climate Justice (WYCJ).

<sup>60</sup> University of Amsterdam

<sup>61</sup> See, e.g., CIEL & Heinrich Böll Stiftung, *IPCC Unsummarized: Unmasking Clear Warnings on Overshoot, Techno-fixes, and the Urgency of Climate Justice* (Apr. 21, 2022), [www.ciel.org/reports/ipcc-wg3-briefing/](http://www.ciel.org/reports/ipcc-wg3-briefing/); IPCC, *Working Group III Contribution to the IPCC Sixth Assessment Report on Mitigation of Climate Change, Summary for Policymakers*, Fig. SPM.7 at SPM-50 (2022), [www.ipcc.ch/report/ar6/wg3/](http://www.ipcc.ch/report/ar6/wg3/); Taylor Kubota, *Stanford Study casts Doubt on Carbon Capture*, *Stanford News* (October 25, 2019), [news.stanford.edu/2019/10/25/study-casts-doubt-carbon-capture/](http://news.stanford.edu/2019/10/25/study-casts-doubt-carbon-capture/); IEEFA, *Carbon capture: a decarbonisation pipe dream* (Sep. 1, 2022); Michael Buchsbaum and Edward Donnelly, *Fossil Fuel Companies Made Bold Promises to Capture Carbon. Here's What Actually Happened*, *DeSmog* (Sep. 25, 2023), [www.desmog.com/2023/09/25/fossil-fuel-companies-made-bold-promises-to-capture-carbon-heres-what-actually-happened/](http://www.desmog.com/2023/09/25/fossil-fuel-companies-made-bold-promises-to-capture-carbon-heres-what-actually-happened/); IEEFA, *The Carbon Capture Crucial: Lessons Learned* (2022), [ieefa.org/resources/carboncapture-crux-lessons-learned/](http://ieefa.org/resources/carboncapture-crux-lessons-learned/); CIEL, ETC Group, Heinrich Böll Foundation & Third World Network, "Response to Questionnaire on the impact of new technologies for climate protection on the enjoyment of human rights," pp. 9–10 (2022), [www.ohchr.org/sites/default/files/2022-06/Joint-submission-to-HRCAC-GeoengineeringHumanRights-CIELETC-HBF-TWN.pdf](http://www.ohchr.org/sites/default/files/2022-06/Joint-submission-to-HRCAC-GeoengineeringHumanRights-CIELETC-HBF-TWN.pdf).

irreversible – risks to people and the environment.<sup>62</sup> If used at scale, some of these technologies could create additional, unpredictable harm to the climate system. Reliance on such risky and scientifically uncertain strategies can not only delay the phaseout of fossil fuels, increasing the potential for further climate-related harm, but also introduce additional direct injuries and impacts on the climate, biodiversity, and human rights.<sup>63</sup>

The International Court of Justice (ICJ)'s unanimous [Climate Advisory Opinion](#) (AO) contains numerous conclusions that clarify why States' reliance on technologies or measures that do not address the causes of climate change and introduce new risks may breach international obligations. The ICJ unanimously affirmed that all States, even those not party to one or more of the climate agreements, have obligations under international law to prevent harm to the climate system and other parts of the environment, and remedy its impacts. To satisfy these duties, States must use all the means at their disposal to avoid activities that cause climate change and its adverse effects. Further, not just any measure will do: States must act with stringent due diligence, in line with best available science, and take all necessary measures to keep global temperature rise below 1.5°C. The AO makes clear that fulfilling the prevention obligation, as well as mitigation duties under the UNFCCC and Paris Agreement, requires taking effective measures to curb conduct known to cause climate harm – namely, greenhouse gas (GHG)-emitting activities – eliminating as far as possible the source of risk to the climate system, not merely attenuating its effects.<sup>64</sup>

The ICJ AO also informs how the precautionary principle should guide climate action consistent with international obligations, particularly the duty to prevent. The precautionary principle emphasizes that effective action to prevent harm should not be delayed due to scientific uncertainty regarding that harm. However, it does not mean that scientific uncertainty regarding the efficacy of a given action in preventing the harm, or its potential to pose further risks, should be ignored. The science around the serious and irreversible harm due to climate change and its principal causes is settled. The science

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<sup>62</sup> Advisory Committee to the Human Rights Council, *Impact of new technologies intended for climate protection on the enjoyment of human rights*, U.N. Doc. A/HRC/54/47 (Aug 10, 2023), [docs.un.org/en/A/HRC/54/47](https://docs.un.org/en/A/HRC/54/47); Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes (Marcos Orellana), *The toxic impacts of some proposed climate change solutions*, UN Doc. A/HRC/54/25 (July 13, 2023), [docs.un.org/en/A/HRC/54/25](https://docs.un.org/en/A/HRC/54/25); CIEL & Heinrich Böll Stiftung, *Beyond the Limits: New IPCC Working Group II Report Highlights How Gambling on Overshoot is Pushing the Planet Past a Point of No Return* (Feb. 28, 2022), [www.ciel.org/reports/ipcc-wg2-briefing](https://www.ciel.org/reports/ipcc-wg2-briefing); IPCC, *Working Group II Contribution to the IPCC Sixth Assessment Report on Climate Change Impacts, Adaptation and Vulnerability, Summary for Policymakers*, paras. B.5.4, B.5.5 at SPM-19–20 (2002), <https://www.ipcc.ch/report/ar6/wg2/>; AR6 WGII, *Technical Summary*, TS.C.11.10 at TS-40.

<sup>63</sup> See, e.g., Center for International Environmental Law, *Media Brief: Geoengineering & Human Rights, Authoritative Statements and language from recent human rights expert reports* (Sept. 11, 2023), [www.ciel.org/news/media-brief-geoengineering-human-rights](https://www.ciel.org/news/media-brief-geoengineering-human-rights); Center for International Environmental Law, *Why Geoengineering is a False Solution to the Climate Crisis*, (Oct. 15, 2024), [www.ciel.org/why-geoengineering-is-a-false-solution-to-the-climate-crisis](https://www.ciel.org/why-geoengineering-is-a-false-solution-to-the-climate-crisis).

<sup>64</sup> For more information on what the science says about stopping the source of emissions rather than relying on speculative technologies, see CIEL & Heinrich Böll Stiftung, *Lost in Translation: Lessons from the IPCC's Sixth Assessment on the Urgent Transition from Fossil Fuels and the Risks of Misplaced Reliance on False Solutions* (March 2023), [www.ciel.org/reports/lost-in-translation-lessons-from-the-ipcc-sixth-assessment](https://www.ciel.org/reports/lost-in-translation-lessons-from-the-ipcc-sixth-assessment).

around the ability of geoengineering, carbon capture, carbon removal, and carbon offsets to mitigate or prevent climate harm is not. When proven mitigation measures are readily available, resorting to such speculative technologies is inconsistent with the principle of prevention itself. And when there are threats that these same technologies could cause serious and irreversible harm to the environment – directly and/or indirectly through their delay of effective measures to transition away from the fossil fuels driving climate change – precaution counsels against their use. Lack of full scientific certainty about the risk these technologies pose should not delay action to prevent it, including by restricting or prohibiting their use. The Court reinforces this in holding that where a risk can be addressed with readily available technologies, States are expected to use them, and that when technologies pose further risks, States must employ them with prudence and caution. The juxtaposition of these two standards effectively creates a hierarchy of mitigation measures under international law, in which proven approaches for reducing emissions at source must take precedence over speculative interventions whose efficacy is undemonstrated and whose risks remain unquantified.

The AO helps elucidate why responses to climate change that detract from State and corporate action to address the chief cause of the crisis – fossil fuels – or mask the inadequacy of their efforts, and generate significant new adverse effects, undermine States' compliance with their international legal obligations on climate, biodiversity, desertification, the ocean, and human rights.<sup>65</sup> This litigation note distils some key findings of the ICJ AO relevant to litigation challenging reliance on speculative technologies and offset-based mitigation measures. Two sections follow: key excerpts from the AO and categories of climate litigation for which those excerpts may be relevant.

## Relevant Excerpts from the ICJ AO

While the ICJ AO does not directly address all potential or purported climate actions, its overarching finding regarding State duties is that States have an obligation to act in accordance with science, with stringent due diligence, and with precaution, in line with their customary and conventional duties under international law to prevent harm to the climate system. The relative primacy given to the preventive duty in the Court's opinion underscores the priority States must accord to measures that avoid the cause of climate harm at its source. Preventing the harm from occurring, namely by curtailing GHG-emitting activities, is paramount. Every State has a duty to use all the means at its disposal to avoid activities that harm the climate system. Accordingly, a State that diverts means away from or foregoes such preventive action in favor of action that aims instead to manage the

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<sup>65</sup> See generally Philippe Sands & Kate Cook, Joint Opinion, secs. III, IV, V (Mar. 26, 2021), [www.ohchr.org/sites/default/files/2022-06/Annex-SubmissionCIEL-ETC-HBF-TWN-Geoengineering-Opinion.pdf](https://www.ohchr.org/sites/default/files/2022-06/Annex-SubmissionCIEL-ETC-HBF-TWN-Geoengineering-Opinion.pdf) (provided as an Annex to Submission to the UN Human Rights Council Advisory Committee on the Response to the Questionnaire on the impact of new technologies for climate protection on the enjoyment of human rights).

effects of harmful GHG-emitting activities could be in breach of its obligations. So, too, could States whose responses to climate change pose new, serious risks to the climate, other parts of the environment, and human rights. Not all measures a State undertakes, permits, finances, or incentivizes private actors to take in the name of addressing climate change or its impacts comport with international law.

## A. Relevant Conduct

*The conduct most relevant to States' primary obligation to prevent harm to the climate system is what they do or do not do with regard to GHG-emitting activities.*

**Para. 94:** “The Court considers that the material scope of its inquiry encompasses **the full range of human activities that contribute to climate change as a result of the emission of GHGs, including both consumption and production activities.**” (*emphasis added*)

**Para. 95:** “The Court’s inquiry must therefore have a broad material scope encompassing States’ obligations concerning **all actions or omissions of States, and of non-State actors within their jurisdiction or effective control, that result in the climate system and other parts of the environment being adversely affected by anthropogenic GHG emissions.**” (*emphasis added*)

## B. Scientific Basis of the Advisory Opinion

*States' climate action must be based on the best available science, reflected in IPCC reports, which confirms that fossil fuels are the primary source of the GHG emissions causing climate change, with serious and irreversible consequences for the environment and human rights dependent on it.*

**Para. 81:** “The IPCC adds that the largest source of CO<sub>2</sub> is combustion of fossil fuels in energy conversion systems such as boilers in electric power plants, engines in aircraft and automobiles, and in cooking and heating within homes and businesses (approximately 64 per cent of emissions). It further observes that fossil fuels are a major source of CH<sub>4</sub>, the second biggest contributor to global warming.”

**Para. 82:** “Furthermore, according to the IPCC, ‘. . . Deep, rapid, and sustained reductions in greenhouse gas emissions would lead to a discernible slowdown in global warming within around two decades, and also to discernible changes in atmospheric composition within a few years’ (IPCC, 2023 Summary for Policymakers, p. 12, Statement B.1).”

**Para. 85:** “The IPCC defines mitigation as a ‘human intervention to reduce emissions or enhance the sinks of greenhouse gases’ (IPCC 2023 Glossary, p. 126). Mitigation includes

both reducing GHG emissions through measures such as transitioning away from fossil fuels and improving energy efficiency, and enhancing sinks through measures such as reforestation and reduced deforestation.”

**Para. 137:** “[T]he specific character of the risk of significant harm to the climate system is indisputably established. **The best available science, as presented by the IPCC**, confirms that **cumulative GHG emissions are the primary source of risks arising from anthropogenic climate change** (see paragraphs 72–87 above).” (*emphasis added*) [See also paras 278, 284]

**Para. 283:** “Scientific information may provide the necessary evidence to assess the probability and seriousness of possible harm, informing the required standard of due diligence.”

**Para. 284:** “[R]eports by the IPCC constitute comprehensive and authoritative restatements of the best available science about climate change at the time of their publication (see paragraphs 74, 77–83 and 277–279 above).”

*State responses to the climate crisis can themselves pose a risk of significant harm to the environment and human rights, a possibility that technical cooperation, knowledge-sharing, environmental impact assessments, and precaution can help minimize.*

**Para. 212:** “Article 4, paragraph 8, of the Convention obliges parties to give full consideration, in implementing their commitments, to ‘what actions are necessary under the Convention, including actions related to funding, insurance and the transfer of technology, to meet the specific needs and concerns of developing country Parties arising from the adverse effects of climate change **and/or the impact of the implementation of response measures**’.” (*emphasis added*)

**Para. 285:** “As concerns technical knowledge, the Court notes that **States need to pursue technical co-operation and knowledge-sharing initiatives**. ... This also serves **to minimize the possibility that a particular adaptation or mitigation measure itself poses a risk of significant transboundary harm**.” (*emphasis added*)

**Para. 286:** “[T]he availability of technological means to prevent or mitigate relevant harm influences what can reasonably be expected of a State. ... **[W]hen technologies pose further risks, States are expected to use them with prudence and caution**.” (*emphasis added*)

**Para. 296:** “The Court has recognized ... that ‘it may now be considered **a requirement under general international law to undertake an environmental impact assessment**’ (ibid.) and that the “[principle] underlying” this obligation **applies** not only to industrial

activities but “**generally to proposed activities which may have a significant adverse impact in a transboundary context**’.” (*emphasis added*)

### C. Relevant State Obligations Under Customary and Conventional Environmental Law

*The prevention duty, an obligation to avoid conduct or activities causing significant harm to the environment, requires addressing the source of climate change, not just its effects.*

**Para. 132:** “Participants generally agree that **States have a duty under customary international law to prevent significant harm to the environment**. Indeed, the Court has recognized that “[a] State is . . . obliged to use all the means at its disposal in order to avoid activities which take place in its territory, or in any area under its jurisdiction, causing significant damage to the environment of another State” (*Pulp Mills on the River Uruguay (Argentina v. Uruguay)*, Judgment, I.C.J. Reports 2010 (I), p. 56, para. 101).” (*emphasis added*)

**Para. 139:** “The Court concludes that the duty of States to prevent significant environmental harm applies in the context of climate change and that this duty forms part of the most directly relevant applicable law.”

**Para. 273:** “The duty to prevent significant harm to the environment also applies to **the climate system, which is an integral and vitally important part of the environment and which must be protected for present and future generations** (see paragraphs 73–74 above).” (*emphasis added*)

**Para. 274:** “States are subject to the duty to prevent significant harm either where no harm has yet been caused but the risk of future significant harm exists, or where some harm has already been caused and there exists a risk of further significant harm.”

**Para. 275:** “Whether an activity constitutes a risk of significant harm depends on ‘both the probability or foreseeability of the occurrence of harm and its severity or magnitude’ and should therefore be ‘determined by, among other factors, an assessment of the risk and level of harm combined’ (*Climate Change, Advisory Opinion*, ITLOS Reports 2024, p. 91, para. 239, and p. 137, para. 397). **It is necessary to take into account the risks that current activities might pose in the future, including in the long term.** In any case, the degree of a given risk of harm is always an important element for the application of the due diligence standard: the higher the probability and the seriousness of possible harm, the more demanding the required standard of conduct.” (*emphasis added*)

*The primary mitigation obligation under the UNFCCC and Paris Agreement is to rapidly and urgently reduce emissions at their source, and States must act in line with their highest possible ambition to achieve that aim.*

**Para. 200:** “The Court considers that mitigation lies at the heart of the UNFCCC’s objective, which is to **stabilize GHG concentrations in the atmosphere** at a level that would prevent dangerous anthropogenic interference with the climate system. The Framework Convention seeks to achieve its mitigation objective in two ways: first, by **limiting anthropogenic GHG emissions by sources**, and second, by **preserving and enhancing sinks and reservoirs** of GHGs (Article 4, paragraph 2 (a)).” (*emphasis added*)

**Para. 230:** “The Court recalls that **mitigation involves human intervention to reduce emissions or enhance carbon sinks** (see paragraph 85 above). ... in order to achieve the temperature goal set forth in Article 2, ‘Parties aim to reach a global peaking of greenhouse gas emissions as soon as possible . . . and to undertake rapid reductions thereafter.’” (*emphasis added*)

**Para. 245:** “[P]arties are obliged to exercise due diligence and ensure that their NDCs fulfil their obligations under the Paris Agreement and thus, when taken together, are capable of achieving the temperature goal of limiting global warming to 1.5°C above pre-industrial levels, as well as **the overall objective of the ‘stabilization of greenhouse gas concentrations in the atmosphere** at a level that would prevent dangerous anthropogenic interference with the climate system’.” (*emphasis added*)

**Para. 246:** “In the current context, because of the seriousness of the threat posed by climate change, the standard of due diligence to be applied in preparing the NDCs is stringent (see paragraph 138 above). This means that **each party has to do its utmost to ensure that the NDCs it puts forward represent its highest possible ambition in order to realize the objectives of the Agreement.**” (*emphasis added*)

*States’ action on climate must be consistent with their concurrent obligations to present and future generations under human rights law and numerous environmental treaties relevant to the protection of the climate system, including the Convention on Biological Diversity, which has imposed a de facto moratorium on geoengineering.*

**Para. 316:** “There are also other international instruments which contribute to the protection of one or more of the components of the climate system ... The Court considers that this is the case for the instruments referenced in General Assembly resolution 77/276, namely the Ozone Layer Convention, the Montreal Protocol, the Biodiversity Convention, and the Desertification Convention (see paragraphs 125–130 above).”

**Para. 317:** “In so far as the States parties to [other international] ... instruments have obligations thereunder that are relevant for the protection of the climate system, they **must have due regard to these obligations when taking measures to ensure the protection of the climate system** and other parts of the environment.” (*emphasis added*)

**Para. 335:** “States parties must therefore take their obligations under these environmental treaties into account when implementing their obligations under the climate change treaties and under customary international law, just as they must take their obligations under the climate change treaties and under customary international law into account when implementing their obligations under these environmental treaties.” (*emphasis added*)

**Para. 346:** [regarding UNCLOS] “States parties are under an obligation to take all necessary measures to reduce and control pollution, with the ultimate aim of preventing its occurrence altogether, although they are not required to ensure an immediate cessation of marine pollution caused by anthropogenic GHG emissions (see *Climate Change, Advisory Opinion, ITLOS Reports 2024*, p. 77, para. 199).”

## D. Human Rights Law

**Para. 144:** “The preamble to the Paris Agreement calls upon States, “when taking action to address climate change, . . . [to] consider their respective obligations on human rights”.”

**Para. 373:** “The environment is the foundation for human life, upon which the health and well-being of both present and future generations depend (see *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996 (I)*, p. 241, para. 29).”

**Para. 375:** “Anthropogenic GHG emissions have an adverse impact on the climate system and other parts of the environment...The degradation of the climate system and of other parts of the environment impairs the enjoyment of a range of rights protected by human rights law.” (*emphasis added*)

**Para. 393:** “The Court thus concludes that, under international law, the human right to a clean, healthy and sustainable environment is essential for the enjoyment of other human rights.”

**Para. 403:** “Taking into account the adverse effects of climate change on the enjoyment of human rights, the Court considers that the full enjoyment of human rights cannot be ensured without the protection of the climate system and other parts of the environment. In order to guarantee the effective enjoyment of human rights, States must take measures to protect the climate system and other parts of the environment. These measures may include, *inter alia*, taking mitigation and adaptation measures, with due account given to the protection of human rights, the adoption of standards and

legislation, and **the regulation of the activities of private actors**. Under international human rights law, **States are required to take necessary measures in this regard.**" (*emphasis added*)

**Para. 404:** "States must therefore take their obligations under international human rights law into account when implementing their obligations under the climate change treaties and other relevant environmental treaties and under customary international law, just as they must take their obligations under the climate change treaties and other relevant environmental treaties and under customary international law into account when implementing their human rights obligations." (*emphasis added*)

## **E. Rights of future generations and intergenerational equity**

**Para. 157:** "Due regard for the interests of future generations and the long-term implications of conduct are equitable considerations that need to be taken into account where States contemplate, decide on and implement policies and measures in fulfilment of their obligations under the relevant treaties and customary international law."

*States must act with stringent due diligence to prevent significant harm to the climate system, by using all means at their disposal to regulate activities generating GHGs, through measures available to them and reasonably capable of preventing the harm, including in the long term.*

**Para. 138:** "[T]he **standard of due diligence for preventing significant harm to the climate system is stringent** (see *Climate Change, Advisory Opinion, ITLOS Reports 2024*, pp. 91–92, para. 241, pp. 92–93, para. 243, p. 94, para. 248, pp. 137–138, paras. 398–400, and pp. 152–158, para. 441). ... As concerns climate change, **a heightened degree of vigilance and prevention is required.**" (*emphasis added*)

**Para. 281:** "The Court recalls that **due diligence requires a State to "use all the means at its disposal in order to avoid activities which take place in its territory, or in any other area under its jurisdiction, causing significant damage to the environment of another State"** (*Pulp Mills on the River Uruguay (Argentina v. Uruguay), Judgment, I.C.J. Reports 2010 (I)*, p. 56, para. 101). This means that States must "put in place a national system, including legislation, administrative procedures and an enforcement mechanism necessary **to regulate the activities in question**, and . . . exercise adequate vigilance to make such a system function efficiently, with a view to achieving the intended objective" (*Climate Change, Advisory Opinion, ITLOS Reports 2024*, p. 89, para. 235)." (*emphasis added*)

**Para. 282:** "As far as climate change is concerned, **such appropriate rules and measures include, but are not limited to, regulatory mitigation mechanisms that are designed to achieve the deep, rapid, and sustained reductions of GHG emissions that are necessary**

**for the prevention of significant harm to the climate system.** ... These rules and measures **must regulate the conduct of public and private operators within the States' jurisdiction or control** and be accompanied by effective enforcement and monitoring mechanisms to ensure their implementation.” (*emphasis added*)

**Para. 283:** “Thus, where there is generally recognized scientific evidence that it is highly probable that significant harm will occur, the standard of due diligence will be more demanding for all States (see paragraph 138 above). **Due diligence also requires States to actively pursue the scientific information necessary for them to assess the probability and seriousness of harm,** in conformity with the common but differentiated responsibilities and respective capabilities principle.” (*emphasis added*)

**Para. 286:** “[T]he availability of technological means to prevent or mitigate relevant harm influences what can reasonably be expected of a State. **Where a risk can be addressed with readily available technologies, States are expected to use them.**” (*emphasis added*)

*States should act in line with the precautionary principle, which dictates that uncertainty about the risk of serious or irreversible harm to the environment should not be grounds to delay effective action to prevent that harm. But the precautionary principle does not counsel deployment of technologies whose capability of preventing climate harm is uncertain and which pose their own risks of serious or irreversible harm, particularly when it's uncertain whether those risks can be prevented.*

**Para. 293:** “Scientific information regarding the probability and the seriousness of possible harm informs the required standard of due diligence (see paragraph 283 above). **States are required to take appropriate measures to prevent significant harm where reliable scientific evidence of a risk of significant harm exists.** However, States should also not refrain from or delay taking actions of prevention in the face of scientific uncertainty [about the risk of significant harm to the environment]. According to Principle 15 of the Rio Declaration, **where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation** (see also Article 3, paragraph 3, of the UNFCCC)” (*emphasis added*) [see also **para. 158**]

**Para. 294:** “The Court agrees with the conclusion reached by ITLOS that “where there are plausible indications of potential risks”, a State “would not meet its obligation of due diligence if it disregarded those risks” and, in that sense, **the “precautionary approach is also an integral part of the general obligation of due diligence”** under the duty to prevent significant harm to the environment (*Responsibilities and obligations of States with respect to activities in the Area, Advisory Opinion, 1 February 2011, ITLOS Reports 2011*, p. 46, para. 131). Based on the above, **the Court considers that the precautionary approach**

or principle, where applicable, guides States in the determination of the required standard of conduct in fulfilling their customary duty to prevent significant harm.” (*emphasis added*)

## F. Legal Consequences Arising from Wrongful Acts and Potential Forms of Remedy

*States may face legal consequences for their wrongful conduct that contributes to significant climate harm, including for not taking the effective preventive measures necessary to protect the climate system – primarily, reducing GHG emissions at source.*

**Para. 409:** “With regard to obligations under customary international law, the Court observes that **the most significant primary obligation for States in relation to climate change is the obligation to prevent significant harm to the climate system and other parts of the environment** (see paragraphs 132–139 above), **which applies to all States, including those that are not parties to one or more of the climate change treaties.** Under this obligation, as well as under other obligations of conduct identified under question (a), a State does not incur responsibility simply because the desired result is not achieved; rather, **responsibility is incurred if the State fails to take all measures which were within its power to prevent the significant harm. ... a State that does not exercise due diligence in the performance of its primary obligation to prevent significant harm to the environment, including to the climate system,** commits an internationally wrongful act entailing its responsibility.” (*emphasis added*)

**Para. 427:** “**Failure of a State to take appropriate action to protect the climate system from GHG emissions – including through fossil fuel production, fossil fuel consumption, the granting of fossil fuel exploration licences or the provision of fossil fuel subsidies – may constitute an internationally wrongful act which is attributable to that State.** The Court also emphasizes that **the internationally wrongful act in question is not the emission of GHGs per se, but the breach of conventional and customary obligations** identified under question (a) pertaining to the protection of the climate system from significant harm resulting from anthropogenic emissions of such gases.” (*emphasis added*)

**Para. 428:** “In relation to private actors, the Court observes that the obligations it has identified under question (a) include **the obligation of States to regulate the activities of private actors as a matter of due diligence. . . . a State may be responsible where, for example, it has failed to exercise due diligence by not taking the necessary regulatory and legislative measures to limit the quantity of emissions caused by private actors under its jurisdiction.**” (*emphasis added*)

## G. Obligation of cessation and non-repetition

**Para. 445:** “[B]reaches of States’ obligations under question (a) may give rise to the entire panoply of legal consequences provided for under the law of State responsibility. These include obligations of cessation and non-repetition, which are consequences that apply irrespective of the existence of harm, as well as the consequences requiring full reparation, including restitution, compensation and/or satisfaction.” (*emphasis added*)

**Para. 448:** “The duty of cessation may also require States to employ all means at their disposal to reduce their GHG emissions and take other measures in a manner, and to the extent, that ensures compliance with their obligations. Additionally, in appropriate circumstances, a responsible State could be required to offer appropriate assurances and guarantees of non-repetition (see ILC Articles on State Responsibility, Article 30 (b)).” (*emphasis added*)

## Categories of Claims Relevant to the Excerpts

The ICJ’s findings have the potential to help prevent the financing, development, testing, and deployment of scientifically uncertain and risky technologies and offset-based responses to climate change. They may also help hold States and corporations relying on such approaches accountable for failing to take the requisite measures to address the climate crisis at its source, and prevent other environmental and human rights harm. To date, there has been limited litigation challenging reliance upon the technologies and approaches addressed in this note or critically examining their compatibility with international obligations. As proponents continue to push some technologies, like geoengineering, from the margins to the mainstream of climate policy debates, as financing for them increases, and as governments and companies increasingly resort to measures other than phasing out GHG-generating conduct, legal challenges ripen. This section highlights some of the categories of claims against ineffective, speculative, and risky climate measures most likely to be bolstered by the ICJ AO. The case examples provided are for illustrative purposes and do not suggest that the ICJ AO has been invoked or applied in those proceedings. The authoritative weight of the ICJ AO conclusions will vary by jurisdiction and legal system. Please note that the case categories below are not mutually exclusive; cases can fall into one or more of them.

### Government “Ambition Gap” or “Effective” Climate Action Claims (framework cases)

Numerous cases challenging government climate plans’ lack of ambition turn on the adequacy of the State’s climate measures to satisfy its international obligations, such as the duty to prevent environmental harm, in line with the precautionary principle and

intergenerational equity. Such cases have often relied on best available science and human rights-based claims, asserting violations of the rights of present and future generations based on insufficient government action to keep temperature rise below 1.5°C, including due to reliance on speculative technologies that delay or detract from proven mitigation measures. The ICJ AO's affirmation of the consensus climate science, emphasis on the primacy of the duty to prevent harm, the obligation to act with the highest level of ambition, and recognition of the duty to assess the negative effects of measures taken in response to climate change, may strengthen similar future legal claims to compel governments to tackle climate change, urgently and at the primary source (the fossil fuel-based, GHG-generating activities themselves). Notably, the AO's finding that States must have due regard to their obligations under the Biodiversity Convention and the Desertification Convention when implementing climate measures opens an additional avenue for framework claims: technologies such as solar radiation management, large-scale bioenergy with carbon capture, and afforestation monocultures for offset purposes carry well-documented risks to biodiversity and land degradation, and reliance on such measures could therefore breach cross-regime obligations that the Court has confirmed must be taken into account.

*Examples:* In [Neubauer v. Germany](#), the German Constitutional Court acknowledged the problems of reliance on speculative technological interventions, noting that the large-scale deployment of negative emissions technologies was not foreseeable and no reliable carbon credit system existed. Similarly, the Supreme Court of Ireland in [Friends of the Irish Environment v. The Government of Ireland](#) and the Dutch Supreme Court in [Urgenda Foundation v. State of the Netherlands](#) questioned reliance on speculative carbon removal technologies given uncertainty that they would achieve promised climate impacts, and therefore the governments' plans may not be sufficient to prevent climate harm in line with their duties. In [R \(oao Friends of the Earth\) v. Secretary of State for Business Energy and Industrial Strategy](#), the UK Court ruled that the government's net zero strategy was not in compliance with its Climate Change Act as there was insufficient information that the envisaged policies would keep the country's emissions within the "carbon budget." In a [follow-up case](#), the UK's revised strategy was also deemed insufficient as the government failed to rationally assess its ability to achieve what was claimed.

### **Intergenerational Equity Claims (framework cases)**

These framework cases have also often involved youth plaintiffs and evoked the principle of intergenerational equity, noting that youth and future generations will suffer disproportionately due to government action or inaction in the present.

*Examples:* In both **Neubauer** and **Urgenda**, courts found that the respective government

plans did not equitably distribute the climate change burden and noted that allowing current generations to use so much of the carbon budget now (due to inadequate near-term targets) would hurt future generations' rights.

## Claims Concerning Corporate Climate Harm and Inaction

Similar to the government framework cases, there are cases against private actors on human rights, constitutional, and tort/civil law grounds, for their failure to curb fossil fuel production and put in place sufficient strategies for defossilizing. The ICJ AO reinforces such claims in two ways. First, the Court held that States have an obligation to regulate the activities of private actors as a matter of due diligence, and failing to take the necessary regulatory and legislative measures to limit emissions by private actors may itself be a wrongful act (see corporate ... ). Second, the AO's finding that where a risk can be addressed with readily available technologies, States are expected to use them, implies that corporate reliance on speculative technologies in lieu of proven mitigation measures is inconsistent with the standard of conduct that States are obliged to enforce.

*Example:* In [Greenpeace Italy et al. v. ENI S.p.A. et al.](#), Greenpeace, ReCommon, and twelve Italian citizens brought a civil suit against ENI for its contribution to climate change and challenged ENI's decarbonization strategy as insufficient in part due to its reliance on carbon capture storage (CCS) and the purchase of Reduced Emissions from Deforestation and Degradation (REDD)+ offset credits. In late 2025, the Italian court rejected the defendants' jurisdictional challenge, allowing the case to proceed.

## Climate-washing or Greenwashing Claims

A growing number of cases accuse corporations of deception and false or misleading advertising when they claim to be carbon neutral or otherwise downplay their climate impacts based on the use of speculative technologies or the purchase of carbon credits to "offset" ongoing emissions. Many of these cases have been successful. In light of the due diligence obligations clarified in the ICJ AO, States arguably have a climate duty to regulate such conduct by private actors, where it contributes to GHG emissions by prolonging the activities generating them, masking their true impacts, or otherwise distracting and detracting from measures that aim directly at the fossil fuels driving climate change. The failure to do so could give rise to claims against the State. The AO's requirement that States actively pursue the scientific information necessary to assess the probability and seriousness of harm may also be deployed as an evidentiary standard in greenwashing proceedings. Corporate claims of carbon neutrality or net-zero status that rest on offsets or carbon capture without adequate scientific verification of their efficacy could be challenged as incompatible with the science-based standard of conduct the ICJ has endorsed.

*Examples:* In [Greenpeace France and Others v. TotalEnergiesSE & TotalEnergies Electricite et Gaz France](#), the Judicial Tribunal of Paris found that Total's claims related to climate neutrality, including its climate strategies' reliance on carbon offsetting mechanisms, were misleading and a violation of France's consumer protection law. Similarly, in [FossielVrij v. KLM](#), the plaintiffs challenged KLM's claims that flying could be sustainable as customers could compensate for or lower emissions through the purchase of carbon credits. The Amsterdam Court found that KLM's claims were misleading as offsets did not reduce emissions. Recent cases, including [Blumm v. Northwest Natural Gas Co.](#) and [Dib et al v. Apple](#), challenge the integrity of the carbon credits on which the companies rely to make their sustainability claims. In response to one such suit in Australia ([Australian Parents for Climate Action v. EnergyAustralia](#)), the [defendant agreed](#) to a settlement that included a public acknowledgement that offsets do not permanently remove greenhouse gases emitted by fossil fuels and that they should not be used to delay necessary decarbonization measures.

The state's complaint in [Commonwealth of Massachusetts v. Exxon](#) details how Exxon misled the public and investors by failing to disclose its knowledge of the climate harms its products cause while publishing documents focused on technologies, such as carbon capture and geoengineering, that do not address the root cause and enable business-as-usual fossil fuel production (**para. 743**).

## Claims Concerning Human Rights Violations Stemming from Carbon Offset Activities

The history of [carbon offset](#) projects is riddled with documented [human rights](#) abuses, especially violations of Indigenous Peoples' rights, which have led to various legal challenges grounded in human rights law.

*Examples:* In several cases stemming from offset projects in Kenya, courts have found for Indigenous communities. The [African Court of People's and Human Rights](#) affirmed the rights of the Ogiek people in Kenya, who were forcibly evicted from their land due to forest carbon offset projects, denied respect of their right to free, prior, and informed consent, and lacked access to remedy, and found the Kenyan government in non-compliance with previous court orders. In a case before the Environment and Land Court at Isiolo, the court found in favor of the communities that had alleged land rights violations and human rights abuses related to conservation projects. Similarly, in [Peru](#), a court found that the rights of the Kichwa people in Puerto Franco were being violated due to a REDD+ project.

## State-to-State Claims

One or more States could bring a case against another State for violating its obligations under a treaty or under customary international law through its reliance on or promotion and deployment of scientifically uncertain, risky, and offset-based responses to climate change. The ICJ AO provides particularly strong doctrinal support for such claims: the confirmation of the duty to prevent harm, the recognition that failure to take appropriate action – including through fossil fuel subsidies – may constitute an internationally wrongful act, and that breaches give rise to the full range of legal consequences under State responsibility, including cessation and reparation. A State that promotes or finances the deployment of geoengineering technologies or relies on offset-dependent NDCs that fail to achieve the deep, rapid, and sustained GHG reductions required by the AO could thus be exposed to inter-State claims, particularly where such measures cause or risk transboundary harm or undermine the collective achievement of the Paris Agreement’s temperature goal.

*Examples:* The International Tribunal for the Law of the Sea (ITLOS), in its [Advisory Opinion](#), indicated that marine geoengineering could violate the UN Convention on the Law of the Sea (UNCLOS), particularly articles 195 and 196. ITLOS warned that geoengineering may be incompatible with the obligation to take all measures necessary to prevent, reduce, and control marine pollution that results from the use of technologies under a State’s jurisdiction or control and would violate UNCLOS if it transforms one type of pollution into another (para. 231). The UN Special Rapporteur on Climate Change and Human Rights has also stated that geoengineering “should be considered contrary to the Convention when it is incompatible with States’ obligations related to the protection of marine biodiversity.”<sup>66</sup>

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<sup>66</sup> Elisa Morgera, *Reprioritizing Climate Action Through Human Rights Law* (IISD SDG Knowledge Hub, Oct. 23, 2024), [sdq.iisd.org/commentary/quest-articles/reprioritizing-climate-action-through-human-rights-law](https://sdq.iisd.org/commentary/quest-articles/reprioritizing-climate-action-through-human-rights-law).

# Litigation Note on Regulatory Rollback

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## Introduction

Regulatory rollback litigation addresses State acts or omissions that weaken, dismantle, or fail to maintain and progressively strengthen environmental and climate protection frameworks. As climate impacts intensify globally, these rollbacks, ranging from easing of emission standards to the dismantling of procedural protections like Environmental Impact Assessments (EIAs), represent a critical threat to the realization of climate targets. The 2025 International Court of Justice (ICJ) Climate Advisory Opinion (AO) clarifies that climate action is a binding legal obligation under both treaty and customary international law. Within this framework, a State's failure to take appropriate regulatory, legislative, and/or administrative action or the active weakening of environmental protections may constitute an internationally wrongful act if it breaches applicable legal obligations. By applying the ICJ's "stringent due diligence" standard, litigants can frame regulatory rollback, inadequate regulation, or domestic inaction as breaches of a State's obligation to take all appropriate measures to prevent significant harm to the climate system for present and future generations.

The following litigation note distills key findings of the ICJ's AO relevant to regulatory rollback litigation, and acknowledges that the overview provided herein is not intended to be comprehensive. Two sections follow: key excerpts from the AO and categories of climate litigation for which those excerpts may be relevant.

## Relevant Excerpts from the ICJ AO

The ICJ AO clarifies the legal obligations and standards that govern State conduct (action and/or omissions) in relation to climate change, including the duty to prevent significant harm to the climate system and to exercise stringent due diligence in adopting and maintaining effective regulatory frameworks. While the Court's conclusions are directly relevant to inter-State responsibility, they also provide authoritative guidance for litigation brought by affected communities and civil society actors challenging domestic regulatory rollback and seeking accountability for failures to protect the climate system.

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<sup>67</sup> World's Youth for Climate Justice (WYCJ) and Legal Initiative for Forest and Environment (LIFE), respectively.

<sup>68</sup> Center for International Environmental Law (CIEL).

<sup>69</sup> Center for International Environmental Law (CIEL).

It is relevant that the obligations the Court identified in relation to climate change under conventional and customary legal sources include, the UN Charter, climate and environmental law treaties, human rights law, law of the sea, the duty to prevent significant harm to the environment, the duty to cooperate, and the cross-cutting principles of sustainable development, common but differentiated responsibilities and respective capabilities (in light of national circumstances) (CBDR-RC), equity, intergenerational equity, and the precautionary approach or principle. The Advisory Opinion rejects the claim that climate treaties operate as *lex specialis* to the exclusion of other international rules, and makes it clear that both treaty and customary international law apply to States' climate obligations.

## A. Duty to prevent significant harm to the environment

*Customary international law imposes a duty on States to prevent significant harm to the environment, including to the climate system, with due diligence as the required standard of conduct.*

### **Content of the duty and application**

**Para. 132:** “Participants generally agree that States have a duty under customary international law to prevent significant harm to the environment. Indeed, the Court has recognized that ‘[a] State is . . . obliged to use all the means at its disposal in order to avoid activities which take place in its territory, or in any area under its jurisdiction, causing significant damage to the environment of another State’ (*Pulp Mills on the River Uruguay (Argentina v. Uruguay)*, Judgment, I.C.J. Reports 2010 (I), p. 56, para. 101).”

**Para. 134:** “This jurisprudence affirms that the duty to prevent significant harm to the environment is not confined to instances of direct cross-border harm and that it applies to global environmental concerns. Therefore, the customary duty to prevent significant harm to the environment also applies with respect to the climate system and other parts of the environment.”

**Para. 135:** “The duty to prevent significant harm to the environment is an obligation to act with due diligence .... As the Court has held, while an obligation to prevent ‘is one of conduct and not one of result, in the sense that a State cannot be under an obligation to succeed, whatever the circumstances, in preventing’ harm, ‘the obligation of [States] is rather to employ all means reasonably available to them, so as to prevent [harm] so far as possible’....”

**Para. 273:** “The duty to prevent significant harm to the environment also applies to the climate system, which is an integral and vitally important part of the environment and which

must be protected for present and future generations... The main elements of this duty are (a) the environmental harm to be prevented and (b) due diligence as the required standard of conduct.”

**Para. 276:** “The Court is of the view that a risk of significant harm may also be present in situations where significant harm to the environment is caused by the cumulative effect of different acts undertaken by various States and by private actors subject to their respective jurisdiction or control, even if it is difficult in such situations to identify a specific share of responsibility of any particular State. States must assess the possible cumulative effects of their acts and the planned activities under their jurisdiction or control. Although such ‘activities may not be environmentally significant if taken in isolation, . . . they may produce significant effects if evaluated in interaction with other activities’.”

**Para. 279:** “Accordingly, the Court considers that the diffuse and multifaceted nature of various forms of conduct which contribute to anthropogenic climate change does not preclude the application of the duty to prevent significant harm to the climate system and other parts of the environment. This duty arises as a result of the general risk of significant harm to which States contribute, in markedly different ways, through the activities undertaken within their jurisdiction or control.”

### ***Due Diligence as the Required Standard of Conduct***

**Para. 280:** “The Court reaffirms that States must fulfil their duty to prevent significant harm to the environment by acting with due diligence.”

**Para. 136:** “The conduct required by due diligence has several elements. These elements include States taking, to the best of their ability, appropriate and, if necessary, precautionary measures, which take account of scientific and technological information, as well as relevant rules and international standards, and which vary depending on each State’s respective capabilities. Other elements of the required conduct include undertaking risk assessments and notifying and consulting other States, as appropriate.” The Court’s clarification that due diligence requires States to take measures “which vary depending on each State’s respective capabilities” is notable, confirming that the standard of conduct is context-dependent and informed by States’ capacities, resources, and circumstances.

**Para. 138:** “[T]he Court recognizes that the standard of due diligence for preventing significant harm to the climate system is stringent ... due diligence ‘entails not only the adoption of appropriate rules and measures, but also a certain level of vigilance in their enforcement and the exercise of administrative control’ ... As concerns climate change, a heightened degree of vigilance and prevention is required.”

**Para. 139:** “The Court concludes that the duty of States to prevent significant environmental harm applies in the context of climate change and that this duty forms part of the most directly relevant applicable law.”

**Para. 275:** “[T]he degree of a given risk of harm is always an important element for the application of the due diligence standard: the higher the probability and the seriousness of possible harm, the more demanding the required standard of conduct.”

**Para. 300:** “[T]he relevant elements, individually and in combination, provide guidance for the identification of an appropriate standard of conduct for different situations.”

### ***Defining the scope of wrongful conduct breaching climate obligations***

**Para. 94:** “[T]he relevant conduct... is not limited to conduct that, itself, directly results in GHG emissions, but rather comprises all actions or omissions of States which result in the climate system and other parts of the environment being adversely affected by anthropogenic GHG emissions.”

**Para. 427:** “Failure of a State to take appropriate action to protect the climate system from GHG emissions – including through fossil fuel production, fossil fuel consumption, the granting of fossil fuel exploration licences or the provision of fossil fuel subsidies – may constitute an internationally wrongful act which is attributable to that State. ... the internationally wrongful act in question is not the emission of GHGs per se, but the breach of conventional and customary obligations identified under question (a) ....” Further, the ICJ was clear (**para. 428**) that a State may be responsible “where, for example, it has failed to exercise due diligence by not taking the necessary regulatory and legislative measures to limit the quantity of emissions caused by private actors under its jurisdiction.”

### ***Environmental Impact Assessments for the purpose of preventing significant harm to the climate system***

**Para. 295:** “[T]he duty to exercise due diligence in preventing significant harm to the environment requires ... certain procedural steps. These procedural obligations are distinct from the obligations to take substantive measures to prevent risks.”

**Para. 297:** “Since customary international law does not ‘specify the scope and content of an environmental assessment’ ... and given the multifaceted and contextual character of the due diligence standard, any EIA for the purpose of preventing significant harm to the climate system needs to take the specific character of the respective risk into account.”

**Para. 298:** “[T]he cumulative and diffuse nature of GHG emissions may involve some difficulty in risk assessment, it considers it important that all States provide for and conduct EIAs with respect to particularly significant proposed individual activities contributing to GHG emissions to be undertaken within their jurisdiction or control, on the basis of the best

available science. Such specific climate-related assessments could identify previously unknown information about possibilities for reducing the quantity of GHG emissions by relevant proposed individual activities.”

## B. Non-regression and Progression in Climate Commitment

*States are required to prepare, maintain, and progressively strengthen climate commitments in accordance with a stringent due diligence standard and the objective of limiting global warming to 1.5 C.*

**Para. 457(A)(e):** “States parties to the Paris Agreement have an obligation to prepare, communicate and maintain successive and progressive nationally determined contributions which, inter alia, when taken together, are capable of achieving the temperature goal of limiting global warming to 1.5°C above pre-industrial levels.”

**Para. 245:** “In light of the above, the Court considers that the discretion of parties in the preparation of their NDCs is limited. As such, in the exercise of their discretion, parties are obliged to exercise due diligence and ensure that their NDCs fulfil their obligations under the Paris Agreement and thus, when taken together, are capable of achieving the temperature goal of limiting global warming to 1.5°C above pre-industrial levels, as well as the overall objective of the ‘stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system’.”

**Para. 246:** “The Court recalls that the standard of due diligence varies depending on a range of factors ... In the current context, because of the seriousness of the threat posed by climate change, the standard of due diligence to be applied in preparing the NDCs is stringent (see paragraph 138 above). This means that each party has to do its utmost to ensure that the NDCs it puts forward represent its highest possible ambition in order to realize the objectives of the Agreement.”

**Para. 232:** “Article 5 of the Paris Agreement elaborates on the means of achieving the net balance between GHG emissions and carbon sinks contemplated in Article 4, paragraph 1, providing that ‘Parties should take action to conserve and enhance, as appropriate, sinks and reservoirs of greenhouse gases . . . , including forests’. The Paris Agreement thus reinforces the obligations relating to the promotion and enhancement of carbon sinks and reservoirs set forth in Article 4 of the UNFCCC.”

## C. Obligation under Human Rights Law

*States have obligations under international human rights law to protect the climate system in order to ensure the effective enjoyment of human rights.*

**Para. 371:** “The Court notes that States have obligations under international human rights law to respect, protect and ensure the enjoyment of human rights of individuals and peoples. Human rights are focused on the protection of individuals and peoples and are not limited to specific fields of activity. In order to respond to the question posed by the General Assembly, the Court will first consider the adverse effects of climate change on the enjoyment of human rights. The Court will then address the question of the right to a clean, healthy and sustainable environment as a human right. It will proceed to examine the territorial scope of the application of international human rights law. In light of these considerations, the Court will turn to the obligations of States under international human rights law to protect the climate system and other parts of the environment.”

**Para. 375:** “Anthropogenic GHG emissions have an adverse impact on the climate system and other parts of the environment. The IPCC has underscored the interdependence between the vulnerability of human populations and that of ecosystems .... The degradation of the climate system and of other parts of the environment impairs the enjoyment of a range of rights protected by human rights law.”

## D. Legal Consequences: Cessation and Revocation of Measures

*States responsible for internationally wrongful acts must cease such conduct, including by revoking legislative, regulatory, or administrative measures that breach climate obligations.*

**Para. 111:** “[W]hether or not individuals have any entitlement to invoke the legal responsibility of States, or to make a claim in a particular circumstance involving injury or harm arising from climate change, is dependent on the relevant primary obligations of States .... Thus, whether individuals are entitled to invoke a State’s responsibility for failure to comply with obligations identified under question (a) depends not on the general rules on State responsibility, but on the specific treaties and other legal instruments that create procedural and substantive rights and obligations governing the relationship between the States and individuals concerned.”

**Para 447:** “Under customary international law, a State responsible for an internationally wrongful act is under an obligation to cease that act if it is continuing and if the breached obligation is still in force (*Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004 (I)*, pp. 201–202,

para. 163 (3) (A)-(C)). In this context, the **Court is of the view that the obligation to put an end to the wrongful act may require a State to revoke all administrative, legislative and other measures that constitute an internationally wrongful act of that State.**” (*emphasis added*)

## Categories of Climate Cases Relevant to the Excerpts

The cited excerpts above are most relevant to constitutional, administrative, and environmental public interest litigation challenging regulatory rollbacks, dilution of emission norms, forest diversion, weakened EIA procedures, or fossil-fuel expansion. They are particularly applicable in jurisdictions where courts recognize environmental or climate rights, as the Advisory Opinion links climate protection to due diligence, procedural safeguards, human rights, and customary international law obligations.

Rollbacks that weaken or remove environmental scrutiny — such as eliminating the need for an EIA for a fossil fuel project or exempting a polluting sector from regulation — contravene the customary duty to assess environmental risk ([Separate Opinion of Justice Bhandari, paras. 4–6](#)). The absence of an EIA for activities that significantly contribute to GHG emissions, particularly regarding foreseeable “downstream effects” (Scope 3 emissions), amounts to a breach of the stringent due diligence standard ([Separate Opinion of Justice Bhandari, paras. 4–6](#)). The AO also requires consideration of cumulative effects, applies the due diligence standard to all States regardless of treaty participation, and clarifies that it must evolve in line with the best available science. Rollbacks that lower mitigation ambition — by easing emission limits, allowing higher pollution levels, or dismantling climate policies — conflict with the obligation that successive Nationally Determined Contributions (NDCs) reflect progression and the highest possible ambition, and provide grounds to challenge planning incompatible with the 1.5°C limit.

The ICJ’s reasoning establishes a clear framework for State responsibility. A failure to maintain or progressively strengthen environmental safeguards may constitute an internationally wrongful act. Such violations trigger the entire ambit of legal consequences of State responsibility, including cessation of ongoing wrongful acts (which may require revoking regressive measures) and full reparation where significant harm occurs. By recognizing these obligations as *erga omnes*, the AO confirms that all States have a legal interest in their enforcement. The ICJ has provided litigants with a firm doctrinal basis and multiple legal bases to challenge environmental deregulation. Regulatory rollback litigation is therefore a critical frontier in climate justice.

The following categories and examples of climate cases illustrate key contexts in which rollback litigation can be brought. These examples are provided for illustrative purposes only and do not necessarily indicate that the ICJ AO has been invoked or applied in those proceedings. The authoritative weight of the ICJ AO conclusions will vary by jurisdiction and legal system. Please note that the case categories below are not mutually exclusive; cases can fall into one or more of them.

## Challenges to Diluted Mitigation and Emission Standards

This category addresses challenges to legislative changes that weaken existing emission targets or accountability mechanisms.

*Examples:* In [Germany](#), plaintiffs are currently challenging an amendment to the Federal Climate Protection Act that replaced binding sectoral caps with a less accountable cumulative planning approach. Similarly, in the [United States](#), the D.C. Circuit set aside the “Affordable Clean Energy Rule” because it wrongly limited emission controls, preventing the replacement of a stronger framework with a weaker one. Further, the [Belgian Constitutional Court](#) (Case 115/2025) recently reviewed an ordinance that postponed the next phase of the Brussels Low Emission Zone by two years. The Court held that delaying the ban on high-emitting vehicles constituted an unjustified reduction in the protection of the rights to health and a healthy environment, violated the “standstill” principle, and necessitated the reinstatement of the original, stricter timeline.

The ICJ AO confirms that States have an obligation to pursue domestic measures to achieve their NDCs. Any rollback that lowers mitigation ambition conflicts with the requirement that NDCs must reflect “progression” and a State’s “highest possible ambition.” The ICJ’s “stringent due diligence” standard can be relied on to assess whether such changes are aligned with the legal duty to prevent significant harm.

## Litigation Against Weakened Land–Use and Resource Protections

These cases target rollbacks that facilitate deforestation or the diversion of protected lands. This category also addresses the removal of legal protections for carbon sinks, specifically through policies that facilitate the diversion of forest land for non-forest purposes.

*Example:* This trend of “regulatory dilution” through narrow definitions is exemplified by the [Aravalli Verdict controversy \(2025\)](#). Here, the Supreme Court initially accepted a restrictive, elevation-based definition of the Aravalli Hills (treating only landforms rising 100 meters or more as “hills”), which environmentalists argued would exclude vast, ecologically critical stretches from protection and open them to mining. Recognizing that such

technical abstractions could “hollow out substantive safeguards,” the Court took the rare step of staying its own order to recalibrate the definition based on a holistic expert assessment of geological and ecological realities.

The ICJ emphasizes a continuing duty to “preserve and improve the absorption capacity of reservoirs and sinks” (**para. 446**), regardless of domestic legislative changes. Because forests are integral components of the climate system, rollbacks allowing forest diversion can be framed as a breach of the customary duty to prevent significant harm.

## Challenges to procedural rollbacks (EIA, compliance, and transparency)

This category focuses on the removal of “procedural safeguards” like EIAs.

*Examples:* The [French Council of State](#) annulled a decree that exempted certain projects from environmental assessments, applying the principle of non-regression: the rule that protection may only improve over time. In India, [the Vanashakti case](#) highlighted the dangers of ex post facto environmental clearances, which the Supreme Court initially struck down as inconsistent with environmental principles before reversing its position on review. In the United States, the U.S. District Court for the Northern District of California (a US federal court), in [California v. U.S. Bureau of Land Management](#), reinstated original compliance deadlines for the Waste Prevention Rule (a regulation designed to reduce waste of methane and other pollutants from oil and gas operations on federal and tribal lands) after the Bureau attempted to postpone them. The court found that the agency lacked the authority to delay implementation and failed to follow required procedures under the Administrative Procedure Act (APA) or consider environmental benefits.

The ICJ AO clarifies that procedural obligations, such as conducting risk assessments, are distinct from substantive measures and are an essential component of the duty to exercise due diligence. Furthermore, the AO establishes that the standard for due diligence is stringent, requiring a “heightened degree of vigilance and prevention” (**para. 138**). Litigants can use these excerpts to argue against procedural rollbacks.

## Human rights and human health challenges

This category of litigation argues that regulatory regression, the weakening of existing environmental laws, directly violates fundamental rights to health and a healthy environment by allowing for increased climate harm.

*Examples:* In [Belgium, the Constitutional Court](#) reviewed a regional ordinance that postponed the next phase of a Low Emission Zone (LEZ) by two years. The Court held that this delay retrospectively authorized the circulation of polluting vehicles that should have

been banned, thereby unjustifiably reducing the protection of environmental and health rights. This violated the “standstill” principle, leading the Court to suspend the ordinance and reinstate the original stricter timeline. Similarly, in France ([Federation Allier Nature v. France](#)), the Council of State annulled a decree that weakened the EIA regime. The Court applied the principle of non-regression, which mandates that environmental protections must only improve over time, finding that exempting projects with significant environmental or health impacts from assessment violated that core principle.

The ICJ AO Opinion establishes that States have clear obligations under international human rights law to “respect, protect and ensure the enjoyment of human rights,” a duty that is not restricted to specific fields of activity (**para. 371**). By linking the protection of the environment to the effective enjoyment of human rights, the AO provides a strong basis for litigants to argue that regulatory rollbacks are not merely policy shifts but breaches of a State’s international human rights obligations. Furthermore, the ICJ notes that the right to a “clean, healthy and sustainable environment” is essential for the enjoyment of other rights (**para. 393**), strengthening the legal standing of the “non-regression” and “standstill” arguments used in French and Belgian courts.

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# Annex 1

## Indian Context and Examples of Regulatory Rollbacks in recent years

The legislative and administrative landscape in India during the 2024–2025 period represents a significant pivot in the country's approach to environmental governance. While the international community observes India's commitment to achieving net-zero emissions by 2070 and attaining 500 GW of non-fossil fuel capacity by 2030, the domestic statutory framework has undergone a series of “regulatory rollbacks.” Let's put these changes in the context of the Advisory Opinion.

### India's SO<sub>2</sub> Emission Rollback

The July 2025 amendment to [India's thermal power emission norms](#) represents a primary example of a regulatory rollback that directly contradicts the State's international obligations. By shifting from mandatory Flue Gas Desulphurization (FGD) systems, intended for reduction at source, to mere “dispersion via stack height” for approximately 78% of its coal-fired capacity (Category C), the State has fundamentally weakened its environmental safeguards. This rollback violates the “stringent standard of due diligence” clarified in the ICJ AO. The Court emphasizes that due diligence is not static; the higher the risk and seriousness of harm, the more demanding the standard of conduct (**para. 275**). Given that anthropogenic GHG emissions, often co-emitted with SO<sub>2</sub>, cause significant harm to the climate system, the State is required to use all means at its disposal to prevent such harm. Relaxing mandates for coal-intensive infrastructure, which accounts for 75% of India's electricity, fails this stringent test of vigilance and administrative control. The AO specifies (**para. 427**) that the provision of subsidies or the failure to regulate private actors effectively can constitute an “internationally wrongful act.” By extending deadlines for Category A to 2027 and offering full exemptions to Category C, the State is failing to exercise “regulatory due diligence” over carbon-intensive private and public entities.

The AO mandates that Environmental Impact Assessments (EIAs) must take into account “the specific character of the respective risk” (**para. 297**), including possible downstream effects. The ministry's justification that SO<sub>2</sub> contributes less than 5% to local PM<sub>2.5</sub> ignores the cumulative atmospheric loading and secondary climate effects of sulphur compounds. The government justified the changes by citing limited availability of FGD technology, supply chain constraints, rising costs, and low ambient sulphur dioxide levels, reasons disputed by policy experts and scientists. Earlier, all thermal power plants were required to

meet emission standards by installing FGD systems, regardless of category. This rationalization bypasses the procedural requirement to acquire and analyze the best available science (**para. 298**) when determining appropriate measures to protect the global climate system.

## Transformation in Forest Governance

The forest sector has witnessed a fundamental shift in its governing philosophy, moving from a conservation-centric model to one that facilitates the diversion of forest land for industrial and strategic purposes. The 2024–2025 period saw the implementation of the [Forest \(Conservation\) Amendment Act, 2023](#), and the subsequent notification of the Van (Sanrakshan Evam Samvardhan) Amendment Rules. The 2023 amendment narrowed the legal definition of “forest” to lands notified under the Indian Forest Act, 1927, or recorded after October 25, 1980. This rollback effectively overturned the 1996 *T.N. Godavarman* ruling, which had extended forest protections to all areas meeting the dictionary meaning of a forest, regardless of official classification. The Forest (Conservation) Amendment Act, 2023, and its accompanying rules can be read as inconsistent with the principles articulated in the ICJAO, particularly the duty to prevent significant environmental harm and the requirement of stringent due diligence. The ICJ emphasized that the duty to prevent significant harm applies directly to the climate system, which must be protected for present and future generations (**para. 273**). By removing large tracts of unclassified and unnotified forests from legal protection and facilitating easier diversion, the FCAA risks accelerating deforestation, which contributes to greenhouse gas emissions. The Court also recognized that environmental harm may arise from the cumulative effect of multiple state and private actions, even where individual acts appear minor (**para. 276**), and that the diffuse nature of climate harm does not relieve states of responsibility (**para. 279**).

The “deemed forests” and “unclassified forests,” particularly in the ecologically sensitive areas, are now vulnerable to diversion for non-forest use without the previously mandatory central clearances or the consent of Gram Sabhas. Rules now allow State Governments to grant permission for linear projects (roads, railways, pipelines) to commence preliminary work and mobilize resources immediately after obtaining “Stage-I” (in-principle) approval. This allows for site preparation and resource mobilization before final environmental safeguards are verified at “Stage-II.” The amendment’s provisions enabling multiple small-scale diversions and green credit-based plantations could cumulatively intensify climate impacts. Forests and their biodiversity are vital carbon sinks, making it easier to grow monoculture plantations for green credit, diverting forest lands, which affects biodiversity.

Further, the Court held that the due diligence standard in climate matters is “stringent” and requires heightened vigilance in lawmaking and enforcement (**paras. 138–139**), with stricter standards where risks are serious (**para. 275**). By diluting forest safeguards and regularizing past diversions, the FCAA appears to lower, rather than strengthen, preventive standards. The ICJ also noted that failure to take appropriate action to protect the climate system, including through State policies affecting fossil fuels or land use or GHG emissions, may constitute an internationally wrongful act (**para. 427**). Finally, the Court stressed the need for climate-sensitive impact assessments based on best available science (**para. 298**) and progressive commitments under the Paris Agreement (**para. 457**). Making a pathway for these huge carbon sinks to be diverted affects our protection against these emissions. The FCAA’s deregulatory approach may undermine these procedural and substantive obligations. In conclusion, in limiting the scope and ambit of the original Forest (Conservation) Act, 1980, the FCAA is removing crucial safeguards from a vast majority of India’s biodiverse forests, thus affecting the climate system.

## EIA and Consent Exemptions as Regulatory Rollbacks

In February 2025, the Ministry of Environment, Forest, and Climate Change (MoEFCC) exempted [industries](#) classified as “practically non-polluting” from the requirement of obtaining Consent to Establish (CTE) and Consent to Operate (CTO). While the Union government initially identified only 54 such industries, some State Pollution Control Boards substantially expanded the list. For instance, the Maharashtra Pollution Control Board reportedly included nearly [850 industries](#) by January 2026, covering sectors ranging from IT offices and bakeries to activities such as CFL bulb assembly. The regime now relies on one-time self-certification through digital portals, with no routine inspections or periodic reclassification. In addition, [projects](#) that have obtained Environmental Clearance under the EIA Notification, 2006, are no longer required to seek separate CTE approvals. These changes can be read as inconsistent with the ICJ’s articulation of the duty of prevention and stringent due diligence. The ICJ held that States must prevent significant harm to the climate system and assess the cumulative impact of activities under their jurisdiction (**paras. 273, 276, 279**). Large-scale exemptions and self-certification mechanisms reduce regulatory oversight and may allow cumulative environmental impacts to go unassessed. The ICJ further emphasized that climate due diligence requires heightened vigilance in both rule-making and enforcement (**paras. 138–139, 275**). By replacing inspections and layered consent procedures with one-time self-declarations, the regulatory framework arguably lowers the standard of vigilance expected under international law. Moreover, the Court stressed the importance of climate-sensitive environmental impact assessments based on best available science (**para. 298**). The removal of establishment-stage scrutiny through CTE exemptions weakens these procedural safeguards. In this sense, the White Category

expansion reflects a regulatory approach that may fall short of the stringent due-diligence obligations and the importance of EIAs outlined in the ICJAO.

In another [Office Memorandum](#), the Ministry of Environment, Forest and Climate Change, Impact Assessment Division made way for the fast-tracking of projects involving mining of critical, strategic, and atomic minerals. The Office Memorandum notes that such projects may be exempted from public consultation where they are linked to national security or strategic considerations, with clearances to be expedited in view of economic and technological priorities. However, the ICJ emphasized that States must assess the cumulative environmental impacts of activities under their jurisdiction and prevent significant harm to the climate system (**paras. 273, 276, 279**). Large-scale mining projects, particularly those involving critical and atomic minerals, can have substantial land-use, energy, and emissions consequences. The Court also stressed that due diligence in climate matters requires heightened vigilance in both substantive and procedural safeguards (**paras. 138–139**), including EIAs based on best available science (**para. 298**). Exempting such projects from public consultation weakens procedural oversight, limits local participation, and reduces the ability to identify cumulative climate and environmental risks. In this sense, the fast-tracking and consultation exemptions may fall short of the stringent due diligence obligations recognized by the ICJ, especially where projects with significant environmental implications are approved without full procedural scrutiny.

In another scenario, the Central Pollution Control Board's [new categorization](#) that shifts waste-to-energy and incineration units into a more permissive “blue” or lower-risk category has been criticized as “[blue-washing](#),” since such plants can emit toxic pollutants and greenhouse gases. By reclassifying these facilities as less polluting, the state reduces regulatory scrutiny and normalizes emission-intensive technologies. This approach conflicts with the ICJ’s duty to prevent significant climate harm and assess cumulative impacts (**paras. 273, 276, 279**), and falls short of the stringent due diligence standard requiring heightened vigilance in environmental regulation (**paras. 138–139, 275**).

# Annex 2

## Selected ICJ AO Excerpts of Overarching Importance

### The Best Available Science

- **Para. 137:** "...The best available science, as presented by the IPCC, confirms that cumulative GHG emissions are the primary source of risks arising from anthropogenic climate change (see paragraphs 72–87 above)."
- **Para. 278:** "The determination of 'significant harm to the climate system and other parts of the environment' must take into account the best available science, which is currently to be found in the reports of the IPCC. ... Informed by the best available science and based on the above considerations, the Court considers that the adverse effects of climate change, including rising temperature levels, sea level rise, negative effects on ecosystems and biological diversity, and extreme weather events, indicate that **the accumulation of GHG emissions in the atmosphere is causing significant harm to the climate system and other parts of the environment.**" (*emphasis added*)
- **Para. 284:** "... The Court is aware that scientific research on climate change is well developed. In this regard, reports by the IPCC constitute comprehensive and authoritative restatements of the best available science about climate change at the time of their publication (see paragraphs 74, 77–83 and 277–279 above)."
- **Para. 81:** "The IPCC adds that the largest source of CO<sub>2</sub> is combustion of fossil fuels in energy conversion systems such as boilers in electric power plants, engines in aircraft and automobiles, and in cooking and heating within homes and businesses (approximately 64 per cent of emissions). It further observes that fossil fuels are a major source of CH<sub>4</sub>, the second biggest contributor to global warming."
- **Para. 82:** "Furthermore, according to the IPCC, '... Deep, rapid, and sustained reductions in greenhouse gas emissions would lead to a discernible slowdown in global warming within around two decades, and also to discernible changes in atmospheric composition within a few years' (IPCC, 2023 Summary for Policymakers, p. 12, Statement B.1)."

### Temperature Limit

- **Para. 224:** "[T]he Court considers the **1.5°C threshold** to be the parties' agreed primary temperature goal for limiting the global average temperature increase under the Paris Agreement." (*emphasis added*)

- **Para. 242:** "...the object and purpose of the Agreement set out in Article 2, i.e. to hold the increase in the global average temperature to below 1.5°C, which the Court has interpreted to be the primary temperature goal under the Agreement (see paragraph 224 above)."

## Applicable Law

- **Para. 172:** "...the Court is of the view that the most directly relevant applicable law consists of the Charter of the United Nations, the UNFCCC, the Kyoto Protocol, the Paris Agreement, UNCLOS, the ozone layer treaties, the Biodiversity Convention, the Desertification Convention, the customary duty to prevent significant harm to the environment and the duty to co-operate for the protection of the environment, and international human rights law, as well as certain guiding principles for the interpretation of various applicable rules and principles (sustainable development, common but differentiated responsibilities and respective capabilities, equity, intergenerational equity, and the precautionary approach or principle)."
- **Para. 168:** "The Court cannot find any actual inconsistency between the provisions of the climate change treaties and other rules and principles of international law ... On the contrary, the preambles of the UNFCCC and the Paris Agreement ... contain references to other rules and principles."
- **Para. 169:** "Nor can the Court identify a discernible intention of the parties to the climate change treaties generally to displace other possibly applicable rules or principles."
- **Para. 171:** "For these reasons, the Court considers that the argument according to which the climate change treaties constitute the only relevant applicable law cannot be upheld and **finds that the principle of *lex specialis* does not lead to a general exclusion by the climate change treaties of other rules of international law.**" (*emphasis added*)
- **Para. 420:** "responsibility for breaches of obligations under the climate change treaties, and in relation to the loss and damage associated with the adverse effects of climate change, is to be determined by applying the well-established rules on State responsibility under customary international law."
- **Para 419:** "...the climate change treaties do not derogate from or displace general international law of State responsibility."

## Intergenerational equity

- **Para. 157:** "In the Court's view, intergenerational equity is a manifestation of equity in the general sense and thus shares its legal significance as a guide for the interpretation of applicable rules. Accordingly, considerations of intergenerational equity must play a role *infra legem*, without displacing or exceeding the limits of the applicable law. **Due regard for the interests of future generations and the long-term implications of conduct are equitable considerations that need to be taken into account where States contemplate,**

decide on and implement policies and measures in fulfilment of their obligations under the relevant treaties and customary international law.” (*emphasis added*)

## Relevant Conduct

- **Para. 94:** “In this regard, the Court is further of the view that **the relevant conduct for the purposes of these advisory proceedings is not limited to conduct that, itself, directly results in GHG emissions, but rather comprises all actions or omissions of States which result in the climate system and other parts of the environment being adversely affected by anthropogenic GHG emissions. The Court considers that the material scope of its inquiry encompasses the full range of human activities that contribute to climate change as a result of the emission of GHGs, including both consumption and production activities...**” (*emphasis added*)
- **Para. 95:** “The Court’s inquiry must therefore have a broad material scope encompassing States’ obligations concerning **all actions or omissions of States, and of non-State actors within their jurisdiction or effective control, that result in the climate system and other parts of the environment being adversely affected by anthropogenic GHG emissions.**” (*emphasis added*)
- **Para. 427:** “In the Court’s view, the “well-established rule of international law” that “the conduct of any organ of a State must be regarded as an act of that State.” ... **Failure of a State to take appropriate action to protect the climate system from GHG emissions – including through fossil fuel production, fossil fuel consumption, the granting of fossil fuel exploration licences or the provision of fossil fuel subsidies – may constitute an internationally wrongful act which is attributable to that State.** The Court also emphasizes that the internationally wrongful act in question is not the emission of GHGs per se, but the breach of conventional and customary obligations identified under question (a) pertaining to the protection of the climate system from significant harm resulting from anthropogenic emissions of such gases.” (*emphasis added*)

## Customary International Law Obligations

- **Para. 314:** “[C]ompliance in full and in good faith by a State with the climate change treaties, as interpreted by the Court [...], suggests that this State substantially complies with the general customary duties to prevent significant environmental harm and to co-operate. **This does not mean, however, that the customary obligations would be fulfilled simply by States complying with their obligations under the climate change treaties [...].** While the treaties and customary international law inform each other, they establish independent obligations that do not necessarily overlap.” (*emphasis added*)
- **Para. 315:** “Customary obligations are the same for all States and exist independently regardless of whether a State is a party to the climate change treaties.”

*Erga Omnes Obligations*

- **Para. 440:** "...the Court considers that all States have a common interest in the protection of global environmental commons like the atmosphere and the high seas. Consequently, States' obligations pertaining to the protection of the climate system and other parts of the environment from anthropogenic GHG emissions, in particular the obligation to prevent significant transboundary harm under customary international law, are obligations erga omnes. In the treaty context, the Court recalls that the UNFCCC and Paris Agreement acknowledge that climate change is "a common concern of humankind" (UNFCCC, first preambular paragraph; Paris Agreement, eleventh preambular paragraph), requiring "a global response" (Paris Agreement, Article 2). They seek to protect the essential interest of all States in the safeguarding of the climate system, which benefits the international community as a whole. As such, the Court considers that the obligations of States under these treaties are obligations erga omnes partes."
- **Para. 441:** "As the Court has observed in the past, obligations erga omnes are "[b]y their very nature . . . the concern of all States" (*Barcelona Traction, Light and Power Company, Limited (New Application: 1962) (Belgium v. Spain), Second Phase, Judgment, I.C.J. Reports 1970*, p. 32, para. 33). ... As a result, all States parties have a legal interest in the protection of the main mitigation obligations set forth in the climate change treaties and may invoke the responsibility of other States for failing to fulfil them."
- **Para. 443:** "There is however a difference between the position of injured States or specially affected States on the one hand, and that of non-injured States on the other, as concerns the availability of remedies. While a non-injured State may pursue a claim against a State in breach of a collective obligation, it may not claim reparation for itself. Rather, it may only make a claim for cessation of the wrongful act and assurances and guarantees of non-repetition, as well as for the performance of the obligation of reparation in the interest of the injured State or of the beneficiaries of the obligation breached." Relatedly, "[offending] States have a continuing duty to perform their obligations despite their breaches thereof ..." (**para. 446**).
- **Para. 271:** Under customary international law, the opinion largely considered "how (1) the customary duty of States to prevent significant harm to the environment and (2) the customary duty of States to co-operate for the protection of the environment are to be interpreted and applied in respect of climate change..."

### **Duty to Prevent Harm, Due Diligence and the Precautionary Approach**

- **Para. 132:** "[a] State is . . . obliged to use all the means at its disposal in order to avoid activities which take place in its territory, or in any area under its jurisdiction, causing significant damage to the environment of another State"
- **Para. 134:** ".....This jurisprudence affirms that the duty to prevent significant harm to the environment is not confined to instances of direct cross-border harm and that it applies to global environmental concerns. Therefore, the customary duty to prevent significant harm to

the environment also applies with respect to the climate system and other parts of the environment.”

- **Para. 409:** “With regard to obligations under customary international law, the Court observes that the most significant primary obligation for States in relation to climate change is **the obligation to prevent significant harm to the climate system and other parts of the environment** (see paragraphs 132–139 above), which applies to all States, including those that are not parties to one or more of the climate change treaties. Under this obligation, as well as under other obligations of conduct identified under question (a), a State does not incur responsibility simply because the desired result is not achieved; rather, **responsibility is incurred if the State fails to take all measures which were within its power to prevent the significant harm**. In this connection, the notion of due diligence, which calls for an assessment *in concreto*, is the relevant standard for determining compliance (see paragraph 137 above). Thus, a State that does not exercise due diligence in the performance of its primary obligation to prevent significant harm to the environment, including to the climate system, commits an internationally wrongful act entailing its responsibility.” *(emphasis added)*
- **Para. 273:** “ The duty to prevent significant harm to the environment also applies to the climate system, which is an integral and vitally important part of the environment and which must be protected for present and future generations (see paragraphs 73–74 above).”
- **Para. 274:** “States are subject to the duty to prevent significant harm either where no harm has yet been caused but the risk of future significant harm exists, or where some harm has already been caused, and there exists a risk of further significant harm”
- **Para. 276:** “The Court is of the view that a risk of significant harm may also be present in situations where significant harm to the environment is caused by the cumulative effect of different acts undertaken by various States and by private actors subject to their respective jurisdiction or control, even if it is difficult in such situations to identify a specific share of responsibility of any particular State. States must assess the possible cumulative effects of their acts and the planned activities under their jurisdiction or control. Although such “activities may not be environmentally significant if taken in isolation, . . . they may produce significant effects if evaluated in interaction with other activities” (*Climate Change, Advisory Opinion, ITLOS Reports 2024*, p. 128, para. 365).”
- **Para. 280:** “The Court reaffirms that States must fulfil their duty to prevent significant harm to the environment by acting with due diligence...”
- **Para. 281:** “The Court recalls that **due diligence requires a State to ‘use all the means at its disposal in order to avoid activities which take place in its territory, or in any area under its jurisdiction, causing significant damage to the environment of another State’** (*Pulp Mills on the River Uruguay (Argentina v. Uruguay), Judgment, I.C.J. Reports 2010 (I)*, p. 56, para. 101)” *(emphasis added)*

- **Para. 136:** “The conduct required by due diligence has several elements. These elements include States taking, to the best of their ability, appropriate and, if necessary, precautionary measures, which take account of scientific and technological information, as well as relevant rules and international standards, and which vary depending on each State’s respective capabilities. Other elements of the required conduct include undertaking risk assessments and notifying and consulting other States, as appropriate.”
- **Para. 138:** “Under these circumstances, **the Court recognizes that the standard of due diligence for preventing significant harm to the climate system is stringent** [...].”(*emphasis added*)
- **Para. 275:** “[...] the degree of a given risk of harm is always an important element for the application of the due diligence standard: the higher the probability and the seriousness of possible harm, the more demanding the required standard of conduct.”
- **Para. 283:** “... Due diligence also requires States to actively pursue the scientific information necessary for them to assess the probability and seriousness of harm, in conformity with the common but differentiated responsibilities and respective capabilities principle.”
- **Para. 284:** “The standard of due diligence may also become more demanding in the light of new scientific or technological knowledge.”
- **Para. 282:** “As far as climate change is concerned, such appropriate rules and measures include, but are not limited to, regulatory mitigation mechanisms that are designed to achieve the deep, rapid, and sustained reductions of GHG emissions that are necessary for the prevention of significant harm to the climate system. Adaptation measures reduce the risk of significant harm occurring and are therefore also relevant for assessing whether a State is fulfilling its customary obligations with due diligence. **These rules and measures must regulate the conduct of public and private operators within the States’ jurisdiction or control and be accompanied by effective enforcement and monitoring mechanisms to ensure their implementation.**” (*emphasis added*)
- **Para 285:** "Adaptation and mitigation measures available to States \_ and their ability to contribute to the prevention of significant harm \_ depend on the sharing of information. This also serves to minimize the possibility that a particular adaptation or mitigation measure itself poses a risk of significant transboundary harm."
- **Para 286:** "Where a risk can be addressed with readily available technologies, States are expected to use them. However, when technologies pose further risks, States are expected to use them with prudence and caution"
- **Para 293:** “Scientific information regarding the probability and the seriousness of possible harm informs the required standard of due diligence.... States are required to take appropriate measures to prevent significant harm where reliable scientific evidence of a risk of significant harm exists. However, States should also not refrain from or delay taking actions of prevention in the face of scientific uncertainty. According to Principle 15 of the Rio Declaration, where there are threats of serious or

irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation (see also Article 3, paragraph 3, of the UNFCCC)."

- **Para. 294:** "The Court agrees with the conclusion reached by ITLOS that "where there are plausible indications of potential risks", a State "would not meet its obligation of due diligence if it disregarded those risks" and, in that sense, the "precautionary approach is also an integral part of the general obligation of due diligence" under the duty to prevent significant harm to the environment (*Responsibilities and obligations of States with respect to activities in the Area, Advisory Opinion, 1 February 2011, ITLOS Reports 2011*, p. 46, para. 131). Based on the above, the Court considers that the precautionary approach or principle, where applicable, guides States in the determination of the required standard of conduct in fulfilling their customary duty to prevent significant harm."
- **Para. 292:** "While developed States, in the context of climate change, must take more demanding measures to prevent environmental harm and must satisfy a more demanding standard of conduct, the standard required in each case ultimately depends on the specific situation of each State, namely 'all the means at its disposal'."
- **Para. 457 (3)(B)(a):** "States have a duty to prevent significant harm to the environment by acting with due diligence and to use all means at their disposal to prevent activities carried out within their jurisdiction or control from causing significant harm to the climate system and other parts of the environment, in accordance with their common but differentiated responsibilities and respective capabilities"
- **Para. 296:** "... The Court has recognized with respect to such situations that "it may now be considered a requirement under general international law to undertake an environmental impact assessment" (*ibid.*) and that the "[principle] underlying" this obligation applies not only to industrial activities but "generally to proposed activities which may have a significant adverse impact in a transboundary context" (*Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)* and *Construction of a Road in Costa Rica along the San Juan River (Nicaragua v. Costa Rica)*, Judgment, *I.C.J. Reports 2015 (II)*, p. 706, para. 104)."

### **Duty to Cooperate**

- **Para. 308:** "Climate change is a common concern. **Cooperation is not a matter of choice for States but a pressing need and a legal obligation.**" (*emphasis added*)
- **Para. 141:** "This duty to co-operate is intrinsically linked to the duty to prevent significant harm to the environment, because unco-ordinated individual efforts by States may not lead to a meaningful result. It also derives from the principle that the conservation and management of shared resources and the environment are based on shared interests and governed by the principle of good faith (see *Legality of the Threat or Use of Nuclear*

*Weapons, Advisory Opinion, I. C.J. Reports 1996 (I), p. 264, para. 102; Nuclear Tests (Australia v. France), Judgment, I.C.J. Reports 1974, p. 268, para. 46).*”

- **Para. 305:** “... The duty to co-operate is applicable to all States, although its level may vary depending on additional criteria, first and foremost the common but differentiated responsibilities and respective capabilities principle.”
- **Para. 306:** “The Court recognizes that the duty to co-operate leaves States some discretion in determining the means for regulating their GHG emissions. **However, this discretion cannot serve as an excuse for States to refrain from co-operating with the required level of due diligence or to present their effort as an entirely voluntary contribution which cannot be subjected to scrutiny...**” (*emphasis added*)

## Mitigation Obligations

*Obligations under the UNFCCC:*

- **Para. 208:** “[I]t cannot be said that an obligation of result, such as an obligation [under Article 4.2(a)] to ‘adopt national policies and take corresponding measures on the mitigation of climate change’, will be met merely by the adoption of any policies and the taking of corresponding measures. To comply with this obligation of result, the policies so adopted and the measures so taken must be such that they are able to achieve the required goal. In other words, the adoption of a policy, and the taking of related measures, as a mere formality is not sufficient to discharge the obligation of result.”

*Obligations under the Paris Agreement:*

### Nationally Determined Contributions (NDCs)

- **Para. 236:** “[T]he mere formal preparation, communication and maintenance of successive NDCs is not sufficient to comply with the obligations under Article 4 [...]. The content of the NDCs is equally relevant to determine compliance.”
- **Para. 226:** The principle of CBDR-RC plays a “key role” in the Paris Agreement.
- **Para. 241:** “[E]ach Party’s successive nationally determined contribution will represent a progression’ beyond that party’s current NDC means that a party’s NDCs must become more demanding over time.”
- **Para. 242:** “[A] party’s NDCs must reflect ‘its highest possible ambition’.”
- **Para. 242:** “[T]he content of a party’s NDC must [...] be capable of making an adequate contribution to the achievement of the temperature goal.”
- **Para. 245:** “... the Court Court considers that the discretion of parties in the preparation of their NDCs is limited. As such, in the exercise of their discretion, parties are obliged to exercise due diligence and ensure that their NDCs fulfil their obligations under the Paris

Agreement and thus, when taken together, are capable of achieving the temperature goal of limiting global warming to 1.5°C above pre-industrial levels, as well as the overall objective of the “stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system.”

- **Para. 246:** “In the current context, because of the seriousness of the threat posed by climate change, the standard of due diligence to be applied in preparing the NDCs is stringent (see paragraph 138 above). This means that **each party has to do its utmost to ensure that the NDCs it puts forward represent its highest possible ambition in order to realize the objectives of the Agreement.**” (*emphasis added*)
- **Para. 247:** “[T]he standard to be applied when assessing the NDCs of different parties will vary depending, *inter alia*, on historical contributions to cumulative GHG emissions, and the level of development and national circumstances of the party in question.”
- **Para. 252:** “[P]arties are required to act with due diligence in taking necessary measures to achieve the objectives set out in their successive NDCs.....”

## Implementing NDCs

- **Para. 253:** “What is required of parties under Article 4, paragraph 2, is not a guarantee that communicated NDCs will be achieved, but rather that they will make best efforts to obtain such a result. The Court considers that the obligation to ‘pursue domestic mitigation measures’ that aim to achieve the objectives of their NDCs requires States to be proactive and pursue measures that are reasonably capable of achieving the NDCs set by them. These measures may include putting in place a national system, including legislation, administrative procedures and an enforcement mechanism, and exercising adequate vigilance to make such a system function effectively, with a view to achieving the objectives in their NDCs.”

## Adaptation Obligations

### *Obligations under the UNFCCC:*

- **Para. 209:** ...“adapting to the adverse effects of climate change is, along with mitigation, a major area of action for parties under the Framework Convention. Adaptation is defined by the IPCC as ‘the process of adjustment to actual or expected climate and its effects, in order to moderate harm or exploit beneficial opportunities’ (IPCC 2023 Glossary, p. 120; see paragraph 86 above).”

### *On relevant adaptation plans*

- **Para. 210:** “For instance, Article 4, paragraph 1(b) of the Framework Convention provides that all parties are to ‘[f]ormulate, implement, publish and regularly update national and, where appropriate, regional programmes containing measures to...facilitate adequate adaptation to climate change’.”

### *On obligations to cooperate*

- **Para. 210:** “Article 4, paragraph 1 (e), establishes an obligation for parties to ‘[c]ooperate in preparing for adaptation to the impacts of climate change; develop and elaborate appropriate and integrated plans for coastal zone management, water resources and agriculture, and for the protection and rehabilitation of areas, particularly in Africa, affected by drought and desertification, as well as floods’.”

#### *On a just transition and adaptation*

- **Para. 210:** “Article 4, paragraph 1 (f), requires parties to ‘[t]ake climate change considerations into account, to the extent feasible, in their relevant social, economic and environmental policies and actions’. It also calls on parties to ‘employ appropriate methods, for example impact assessments’ ... with a view to minimizing adverse effects that adaptation projects or measures could have ....”

#### *On climate finance and technological transfer obligations*

- **Para. 211:** “Article 4, paragraph 4, of the UNFCCC provides that Annex II parties “shall” assist the developing country parties that are particularly vulnerable to the adverse effects of climate change in meeting the costs of adaptation. **This is a legally binding obligation on all parties that are listed in Annex II.**” (*emphasis added*)

#### *On relevant plans:*

- **Para. 256:** “[S]pecific obligations pertaining to adaptation are contained in Article 7, paragraph 9, of the Paris Agreement, which provides that ‘[e]ach Party shall, as appropriate, engage in adaptation planning processes and the implementation of actions, including the development or enhancement of relevant plans, policies and/or contributions.’ This provision, introduced with the terms ‘[e]ach Party shall’, imposes a **legally binding obligation** upon the parties to undertake adaptation planning actions.” (*emphasis added*)

#### *Forms of adaptation actions:*

- **Para. 257:** “While Article 7, paragraph 9, does not provide for any specific actions that parties must take, the provision does specify the types of actions and processes that parties may take to meet their obligations under this provision. These include: the “implementation of adaptation actions, undertakings and/or efforts” (Article 7, paragraph 9 (a)); the formulation and implementation of national adaptation plans (Article 7, paragraph 9 (b)); the assessment of climate change impacts and vulnerability, with a view to formulating nationally determined prioritized actions, taking into account vulnerable people, places and ecosystems (Article 7, paragraph 9 (c)); monitoring, evaluating and learning from adaptation plans, policies, programmes and actions (Article 7, paragraph 9 (d)); and building the resilience of socio-economic and ecological systems, including through economic diversification and the sustainable management of natural resources (Article 7, paragraph 9 (e)).”
- **Para. 258: On forms of adaptation,** “the Court observes that the IPCC noted in 2023 that adaptation is a particularly pressing challenge in responding to climate change and that adaptation options exist that are effective in reducing climate risks in certain contexts, such

as restoration of ecosystems, the creation of early warning systems, and resilience-enhancing infrastructure (see IPCC, Climate Change 2023: Synthesis Report, pp. 55–56, section 2.2.3). These options, as well as others such as regenerative farming, crop diversification, weatherproofing of buildings, and managing land to reduce wildfire risk, implemented by parties through the deployment of appropriate measures and the exercise of best possible efforts, could, in the Court’s view, meet the adaptation obligations of parties under Article 7, paragraph 9, of the Paris Agreement.”

#### *Standard of compliance:*

- **Para. 258:** “The fulfilment of adaptation obligations of parties is to be assessed against a standard of due diligence. It is therefore incumbent upon parties to enact appropriate measures (examples of which are provided in Article 7, paragraph 9) that are capable of “enhancing adaptive capacity, strengthening resilience and reducing vulnerability to climate change” (Article 7, paragraph 1). In this connection, parties must use their best efforts, in line with the best available science, with a view to achieving the aforementioned objectives.”

#### *Nexus with mitigation:*

- **Para. 259:** “[T]he adaptation obligations under the Paris Agreement complement the mitigation obligations in preventing and reducing the harmful consequences of climate change. This interlinkage is explicitly recognized in Article 7, paragraph 4, of the Paris Agreement, which states that ‘greater levels of mitigation can reduce the need for additional adaptation efforts’.”

#### *On finance and technology transfer:*

- **Para. 264:** “The Court observes that the Paris Agreement establishes **obligations for developed States to provide financial resources to developing States** ... Article 9 of the Paris Agreement provides that ‘[d]eveloped country Parties shall provide financial resources to assist developing country Parties with respect to both mitigation and adaptation’. The use of the term “shall” to introduce the obligation indicates the legally binding character of that provision. Moreover, the phrase “in continuation of their existing obligations under the Convention” is to be interpreted as a restatement of the obligation of developed country parties to provide financial resources to developing country parties, as stipulated in Article 4, paragraph 3, of the Framework Convention.” (*emphasis added*)
- **Para. 265:** “While the Paris Agreement does not specify the amount or level of financial support that must be provided, the Court considers that, in line with the customary rules of treaty interpretation, this obligation must be interpreted in light of other provisions in the Agreement, including the collective temperature goal provided for in Article 2 (see paragraph 224 above). Accordingly, **parties are to implement their obligations under Article 9 in a manner and at a level that allows for the achievement of the objectives listed in Article 2**. This level can be evaluated on the basis of several factors, including the capacity of developed States and the needs of developing States.” (*emphasis added*)

## Human Rights Obligations, including Right to a Healthy Environment

- **Para. 145:** “[T]he Court considers that the core human rights treaties, including the International Covenant on Economic, Social and Cultural Rights (hereinafter “ICESCR”) of 16 December 1966 and the International Covenant on Civil and Political Rights (hereinafter “ICCPR”) of 16 December 1966, and the human rights recognized under customary international law form part of the most directly relevant applicable law.”
- **Para. 373:** “The environment is the foundation for human life, upon which the health and well-being of both present and future generations depend (see *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996 (I)*, p. 241, para. 29). The Court thus considers that the protection of the environment is a precondition for the enjoyment of human rights, whose promotion is one of the purposes of the United Nations as set out in Article 1, paragraph 3, of the Charter.”
- **Para. 375:** “Anthropogenic GHG emissions have an adverse impact on the climate system and other parts of the environment. The IPCC has underscored the interdependence between the vulnerability of human populations and that of ecosystems (see IPCC, *Climate Change 2023: Synthesis Report*, pp. 97–99, section 4.3; IPCC, 2022, *Climate Change 2022: Impacts, Adaptation, and Vulnerability, Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change* (hereinafter “IPCC, 2022 contribution of Working Group II”), pp. 9–13; see also paragraph 73 above). The degradation of the climate system and of other parts of the environment impairs the enjoyment of a range of rights protected by human rights law.”
- **Para. 393:** “... **the Court is of the view that a clean, healthy and sustainable environment is a precondition for the enjoyment of many human rights**, such as the right to life, the right to health and the right to an adequate standard of living, including access to water, food and housing. The right to a clean, healthy and sustainable environment results from the interdependence between human rights and the protection of the environment. Consequently, in so far as States parties to human rights treaties are required to guarantee the effective enjoyment of such rights, it is difficult to see how these obligations can be fulfilled without at the same time ensuring the protection of the right to a clean, healthy and sustainable environment as a human right. The human right to a clean, healthy and sustainable environment is therefore inherent in the enjoyment of other rights. The Court thus concludes that, under international law, the human right to a clean, healthy and sustainable environment is essential for the enjoyment of other human rights.”
- **Para. 403:** “Taking into account the adverse effects of climate change on the enjoyment of human rights, the Court considers that the full enjoyment of human rights cannot be ensured without the protection of the climate system and other parts of the environment. In order to guarantee the effective enjoyment of human rights, States must take measures to protect the climate system and other parts of the environment. These measures may include, inter alia, taking mitigation and adaptation measures, with due account given to the protection of human rights, the adoption of standards and legislation, and the regulation of the activities

of private actors. Under international human rights law, States are required to take necessary measures in this regard.”

- **Para. 404:** “[I]nternational human rights law, the climate change treaties and other relevant environmental treaties, as well as the relevant obligations under customary international law, inform each other [...]. States must therefore take their obligations under international human rights law into account when implementing their obligations under the climate change treaties and other relevant environmental treaties and under customary international law, just as they must take their obligations under the climate change treaties and other relevant environmental treaties and under customary international law into account when implementing their human rights obligations.”

## Legal Consequences

- **Para. 428:** “[A] State may be responsible where, for example, it has failed to exercise due diligence by not taking the necessary regulatory and legislative measures to limit the quantity of emissions caused by private actors under its jurisdiction.”
- **Para. 429:** “[I]t is scientifically possible to determine each State’s total contribution to global emissions, taking into account both historical and current emissions.”
- **Para. 430:** “[T]he rules on State responsibility under customary international law are capable of addressing a situation in which there exists a plurality of injured or responsible States.”
- **Para. 431:** “Therefore, in the climate change context, the Court considers that each injured State may separately invoke the responsibility of every State which has committed an internationally wrongful act resulting in damage to the climate system and other parts of the environment. And where several States are responsible for the same internationally wrongful act, the responsibility of each State may be invoked in relation to that act.”
- **Para. 445:** “[B]reaches of States’ obligations under question (a) may give rise to the entire panoply of legal consequences provided for under the law of State responsibility. These include obligations of cessation and non-repetition, which are consequences that apply irrespective of the existence of harm, as well as the consequences requiring full reparation, including restitution, compensation and/or satisfaction.”
- **Para. 447:** “Under customary international law, a State responsible for an internationally wrongful act is under an obligation to cease that act if it is continuing and if the breached obligation is still in force (*Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004 (I)*, pp. 201–202, para. 163 (3) (A)–(C)). In this context, the Court is of the view that the obligation to put an end to the wrongful act may require a State to revoke all administrative, legislative and other measures that constitute an internationally wrongful act of that State.”
- **Para. 448:** “The duty of cessation may also require States to employ all means at their disposal to reduce their GHG emissions and take other measures in a manner, and to the

extent, that ensures compliance with their obligations. Additionally, in appropriate circumstances, a responsible State could be required to offer appropriate assurances and guarantees of non-repetition (see ILC Articles on State Responsibility, Article 30 (b)).”

### Restitution

- **Para. 451:** ...“the Court considers that, in the circumstances of climate change caused by emissions of GHGs, restitution may take the form of reconstructing damaged or destroyed infrastructure, and restoring ecosystems and biodiversity. Whether or not these special forms of restitution are appropriate as reparation for damage suffered by States in relation to climate change is to be determined on a case-by-case basis.”

### Compensation

- **Para. 452:** “In the event that restitution should prove to be materially impossible, responsible States have an obligation to compensate. The Court observes that compensation, as a form of reparation, has the function of addressing the losses incurred as a result of the internationally wrongful act. Compensation corresponds to the financially assessable damage suffered by the injured State or its nationals.”
- **Para. 453:** “[C]ompensation will be due for both damage caused to the environment, ‘in and of itself’ — which may include ‘indemnification for the impairment or loss of environmental goods and services in the period prior to recovery’ — and expenses incurred by injured States as a consequence of such damage (*Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)*, *Compensation, Judgment*, *I.C.J. Reports 2018 (I)*, pp. 28–29, paras. 41–43).”
- **Para. 454:** “[W]here there is uncertainty with respect to the exact extent of the damage caused, compensation in the form of a global sum, within the range of possibilities indicated by the evidence and taking into account equitable considerations, may be awarded on an exceptional basis (see *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, *Reparations, Judgment*, *I.C.J. Reports 2022 (I)*, p. 52, para. 106).”

### Satisfaction

- **Para. 455:** “Whether satisfaction is warranted for a violation by a State or States of obligations regarding the emission of GHGs, and what form that satisfaction could take, will depend on the nature and circumstances of the breach. It is possible for satisfaction to take the form of expressions of regret, formal apologies, public acknowledgments or statements, or education of the society about climate change. In the past, the Court has also recognized that a formal declaration by an international court or tribunal of the wrongfulness of State conduct is a potential form of satisfaction (*Corfu Channel (United Kingdom v. Albania)*, *Merits, Judgment*, *I.C.J. Reports 1949*, p. 35).”

## Conclusion

→ **Para 456:** Before concluding, the Court recalls that it has been suggested that these advisory proceedings are unlike any that have previously come before the Court. At the same time, as the Court concluded earlier, the questions put to it by the General Assembly are legal ones (see paragraph 40), and the Court, as a court of law, can do no more than address the questions put to it through and within the limits of its judicial function; this is the Court's assigned role in the international legal order. However, the questions posed by the General Assembly represent more than a legal problem: they concern an existential problem of planetary proportions that imperils all forms of life and the very health of our planet. International law, whose authority has been invoked by the General Assembly, has an important but ultimately limited role in resolving this problem. A complete solution to this daunting, and self-inflicted, problem requires the contribution of all fields of human knowledge, whether law, science, economics or any other. Above all, a lasting and satisfactory solution requires human will and wisdom – at the individual, social and political levels – to change our habits, comforts and current way of life in order to secure a future for ourselves and those who are yet to come. Through this Opinion, the Court participates in the activities of the United Nations and the international community represented in that body, with the hope that its conclusions will allow the law to inform and guide social and political action to address the ongoing climate crisis.