# ICJ AO Litigation Notes Digest

## February 2026

Litigation Note on Challenging the Financing of Climate-Destructive Conduct

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- Climate Litigation Network (CLN)
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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.

**This thematic brief is part of a broader litigation notes compendium organized by topic; the full compilation is available here: www.ciel.org/reports/icj-litigation-notes-digest**

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

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## 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

[52] Milieudefensie (Friends of the Earth The Netherlands) and Center for International Environmental Law (CIEL), respectively.
[53] 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.[54] 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.

[54] 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.

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).[55] 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.

[55] *See* EXIM, *List of Known Official Export Credit Agencies*, 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.

## 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.*

**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.[56] 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

[56] 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).

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*)

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.[57] The existence of a climate mitigation duty for private actors has also been confirmed in climate litigation, for example, in the ***Milieudefensie 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:*

***Milieudefensie v. ING***: The Dutch NGO Milieudefensie filed a case against ING Bank in March 2025 before the Amsterdam District Court. Milieudefensie 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,

[57] ClientEarth complaint concerning Saudi Arabian Oil Company (Saudi Aramco) et. al. (Summary), www.clientearth.org/media/l44by31b/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.

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. 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.