

ICJ AO Litigation Notes Digest February 2026

Litigation Note on Regulatory Rollback



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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 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.

⁶⁶ World's Youth for Climate Justice (WYCJ) and Legal Initiative for Forest and Environment (LIFE), respectively.

⁶⁷ Center for International Environmental Law (CIEL).

⁶⁸ 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 SO₂ 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 SO₂, 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 SO₂ contributes less than 5% to local PM_{2.5} 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 ICJ AO.

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**).