# ICJ AO Litigation Notes Digest

## February 2026

Litigation Note on Remedies and Reparations

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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 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.[41]

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.[42] This normative precision provides critical support to the evolving climate remedy and reparation-related litigation landscape.

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[38] Center for International Environmental Law (CIEL), ClientEarth, and World's Youth for Climate Justice (WYCJ), respectively.
[39] Pacific Island Students Fighting Climate Change (PISFCC).
[40] Notre Affaire à Tous (NAAT).
[41] NYU Climate Law Accelerator database (last updated 08/04/2025), docs.google.com/spreadsheets/d/1kjr-GfCk9o-Ldaiz-UDlLR3Kqy_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 (last accessed Feb. 20, 2025).
[42] *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.

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.[43] 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

[43] 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***,[44] 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.

[44] 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.