

ICJ AO Litigation Notes Digest

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Litigation Note on Adaptation



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Cover Illustration and Layout

- Rossella Recupero, CIEL

For any questions, please contact

- Joie Chowdhury, Senior Attorney & Climate Justice and Accountability Manager at CIEL: jchowdhury@ciel.org
- Aditi Shetye, Lead of Strategic Litigation at WYCI: aditi@wy4cj.org

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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 Adaptation

Authors: Lea Main-Klingst, Joie Chowdhury, and Nomasango Masiye-Moyo²¹

Reviewer: Joe Udell²²

Introduction

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

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

Relevant Excerpts from the ICJ AO

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

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

²² Climate Litigation Network (CLN).

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

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

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

A. States' Obligations on Adaptation under the Climate Treaties

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

UNFCCC Adaptation Obligations

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

On relevant adaptation plans

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

On obligations to cooperate

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

On a just transition

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

On climate finance and technological transfer obligations

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

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

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

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

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

Paris Agreement Adaptation Obligations

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

On relevant plans

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

Forms of adaptation actions

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

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

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

Standard of compliance

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

Nexus with mitigation

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

On finance and technology transfer

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

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

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

Erga omnes character of these obligations

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

B. States’ Obligations on Adaptation under Human Rights Law

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

Right to privacy and home life

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

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

C. Other overarching findings relevant to climate adaptation litigation

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

On the centrality of the best available science

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

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

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

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

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

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

Categories of Climate Cases Relevant to the Excerpts

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

Human Rights–Based Climate Cases

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

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

Litigation Targeting National Climate and Adaptation Planning

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

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

²⁵ 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).

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

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

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

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

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

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

Corporate Accountability Cases

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

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

Project-specific or Infrastructure-related Adaptation Cases

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

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

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

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

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

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

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

Inter-State and Advisory Proceedings

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

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

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

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

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