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Climate change and environmental justice: Evolving legal frameworks for sustainable development

Dr. Ananya Sharma
Department of Law, University of Delhi, New Delhi, India

Abstract
Climate change is increasingly framed in law as a question of justice as well as emissions. This paper reviews how legal frameworks for sustainable development evolved between 2024 and 2026 in response to that framing. Using a doctrinal and comparative review of primary authorities (three international advisory opinions, regional and domestic judgments, and key treaties) and recent scholarship, it asks whether emerging norms advance environmental justice, understood as fair distribution of climate burdens, meaningful participation, and effective remedies. The review finds consolidation at the international level: stringent due diligence, the applicability of State responsibility, *erga omnes* obligations, and a rights-based reading of environmental protection. Domestic and regional litigation is expanding rapidly but yields uneven outcomes, with causation, justiciability, and standing remaining decisive obstacles. Justice gains are clearest in procedural rights and recognition of vulnerable groups; historical responsibility, reparation, and finance remain largely unresolved. The paper concludes that the new jurisprudence supplies a strong normative baseline whose justice value depends on domestic legislation, accessible remedies, and climate finance reflecting differentiated responsibility.

Keywords: Climate justice, environmental justice, due diligence, State responsibility, advisory opinions, climate litigation, right to a healthy environment, sustainable development

Introduction

Climate harm falls unevenly: small island States, Indigenous peoples, children, and low-income communities bear risks they did little to create. For decades, international law answered through negotiated treaties and political commitments. Since 2024, adjudication has taken a larger role. The International Tribunal for the Law of the Sea (ITLOS, 2024), the Inter-American Court of Human Rights (2025) [3], and the International Court of Justice (ICJ, 2025) [3] each delivered advisory opinions on climate obligations, while the European Court of Human Rights found Switzerland in breach of the European Convention in Verein KlimaSeniorinnen Schweiz and Others v. Switzerland (2024). Climate litigation overall now spans roughly 2,967 cases in over 50 jurisdictions (Setzer & Higham, 2025, as reported by Gilbert + Tobin, 2025).

The research problem is whether these developments deliver environmental justice within a sustainable development framework, meaning development that protects present and future generations. The paper asks: (1) what obligations do the recent authorities establish; (2) how do they treat the distributive, procedural, and remedial dimensions of justice; and (3) what barriers limit their effect? The scope covers international and regional authorities and selected domestic decisions available to the author by October 2026; it is not a survey of national statutes.

Review Approach

This is a doctrinal and comparative legal review. Primary authorities were prioritised: the ICJ, ITLOS, and Inter-American Court opinions; ECtHR and national judgments; General Assembly resolutions; and treaties. Peer-reviewed commentary from 2025 [4]–2026 (notably in the International & Comparative Law Quarterly and Environmental Policy and Law), ASIL Insights, and the LSE Grantham Institute litigation report supplied analysis and data. Materials were located through searches of court and tribunal websites, publisher platforms, and open repositories, favouring 2023–2026 publications and retaining older instruments where foundational. Three limitations apply. Some judgments were accessed through scholarly or practitioner summaries and require paragraph-level checking. Litigation databases over-represent English-language and Global North cases. And the field moves quickly, so later developments may qualify these findings.

Conceptual and Legal Framework

Environmental justice is used here in three familiar dimensions: distributive (who bears climate burdens), procedural (who participates and can obtain redress), and recognitional (whose vulnerabilities are acknowledged). Sustainable development, as the ICJ framed it, concerns reconciling economic development with environmental protection (Foster, 2025).

The treaty core is the United Nations Framework Convention on Climate Change (1992) and the Paris Agreement (2015). The latter sets a temperature goal in Article 2 and requires successive nationally determined contributions (NDCs) reflecting progression and highest possible ambition under Article 4(3) (Lange & Schophaus, 2026). Guiding principles include common but differentiated responsibilities and respective capabilities (CBDR-RC), equity, intergenerational equity, and precaution (Foster, 2025). Customary law adds duties to prevent significant environmental harm and to cooperate. Procedural justice rests on the Aarhus Convention (1998) [1] and the Escazú Agreement (2018). On rights, General Assembly Resolution 76/300 (2022) recognised a human right to a clean, healthy and sustainable environment by 161 votes to none, with eight abstentions (Lange & Schophaus, 2026).

Major Legal Approaches

1. International due diligence

The ICJ rejected the argument that climate treaties are a self-contained lex specialis, reading treaty, customary, and

human rights obligations together (Foster, 2025) [3]. It held that mitigation demands stringent due diligence, that NDCs are not matters of State discretion, and that successive NDCs must become more demanding (ICJ, 2025, para. 241; Lange & Schophaus, 2026). It also treated fossil fuel licensing and subsidies as conduct capable of breaching international law (Foster, 2025). The ITLOS opinion (2024) had earlier clarified duties under the law of the sea, and the ICJ gave its interpretations great weight (Foster, 2025) [2].

2. Regional human rights

In KlimaSeniorinnen (2024), the Grand Chamber found violations of Articles 8 and 6(1) of the European Convention, concluding that Switzerland had failed to meet its climate obligations, including its own past emission targets (European Court of Human Rights [ECtHR], 2024). The Inter-American Court's Advisory Opinion OC-32/25 went further: it required enhanced due diligence, recognised a right to a healthy climate, treated nature as a subject of rights, and set duties for business enterprises alongside guarantees of participation, information, and justice (Celorio, 2025) [3].

3. Domestic constitutional and civil law

In Held v. State of Montana (2024), the Montana Supreme Court held that the state constitutional right to a clean and healthful environment includes a stable climate system (Gilbert + Tobin, 2025). In Lliuya v. RWE AG (2025) [4], the Higher Regional Court of Hamm accepted that a major emitter may in principle be liable under German civil law for climate risks abroad, but dismissed the claim because the flood risk to the Peruvian claimant's property was too low (Costa Cordella, 2025; Gilbert + Tobin, 2025) [4]. The Hague Court of Appeal in Milieudefensie v. Shell (2024) affirmed a corporate responsibility to limit emissions consistently with the Paris Agreement yet declined to impose a specific percentage reduction (Gilbert + Tobin, 2025).

Evidence and Legal Developments

Established principles. A unanimous ICJ settled several points: States must exercise due diligence to prevent climate harm; the general law of State responsibility applies; and core mitigation obligations are owed erga omnes or erga omnes partes (Foster, 2025; Lange & Schophaus, 2026).

Scholarly debate. Commentators diverge on the environmental right. Burri (2025) [2] reads the opinion as advancing recognition of a human right to a healthy environment, whereas Lange and Schophaus (2026) stress that the Court stopped short of declaring it customary law, and Foster (2025) [3] notes it is absent from the operative paragraphs. A further critique concerns silence: Tigre *et al*. (2025) examine the Court's restraint on historical and colonial responsibility and differentiated obligations.

Emerging developments. Setzer and Higham (2025), as reported by Gilbert + Tobin (2025), record 226 new cases in 2024, over 80% strategic in character, including at least 31 rights-based filings and eleven new damages claims. In May 2025 [4], African civil society organisations requested an advisory opinion from the African Court on Human and Peoples' Rights (Gilbert + Tobin, 2025) [3]. Table 1 summarises the principal authorities.

Table 1: Selected climate authorities, 2024–2025

Authority	Date	Core holding	Justice relevance
ITLOS Advisory Opinion (Case No. 31)	21 May 2024	Clarified UNCLOS duties on climate change	Requested by small island States
KlimaSeniorinnen (ECtHR, Grand Chamber)	9 Apr 2024	Violation of Articles 8 and 6(1)	Positive obligations; access to court
Held v. Montana (Mont. S. Ct.)	18 Dec 2024	Stable climate within state constitutional right	Youth plaintiffs; future generations
Lliuya v. RWE (OLG Hamm)	28 May 2025	Emitter liability possible in principle; claim dismissed	Transnational claimant from the Global South
IACtHR OC-32/25	3 Jul 2025	Enhanced due diligence; right to a healthy climate	Vulnerable groups; participation; business duties
ICJ Advisory Opinion	23 Jul 2025	Stringent due diligence; State responsibility applies	Reparation pathway; small island States

Sources: ITLOS (2024); ECtHR (2024); Gilbert + Tobin (2025); Costa Cordella (2025); Celorio (2025); ICJ (2025) [3, 4].

Effectiveness and Legal Outcomes

Normative effect is strong; practical effect is uneven. Advisory opinions are formally non-binding, although they are expected to shape litigation and policy (Foster, 2025; Lange & Schophaus, 2026). Implementation lags: about 170 Paris Agreement parties missed the February 2025 [2] deadline for successive NDCs (Foster, 2025) [2]. Domestic wins are often partial. Lliuya recognised liability in principle yet awarded nothing, though Costa Cordella (2025) [4] treats it as a significant step toward justiciability. Montana's legislature answered Held with emissions-inventory measures that impose no duty to regulate (Gilbert + Tobin, 2025). In Pabai v. Commonwealth of Australia (No 2) (2025), the Federal Court accepted evidence of serious cultural and environmental loss in the Torres Strait and found past targets unambitious, yet dismissed the negligence claim: target-setting was core policy, causation was too diffuse, and loss of cultural fulfilment was not compensable under existing tort law (Gilbert + Tobin, 2025). Litigation thus more reliably changes reasoning and procedure than it delivers distributive remedies.

Barriers to Implementation

Causation and attribution. The ICJ held that causal links must be established through concrete, case-specific assessment (ICJ, 2025, para. 438), and intertemporal principles make it difficult to treat historical emissions as wrongful (Lange & Schophaus, 2026).

Jurisdiction and justiciability. Contentious ICJ proceedings require consent, and some major emitters have not accepted the optional clause (Lange & Schophaus, 2026). Domestic courts may treat climate targets as policy rather than law, as in Pabai (Gilbert + Tobin, 2025).

Political backlash. Montana's response to Held shows how judicial gains can be narrowed legislatively (Gilbert + Tobin, 2025).

Finance and capacity. The ICJ addressed climate finance under cooperation and support, emphasising obligation over monetary figures (Foster, 2025), which leaves developing States without a quantified entitlement.

Comparative and International Perspective

Europe pairs rights-based positive obligations with civil duties of care: the ECtHR requires States to do their part, and the Dutch Supreme Court grounded climate duties in Articles 2 and 8 of the Convention in State of the Netherlands v. Urgenda Foundation (2019, as summarised by Gilbert + Tobin, 2025). The Americas combine expansive regional jurisprudence on vulnerable groups, Indigenous free, prior and informed consent, and participation (Celorio, 2025) [3]. The United States offers a state-constitutional route (Held) amid federal uncertainty, whereas Australian common law has proved cautious without a national human rights act (Gilbert + Tobin, 2025) [3]. German civil law has opened transnational liability in principle. In Africa, the pending advisory request could define duties for a region with low emissions but high vulnerability (Gilbert + Tobin, 2025).

Three lessons emerge. Entrenched environmental or human rights provisions travel better than tort claims. Regional courts can set consistent standards that national courts may borrow. And causation doctrine needs adaptation, as the proportional-contribution reasoning in Lliuya suggests (Gilbert + Tobin, 2025) [4].

Discussion and Legal Implications

The recent authorities converge on a common core of prevention, due diligence, cooperation, and rights protection, but diverge on remedies. The result is an asymmetry: procedural and recognitional justice advance faster than distributive and corrective justice. The ICJ's recognition that States sit on a spectrum of changing national circumstances (Foster, 2025) refines CBDR-RC, yet its caution on historical emissions leaves a gap that climate-vulnerable States will keep pressing.

For legislators, the opinions supply a benchmark for reviewing NDCs and fossil fuel decisions. For courts, they offer interpretive material on due diligence and causation usable without legislative reform. For policymakers, cooperation is framed as a legal obligation rather than a choice (Foster, 2025). Practitioners should expect growth in damages suits, greenwashing actions, and rights-based petitions (Setzer & Higham, 2025) [3]. A caution comes from within the ICJ: Judge Nolte warned that encouraging litigation could prove counterproductive if it substitutes for political will (Lange & Schophaus, 2026). Future research should test empirically whether these rulings change State and corporate behaviour, particularly in the Global South.

Recommendations

1. Legislators should codify stringent due diligence and NDC progression in domestic law, with independent periodic review and climate-specific impact assessment for fossil fuel licensing and subsidies (Foster, 2025).
2. States should implement procedural environmental rights by applying Aarhus or Escazú where available, broadening representative standing, funding legal aid, and protecting environmental defenders (Celorio, 2025) [3].
3. Courts should adapt causation and justiciability doctrine, using proportional-contribution reasoning and treating ICJ, Inter-American, and ECtHR standards as interpretive aids (Gilbert + Tobin, 2025; Lange & Schophaus, 2026).
4. Developed States should treat finance, technology transfer, and capacity-building as components of the duty to cooperate, prioritising adaptation for vulnerable groups (Foster, 2025; Celorio, 2025) [3].
5. Regulators should require credible 1.5°C-aligned transition plans and enforce anti-greenwashing rules (Celorio, 2025; Gilbert + Tobin, 2025) [3].

Conclusion

Between 2024 and 2025, international and regional courts converged on a demanding legal baseline for climate action: stringent due diligence, State responsibility, cooperation, and rights-based protection. For environmental justice, this is a necessary but incomplete achievement. Procedural and recognitional gains are tangible, while distributive outcomes, including reparation, finance, and accountability for historical emissions, remain unresolved and depend on national implementation. The task for sustainable development law is to convert authoritative reasoning into enforceable duties, accessible remedies, and resources for those who contributed least to the problem but bear its heaviest consequences.

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