THE PAST AND FUTURE OF CLIMATE REPARATIONS

BY

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Climate change is more than just a problem afflicting us all in the present. Rather, it is a justice-related problem implicating the past and future. Any reparatory project undertaken should thus endeavor to remedy past wrongs and prevent future harms. This Article first establishes an analytical framework premised on climate justice that facilitates an examination of international governance mechanisms and climate litigation. It subsequently analyzes the extent to which these two means of achieving climate reparations—that implement the international law on mitigation, adaptation, and loss and damage—have achieved climate justice in the past. Lastly, it suggests how these means may better achieve climate justice in the future. Ultimately, this Article finds that achieving climate reparations for States and individuals necessitates strong minilateral international governance mechanisms beyond the Paris Agreement and vigorous climate litigation using domestic and international law and courts.

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I. INTRODUCTION

A. Overview

Climate change can be characterized as a problem affecting everyone in the here and now, a problem that *currently* threatens *all* life on Earth.[1] Yet, this neutrally-constructed, present-day lens offers us a limited view of climate change. This lens reflects melting glaciers, rising sea levels, and raging wildfires, but obscures that these trends *have been* unfolding—and *will continue* to unfold—for decades. Perhaps more disappointingly, this lens fails to show how these phenomena have affected—and will likely continue to affect—certain individuals more than others. Climate change is, then, more than just a meteorological problem afflicting us all in the present—it is a justice-related problem implicating the past and future. The narrow lens must be expanded. Only by taking a wider angle do we see that any reparatory project should endeavor to remedy past wrongs *and* prevent future harms. In conceptualizing climate reparations, this Article maps its terrain and offers a compass to navigate it.

This terrain of climate reparations consists of the legal and policy tools that implement existing international climate obligations relating to mitigation,[2] adaptation,[3] and loss and damage under the Paris Agreement (PA).[4] These form the basis for addressing future harms and past wrongs. The compass that will guide our exploration of climate reparations is the concept of climate justice: an analytical lens for

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[1] *See, e.g.*, *The Effects of Climate Change*, NAT'L AERONAUTICS & SPACE ADMIN. (Oct. 23, 2024), https://science.nasa.gov/climate-change/effects [https://perma.cc/26EW-XE6Z]; *Climate Change Impacts*, NAT'L OCEANIC & ATMOSPHERIC ADMIN. (Nov. 18, 2025), https://www.noaa.gov/education/resource-collections/climate/climate-change-impacts [https://perma.cc/6F27-YD7X]; *Consequences of Climate Change*, EUR. COMM'N, https://climate.ec.europa.eu/climate-change/consequences-climate-change_en [https://perma.cc/7H ME-E54T] (last visited Jan. 17, 2026).

[2] Paris Agreement to the United Nations Framework Convention on Climate Change, art. 4, Dec. 12, 2015, T.I.A.S. No. 16-1104 [hereinafter Paris Agreement].

[3] *Id.* art. 9.

[4] *Id.* art. 8. A Conference of the Parties (COP) decision nevertheless excludes liability and compensation as remedies under this provision. *See* Patrick Toussaint, *Loss and Damage, Climate Victims, and International Climate Law: Looking Back, Looking Forward*, 13 TRANSNAT'L ENV'T L. 134, 137 (2024). This reading of Article 8 in conjunction with the aforementioned COP decision has been confirmed by the International Court of Justice (ICJ) in its advisory opinion on climate change. *See* Obligations of States in Respect of Climate Change, Advisory Opinion, 2025 I.C.J., ¶¶ 414–415 (July 23).

evaluating how these legal and policy means have worked in the past, and how the terrain may be better charted in the future.[5]

This Article will first define the main features of this terrain. Climate litigation—the legal mechanism for pursuing climate reparations—forms half of it. In this Article, "climate litigation" will refer specifically to three subsets of climate litigation cases brought before domestic and international courts that tackle the past and future dimensions of climate change.[6] The first subset of cases involves "mitigation" cases. These seek to compel a government to remedy its inadequately ambitious mitigation measures—actions that reduce or prevent anthropogenic greenhouse gas (GHG) emissions—moving forward.[7] The second subset of cases involves "failure to adapt" cases. These seek to compel a government to remedy its inadequately ambitious adaptation measures—actions that reduce vulnerability to the future impacts of climate change—moving forward.[8] The third subset of cases involves "loss and damage" cases. These seek to establish liability for past damages wrought by corporations' climate change impacts.[9]

The other half of the terrain consists of international governance mechanisms—the policy mechanisms for pursuing climate reparations. In this Article, "international governance mechanisms" refers to

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[5] The notion of "climate reparations" that will be explored in this Article is broader than the concept of "climate finance." It is true that law and courts can provide finance with "the elasticity it needs to evolve," especially considering the novel problems posed by the climate crisis. *See* MARCO LAMANDINI & DAVID RAMOS MUÑOZ, FINANCE, LAW, AND THE COURTS 4 (Oxford Univ. Press 2023). This indeed segues with the goal of climate reparations—to resolve the issues that climate change has caused in the past, and will cause in the future, in a just manner. However, the notion of climate reparations is not singularly concerned with the policy on adaptation and loss and damage finance under the Paris Agreement, though the literature on this issue tends to use the term "climate finance." *See, e.g.*, Mostafa Mahmud Naser & Hossain Mohammad Reza, *Climate Change, Human Mobility, and Climate Finance: Potential Linkages and Challenges*, 38 J. ENV'T L. & LITIG. 139, 150–51 (2023); Megan Bowman, *Turning Promises into Action: 'Legal Readiness for Climate Finance' and Implementing the Paris Agreement*, 16 CARBON & CLIMATE L. REV. 41, 42–43 (2022); Yulia Yamineva, *Climate Finance in the Paris Outcome: Why Do Today What You Can Put Off Till Tomorrow?*, 25 REV. EUR. CMTY. & INT'L ENV'T L. 174, 179 (2016). The notion of climate reparations is additionally concerned with "mitigation," "failure to adapt," and "loss and damage" litigation, which can involve applicants demanding a range of court orders. *See infra* Part V.C. Further, this Article does not endeavor to extensively discuss climate reparations in relation to central banks or financial supervisors, which occupy prominent roles in the law of finance.

[6] A "court," for the purposes of this Article, is defined as any body that hears legal issues, regardless of their enforcement powers.

[7] *What Is Climate Change Mitigation and Why Is It Urgent?*, UNITED NATIONS DEV. PROGRAMME: CLIMATE PROMISE (Feb. 29, 2024), https://climatepromise.undp.org/news-and-stories/what-climate-change-mitigation-and-why-it-urgent [https://perma.cc/S762-GVJ4].

[8] *What Is Climate Change Adaptation and Why Is It Crucial?*, UNITED NATIONS DEV. PROGRAMME: CLIMATE PROMISE (Jan. 30, 2024), https://climatepromise.undp.org/news-and-stories/what-climate-change-adaptation-and-why-it-crucial/ [https://perma.cc/BV8S-2SMY].

[9] Lilla Judit Bartuszek, *Climate Litigation: Can a Sustainable Future be a Human Right?*, ACTA HUMANA, Oct. 28, 2024, at 61, 68.

mechanisms under *and* beyond the PA. The existing climate governance regime under the PA includes the United Nations Framework Convention on Climate Change's (UNFCCC) Conference of the Parties (COP),[10] the Warsaw International Mechanism for Loss and Damage (WIM),[11] and the Green Climate Fund (GCF).[12] Beyond the PA lie Global South-led and Small Island Developing States (SIDS)-targeted proposals; these similarly tackle issues of mitigation, adaptation, and/or loss and damage finance.[13]

These dual dimensions of climate reparations seek to implement the international law on mitigation (through "mitigation" litigation and mitigation finance), adaptation (through "failure to adapt" litigation and adaptation finance), and loss and damage (through "loss and damage" litigation and loss and damage finance). In examining the efficacy of international governance mechanisms and climate litigation, this Article asks: how can climate reparations be secured? To tackle the unsatisfactory climate governance regime under the PA, climate reparations must be secured through: 1) strong minilateral international governance mechanisms beyond the PA; and 2) vigorous climate litigation using domestic and international law and courts.

By mapping the terrain and providing directions through it, this Article's methodological and conceptual approaches to climate reparations fill three lacunae in the literature. First, this Article introduces an analytical framework rooted in climate justice considerations to examine "climate reparations."[14] Adopting such a methodological approach is apposite. Scholars have not only underscored the necessity of adopting climate justice-oriented approaches in climate

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[10] The UNFCCC COP is the Convention's supreme body and principal decision-making forum, and it also serves as the meeting of the Parties to the Paris Agreement. *See* Paris Agreement, *supra* note 2, arts. 7(3), 16.

[11] The WIM operationalizes loss and damage at the multilateral level.

[12] The GCF operationalizes adaptation funding obligations.

[13] These Global South-led and SIDS-targeted proposals include the Bridgetown Initiative, the Pacific Insurance and Climate Adaptation Program (PICAP), and the Tuvalu Coastal Adaptation Project (TCAP). *The Bridgetown Initiative 3.0*, BRIDGETOWN INITIATIVE, https://www.bridgetown-initiative.org/bridgetown-initiative-3-0/ [https://perma.cc/5THK-FVT3] (last visited Mar. 2, 2026) (calling for "socially-inclusive, equitable, climate-resilient, and environmentally-sustainable development"); *Pacific Insurance and Climate Adaptation Programme (PICAP)*, U.N. DEV. PROGRAMME, https://www.undp.org/pacific/projects/pacific-insurance-and-climate-adaptation-programme [https://perma.cc/5B5W-C7XT] (last visited Mar. 2, 2026); *FP015: Tuvalu Coastal Adaptation Project (TCAP)*, Green Climate Fund, https://www.greenclimate.fund/project/fp015 [https://perma.cc/APS8-M2GF] (last visited Mar. 2, 2026); *see also* Valerie Onu, *How SIDS' Can Influence the Global North Through Climate Action*, STIMSON (May 13, 2025), https://www.stimson.org/2025/how-sids-can-influence-the-global-north-through-climate-action/ [https://perma.cc/E8LE-SUDG] (characterizing SIDS as leaders in climate-finance reform and summarizing Barbados's Bridgetown Initiative's specific reform proposals).

[14] *See infra* Part II.

litigation,[15] but also critiqued the existing climate governance regime under the PA for not being fully embedded in climate justice considerations.[16]

Second, this Article provides an original analysis of two currently underexplored routes of climate litigation in practice—1) "failure to adapt" and 2) "loss and damage."[17] While the PA identifies three means of tackling climate change (i.e., mitigation, adaptation, and loss and damage),[18] cases that have reached judicial dockets overwhelmingly lie within the first category.[19] Practice thus parallels the existing climate litigation literature's several shortcomings, which this Article aims to remedy. These shortcomings include insufficient evaluation of adaptation litigation,[20] inadequate suggestions on the possibilities of loss and damage cases especially in and/or by the Global South,[21] and incomplete consideration of remedies sought by litigants.[22]

Finally, this Article conceptually connects climate litigation and international governance mechanisms to a broader concept of climate reparations. Papers published in this area have largely focused on the challenges of implementing international legal provisions on climate

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[15] Melanie Jean Murcott & Maria Antonia Tigre, *Developments, Opportunities, and Complexities in Global South Climate Litigation: Introduction to the Special Collection*, 16 J. HUM. RTS. PRAC. 1, 12–15 (2024); *see* Damilola S. Olawuyi, *Advancing Climate Justice in National Climate Actions: The Promise and Limitations of the United Nations Human Rights-Based Approach*, *in* CLIMATE JUSTICE: CASE STUDIES IN GLOBAL AND REGIONAL GOVERNANCE CHALLENGES 3, 3–7 (Randall S. Abate ed., 2016) (explaining how the United Nations "rights-based approach provides normative procedural frameworks for addressing systemic and structural injustices, social exclusions, and human rights repressions in the development of climate change solutions").

[16] David Ciplet et al., *The Unequal Geographies of Climate Finance: Climate Injustice and Dependency in the World System*, POL. GEO., Oct. 5, 2022, at 1, 8.

[17] Jacqueline Peel & Jolene Lin, *Climate Change Adaptation Litigation: A View from Southeast Asia*, *in* CLIMATE CHANGE LITIG. IN THE ASIA PAC. 294, 299–302 (Jolene Lin & Douglas A. Kysar eds., 2020) (discussing and exploring the "lack of prominence" of "adaptation litigation"); Dov Waisman, *Failure-to-Adapt Climate Litigation at 20: An Underused Tool?*, 54 ENV'T L. REP. 10960, 10960, 10962 (2024) (noting the proliferation of "failure-to-adapt" litigation in recent years, yet also its "modestly successful" track record in US courts); Margaretha Wewerinke-Singh, *The Rising Tide of Rights: Addressing Climate Loss and Damage Through Rights-Based Litigation*, 12 TRANSNAT'L ENV'T L. 537, 541 (2023).

[18] Paris Agreement, *supra* note 2, arts. 4, 8, 9.

[19] *See* JOANA SETZER & CATHERINE HIGHAM, GLOBAL TRENDS IN CLIMATE CHANGE LITIGATION: 2024 SNAPSHOT 43 (2024).

[20] *See* Birsha Ohdedar, *Climate Adaptation, Vulnerability and Rights-Based Litigation: Broadening the Scope of Climate Litigation Using Political Ecology*, 13 J. HMN. RTS. & ENV'T 137, 139 (2022) (broadening the scope of "climate litigation" to adequately evaluate more discrete, previously unnoticed "adaptation" cases not "expressly argued on climate grounds"); Riccardo Luporini, *Strategic Litigation at the Domestic and International Levels as a Tool to Advance Climate Change Adaptation?: Challenges and Prospects*, 4 Y.B. INT'L DISASTER L. ONLINE 202, 203 (2023).

[21] Murcott & Tigre, *supra* note 15, at 15.

[22] *See generally* Wewerinke-Singh, *supra* note 17, at 537 ("[R]esearch to date has not systematically analyzed the remedies that plaintiffs have sought or secured.").

reparations under the PA,[23] climate litigation in financial markets,[24] and the interaction between climate litigation and loss and damage.[25] The relationship between climate litigation and international governance mechanisms under and beyond the PA has thus been insufficiently examined.

B. Methodology

In mapping the existing terrain, this Article will examine twenty main "mitigation," "failure to adapt," and "loss and damage" cases; these are listed in Appendix I.[26] It should be noted at the outset that one case (*Declic et al. v. The Romanian Government*)[27] can be categorized as both a "mitigation" and "failure to adapt" case, as per the case definitions provided below.

This Article analyzes "first-mover" climate litigation on adaptation and loss and damage. It will limit consideration of "failure to adapt" cases

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[23] *See generally, e.g.*, Bowman, *supra* note 5, at 41 ("At its heart, this article encourages decision makers to see the challenge of financial implementation of the Paris Agreement as an opportunity for endogenous empowerment."); Oscar Rosario Gugliotta, *The Paris Agreement 5 Years Later: The Challenges of Climate Finance and Multilateral Development Banks*, BIALYSTOK LEGAL STUD., Dec. 2021, at 23 ("In this paper, after a brief excursus on the Paris Agreement's role in the global climate crisis, there will be an evaluation of the relations between MDBs and climate finance."); Hao Zhang, *Implementing Provisions on Climate Finance Under the Paris Agreement*, 9 CLIMATE L. 21 (2019) ("By examining the implementation challenges and gaps, this article discusses whether the climate-finance provisions of the Paris Agreement . . . will be able to remain consistent with the applicable principles of international law on climate finance.").

[24] *See generally* Javier Solana, *Climate Litigation in Financial Markets: A Typology*, 9 TRANSNAT'L ENV'T L. 103 ("This article provides the first systematic overview of climate cases in financial markets and introduces a typology to classify this type of climate case.").

[25] *See generally* Maria Antonia Tigre & Margaretha Wewerinke-Singh, *Beyond the North-South Divide: Litigation's Role in Resolving Climate Change Loss and Damage Claims*, 32 REV. EUR., COMPAR. & INT'L ENV'T L. 439 (2023) ("Within the international climate regime, legal aspects surrounding loss and damage (L&D) are contentious topics."); Patrick Toussaint, *Loss and Damage and Climate Litigation: The Case for Greater Interlinkage*, 30 REV. EUR., COMPAR. & INT'L ENV'T L. 16 (2021) [hereinafter Toussaint, *Loss and Damage and Climate Litigation*] ("[T]he article contextualizes normative claims about the influence of climate court cases through practice-embedded views of stakeholders in the loss and damage context."); Ike Uri et al., *Equity and Justice in Loss and Damage Finance: A Narrative Review of Catalysts and Obstacles*, 10 CURRENT CLIMATE CHANGE REPS. 33 (2024) ("Reviewing recent literature on loss and damage finance, we consider how the new UNFCCC Loss and Damage Fund could be transformative for climate finance.").

[26] These cases were found using the Columbia Law School Sabin Center for Climate Change Law Database, reports from the Grantham Research Institute on Climate Change and the Environment at the London School of Economics, and other academic articles. Reference will additionally be made to other cases to supplement the analysis of the abovementioned cases. These include an additional pre-PA era "failure to adapt" case and other international legal cases that articulate international courts' approaches to questions of standing and admissibility, rights and obligations, and remedies in the environmental context. *See* sources cited *infra* App. I.

[27] Case No. 114/33/2023, Declic et al. v. Romanian Gov't, ECLI:RO:CACLJ:2023:048.000312 (June 6, 2023) (Rom.).

to those that 1) involve (but not necessarily exclusively) "failure to adapt" arguments; 2) were heard after the entry into force of the PA; and 3) make explicit reference to governments' international legal obligations under the PA.[28] This Article identifies seven such cases where groups of individuals and/or organizations sue their governments for their failures to implement adequate adaptation measures.

The dataset for "loss and damage" litigation is smaller. Three such cases involve individuals bringing tortious claims against corporations for damage caused by their activities; one such case involves an advisory opinion brought by two organizations before a human rights commission regarding, *inter alia*, the human rights obligations of corporations in respect of climate change. Such litigation can notably plug the enforceability gap for "loss and damage" under international law. Since Article 8 PA is not directly enforceable,[29] litigants must make recourse to domestic and international legal regimes to invoke loss and damage.[30]

To incorporate the latest developments on "mitigation" cases, while recognizing the extensive treatment such cases have already received,[31] this Article harnesses insights from secondary sources (e.g., reports and law review articles) to inform its overall analysis of "mitigation" cases. This Article will define "mitigation" cases as cases taken by (groups of) individuals and/or organizations against their governments for having taken inadequate mitigation measures, thereby violating their PA obligations. Given the huge dataset of such "mitigation" cases, especially vis-à-vis "failure to adapt" and "loss and damage" cases,[32] only insights pertaining to mitigation cases heard from 2023 to the present will be referenced.[33] This Article identifies ten such cases.

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[28] This is because this Article is focused on assessing how international governance mechanisms under and beyond the PA, as well as climate litigation, implement existing international climate obligations relating to adaptation and loss and damage under the PA. *See* discussion *supra* Part I.A.

[29] *See* discussion *infra* Part III.A.3.

[30] Morten Broberg, *The Third Pillar of International Climate Change Law: Explaining 'Loss and Damage' After the Paris Agreement*, 10 CLIMATE L. 211, 221–22 (2020).

[31] For example, it has been said that "[a]n ocean of ink has been already split" for, *inter alia*, the *Klimaseniorinnen v. Switzerland* case, discussed in this Article in Part VI.A. *See* Linos-Alexander Sicilianos & Maria-Louiza Deftou, *Breaking New Ground: Climate Change Before the Strasbourg Court*, EJIL:TALK! (Apr. 12, 2024), https://www.ejiltalk.org/breaking-new-ground-climate-change-before-the-strasbourg-court/ [https://perma.cc/38BG-RU4L].

[32] SETZER & HIGHAM, *supra* note 19, at 3, 4.

[33] Examples of earlier cases include *Greenpeace v. Instituto Nacional de Ecología y Cambio Climático and Others*, amparo en revisión 159/2022 (Eleventh Collegiate Ct. of the First Cir. in Admin. Matters, Dec. 15, 2022) (Mex.), *Laboratório do Observatório do Clima v. Minister of Environment and Brazil*, Ação Civil Pública No. 1027282-96.2021.4.01.3200 (Amazonas Fed. Ct., Nov. 24, 2021) (Braz.), and Case No. 11024/2021, *Greenpeace v. Spain*, ECLI:ES:TS:2021:11024A (Sup. Ct., June 14, 2021) (Spain). *See Greenpeace v. Instituto Nacional de Ecología y Cambio Climático and Others*, COLUM. L. SCH.: SABIN CTR. FOR CLIMATE CHANGE L., https://www.climatecasechart.com/documents/greenpeace-v-instituto-nacional-de-ecologia-y-cambio-climatico-and-others-decision_14f0 [https://perma.cc/NAL5-W77L] (last visited Mar. 2, 2026) (providing summary of facts, reasoning, and litigation

C. Outline

This Article proceeds in six parts. Part II will establish a framework for thinking about climate reparations. This framework will both anchor the subsequent analysis of international governance mechanisms and climate litigation, as well as inform further insights on how the international law on mitigation, adaptation, and loss and damage can be better implemented. Part III will analyze efforts to obtain climate reparations through international governance mechanisms under and beyond the PA, before evaluating them through a climate justice lens. Part IV will first articulate the overarching limits international governance mechanisms are subject to. It will then identify the further implications of Part III's findings and these overarching limits for future international governance mechanisms. Part V turns to climate litigation. It will analyze how domestic courts have answered questions of standing and admissibility, rights and obligations, and remedies in "mitigation," "failure to adapt," and "loss and damage" cases. These answers will then be evaluated through a climate justice lens. Part VI will build upon these conclusions, assessing how climate litigation can be harnessed to obtain climate reparations for both States[34] and individuals at the international level. Part VII will articulate the overarching limits climate litigation finds itself subject to, before identifying the further implications of Part V and VI's findings and these overarching limits for future climate litigation. Part VIII will conclude.

II. ANALYTICAL FRAMEWORK

This Part will outline an analytical framework for thinking about climate reparations. Specifically, this framework helps us understand how past efforts have fared and how future efforts can be better made. Under this framework, the policy and legal dimensions of climate reparations will first be understood through several underlying principles and values they can advance respectively, before being evaluated for their ability to achieve climate justice.

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outcome in English); *Laboratório do Observatório do Clima v. Minister of Environment and Brazil*, COLUM. L. SCH.: SABIN CTR. FOR CLIMATE CHANGE L., https://www.climatecasechart.com/document/laboratorio-do-observatorio-do-clima-v-minister-of-environment-and-brazil_e1d0 [https://perma.cc/XQ6G-32NJ] (last visited Feb. 15, 2026) (providing overview of litigation in English); NAT. JUST., ENVIRONMENTAL COURT CASES ACROSS THE WORLD: GREENPEACE V. SPAIN (2021), https://naturaljustice.org/publication/environmental-court-cases-greenpeace-v-spain/ [https://perma.cc/GQC9-M93X] (providing overview of litigation in English).

[34] A "State," for the purposes of this Article, is a term of art from public international law meaning a sovereign nation-state (i.e., the kind of entity that can, *inter alia*, join the United Nations as a member, become a treaty Party, or bring a case before the International Court of Justice). It is distinct from subnational states (e.g., Oregon, California).

Climate justice has four central pillars: 1) procedural justice, which concerns participation in decision-making processes; 2) recognition justice, which interrogates the acknowledgement of inequalities; 3) distributive justice, which examines the allocation of the burdens of climate change; and 4) intergenerational justice, which ascertains the ways in which impacts on future generations are addressed.[35] These four pillars function as the standards against which international governance mechanisms and climate litigation can be evaluated.

International governance mechanisms under and beyond the PA constitute the policy dimension of climate reparations. These will be analyzed for their ability to 1) acknowledge historical responsibility and injustice/wrongdoing; and 2) address issues of power, inequalities, and dependency.[36] These two principles, which international governance mechanisms can advance, align with climate justice's underlying considerations. Climate justice fundamentally understands justice as the imperative to correct historical wrongs—and thus the need for wrongdoers to accept responsibility;[37] it also advocates for the more equitable exercise of financial power.[38] It follows that the abovementioned

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[35] Peter Newell, *Climate Justice*, 49 J. PEASANT STUD. 915, 916–17 (2022) (noting these four "dimensions" of justice are "key" in effective climate change responses); Peter Newell et al., *Toward Transformative Climate Justice: An Emerging Research Agenda*, WIREs: CLIMATE CHANGE, Nov./Dec. 2021, at 1, 4–6 (describing the four pillars); *see generally* GIADA GIACOMINI, INDIGENOUS PEOPLES AND CLIMATE JUSTICE: A CRITICAL ANALYSIS OF INTERNATIONAL HUMAN RIGHTS LAW AND GOVERNANCE 36–44 (2022) (exploring the benefits and drawbacks of distribution, recognition, and participation theories within the Indigenous climate justice discourse).

[36] *See generally* Thomas Piketty, *Capital, Inequality and Justice: Reflections on* Capital in the Twenty-First Century, 10 BASIC INCOME STUD. 141, 142–156 (2015) (summarizing the author's "multidimensional approach to capital and power"); FANNY PIGEAUD, NDONGO SAMBA SYLLA & WILLIAM MITCHELL, AFRICA'S LAST COLONIAL CURRENCY: THE CFA FRANC STORY 1–4 (2021) (introducing the work's focus on "Franco-African monetary relations" historically, currently, and into the future); DAVID MCNALLY, BLOOD AND MONEY: WAR, SLAVERY, FINANCE, AND EMPIRE 1–3 (2020) ("Exploring a range of monetary technologies that have taken shape in societies organized around war, slavery, and colonial plunder, I show that these are *intrinsic* elements of the history of money, not background stage effects."(emphasis in original)); PETER JAMES HUDSON, BANKERS AND EMPIRE: HOW WALL STREET COLONIZED THE CARIBBEAN 1–17, 81–116 (2017) (exploring the history and significance of the internationalization and imperialization of Wall Street across the Americas).

[37] *See* Orla Kelleher, *Incorporating Climate Justice into Legal Reasoning: Shifting Towards a Risk-Based Approach to Causation in Climate Litigation*, 13 J. HUM. RTS. & ENV'T 290, 316 (2022) (adopting a "risk-based" approach to causation in climate litigation could "giv[e] expression to the dominant conception of climate justice," thus ensuring that "wealthy developed countries . . . bear a significant and fair share of the burden").

[38] *See generally* ELIZABETH CRIPPS, WHAT CLIMATE JUSTICE MEANS AND WHY WE SHOULD CARE 95–154 (2022) (commenting that climate justice, *inter alia,* means "empowering vulnerable groups," and genuinely recognizing that "[w]hen it comes to resources, *equality* need not be the goal; but so long as some are rich enough to buy political influence, the basic rights of others are too easily set aside" (emphasis in original)); GIACOMINI, *supra* note 35, at 31 (discussing how "ethical considerations of climate change reflect the imbalances of power between the so-called developed and the non-developed

two principles can be analyzed in conjunction with the concept of climate justice. Part III further examines the extent to which international governance mechanisms achieve the abovementioned principles and, by extension, climate justice's four pillars.

Climate litigation—the legal dimension of climate reparations—can be understood in three parts. Each part maps out the fundamental questions legal judgments seek to answer onto a corresponding value climate litigation can advance. Questions of standing and admissibility correspond to climate litigation's framing value, which endeavors to identify key claimants and the framing of their claims.[39] Questions of rights and obligations correspond to climate litigation's standard-setting value, which seeks to provide more precise standards to induce institutional change.[40] And questions of remedies correspond to climate litigation's enforcement and compliance value, which strives to identify existing gaps in enforcement and/or require actions/changes from the errant party/parties.[41] These three parts map neatly onto one or more of climate justice's four pillars. Climate litigation's framing value relates to achieving procedural justice; climate litigation's standard-setting value

countries," especially in the "current economic system and societies' lifestyles"); Keston K. Perry, *The New "Bond-Age," Climate Crisis and the Case for Climate Reparations: Unpicking Old / New Colonialities of Finance for Development Within the SDGs*, GEOFORUM, Nov. 2021, at, 361, 367–69 (2021) (noting that, in the context of the UN General Assembly's Sustainable Development Goals (SDGs), the "lack of inclusion or disregard" for a proposed reparatory agenda at this level "is critical to understand why current financing agendas to address mitigation and adaptation challenges are inadequate"); STEFAN EICH, THE CURRENCY OF POLITICS: THE POLITICAL THEORY OF MONEY FROM ARISTOTLE TO KEYNES 6–10 (2022) (identifying money as "an essential tool for the formulation and pursuit of justice"); ROBERT MEISTER, JUSTICE IS AN OPTION: A DEMOCRATIC THEORY OF FINANCE FOR THE TWENTY-FIRST CENTURY 1–14 (2021) (proposing the belief and argument that "today's financial theory—much more than democratic theory—provides conceptual and practical tools for bringing heterogeneous times and spaces into the present"); SAMUEL KNAFO, THE MAKING OF MODERN FINANCE 5 (2013) (presenting the historical argument "that policies that seem to establish fixed rules of the game to protect investors, in fact contributed to an extension of state power over finance" in order to "achieve sound money").

[39] *See, e.g.*, César Rodríguez-Garavito, *Litigating the Climate Emergency: The Global Rise of Human Rights-Based Litigation for Climate Action*, *in* LITIGATING THE CLIMATE EMERGENCY: HOW HUMAN RIGHTS, COURTS, AND LEGAL MOBILIZATION CAN BOLSTER CLIMATE ACTION 9, 24, 37 (César Rodríguez-Garavito ed., 2023) (explaining how various conceptions of standing "pose particularly complex challenges for human rights concepts and doctrines, and no clear international norms are currently detectable with regard to these issues").

[40] *See generally* Filiz Kahraman, *What Makes an International Institution Work for Labor Activists? Shaping International Law Through Strategic Litigation*, 57 L. & SOC'Y. REV. 61, 63 (2023) (noting activists' strategy of invoking international litigation to leverage structural reform domestically).

[41] *See generally* Geraldo Vidigal, *Remedies and Compliance*, *in* THE OXFORD HANDBOOK OF INTERNATIONAL TRADE LAW 967 (Daniel Bethlehem et al. eds., 2022) (highlighting how primary remedies in the context of international trade adjudication can induce compliance); Geraldo Vidigal, *Targeting Compliance: Prospective Remedies in International Law*, 6 J. INT'L DISP. SETTLEMENT 462 (2015) (explaining how remedies awarded by international courts and tribunals can aim to "induc[e] substantive compliance").

relates to achieving recognition and intergenerational justice; and climate litigation's enforcement and compliance value relates to achieving distributive justice. Parts V and VI further examine the extent to which domestic and international climate litigation advance these values and, by extension, climate justice's four pillars.

Overall, climate justice will underpin the evaluation of international governance mechanisms and climate litigation. Climate justice-related issues under Part III could therefore similarly arise under Parts V and VI. This framework also highlights that climate litigation cannot only be viewed through the lens of climate justice, but also be evaluated for its ability to improve international governance mechanisms.[42] Figure I contains a diagrammatic representation of this analytical framework.[43]

FIGURE I
Framework to assess climate reparations

Value of international governance mechanisms	*Pillars of climate justice*	*Value of climate litigation*
Ensuring acknowledgement of historical responsibility and injustice/wrongdoing Addressing issues of power, inequalities, and dependency	Procedural justice	The framing value of climate litigation
	Recognition justice Intergenerational justice	The standard-setting value of climate litigation
	Distributive justice	The enforcement and compliance value of climate litigation

III. OBTAINING CLIMATE REPARATIONS UNDER INTERNATIONAL GOVERNANCE MECHANISMS

This Part will explore the extent to which parties have secured climate reparations through international governance mechanisms. Part III.A will first map this half of the overall terrain, examining the existing climate governance regime under the PA as well as Global South-led proposals and SIDS-targeted proposals. These mechanisms will be analyzed through the two interrelated dimensions of 1) historical responsibility and injustice/wrongdoing, and 2) power, inequalities, and dependency. Any exploration without our climate justice compass will, however, be futile. Using the analytical framework outlined in Part II, Part III.B will analyze whether the state of affairs examined in Part III.A attains climate justice at the level of States.

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[42] *See infra* Part VI.C, VII.B.
[43] Figure created by author.

A. The Political Economy of International Governance Mechanisms

1. The International Law and Policy of Mitigation Finance

The PA establishes the international legal obligations of states on mitigation finance and carbon market mechanisms, adaptation finance, and loss and damage finance.[44] Textually, the international law on mitigation finance recognizes the existence of developed-developing inequalities. Article 4(5) PA holds that "[s]upport shall be provided to developing country Parties" in pursuit of their domestic mitigation measures.[45] It explicitly recognizes that "enhanced support for developing country Parties will allow for higher ambition in their actions."[46] Although this provision appears to create a binding legal obligation (through the use of "shall"), it is unclear who exactly should be providing this support, as well as what sort of and when support should be provided.[47] In practice, this means that developed States can avoid their historical responsibility to make reparations for their historical emissions. Given the legal text's lack of clarity, most developing States have been unable to access sufficient mitigation finance. Indeed, mitigation finance largely flows to developed and fast-growing developing States, leaving those most vulnerable to the impacts of climate change behind.[48]

Literature attributes this phenomenon to four factors. First, developed States have expressed strong preferences for mitigation (rather than adaptation) finance.[49] Second, path dependency generates an "investment lock-in" that perpetuates existing distributional inequalities.[50] Third, protracted disagreements on the quantity and quality of mitigation finance that should be provided render it challenging to provide adequate finance for the most climate vulnerable.[51] Lastly, private finance flows are shaped by investment suitability

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[44] Paris Agreement, *supra* note 2, arts. 6, 8, and 9.

[45] *Id.* art. 4, ¶ 5.

[46] *Id.*

[47] *See id.*

[48] *See generally* Shristi Tandukar, Tek Maraseni & Tapan Sarker, *Financing Sources for Mitigation of Adverse Climate Change: A Systematic Review*, DISCOVER SUSTAINABILITY, Dec. 2025, 1, 11 (finding climate finance is more constrained in regions particularly vulnerable to climate change); *see* Shonali Pachauri et al., *Fairness Considerations in Global Mitigation Investments*, 378 SCI. 1057, 1058 (2022); Jamie Rickman et al., *Investment Suitability and Path Dependency Perpetuate Inequity in International Mitigation Finance Toward Developing Countries*, 6 ONE EARTH 1304, 1305 (2023).

[49] Robert Bergsvik et al., *Is Transparency Furthering Clarity in Multilateral Climate Governance? The Case of Climate Finance*, 24 INT'L ENV'T AGREEMENTS: POL., L. & ECON. 565, 567 (2024).

[50] Rickman et al., *supra* note 48, at 1305.

[51] *Id.*

considerations.[52] This means that countries offering the highest potential for emissions reductions are prioritized by investors, while low-emission countries highly vulnerable to the impacts of climate change are overlooked. Taken together, these four factors suggest that the international law on mitigation finance ultimately perpetuates historical injustices and existing inter-state inequalities.

2. The International Law and Policy of Adaptation Finance

Although Article 9 PA's provisions on adaptation finance ostensibly seek to remedy historical injustice, they reflect existing inequalities between developed and developing States. Article 9(1) states, "[d]eveloped country Parties shall provide financial resources to developing country Parties with respect to . . . adaptation in continuation of their existing obligations under the Convention."[53] Redistributing developed States' financial resources—largely accumulated from fossil fuel exploitation—can help developing States gain adaptive capacity.[54]

The principle of common but differentiated responsibilities (CBDR) has been presented as a vehicle through which climate justice may be achieved,[55] and positioned as the climate regime's "overall principle."[56] It is, however, unclear if interpreting Article 9(1) in light of CBDR imposes a stronger obligation on developed States. Further, despite Article 9(1)'s use of "shall"—which typically indicates a substantive legal obligation—this obligation names not individual States as its subjects, but a collective of "[d]eveloped country Parties."[57] This deviation from most international legal obligations has led scholars to indicate that Article 9(1) may be nothing more than a political statement.[58]

Article 9(3) similarly provides that "developed country Parties should continue to take the lead in mobilizing climate finance" and "[take] into account the needs and priorities of developing country Parties."[59] This

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[52] *Id.*; *see also* Bolin Wei, *Does Climate Finance Achieve its Goals in Developing Countries? An Econometric Assessment of Mitigation and Adaptation Outcomes*, DISCOVER SUSTAINABILITY, Dec. 2025, at 1, 3.

[53] Paris Agreement, *supra* note 2, art. 9, ¶1.

[54] *See* Sam Adelman, *Human Rights in Pursuit of Climate Justice*, 38 WIS. INT'L L.J. 171, 177 (2021).

[55] Patrícia G. Ferreira, *From Justice to Participation: The Paris Agreement's Pragmatic Approach to Differentiation*, *in* CLIMATE JUSTICE: CASE STUDIES IN GLOBAL AND REGIONAL GOVERNANCE CHALLENGES 26 (Randall S. Abate ed., 2016).

[56] Catherine Hall, *Towards Minilateral Climate Governance? Analyzing Climate Club Design Options Through the Lens of Common but Differentiated Responsibilities and Respective Capabilities*, 33 REV. EUR. COMPAR. & INT'L ENV'T L. 604, 610 (2024).

[57] Paris Agreement, *supra* note 2, art. 9.

[58] David Rossati & Alexander Zahar, *Governing International Climate Finance and Investment: The Paris Agreement and Related International and Transnational Mechanisms*, *in* RESEARCH HANDBOOK ON THE LAW OF THE PARIS AGREEMENT 296, 299–300 (Alexander Zahar ed., 2024).

[59] Paris Agreement, *supra* note 2, art. 9, ¶ 3.

provision notably uses "should"—rather than "shall"—as its operative verb.[60] It also only compels developed States to "[mobilize] climate finance from a wide variety of sources, instruments[,] and channels."[61] This wording suggests that such funds may not necessarily have to directly come from developed States themselves, but from other sources such as multilateral development banks (MDBs) or the private sector. Developed States thus risk remaining subject to their existing grievances with the international financial architecture. The developing States will likely have to unsustainably obtain climate finance at higher interest rates vis-à-vis developed States, while serving their accumulated maturing debt.[62] This could, in turn, disincentivize developing States from obtaining climate finance to improve their adaptive capacity altogether.

Overall, Article 9 does not solely impose minimal climate finance obligations on developed States. More concerningly, it practically risks perpetuating inequalities in climate resilience/vulnerability between developed and developing States. Article 9 is thus premised on—and perpetuates—historical injustice.

Vulnerable States, however, suffer such injustice to varying degrees. First, a mismatch between levels of adaptation finance and adaptation needs in SIDS continues to leave SIDS highly vulnerable to climate change, despite their historically low emissions.[63] SIDS face relatively high adaptation costs given their high degree of climate change exposure and sensitivity,[64] while public climate finance flows toward SIDS have been inadequate.[65]

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[60] *Id.*

[61] *Id.*

[62] *See* Bertha Iris Argueta Tejeda & Justine Batura, *Climate Justice or Market Expansion? Unpacking COP29's Financing Decisions: An Interview with Bertha Argueta*, VÖLKERRECHTSBLOG (Nov. 28, 2024), https://voelkerrechtsblog.org/climate-justice-or-market-expansion-unpacking-cop29s-financing-decisions/ [https://perma.cc/L8KH-UVB6]; Avinash Persaud, *Breaking the Deadlock on Climate – The Bridgetown Initiative*, GREEN, Jan. 2023, at 99, 101.

[63] *See* Ellen Ledger & Carola Klöck, *Climate Justice Through Climate Finance? Australia's Approach to Climate Finance in the Pacific*, NPJ CLIMATE ACTION, Aug. 2023, at 1, 2, https://www.nature.com/articles/s44168-023-00053-6 [https://perma.cc/WGB4-7MQ7]; *see generally* Ellis Kalaidjian & Stacy-ann Robinson, *Reviewing The Nature and Pitfalls of Multilateral Adaptation Finance for Small Island Developing States*, CLIMATE RISK MGMT., Apr. 27, 2022, at 1, https://www.sciencedirect.com/science/article/pii/S2212096322000390 [https://perma.cc/KAX6-PS7Q] (analyzing the climate finance landscape using the experience of SIDS and finding that principles underlying climate finance are variedly operationalized, creating inadequacies and barriers for SIDS and other particularly vulnerable countries); Zoe Nay, Margaretha Wewerinke-Singh & Willy Missack, *Climate Loss and Damage in Pacific Island States: International Law Implications of Evolving Climate Science*, 24 ASIA PAC. J. ENV'T L. 201, 216–17 (2021).

[64] Kalaidjian & Robinson, *supra* note 63, at 2.

[65] Ledger & Klöck, *supra* note 63, at 2; Phemelo Tamasiga et al., *Is Africa Left Behind in the Global Climate Finance Architecture: Redefining Climate Vulnerability and Revamping the Climate Finance Landscape – A Comprehensive Review*, SUSTAINABILITY,

Further, climate finance flows and outcomes reproduce historical injustices for most SIDS.[66] SIDS struggle to access climate finance given strict requirements and their limited institutional capacity,[67] receive adaptation financing that reflects existing aid patterns rather than meeting local needs,[68] and find themselves excluded from funding sources.[69] The effectiveness of a State's domestic government thus determines the extent to which these injustices are reproduced. SIDS with the lowest institutional capacity and highest vulnerability are, in turn, unable to obtain financing under the GCF.[70] Such historical injustices are additionally more pronounced under adaptation and loss and damage cases vis-à-vis mitigation. With the current distribution of climate finance heavily concentrated on mitigation measures, adaptation and loss and damage measures (to be explored below) are left underfunded.[71]

A notable—but nevertheless highly limited—exception to the inequality faced by most SIDS is Tuvalu. Tuvalu has been a direct beneficiary of the Tuvalu Coastal Adaptation Project (TCAP), funded by the GCF.[72] This Project, expected to directly benefit sixty percent of Tuvalu's population, received US$36 million from the GCF to help the

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Sep. 2023, at 1, 4, https://www.mdpi.com/2071-1050/15/17/13036 [https://perma.cc/V26P-ATLP].

66 Kirsty Anantharajah & Abidah B. Setyowati, *Beyond Promises: Realities of Climate Finance Justice and Energy Transitions in Asia and the Pacific*, ENERGY RSCH. & SOC. SCI., July 2022, at 1, 8, https://www.sciencedirect.com/science/article/pii/S2214629622000561?via%3Dihub [https://perma.cc/UJ5A-CBUE].

67 Tamasiga et al., *supra* note 65, at 2.

68 Nina Incerti & Jon Barnett, *Following The Money: Climate Adaptation Finance in the Marshall Islands*, 19 ENV'T RSCH. LETTERS, May 2024, at 1, 8, https://iopscience.iop.org/article/10.1088/1748-9326/ad383e [https://perma.cc/93GN-VBDR].

69 David Tennant, Stuart Davies & Sandria Tennant, *Determinants of Access to Climate Finance: Nuanced Insights for SIDS and Other Vulnerable Economies*, WORLD DEV., Aug. 2024, at 1, 17, https://www.sciencedirect.com/science/article/abs/pii/S0305750X24000937?via%3Dihub [https://perma.cc/2C7M-BKRT].

70 Matthias Garschagen & Deepal Doshi, *Does Funds-Based Adaptation Finance Reach the Most Vulnerable Countries?*, GLOB. ENV'T CHANGE, Mar. 2022, art. no. 102450, at 8, https://www.sciencedirect.com/science/article/pii/S0959378021002296 [https://perma.cc/QYY5-FA2X] (noting that countries with "low or very low institutional capacity…needed to draw on the support of international or regional entities for accessing funds – or even did not receive [Green Climate Fund] funds at all").

71 Comm. on the Rights of the Child, General Comment No. 26 (2023) On Children's Rights and the Environment, with a Special Focus on Climate Change, ¶ 113, U.N. Doc. CRC/C/GC/26 (2023); Tandukar, Maraseni & Sarker, *supra* note 48 (noting, however, that a "growing recognition of the urgent need to build resilience has led to a shift in focus" from mitigation to adaptation, yet a "significant gap" still remains).

72 *See Tuvalu Coastal Adaptation Project*, U.N. DEV. PROGRAMME: PAC. OFF., 2025, https://www.undp.org/pacific/projects/tuvalu-coastal-adaptation-project [https://perma.cc/5QG5-PP58] (last visited Mar. 2, 2026) (financing of $36 million from the GCF and $2.9 million from the local government).

Government of Tuvalu manage coastal hazard risks.[73] This funding has reaped results: its first phase saw the construction of 7.8 hectares of raised land in Funafuti, Tuvalu's capital.[74]

3. The International Law and Policy of Loss and Damage Finance

Like Article 9, Article 8 PA's provisions on loss and damage finance similarly perpetuate inequalities. Article 8(2) holds that the WIM "shall be subject to the authority and guidance of the Conference of the Parties serving as the meeting of the Parties to this Agreement and may be enhanced and strengthened, as determined by the Conference of the Parties serving as the meeting of the Parties to this Agreement."[75] This textually provides the WIM with a legal basis.[76] However, Article 8(2) cannot be directly invoked by developing States to seek redress from developed States.[77] Its wording makes no explicit link to the UNFCCC's financial mechanism (i.e., the GCF), while a COP decision excludes any basis under Article 8 for liability and compensation.[78] Moreover, although the exigencies of climate vulnerable States necessitate compensation for both economic and non-economic loss, the types of non-economic loss covered by Article 8 are unclear.[79]

Article 8(3) states that "Parties should enhance understanding, action and support, including through the Warsaw International Mechanism, as appropriate, on a cooperative and facilitative basis with respect to loss and damage associated with the adverse effects of climate change."[80] Since the general reference to "Parties" does not single out developed country Parties akin to Article 9, Article 8(3) does not appear to endeavor to remedy historical injustice.[81] The nature of "support" here is also ambiguous: it is unclear whether loss and damage financing constitutes an obligation or merely an expectation.[82] This provision thus

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[73] *Id.*

[74] *Australia and New Zealand Back a Second Phase of the Tuvalu Coastal Adaptation Project to Beat Sea Level Rise*, TUVALU COASTAL ADAPTATION PROJECT (Sep. 18, 2024), https://tcap.tv/news/Australia-and-new-zealand-back-second-phase [https://perma.cc/YYG6-JXF4].

[75] Paris Agreement, *supra* note 2, art. 8, ¶ 2.

[76] Margaretha Wewerinke-Singh & Diana Hinge Salili, *Between Negotiations and Litigation: Vanuatu's Perspective on Loss and Damage from Climate Change*, 20 CLIMATE POL'Y 681, 684 (2020).

[77] *Id.*; Nay, Wewerinke-Singh & Missack, *supra* note 63, at 222.

[78] Toussaint, *Loss and Damage and Climate Litigation*, *supra* note 25, at 18.

[79] Broberg, *supra* note 30, at 217; Wewerinke-Singh & Hinge Salili, *supra* note 76, at 682.

[80] Paris Agreement, *supra* note 2, art. 8, ¶ 3.

[81] *Compare id.* art. 8, ¶ 3, *with id* art. 9 (demonstrating the difference in obligatory language between the two articles).

[82] Julia Dehm, *Climate Change, 'Slow Violence' and the Indefinite Deferral of Responsibility for 'Loss and Damage,'* 29 GRIFFITH L. REV. 220, 231 (2020).

likely does not impose any substantive legal obligation on developed States.

In imposing no substantive loss and damage finance obligations on developed States, Article 8 allows developed States to evade historical responsibility, while perpetuating the historical injustices experienced by developing States. This dynamic is echoed in Article 8's operationalization. Developed States have not only avoided discussions on liability, accountability, and reparations, but also blocked a proposal from developing States to implement the "Glasgow Loss and Damage Facility."[83] With the WIM focusing on disaster risk reduction and financialized insurance frameworks, developed States can evade their historical responsibility by shifting the burden of climate resilience building onto developing States.[84] The current state of loss and damage finance thus perpetuates and exacerbates historical injustice, maintaining existing power inequalities between States.

4. Looking Beyond the PA

The existing climate governance regime under the PA exhibits clear limitations. In response, Global South-led and SIDS-targeted proposals addressing issues of adaptation and loss and damage finance could partially reverse historical injustices. Rather than directly operationalizing the existing international law on adaptation and loss and damage finance, these proposals offer a blueprint for improved robust financing mechanisms. These can thus contribute toward remedying the existing PA regime's inadequacies.

i. Global South-led Proposals

Barbados' leadership of the Bridgetown Initiative is a key example. Launched in 2022 by Barbadian Prime Minister Mia Mottley, the Bridgetown Initiative comprises three tenets: 1) changing the terms of how international funding is loaned and repaid; 2) calling for MDBs to provide an additional $1 trillion of climate finance to developing States; and 3) dramatically increasing financing for the SDGs and climate action from the private sector.[85] Ultimately, Mottley seeks fundamental reform

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[83] Nay, Wewerinke-Singh & Missack, *supra* note 63, at 222; *see* Erich de Castro Dias & Sofia Larriera Santurio, *Human Rights and the Warsaw International Mechanism: An Interdisciplinary Approach to Overcome a Financial Gridlock*, 22 CLIMATE POL'Y 1186, 1188 (2022); Perry, *supra* note 38, at 362.

[84] Dehm, *supra* note 82, at 233, 243.

[85] BRIDGETOWN INITIATIVE, BRIDGETOWN INITIATIVE ON THE REFORM OF THE INTERNATIONAL DEVELOPMENT AND CLIMATE FINANCE ARCHITECTURE 3 (2025), https://www.bridgetown-initiative.org/bridgetown-initiative-3-0/ [https://perma.cc/Q2EV-5A5A]; Victoria Masterson, *The Bridgetown Initiative: Here's Everything You Need to Know*, WORLD ECON. F. (Jan. 13, 2023), https://www.weforum.org/stories/2023/01/barbados-bridgetown-initiative-climate-change [https://perma.cc/77U2-HU2V].

of the international financial architecture—both to enhance adaptation and loss and damage-related support for developing States, and to reduce extant power inequalities between developed and developing States.[86]

Mottley has made some progress toward this Initiative's stated goals. In line with some of the Initiative's demands, the World Bank has agreed to suspend debt for indebted States facing extreme climate shocks, while the International Monetary Fund (IMF) has agreed to provide climate vulnerable States with $100 billion in special drawing rights.[87] This Initiative has also gained significant traction within and beyond the Global South. The central tenets of the Initiative are echoed in the Accra-Marrakech Agenda, which was adopted in 2023 by sixty-eight of the world's most climate vulnerable States.[88] Additionally, the Bridgetown Initiative for the Reform of the International Financial Architecture inspired the Summit for a New Global Financing Pact organized by France in 2023,[89] potentially incentivized the Sustainable Development Goals (SDG) Stimulus Package promoted by the UN,[90] and received support from, among others, the IMF Managing Director and the Chief Executive of Bank of America.[91] The present impact of this Initiative, however, should not be overestimated. Mottley's efforts and the above traction notwithstanding, an additional $1.8 trillion annually is still required to meet the Global South's needs.[92]

It is arguable that such mechanisms, in explicitly involving private sector actors in climate financing unlike Article 9(3), may inadvertently create a new form of dependency—and thus inequality—between developing States and non-State private sector actors. Worse still, the benefits of such climate action risk being largely—if not wholly—privatized.[93] Nevertheless, such a risk must not be overstated. While developing States present significant opportunities for adaptation-related investments, the high cost of capital has deterred climate finance flows into those territories.[94] It is also uncertain if numerous private

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[86] *Rockefeller Foundation Welcomes Release of Bridgetown 3.0*, ROCKEFELLER FOUND. (Sep. 25, 2024), https://www.rockefellerfoundation.org/news/rockefeller-foundation-welcomes-release-of-bridgetown-3-0/ [https://perma.cc/2EVF-5SQZ].

[87] Uri et al., *supra* note 25, at 40.

[88] VULNERABLE TWENTY GRP., ACCRA-MARRAKECH AGENDA 1 (2023), https://www.v-20.org/accra-marrakech-agenda/ [https://perma.cc/B4B3-NMD8]. The Accra-Marrakech Agenda recommends, *inter alia*, the transformation of the international and development financial system and the revolutionization of risk management for our climate insecure world economy. *See id.* at 2, 4.

[89] Bodo Ellmers, *Bridgetown Initiative 3.0 Released: What's The News?*, GLOBAL POL'Y F. (June 5, 2024), https://www.globalpolicy.org/en/news/2024-06-05/bridgetown-initiative-30-released-whats-news [https://perma.cc/HRG9-GB3J].

[90] *Id.*

[91] Masterson, *supra* note 85.

[92] BRIDGETOWN INITIATIVE, *supra* note 85.

[93] Tejeda & Batura, *supra* note 62.

[94] Persaud, *supra* note 62, at 102–03.

sector actors would opt to invest in climate vulnerable States, which some may deem too high risk for stable long-term investment goals.[95]

The Nairobi Declaration similarly reflects the fundamental interest of the Bridgetown Initiative—to dismantle existing power inequalities. This Declaration, which formed the basis of Africa's COP28 negotiating position, includes proposals for, *inter alia*, MDBs to ensure low-cost lending and include new funding sources for the "loss and damage" facility under the PA.[96] However, the extent to which this Declaration managed to influence the outcomes of COP28—and thus dismantle existing power inequalities in practice—is unclear. Even as numerous pledges were made for adaptation funding, and Parties reached a historic agreement on the operationalization of the loss and damage fund, overall funding still fell far short of the trillions required by developing States.[97] COP28 also "underscore[d] the importance of reforming the multilateral financial architecture," but did not elaborate further as to how such reform is to be achieved.[98]

ii. SIDS-targeted Proposals

Other SIDS-targeted proposals that extend beyond the direct remit of the PA also exist. One key example is the Pacific Insurance and Climate Adaptation Program (PICAP), headed by the United Nations and financially supported by the Governments of Australia, New Zealand, Luxembourg, and the United Kingdom.[99] Structured as a multi-year program for the Pacific, PICAP has expanded its reach from Fiji, Tonga,

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[95] Rickman et al., *supra* note 48, at 1304–05; *see, e.g.*, Arthur Webb et al., *Notes From Tuvalu: Leading the Way in Adapting to Sea-Level Rise*, U.N. DEV. PROGRAMME (July 19, 2023), https://www.undp.org/blog/notes-tuvalu-leading-way-adapting-sea-level-rise [https://perma.cc/HR27-MLHM] (noting that, in the wake of a successful national adaptation plan, "[c]oncerted efforts are required to unblock the flow of private capital to Tuvalu and address macroeconomic factors and increase economic growth" for long-term adaptation sustainability).

[96] Chido Munyati, *The Nairobi Declaration: This Is How African Nations Want to Fight Climate Change*, WORLD ECON. F. (Sep. 11, 2023), https://www.weforum.org/stories/2023/09/africa-climate-nairobi-declaration-taxes/ [https://perma.cc/78E7-GTDP]; David McNair, *Tomorrow's Global Financial Architecture: A Reform Plan for People and Planet*, (Apr. 4, 2024), https://carnegieendowment.org/research/2024/04/tomorrows-global-financial-architecture-a-reform-plan-for-people-and-planet?lang=en [https://perma.cc/L5JX-6SFC].

[97] *COP28 Agreement Signals "Beginning of the End" of the Fossil Fuel Era*, U.N. CLIMATE CHANGE (Dec. 13, 2023), https://unfccc.int/news/cop28-agreement-signals-beginning-of-the-end-of-the-fossil-fuel-era [https://perma.cc/6QTU-UWLC].

[98] *Id.*

[99] *Pacific Insurance and Climate Adaptation (PICAP)*, U.N. CAP. DEV. FUND, https://www.uncdf.org/pacific-insurance-and-climate-adaptation-programme [https://perma.cc/27 NP-CVFD] (last visited Feb. 15, 2026).

and Vanuatu to additionally include Samoa, Solomon Islands, Kiribati, Timor-Leste, and Papua New Guinea.[100]

This Program does not, unlike the abovementioned Global South-led initiatives, call for the dismantling of existing power inequalities.[101] That being said, its smaller minilateral scale has the potential to be successful in expeditiously delivering loss and damage finance and, by extension, tackling existing historical inequalities. This can be attributed to two factors: 1) the sort of relief provided; and 2) the structure of the Program.

First, the Program seeks to provide parametric insurance—where payouts will be disbursed based on pre-agreed "trigger events."[102] Since payment is immediate, so long as the triggers are met, this provides Pacific Islanders with a form of swift financial assistance.[103] This reduces existing historical inequalities insofar as it provides those disproportionately affected by climate change with a quicker, targeted, and more reliable source of funding when disaster strikes.

Second, the Program is structured in a participatory manner: the Program's Fijian iteration involved, *inter alia*, the Reserve Bank of Fiji, local insurers, and other non-governmental actors.[104] This helps reinforce the potential speed of this Program, with local actors more likely to be able to act as quickly as possible in response to "trigger events" vis-à-vis foreign actors.[105] More importantly, such local participation helps prevent the perpetuation of historical inequalities: instead of further empowering this Program's powerful Government funders, it seeks to empower local communities and organizations to act swiftly in response to climate risks. This is especially important as the efficacy of local initiatives can be impeded by limited technical expertise and weak governance structures.[106]

iii. Interim Conclusions

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[100] *Pacific Insurance and Climate Adaptation Program: Results at a Glance 2021–2022*, U.N. CAP. DEV. FUND (Feb. 17, 2023), https://www.uncdf.org/article/8150/pacific-insurance-and-climate-adaptation-programme-results-at-a-glance-2021-2022 [https://perma.cc/422M-9B7U].

[101] *Id.*

[102] Munkhtuya Altangerel & Krishnan Narasimhan, *Insuring Resilience: How Parametric Solutions Are Transforming Climate Adaptation in the Pacific*, PREVENTIONWEB (Jan. 30, 2025), https://www.preventionweb.net/news/insuring-resilience-how-parametric-solutions-are-transforming-climate-adaptation-pacific [https://perma.cc/5BD4-WXXB] ("Unlike traditional insurance, parametric insurance provides payouts based on pre-agreed triggers . . . .").

[103] *Id.*

[104] *Id.*

[105] *Id.*

[106] Wei, *supra* note 52 ("While large-scale renewable energy projects have demonstrated measurable success in reducing emissions, smaller-scale initiatives often encounter significant barriers, including limited technical expertise and weak local governance structures.").

The analysis illustrated that historical responsibility and injustice/wrongdoing are, to some extent, acknowledged under the PA. Yet the operationalization of these international legal provisions on mitigation, adaptation, and loss and damage finance risks further perpetuating inequalities between developed and developing States. While the international law on mitigation finance under Art 4(5) acknowledges these inequalities, it practically perpetuates them instead through its associated international governance mechanisms. The international law on adaptation finance under Article 9 reflects existing inequalities, and risks perpetuating these inequalities through its associated international governance mechanisms. These inequalities are similarly perpetuated, both textually and practically, by the international law on loss and damage finance under Article 8. Global South-led and SIDS-targeted proposals may, however, rectify this. Situated beyond the PA, these provide ideological imperatives and innovative practical strategies to tackle historical injustices suffered by developing States.

B. The Current State of Climate Reparations: International Governance Mechanisms

1. The Four Pillars of Climate Justice

But how just—or unjust—is this current state of climate reparations under international governance mechanisms? Answering this question necessitates an assessment of the state of affairs outlined in the previous Part (Part III.A) using climate justice's four pillars: procedural justice, recognition justice, distributive justice, and intergenerational justice.

Procedures associated with these climate reparations have enabled States to meaningfully participate in decision-making processes, thereby ensuring the attainment of procedural justice. The PA negotiations involved, at least formally, the equal participation of developed and developing States.[107] However, subsequent negotiations pertaining to international legal provisions under the PA, and the operationalization of such provisions, rendered developing States unable to put their concerns on the table.[108] These States have thus failed to achieve sufficient redress. Global South-led and SIDS-targeted proposals nevertheless have the potential to mitigate this equity issue. The Bridgetown Initiative seeks to provide developing States with greater agenda-setting powers in relation to climate finance, while PICAP endeavors to provide expeditious post-crisis climate financing through local community empowerment.[109]

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[107] Katie Shonk, *Major Negotiations in History: In Paris Climate Talks, Planning Was Key*, PROGRAM ON NEGOT. HARV. L. SCH. (Nov. 13, 2025), https://www.pon.harvard.edu/daily/negotiation-skills-daily/major-negotiations-in-history-in-paris-climate-talks-planning-was-key/ [https://perma.cc/6J79-HLBM].

[108] *See supra* Part III.A.1–2.

[109] *See supra* Part III.A.4.ii.

Recognition justice is somewhat achieved through international legal provisions under the PA as well as Global South-led and SIDS-targeted proposals. They recognize, at least textually, inequalities between States in relation to rights protection and vulnerability in the face of climate change.[110] They have also made efforts to remedy these inequalities. It may nevertheless be the case that SIDS-targeted proposals have been more successful because they involve significantly fewer actors. Yet recognition justice is not achieved to the same extent under the PA provisions' associated policies. Since these policies have been shown to perpetuate historical injustice, this implies little to no substantive acknowledgement of inequalities between developed and developing States.

While a more equitable distribution of the burdens of climate change is not accomplished through the existing climate governance regime under the PA, Global South-led and SIDS-targeted proposals may be able to obtain at least some distributive justice. As seen above, Articles 4(5), 8, and 9 establish close to no substantive obligations directly on developed States; the operationalization of these international legal sources perpetuates historical injustice.[111] Most developing States will thus find themselves saddled with the burdens of climate change. Indeed, they will lack the sufficient financial resources required to remedy existing climate change-related damage and/or protect themselves against future damage.

The Bridgetown Initiative, by contrast, offers hope for a more equitable distribution of these burdens. This is especially given its approval by significant public and private sector actors. Achieving extensive progress in both the public and private sectors through the implementation of this Initiative will, however, most probably take some time. Such hope is similarly exhibited through the PICAP, which has the potential to provide quick and reliable relief to communities disproportionately affected by climate change.

Similarly, while intergenerational justice is not attained through the existing climate governance regime under the PA, it may be attained through Global South-led and SIDS-targeted proposals. In perpetuating historical injustice, the PA regime effectively imposes historical inequalities on future generations. Intergenerational justice can nevertheless be achieved through Global South-led and SIDS-targeted proposals. It is these proposals that have the potential to tackle the roots of such inequalities between developed and developing States. These roots include, *inter alia*, significantly higher costs of servicing debt from MDBs; a limited ability to substantively participate in, and shape the outcomes of, climate negotiations; and limited local technical and governance expertise. Should these proposals end up being able to eradicate the roots of such inequalities by shifting the Overton Window

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110 *See supra* Part III.A.1–2

111 *See generally supra* Part III.A (noting "how developed States can avoid their historical responsibility to make reparations for their historical emissions").

over time, future generations in developing States will likely be less subject to extant historical inequalities.[112]

2. Interim Conclusions

Overall, although climate reparations under international governance mechanisms can support procedural and recognition justice, they inadequately address distributive and intergenerational justice considerations. These shortcomings ultimately limit the reparative potential of these mechanisms. Global South-led and SIDS-targeted international governance proposals nevertheless hold promise for somewhat remedying this state of affairs. Indeed, the Bridgetown Initiative and PICAP are likely to advance all the dimensions of climate justice at the level of States—provided they end up being widely, expeditiously, and efficaciously implemented.

IV. IMPLICATIONS FOR FUTURE INTERNATIONAL GOVERNANCE MECHANISMS

After analyzing international governance mechanisms under and beyond the PA through the framework established in Part II, Part IV.A will outline the overarching limits international governance mechanisms find themselves subject to in seeking to achieve climate reparations. These are 1) non-uniform understandings of climate finance concepts under the PA; 2) overarching political dynamics; and 3) non-negligible risks of investor-State dispute settlement (ISDS) on the implementation of climate reparations. Cognizant of these limits, Part IV.B will then identify the implications of the above analysis for better implementing the international law on mitigation, adaptation, and loss and damage.

A. The Overarching Limits of International Governance Mechanisms

The overall ability of international governance mechanisms to achieve climate justice at the State level is subject to three overarching limits. The first is that of non-uniform understandings of climate finance concepts under the PA. Since the PA lacks multilaterally agreed definitions around key aspects of climate finance, countries self-select

[112] The Overton Window is "a theoretical construct that embodies the menu of governmental policies that the mainstream population finds acceptable or desirable." David Dyjack, *The Overton Window*, J. ENV'T HEALTH, Mar. 2020, at 54, 54. Moving ideas within the scope of the Window makes it more likely that politicians will opt to implement them. *Id.* ("Throughout history, our politicians have instinctually recognized that the ideas most likely to get them elected reside within the window.").

their own parameters of climate finance flows.[113] This reduces clarity and comparability, especially when it comes to determining, for example, what "mitigation finance" or "adaptation finance" constitute.[114]

This risks further perpetuating the current historical inequalities reflected in international governance mechanisms. Without standardized definitions, it becomes challenging to ascertain whether, for example, grants labeled as "mitigation finance" *truly* support emissions-reducing initiatives. A lack of transparency also risks potential inflation of aggregate funds pledged. The actual funds received may fall far short of what recipient States require to meet their finance needs. This challenge is exacerbated by the fact that "international review of country self-reporting of climate finance provided is subject to politically negotiated limitations."[115]

The second limit is that of overarching political dynamics. As highlighted above, the potential of Global South-led and SIDS-targeted proposals to better achieve climate justice is contingent on their ability to be widely, expeditiously, and efficaciously implemented.[116] This crucially requires the support of developing States. Indeed, the Bridgetown Initiative still falls far short of its financing demands, while PICAP has not yet been extended to all SIDS.[117] The actual efficacy of these initiatives also receives limited reporting. Further, domestic political dynamics of vulnerable States are key in ensuring that these funds are swiftly harnessed for their intended use.

The third and final limit is that of non-negligible risks of ISDS on the implementation of climate reparations. Even if developing States were to receive sufficient climate reparations to execute, for instance, mitigation projects, these States may hesitate to adopt (more) ambitious regulatory measures lest investors launch ISDS claims. This impairs the actual efficacy of these mitigation funds in actually achieving mitigation outcomes.

The risk of such "regulatory chill" cannot be understated. It may be argued that investment treaty standards are sufficiently vague that

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113 *See generally* Bergsvik et al., *supra* note 49, at 565 (evaluating limited self-reporting done by countries, yet struggling to find clarity about climate finance flowing between developed and developing countries due to this lack of consensus).

114 *Id.* at 579 (comparing, for example, France's and United States' "different approaches to determining what constitutes adaptation finance," yet aligning with their approaches to define "mitigation finance"); Lambert Schneider et al., *Outside In? Using International Carbon Markets for Mitigation Not Covered by Nationally Determined Contributions (NDCs) Under the Paris Agreement*, 20 CLIMATE POL'Y 18, 27 (2020); Hanna-Mari Ahonen et al., *Governance of Fragmented Compliance and Voluntary Carbon Markets Under the Paris Agreement*, POL. & GOVERNANCE, Mar. 2022, at 235, 241.

115 *See generally* Bergsvik et al., *supra* note 49, at 565 (due to this, inter alia, "clarity remains elusive on climate finance provided and received under the UNFCCC").

116 *See supra* Part III.A.4.

117 *See supra* Part III.A.4.

outcomes can be difficult to predict.[118] However, simply because tribunals *may* substantively find in favor of States does not mean that the *threat* of suits will go away. There is still some risk that the tribunal will find against the host State. This risk is not small: fossil fuel cases decided on the merits have been decided in favor of investors in 72% of cases.[119] The awards in these cases have a high average compensation awarded of $600 million.[120] This "chilling effect" is more pronounced in developing States—these cases would have a proportionately larger impact on relatively lower domestic budgets.[121]

Yet this risk can, at least in theory, be somewhat mitigated. It has been suggested that developed States should help developing States mitigate their exposure to "regulatory chill," while ensuring that developing States' interests are still being met.[122] Avoiding dispute settlement outcomes that are only counterproductive from a climate protection perspective can be achieved through, *inter alia*, improving the position of vulnerable host States vis-à-vis multinational investors through the (re)negotiation of complex investment contracts.[123]

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[118] Kyla Tienhaara et al., *Investor-State Disputes Threaten the Global Green Energy Transition,* 376 SCI. 701, 701 (2022).

[119] LEA DI SALVATORE, INT'L INST. FOR SUSTAINABLE DEV., INVESTOR-STATE DISPUTES IN THE FOSSIL FUEL INDUSTRY iv (2021).

[120] *Id.*

[121] Matteo Fermeglia et al., *'Investor-State Dispute Settlement' as a New Avenue for Climate Change Litigation*, THE LONDON SCH. OF ECON. & POL. SCI.: GRANTHAN RSCH. INST. ON CLIMATE CHANGE & THE ENV'T (June 2, 2021), https://www.lse.ac.uk/granthaminstitute/news/investor-state-dispute-settlement-as-a-new-avenue-for-climate-change-litigation/ [https://perma.cc/9XYZ-67GM].

[122] A comprehensive analysis of ISDS reform proposals—which has already been extensively covered in the literature—is beyond the scope of this Article. Instead, this Article only wishes to raise an example of an ISDS reform proposal to remark that the risk of "regulatory chill" can be mitigated. For more on ISDS reform proposals, *see generally* N. JANSEN CALAMITA & CHARALAMPOS GIANNAKOPOULOS, ASEAN AND THE REFORM OF INVESTOR-STATE DISPUTE SETTLEMENT: GLOBAL CHALLENGES AND REGIONAL OPTIONS (2022) (assessing international proposals for the reform of ISDS by analyzing experience and concerns of member states); MARIUS DOTZAUER, THE POPULAR LEGITIMACY OF INVESTOR-STATE DISPUTE SETTLEMENT: CONTESTATION, CRISIS, AND REFORM (2024) (evaluating the rise of investor-state arbitration, the politicization of the investor-state dispute settlement (ISDS) system, and the corresponding legitimacy crisis that has catalyzed attempted ISDS reform in order to answer whether this reform can be successful at all); Claiton Fyock, *Getting 'Real' About ISDS Reform: A Critical Realist View of International Investment Law's Status Quo*, J. INT'L DISP. SETTLEMENT, June 2025, at 2 (arguing for a further-reaching paradigmatic reform of ISDS).

[123] Tim A. Hagemann, *The North-South Divide of Regulatory Chill: A Comparative Analysis of the Impact of Investor-State Dispute Settlement on Policy Makers in Developed and Developing Countries*, N.Y. INT'L L. REV., Spring 2022, at 27, 31–32; *see generally* Lorenzo Cotula, *International Investment Law and Climate Change: Reframing the ISDS Reform Agenda*, 24 J. WORLD INV. & TRADE 766, 767–69 (2023) (arguing for the restructuring of the global investment treaty system because the current approach, *inter alia*, "entrenches 'path dependency'" and supports historical disadvantages).

B. Implications for Implementing the International Law on Mitigation, Adaptation, and Loss and Damage

Multilateralism under the PA is not the best way to expeditiously and efficaciously deliver climate reparations for the most climate vulnerable. Such multilateralism directly risks perpetuating inter-State inequalities, while having its efficacy further subject to other political and legal considerations. More fundamentally, multilateralism under the PA does not fully achieve climate justice.[124]

The failures of mechanisms under the PA, and the potential of Global South-led and SIDS-targeted proposals beyond the PA, collectively show that minilateralism may instead be preferable. Put simply, improving the implementation of the international law on mitigation, adaptation, and loss and damage requires the creation of parallel international processes that involve some, rather than all, States within the international system. The literature terms this concept "climate clubs," characterized broadly as groups of States engaged in a common endeavor.[125]

The above analysis on the limits of international governance mechanisms further implies that several key (but non-exhaustive) features are required for "climate reparations clubs" to more effectively deliver climate reparations. These include 1) the participation of well-resourced public and/or private sector actors *actually interested* in best meeting the needs of the most climate vulnerable; 2) the provision of standardized definitions of key finance concepts within the "club;" and 3) the (creation of the) presence of domestic regulatory environments within participant States that minimize the risk of ISDS.

V. SECURING CLIMATE REPARATIONS THROUGH DOMESTIC CLIMATE LITIGATION

Using this Article's framework, this Part will explore the extent to which climate reparations have been secured through climate litigation before domestic courts using domestic law and the PA. The terrain of climate litigation will first be mapped. The content of "mitigation," "failure to adapt," and "loss and damage" cases (as identified in Figure I) will be analyzed along three lines. Judicial answers to questions of

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[124] This is not to say, however, that the issues plaguing international governance mechanisms under the PA are wholly irreparable. *See infra* Parts VI.C and VII.B.

[125] Michele Stua, Colin Nolden & Michael Coulon, *Climate Clubs Embedded in Article 6 of the Paris Agreement*, RES., CONSERVATION & RECYCLING, May 2022, at 1, 3–7 (elaborating on the "climate club interpretation of Article 6" of the Paris Agreement); William Nordhaus, *Climate Clubs: Overcoming Free-Riding in International Climate Policy*, 105 AM. ECON. REV. 1339, 1341 (2015). There is some debate within the literature as to whether "climate clubs" must reach a critical mass and involve the participation of historical/large emitters in order to be effective. *See* Vegard H. Tørstad, *Participation, Ambition and Compliance: Can the Paris Agreement Solve the Effectiveness Trilemma?*, 29 ENV'T POL. 761, 763, 772 (2020).

standing and admissibility will be used to evaluate the framing value of climate litigation in Part V.A; judicial answers to questions of rights and obligations will be used to evaluate the standard-setting value of climate litigation in Part V.B; and judicial answers to questions of remedies will be used to evaluate the enforcement and compliance value of climate litigation in Part V.C. In using our compass, Part V.D will determine the extent to which current climate litigation before domestic courts secures the four dimensions of climate justice at the level of individuals.

A. Questions of Standing and Admissibility

The courts' answers to questions of standing and admissibility can fulfill climate litigation's framing value. Different categories of cases adopt distinct framings.

1. "Mitigation" Cases

Successful "mitigation" cases frame climate change as a threat to both present and future generations. In *VZW Klimaatzaak v. Kingdom of Belgium & Others*,[126] VZW Klimaatzaak, a non-profit organization, filed its claim alongside nearly 60,000 Belgian citizens.[127] By "extraordinar[il]y" allowing all these citizens to have legal standing in the case,[128] and determining that climate change posed a risk of danger to *all* the Applicants,[129] the Court of Appeal of Brussels recognized that climate change affects not simply a few, but the masses. In *Do-Hyun Kim et al. v. South Korea*,[130] the South Korean Constitutional Court was willing to hear a consolidated case on constitutional rights co-filed by several youth activists and a 20-week-old embryo.[131] This emphasized the direct impact of climate change on not just the youngest generations, but also the future generations.[132]

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[126] Hof van Beroep (HvB) [Court of Appeal of Brussels] Bruxelles (6th ch.), Nov. 30, 2023, (Belg.).

[127] *Id.*; Riley Arthur & Rani Ravinthran, *Belgium Found to be in Breach of European Human Rights Obligations by Failing to Take Substantive Climate Change Mitigation Action*, HUM. RTS. L. CTR. (Feb. 8, 2024), https://www.hrlc.org.au/case-summaries/2024-02-08-vzw-klimaatzaak-v-kingdom-of-belgium-others/ [https://perma.cc/76W5-XBCB].

[128] Cedric Jenart, *The Belgian Climate Case and Rising (Sea) Levels: Human Rights, Separation of Powers and Multi-Level Constitutionalism*, 31 MAASTRICHT J. EURO. & COMPAR. L. 451, 452 (2024).

[129] Arthur & Ravinthran, *supra* note 127.

[130] Hunbeobjaepanso [Const. Ct.], Aug. 29, 2024, 2022Hun-Ma854 (consolidated with 2020Hun-Ma 389, 2021Hun-Ma 1264, 2023Hun-Ma 846) (S. Kor.).

[131] *Id.*; *see* Buhm-Suk Baek & Hosung Ahn, *2020Hun-Ma389, 2021Hun-Ma1264, 2022Hun-Ma854, 2023Hun-Ma846 (Consolidated)*, 119 AM. J. INT'L L. 1, 141 (2025); Aleydis Nissen, *Green Court – South Korean Constitutional Court Rules Landmark Climate Judgement*, EJIL:TALK! (Apr. 29, 2025), https://www.ejiltalk.org/green-court-south-korean-constitutional-court-rules-landmark-climate-judgement/ [https://perma.cc/A2MN-ZYMT].

[132] Nissen, *supra* note 131.

Yet not all "mitigation" cases lend themselves to such a framing. Two circumstances account for this. First, existing legal doctrines can prevent "mitigation" cases from being heard. In *Finnish Association for Nature Conservation and Greenpeace v. Finland*,[133] the Supreme Administrative Court of Finland dismissed the case on procedural grounds, citing a "well-established doctrine of Finnish administrative law."[134] It cannot be assumed, however, that all courts that dismiss cases as such are unwilling to hear these cases to begin with. Indeed, since the Court's majority used "more detail than usual" to justify its dismissal and stated that similar cases may be admissible under specific conditions, this opens the door for future admissible "mitigation" litigation in Finland.[135]

Second, the perceived quality of pleadings may render courts unwilling to hear these cases. This is the case in both *Associação Último Recurso et al. v. Portuguese State*[136] and *Declic et al. v. The Romanian Government*.[137] The former was rejected for being "[unintelligible]",[138] while the latter was rejected for lacking specificity.[139]

2. "Failure to Adapt" Cases

"Failure to adapt" cases frame climate change as an *inherently* serious problem. Some underscore the exigencies of climate change through the litigants' successful invocation of constitutional procedures. *Future Generations v. Ministry of the Environment and Others*[140] is one such case. Seeking to tackle ever-increasing deforestation in the

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133 Case No. KHO:2023:62, Finnish Association for Nature Conservation and Greenpeace v. Finland, ECLI:EN:KHO:2023:62 (Sup. Admin. Ct., Jul. 18, 2023) (Fin.).

134 *Id.*; Kristiina Ella Markkanen, *Challenging Established Legal Doctrines in the Face of the Climate Crisis: Four Legal Experts Assess the Outcome of the Finnish Climate Case*, THE CTR. FOR CLIMATE CHANGE, ENERGY, & ENV'T L. (Oct. 30, 2023), https://sites.uef.fi/cceel/challenging-established-legal-doctrines-in-the-face-of-the-climate-crisis-four-legal-experts-assess-the-outcome-of-the-finnish-climate-case/ [https://perma.cc/39A5-MX2V].

135 Markkanen, *supra* note 134.

136 Supremo Tribunal de Justiça [Supreme Court of Justice] of 19-09-2024 in Proceedings No. 28650/23.0T8LSB.S1 (Port.); *see also Associação Último Recurso et al. v. Portuguese State*, COLUM. L. SCH.: SABIN CTR. FOR CLIMATE CHANGE L., https://www.climatecasechart.com/document/associacao-ultimo-recurso-et-al-v-portuguese-state_fde1 [https://perma.cc/AE4P-MYUG] (last visited Feb. 14, 2026).

137 Case No. 114/33/2023, Declic et al. v. Romanian Gov't, ECLI:RO:CACLJ:2023:048.000312, 6 (June 6, 2023) (Rom.).

138 *See Associação Último Recurso et al.*, Proceedings no. 28650/23.0T8LSB.S1 (Port.) at 2 (author translation).

139 *See Declic et al.,* ECLI:RO:CACLJ:2023:048.000312 (Rom.) at 6.

140 Corte Suprema de Justicia [C.S.J.] [Supreme Court], Sala. Civ. abril 5, 2018, M.P: Luis Armando Tolosa Villabona, STC4360-2018, *translated in Climate Change and Future Generations Lawsuit in Colombia: Key Excerpts from the Supreme Court's Decision*, DEJUSTICIA, https://www.dejusticia.org/en/climate-change-and-future-generations-lawsuit-in-colombia-key-excerpts-from-the-supreme-courts-decision/ [https://perma.cc/U2Q7-57VZ] (last visited Mar. 2, 2026).

Colombian Amazon, twenty-five children and young adults filed a "tutela"—a Colombian constitutional claim used for the enforcement of fundamental rights—before the Supreme Court of Justice of Colombia.[141] The plaintiffs identified a failure by the Government of Colombia to adapt to climate change, arguing that the Government had failed to reduce deforestation in the Amazon.[142] In doing so, the Government violated their right to a healthy environment.[143] The Supreme Court found this "tutela" claim admissible: it cited the interconnectedness—and thus indivisibility—of the right to a healthy environment with the fundamental rights of life and health, including those of future generations.[144]

In the same vein, other "failure to adapt" cases underscore the exigencies of climate change through the litigants' successful invocation of constitutional rights. In *PSB et al. v. Brazil (on Amazon Fund)*,[145] the Brazilian Federal Supreme Court found the plaintiffs' action admissible as the duty to preserve the environment derived from, *inter alia*, the Federal Constitution.[146]

However, not all courts may be willing to frame "failure to adapt" cases as constitutional matters. Plaintiffs run the risk that domestic courts choose to disregard their human rights arguments, even if such arguments are premised on constitutional/fundamental rights. In *Klimatická žaloba ČR v. Czech Republic*,[147] the Municipal Court in Prague found that the applicants had standing because there was a direct infringement of their rights.[148] The Court reasoned that since the purpose of the right to a favorable environment (enshrined under Article 35(1) of the Charter of Fundamental Rights and Freedoms) was to ensure that

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[141] *Id.* at 10–13. A "tutela" filing must show that (i) there exists a connection between the violation of collective and fundamental/individual rights; (ii) the "tutela" filer is directly affected by the violation; (iii) such a violation is fully proven, rather than hypothetical; and (iv) the requested order is oriented toward restoring individual, instead of collective, rights. *Id.*

[142] *Id.* Forests have been found to constitute an adaptation—in addition to a mitigation—measure in response to the effects of climate change, given that trees help reduce erosion and enhance soil fertility. Gabrielle Lipton, *Forests: An Unrecognized Force for Adaptation to Climate Change*, GLOB. LANDSCAPES F.: THINK LANDSCAPE (Dec. 14, 2021), https://thinklandscape.globallandscapesforum.org/56012/forests-an-unrecognized-force-for-adaptation-to-climate-change [https://perma.cc/J6KR-84SH].

[143] *Future Generations*, STC 4360-2018 at 13.

[144] *Id.*

[145] Supremo Tribunal Federal [S.T.F.] (Plenário), Ação Direta de Inconstitucionalidade por Omissão [ADO] No. 59/DF, Relator: Min. Rosa Weber, j. 03.11.2022, (Braz.).

[146] *Id.*; *Case Summary: PSB et al. v. Brazil (on Amazon Fund)*, N.Y.U. L. R2HE TOOLKIT, https://r2he.info/summaries/psb-et-al-v-brazil-on-amazon-fund/ [https://perma.cc/6PC9-EF6T] (last visited Feb. 13, 2026).

[147] Rozsudek Jménem Republiky ze dne 15.06.2022 (MS) [Decision of the Circuit Court in the City of Prague of June 15, 2022], Judgment No. 14A 101/2021 (Czech.).

[148] *Id.* ¶¶ 158–166.

citizens could live with dignity, a failure to implement adaptation measures had the potential to interfere with such a purpose.[149]

Declic stands in stark contrast. Here, the Court of First Instance failed to find standing for the applicants due to their failure to identify—with precision—the necessary measures the Government of Romania ought to take to achieve its adaptation targets.[150] This holding effectively ignored the plaintiffs' rights arguments premised on the right to a healthy environment found in Article 35(1) of the Romanian Constitution and the right to life as a fundamental right.[151]

Further, standing for "failure to adapt" cases may only be established on specific, non-constitutional/fundamental rights-related grounds in certain jurisdictions. This may prevent all litigants and courts from fully achieving climate litigation's framing value. A successful attempt at harnessing specificity is seen in *Notre Affaire à Tous et al. v. France*,[152] where a coalition of four non-profits challenged the French Government's failure to implement sufficient adaptation (and mitigation) measures.[153] In this case, the Administrative Court of Paris found these associations had established a sufficient interest to act in the matter through the link between their organizational purpose (i.e., the protection of nature and environmental defense) and the nature of their action (i.e., compensation for ecological damage).[154] Such a finding was nevertheless facilitated by French law itself.[155] The Civil Code provisions relied upon by the associations establish relatively low admissibility requirements for environmental claims filed by nonprofit environmental associations.[156]

3. "Loss and Damage" Cases

The courts' answers to questions of standing and admissibility may also fulfill climate litigation's framing value through "loss and damage" cases. These cases frame climate change in terms of its grave *consequences*. This is underscored through the plaintiffs' pleadings of the potential value of the damage that has been, and/or could be, caused by

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149 *Id.*

150 Case No. 114/33/2023, *Declic et al.*, ECLI:RO:CACLJ:2023:048.000312, at 32 (June 6, 2023) (Rom.).

151 *Id.* at 6, 22.

152 TA Paris, Feb. 3, 2021, No. 1904967, 1904968, 1904972, 1904976/4-1, ¶¶ 10–15 (Fr.).

153 *Id.* at 1; *Notre Affaire à Tous and Others v. France, No. 1904967, 1904968, 1904972, 1904976/4-1, Paris Administrative Court (3 February 2021)*, ENV'T L. ALL. WORLDWIDE, [hereinafter *Notre Affaire à Tous and Others*] https://elaw.org/resource/fr_notreaffairsatous_3feb2021 [https://perma.cc/9WTW-BUTD] (last visited Feb. 14, 2026).

154 *Notre Affaire à Tous et al.*, Nos. 1904967, 1904968, 1904972, 1904976/4-1, ¶¶ 10–15.

155 *Id.* ¶¶ 18–21; *Notre Affaire à Tous and Others*, *supra* note 153.

156 *Litigating Climate Change in France*, DENTONS (Nov. 3, 2022), https://www.dentons.com/en/insights/articles/2022/november/3/litigating-climate-change-in-france [https://perma.cc/NKW3-3N9F].

the defendant's actions. *Lliuya v. RWE*[157] involved a Peruvian farmer filing claims for declaratory judgment and damages against RWE, the largest electricity producer in Germany.[158] The Higher Regional Court of Hamm established that the plaintiff had sufficient legal interest to bring proceedings.[159] This was because Lliuya pleaded that €17,000 was required to avert potential property damage from RWE's significant GHG emissions—emissions that constituted at least one cause of the melting of mountain glaciers near his town and thus the risk of flooding.[160]

Like "failure to adapt" cases, plaintiffs in "loss and damage" cases run the risk that domestic courts may choose to disregard their human rights arguments. This may be the case even if such arguments are premised on constitutional/fundamental rights. The indigenous applicants in *Baihua Caiga et al. v. PetroOriental S.A.*[161] asserted that gas flaring from the oil concessions of PetroOriental S.A., in emitting GHGs contributing to climate change, violated several of their rights under, *inter alia*, the Ecuadorian constitution.[162] However, the Family, Women, and Children Judicial Unit dismissed the constitutional action, holding that the applicants had failed to adequately demonstrate that these rights had indeed been violated.[163]

4. Interim Conclusions

Overall, the courts' answers to questions of standing and admissibility advance climate litigation's framing value in three different ways. In "mitigation" cases, accepted pleadings—from the masses to even a fetus—signal the threat climate change poses to both present *and* future generations. In "failure to adapt" cases, accepted pleadings premised on constitutional procedures and rights signal the *inherent* seriousness of climate change. In "loss and damage" cases, accepted

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157 Oberlandesgericht [OLG] [Higher Regional Court] May 25, 2025, Case No. 2 O 285/15, ¶ 1 (Ger.); *Legal*, THE CLIMATE CASE: SAÚL VS. RWE, https://rwe.climatecase.org/en/legal [https://perma.cc/WV5B-PCE5] (last visited Feb. 14, 2026) (discussing the case and its implications).

158 THE CLIMATE CASE: SAÚL VS. RWE*, supra* note 157.

159 *Id.*

160 *Id.*; Maxim Bönnemann & Maria Antonia Tigre, *What Lliuya v. RWE Means for Climate Change Loss and Damage Claims*, CLIMATE L. BLOG (June 19, 2025), https://blogs.law.columbia.edu/climatechange/2025/06/19/what-lliuya-v-rwe-means-for-climate-change-loss-and-damage-claims [https://perma.cc/GW9K-2QTM].

161 Baihua Caiga et al. v. PetroOriental S.A, No. 22201202000469 (Jud. Unit of Fam., Women, & Child. July 15, 2021) (Ecuador); *Baihua Caiga et al. v. PetroOriental S.A.*, COLUM. L. SCH.: SABIN CTR. FOR CLIMATE CHANGE L., https://www.climatecasechart.com/document/baihua-caiga-et-al-v-petrooriental-s-a_beae [https://perma.cc/9VWT-9Z5N] (last visited Feb. 14, 2026).

162 Maria Antónia Tigre, *Climate Change and Indigenous Groups: The Rise of Indigenous Voices in Climate Litigation*, E-PUBLICA, Dec. 2022, at 215, 241.

163 *Id.*

pleadings premised on quantified potential damage signal the severity of climate change's *impacts*.

Litigants, jurisdiction-specific laws, and courts collectively construct these narratives. The pleadings themselves, in enabling plaintiffs to share their unique testimonies of how climate change has adversely impacted their rights, further frame climate change as an issue with significant individual- and/or community-specific impacts. However, these pleadings and framings do not always persuade courts, while some jurisdiction-specific legal doctrines and procedural rules can limit plaintiffs' ability to fully harness climate litigation's framing value.

B. Questions of Rights and Obligations

The courts' answers to questions of rights and obligations fulfill climate litigation's standard-setting value in several ways.

1. "Mitigation" and "Loss and Damage" Cases

First, courts can facilitate the integration of international law—and, more specifically, the PA—into domestic law. This clarifies the standards under which legislation and government officials should be held to account. However, domestic courts do not treat international law uniformly.[164] Domestic courts in "mitigation" and "failure to adapt" cases interpret and apply international law in climate litigation cases—and thus approach the interface between international and domestic law—differently.

One way in which courts do this is through explicitly integrating the former into the latter. This is seen in *Shrestha v. Office of the Prime Minister et al.*,[165] where a Nepalese citizen filed an application to compel the Government of Nepal to enact a new climate change law.[166] In considering the severity of the impacts that climate change and pollution stand to inflict on the well-being of Nepalese citizens, the Supreme Court of Nepal deemed it imperative for any new climate change law to consider the provisions of, *inter alia*, the PA to effectuate Nepal's commitments under it.[167] Similarly, the Brazilian Supreme Court in *Amazon Fund* notably recognized the PA as a "supralegal" binding human rights treaty

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[164] Annalisa Savaresi, *Climate Change Litigation: The Role of International Law*, 13 CAMBRIDGE INT'L L.J. 286, 288 (2024).

[165] Shrestha v. Office of the Prime Minister et al., Order No. 074-WO-0283, ¶¶ 3–5 (Sup. Ct., Div. Bench Dec. 25, 2018) (Nepal).

[166] *Id.*

[167] *Id.*

to assist its conclusion that the Bolsonaro Government's failure to maintain the National Fund on Climate Change was unconstitutional.[168]

Another way in which courts may integrate international law into domestic law is through using international legal standards as criteria to evaluate national legislation. This was done in *Future Generations*. Here, the Supreme Court of Justice of Colombia identified, *inter alia*, the PA as "guiding criteria for national legislation" to protect present and future generations.[169] This was also done in *Do-Hyun Kim*, where the Constitutional Court of Korea referred to, *inter alia*, the PA to assess whether sufficient measures for emissions reductions were taken by the Government of South Korea.[170]

The final way in which courts may integrate international law into domestic law is through interpreting international legal obligations in light of regional and domestic legislation. The applicants in *Klimatická žaloba ČR* cited several pieces of domestic legislation, in conjunction with Art 7(2) PA, to plead that the Czech Government had an obligation to take measures to adapt to climate change.[171] To determine the precise content of this obligation, the Prague Municipal Court read the provisions on adaptation measures under Art 7 PA more broadly in line with European and domestic legislation.[172]

Second, courts in "mitigation" and "failure to adapt" cases fulfill climate litigation's standard-setting value through taking evolutionary approaches to their jurisprudence. Courts do this in several ways.

Courts can extend the applicability of existing constitutional rights to the novel circumstances created by climate change. *Future Generations* involves a court taking such an evolutionary approach to constitutional rights. Here, the Supreme Court of Justice of Colombia adopted a "green" approach in analyzing the Constitution of Colombia, while deeming the environment relevant to fundamental rights.[173] This approach—one undertaken by the Constitutional Court of Colombia in an established line of jurisprudence—served to legitimize the Supreme Court's overall argument that the ineffectiveness of governmental measures breached fundamental rights relating to the environment.[174] This is similarly seen in *Do-Hyun Kim*. The Constitutional Court of Korea not only made a rare recognition of the right to a healthy environment as the relevant

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168 Patrick Hegarty Morrish, *The Paris Agreement as a Human Rights Treaty: PSB et al. v Brazil*, OXFORD HUM. RTS. HUB: BLOG (Dec. 23, 2022), https://ohrh.law.ox.ac.uk/the-paris-agreement-as-a-human-rights-treaty-psb-et-al-v-brazil/ [https://perma.cc/F568-MVRT].

169 *Future Generations*, C.S.J., Sala. Civ. abril 5, 2018, STC 4360-2018, at 22 (Colom.).

170 Nissen, *supra* note 131.

171 *Klimatická žaloba ČR*, Rozsudek Jménem Republiky ze dne 15.06.2022 (MS), Judgment No. 14A 101/2021, ¶¶ 20–21 (Czech.).

172 *Id.* ¶¶ 286–289.

173 *Future Generations*, STC 4360-2018 at 22.

174 *Id.* at 34.

substantive basis for the plaintiffs' claim, but also found that the right attributes to the State an obligation to mitigate climate change.[175]

Courts in some "mitigation" cases also integrate new concepts in their jurisprudence. A notable example is the concept of future generations. In *Do-Hyun Kim*, the Constitutional Court of Korea reasoned that since no mechanism to "safeguard future generations from shouldering a disproportionate share of the reduction burden" existed, the right to a healthy environment was violated.[176] The Court thus links the concept of future generations with the existing constitutional right to a healthy environment, suggesting that the abstract rights of a group of unborn humans can be infringed.[177] The Court of Appeal of Brussels in *Klimaatzaak* took a different approach to future generations. Employing a vicarious damage concept, it attributed the potential intergenerational damage that climate change can cause to the living applicants themselves.[178]

However, given the controversy of the concept of future generations in the literature, it is unsurprising that not all courts are keen on integrating this legal innovation.[179] The Court of Appeals of Canada in *La Rose* was one such court. Employing a "difficult separation between law and policy," the Court argued that adjudicating future inequalities took courts into extrajudicial territory; intergenerational equality was beyond the scope of the Canadian Charter of Rights and Freedoms.[180]

Another way in which courts adopt evolutionary approaches to their jurisprudence is through referring to favorable precedent from other courts. In *Shrestha*, the Supreme Court of Nepal introduced the concept of "climate justice" in its jurisprudence, deeming it to constitute the fulfillment of the principles of sustainable development, as well as intergenerational and intragenerational justice.[181] Such an understanding of the concept of "climate justice" is, however, not entirely novel. This appears inspired by pre-PA precedent from *Ashgar Leghari v.*

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[175] Filippo P. Fantozzi & Joe Udell, *Shifting the Mitigation Burden: Outcomes and Implementation Opportunities of the Landmark South Korean Climate Case*, BRIT. INST. OF INT'L & COMPAR. L. (Dec. 11, 2024), https://www.biicl.org/blog/97/shifting-the-mitigation-burden-outcomes-and-implementation-opportunities-of-the-landmark-south-korean-climate-case?cookiesset=1&ts=1751625761 [https://perma.cc/R3P6-FCA7].

[176] *Id.*

[177] *Id.*; Nissen, *supra* note 131.

[178] *See* Jenart, *supra* note 128, at 452.

[179] *See, e.g.*, Stephen Humphreys, *Against Future Generations*, 33 EUR. J. INT'L L. 1061, 1063 (2023); Margaretha Wewerinke-Singh, Ayan Garg & Shubhangi Agarwalla, *In Defence of Future Generations: A Reply to Stephen Humphreys*, 34 EUR. J. INT'L L. 651, 652 (2023); Peter Lawrence, *International Law Must Respond to the Reality of Future Generations: A Reply to Stephen Humphreys*, 34 EUR. J. INT'L L. 669, 670 (2023).

[180] Margot Young, Annabel Webb & Bruce Porter, *Canadian Youth Climate Action Challenge Proceeds to Trial: La Rose v. His Majesty the King*, OXFORD HUM. RTS. HUB: BLOG (Feb. 12, 2024), https://ohrh.law.ox.ac.uk/canadian-youth-climate-action-challenge-proceeds-to-trial-la-rose-v-his-majesty-the-king/ [https://perma.cc/QPL3-5B92].

[181] *Shrestha*, Order No. 074-WO-0283, ¶¶ 2 (Sup. Ct., Div. Bench Dec. 25, 2018) (Nepal).

Federation of Pakistan.[182] Here, the Lahore High Court conceptualized "climate justice" as 1) a move beyond existing notions of "environmental justice" in its jurisprudence and 2) about ensuring equitable burden sharing.[183] In a similar vein, after establishing that the Government should embrace "climate justice" while carrying out any climate change-related activity, the Supreme Court of Nepal used the concept to justify the need to develop a new law to tackle the threat to the existence of ecology and biodiversity for current and future generations through climate change adaptation (and mitigation).[184]

This is also done in some "mitigation" cases. *Klimaatzaak* referred to the Dutch Supreme Court in *Urgenda* and the German Constitutional Court in *Neubauer v. Germany*[185] to dismiss the "drop in the ocean" argument made by the Belgian Government.[186] *Six Youths v. Minister of Environment and Others*[187] also cited *Urgenda*.[188] This promotes a form of "transnational exchange" not just between courts worldwide, but also between claimants and courts.[189] This allows litigants in future cases to replicate successful legal arguments and strategies of prior cases to shape their pleadings, and courts in future cases to refer to interpretations and norm constructions of prior cases to shape their reasoning.[190] However, not all "mitigation" cases promote this "exchange." *Greenpeace v Spain II*,[191] in conducting no substantive analysis of Spain's mitigation

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182 Ashgar Leghari v. Fed'n of Pakistan, (Lahore High Ct.) W.P. No. 25501/2015, ¶¶ 6–7 (2015) (Pak.).

183 *Id.*

184 Supreme Court of Nepal [Sup. Ct. Nepal] Dec. 25, 2018, Advocate Padam Bahadur Shrestha v. Office of the Prime Minister & Council of Ministers, Decision No. 10210 (Nepal).

185 Bundesverfassungsgericht [BVerfG] [Federal Constitutional Court] Mar. 24, 2021, Case No. 1 BvR 2656/18, 1 BvR 288/20, 1 BvR 96/20, 1 BvR 78/20 (Ger.).

186 APRIL WILLIAMSON & FILIPPO P. FANTOZZI, CLIMATE LITIG. NETWORK SUCCESSFUL CLIMATE LITIGATION IN BELGIUM: *VZW KLIMAATZAAK V. KINGDOM OF BELGIUM & OTHERS* 21 (2024), https://climatelitigationnetwork.org/wp-content/uploads/CLN-REPORT-Successful-Climate-Litigation-in-Belgium-2024.pdf [https://perma.cc/62AW-ZCRX].

187 TRF-3, Ação Popular No. 5008035-37.2021.4.03.6100, 30.11.2023 (Braz.); Elisa de Wit & Holly Stebbing, *Climate Change Litigation Update*, NORTON ROSE FULBRIGHT (July 2025), https://www.nortonrosefulbright.com/en/knowledge/publications/674162d1/climate-change-litigation-update-july-2025 [https://perma.cc/6FNV-PTRD].

188 CATHERINE HIGHAM, JOANA SETZER & EMILY BRADEN, GRANTHAM RSCH. INST. ON CLIMATE CHANGE & THE ENV'T, CTR. FOR CLIMATE CHANGE ECON. & POL'Y, CHALLENGING GOVERNMENT RESPONSES TO CLIMATE CHANGE THROUGH FRAMEWORK LITIGATION 17 (2022), https://www.lse.ac.uk/granthaminstitute/wp-content/uploads/2022/09/Challenging-government-responses-to-climate-change-through-framework-litigation-final.pdf [https://perma.cc/CJC7-82PP] (last visited Feb. 14, 2026).

189 *Id.*

190 Christina Eckes, *Constitutionalizing Climate Mitigation Norms in Europe*, *in* CONSTITUTIONALISM AND TRANSNATIONAL GOVERNANCE FAILURES 107, 108–111 (Ernst-Ulrich Petersmann & Armin Steinbach eds., 2024).

191 S.T.S. July 24, 2023, No. 3556/2023 (2023) (Spain); Sara Gonzalez Merinero & Maria Antonia Tigre, *Understanding Unsuccessful Climate Litigation: The Spanish Greenpeace Case*, CLIMATE L. BLOG (Sep. 11, 2023),

commitments, failed to engage with similar European decisions in its judgment.[192]

Lastly, courts in "mitigation" and "failure to adapt" cases can fulfill climate litigation's standard-setting value through evaluating the fulfillment of governmental obligations with respect to climate change. *Klimatická žaloba ČR* evaluated the Czech Government's implementation of adaptation measures to determine compliance with its adaptation obligation.[193] While the Court found compliance, it subsequently noted that the judicial review "could not have been more specific."[194] This is because the applicants failed not only to identify the specific agricultural measures with which they deemed the Government had failed to comply, but also to explain how such failures had significantly affected the adaptive capacity of agriculture.[195] This implies that courts' ability to evaluate the fulfillment of governmental obligations is subject to the depth with which the applicants plead governmental failures—and thus the ability of the applicants to retrieve such data. National mitigation commitments were also scrutinized in the "mitigation" cases of *Six Youths* and *Do-Hyun Kim*.[196]

The ability of courts to fulfill climate litigation's standard-setting value in "mitigation" cases can nevertheless be limited by their perception of the rightful separation of powers within their domestic context. Indeed, it is arguable that judges in "mitigation" cases are tasked by litigants to "engage in pro-active expert law-making" through requests to "specify legal limits to acceptable actions or inactions."[197]

Courts here can be placed on a sliding scale, positioned between "unconstrained" and "constrained." The Court in *Do-Hyun Kim* did not find itself constrained by the separation of powers.[198] It recalled that "judicial review of the fulfilment of the legislative duty […] must be much stricter" in the climate context, since "future generations have even more limited participation in the democratic political process."[199] The Court in *Klimaatzaak,* however, found itself somewhat constrained in its ability to

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https://blogs.law.columbia.edu/climatechange/2023/09/11/understanding-unsuccessful-climate-litigation-the-spanish-greenpeace-case/ [https://perma.cc/Y84F-3LEV].

192 Merinero & Tigre, *supra* note 191.

193 *Klimatická žaloba ČR,* Rozsudek Jménem Republiky ze dne 15.06.2022 (MS), Judgment No. 14A 101/2021, ¶¶ 301–319 (Czech.) (finding that the Czech government did not adequately enforce climate adaptation measures across sectors including forestry and agriculture).

194 *Id.* ¶ 319.

195 *Id.*

196 MARIA ANTONIA TIGRE, COLUM. L. SCH. SABIN CTR. FOR CLIMATE CHANGE L., CLIMATE LITIGATION IN THE GLOBAL SOUTH: MAPPING REPORT 91 (2024); Nissen, *supra* note 131.

197 ECKES, *supra* note 190, at 113.

198 *Do-Hyun Kim*, Hunbeobjaepanso, Aug. 29, 2024, 2020HunMa389, at 20, 82, 85 (S. Kor.); *Do-Hyun Kim et al. v. South Korea*, COLUMBIA L. SCH.: SABIN CTR. FOR CLIMATE CHANGE L., https://www.climatecasechart.com/document/do-hyun-kim-et-al-v-south-korea_2dd5 [https://perma.cc/GA7B-2FGP] (last visited Feb. 14, 2026).

199 *Do-Hyun Kim*, Case No. 2020HunMa389, at 59.

specify legal limits.[200] It asserted that while judicial climate target setting exhibits compatibility with the separation of powers, it "prohibits the court from determining a rate of GHG reduction which it deems desirable or equitable in view of Belgium's historical responsibility."[201] Indeed, the Court may only set a "floor" in indicating the "minimal contribution" the Belgian authorities ought to pursue according to scientific and international political consensuses.[202] At the other end of the spectrum lies *Greenpeace v. Spain II*.[203] Here, the Supreme Court of Spain dismissed the case on separation of powers grounds.[204]

Further, the ability of courts to fulfill climate litigation's standard-setting value in "failure to adapt" cases is limited by their approach to questions of causality. One of the applicant associations in *Notre Affaire à Tous et al.*, Oxfam, pleaded that since France took twelve years to adopt its very first National Adjustment Strategy, the regulatory authorities disregarded the State's adaptation (and mitigation) obligations under the UNFCCC and their general obligation to combat climate change.[205] However, the Court deemed such an argument insufficiently pleaded.[206] It held that the inadequacy of adaptation measures cannot be regarded as having "directly caused" the ecological damage for which compensation is being sought.[207] The Court thus deemed the French Government's 12-year delay in adopting its National Adjustment Strategy an indirect—rather than direct—link to the pleaded ecological damage, though it has nevertheless been left unclear what exactly a direct link should look like.[208]

Not all courts, however, demand the establishment of direct causation. The Supreme Court of Justice of Colombia did not require such a standard in *Future Generations*, where the Court deemed the pleaded

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[200] *Klimaatzaak*, Hof van Beroep (HvB) [Court of Appeal of Brussels] Bruxelles (6th ch.), Nov. 30, 2023 (Belg.)

[201] *Id.*

[202] Matthias Petel & Norman Vander Putten, *The Belgian Climate Case: Navigating the Tensions Between Climate Justice and Separation of Powers*, VERFASSUNGSBLOG (Dec. 5, 2023), https://verfassungsblog.de/the-belgian-climate-case [https://perma.cc/Q9V6-4RAJ].

[203] S.T.S. July 24, 2023, No. 3556/2023 (2023) (Spain).

[204] *Id.*; Sara Gonzalez Merinero & Maria Antonia Tigre, *Understanding Unsuccessful Climate Litigation: The Spanish Greenpeace Case*, CLIMATE L. BLOG (Sep. 11, 2023), https://blogs.law.columbia.edu/climatechange/2023/09/11/understanding-unsuccessful-climate-litigation-the-spanish-greenpeace-case/ [https://perma.cc/25EU-2UE8].

[205] *Notre Affaire à Tous et al.*, TA Paris, Feb. 3, 2021, No. 1904967, 1904968, 1904972, 1904976/4-1, ¶¶ 10–15 (Fr.); *Notre Affaire à Tous and Others*, *supra* note 153.

[206] *Notre Affaire à Tous et al.*, Nos. 1904967, 1904968, 1904972, 1904976/4-1, ¶¶ 23–28; *Notre Affaire à Tous and Others*, *supra* note 153.

[207] *Notre Affaire à Tous et al.*, Nos. 1904967, 1904968, 1904972, 1904976/4-1, ¶ 33; *Notre Affaire à Tous and Others*, *supra* note 153.

[208] *Notre Affaire à Tous et al.*, Nos. 1904967, 1904968, 1904972, 1904976/4-1, ¶ 33 (dismissing claims related to the delay in adopting the National Adjustment Strategy which are not considered as a direct cause of environmental damage).

ecological damage illustrative of the ineffectiveness of governmental adaptation measures.[209]

2. "Loss and Damage" Cases

The courts' answers to questions of rights and obligations in "loss and damage" cases can fulfill climate litigation's standard-setting value through clarifying, and/or evaluating the fulfillment of, corporate obligations with respect to climate change. Piercing the prism of Westphalian, State-centric international law, the Philippine Commission on Human Rights outlined, *inter alia*, the applicable international legal obligations to corporations to protect human rights, such as those found under the UN Guiding Principles on Business and Human Rights.[210] Using these standards, the Commission subsequently found the Carbon Majors guilty.[211] Since they had knowledge of the adverse environmental effects of their products, they had "[e]ngaged in [w]illful [o]bfuscation and [o]bstruction to [p]revent [m]eaningful [c]limate [a]ction."[212] It is, however, not entirely clear how "loss and damage" cases involving tort claims fulfill climate litigation's standard-setting value, given that none of them have (yet) reached the pleading stage.

3. Interim Conclusions

Overall, the courts' answers to questions of rights and obligations fulfill climate litigation's standard-setting value in different ways. In "mitigation" and "failure to adapt" cases, courts may 1) integrate international legal standards into domestic law; 2) take evolutionary approaches to their jurisprudence; and/or 3) evaluate the fulfillment of governmental obligations with respect to climate change. Nevertheless, the courts' case-specific approaches to 1) the separation of powers and 2) causality risk impeding the extent to which such standard-setting value can be fulfilled. In "loss and damage" cases, courts may clarify, and/or evaluate the fulfillment of, corporate obligations with respect to climate change.

C. Questions of Remedies

1. "Mitigation" Cases

The courts' answers to questions of remedies in "mitigation" cases fulfill climate litigation's enforcement and compliance value through a

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209 *Future Generations*, C.S.J., Sala. Civ. abril 5, 2018, STC 4360-2018, at 39 (Colom.).

210 NATIONAL INQUIRY ON CLIMATE CHANGE REPORT: COMM'N ON HUM. RTS. OF THE PHILIPPINES 2022 72–73 (2022).

211 *Id.* at 104–05, 108–09.

212 *Id.* at 100–109.

range of orders. In *Klimaatzaak*, the Court of Appeal of Brussels not only intended to review the measures that the Belgian Government would take to comply with the ruling a year after the judgment was issued,[213] but also "innovative[ly]" claimed the power to demand penalty payments for non-compliance.[214] This ensures, as far as possible, that the Belgian Government would comply with the order issued by the Court through both punitive and non-punitive mechanisms.

The extent to which courts in "mitigation" cases can enforce their judgments will nevertheless depend on governmental willingness to comply. The order in *Do-Hyun Kim* was non-punitive—simply that the non-compliant piece of legislation had to be amended.[215] While the Constitutional Court did not provide extensive instructions as to what sort of mitigation targets the Government ought to implement, the South Korean Government announced its ambition to "design a long-term plan to achieve carbon neutrality by 2050" in response to the Court's ruling.[216]

2. "Failure to Adapt" Cases

The courts' answers to questions of remedies in "failure to adapt" cases contribute toward the fulfillment of climate litigation's enforcement and compliance value through non-repetition orders requiring policy-related changes from errant governments. This is seen in *Amazon Fund*: the Brazilian Supreme Court directly ordered the Federal Government to resume the distribution of funds under the Amazon Fund toward adaptation (and mitigation) measures and refrain from paralyzing the Fund's operation.[217]

Courts in these cases may, however, be unable to always fully achieve such value. This is potentially attributable to the judiciary's 1) lack of technical and scientific experience; 2) unwillingness to be seen as breaching the separation of powers in doing policymaking work on behalf of governments; and/or 3) broader policy disagreements as to what exactly adequate adaptation measures constitute. While the Supreme Court of Nepal in *Shrestha* eventually ordered the Government of Nepal to enact a new climate change law, its overall order can be critiqued for being overly general.[218] It broadly sketched general directions in which the Government could introduce legal, scientific, and governance

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213 Alice Briegleb & Antoine de Spiegeleir, *From Urgenda to Klimaatzaak: A New Chapter in Climate Litigation*, VERFASSUNGSBLOG (Dec. 5, 2023), https://verfassungsblog.de/from-urgenda-to-klimaatzaak/ [https://perma.cc/X2P8-SB2S].

214 Jenart, *supra* note 128, at 455.

215 Fantozzi & Udell, *supra* note 175.

216 *Id.*; Nissen, *supra* note 131.

217 R2HE Case Summary, *supra* note 146.

218 *See Shrestha*, Order No. 074-WO-0283, ¶ 6 (Sup. Ct., Div. Bench Dec. 25, 2018) (Nepal) (ordering the drafting and implementing of a new and adequate climate change legislation but using general terms of what must be in said legislation and proffered no concrete solutions).

mechanisms regarding urbanization, promotion of sustainable development, and evaluations of pollution or environmental degradation.[219] The Court thus failed to provide further detail as to what sort of mechanisms should be designed or the precise targets the Government should adopt.[220]

These limitations can nevertheless be mitigated through integrating accountability mechanisms within ordered measures to better secure governmental compliance. In *Future Generations*, the Supreme Court of Justice of Colombia ordered the Presidency of the Republic, the Ministry of Environment and Sustainable Development, and the Ministry of Agriculture and Rural Development to formulate measures in collaboration with the plaintiffs, affected communities, scientific organizations or environmental research groups, and the interested population in general.[221] This effectively demands public-private collaboration and accountability. Indeed, this order compels the Government to not only consider the perspectives of various affected stakeholders, but also enables non-governmental actors to function as a "check" on governmental policy actions. This possesses the potential to better ensure enforcement with the issued judgment.

Moreover, climate litigation's enforcement and compliance value may not be best fulfilled through orders for damages in "failure to adapt" cases. In *Notre Affaire à Tous et al.*, the Administrative Court of Paris ordered highly limited compensation—a symbolic €1—for "moral damage."[222] Arguments for compensation on the grounds of "ecological damage" were rejected because the Court believed it was possible for the State to take reparatory measures.[223] Such a finding might nevertheless be a function of the high bar established in the piece of French Civil Code used. Under Article 1249, it must be "impossible or insufficient" to take reparatory measures before the Court may order compensation.[224] Yet, demanding monetary remedies in "failure to adapt" cases may not sufficiently plug existing gaps in enforcement. Monetary remedies fail to tackle the root of the problem. Rather than directly ordering governments to change, monetary remedies punish governmental failures to implement satisfactory adaptation measures. While monetary remedies can have a punitive effect in deterring governments from continuing to implement adaptation measures in an unsatisfactory manner, this may not directly compel them to implement adaptation measures in a

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219 *Id.*

220 *Id.*

221 *Future Generations*, C.S.J., Sala. Civ. abril 5, 2018, STC 4360-2018, at 48 (Colom.).

222 *See Notre Affaire à Tous et al.*, Nos. 1904967, 1904968, 1904972, 1904976/4-1 (awarding symbolic €1 per claimant NGO for moral prejudice but rejecting symbolic €1 for ecological damage).

223 *See Notre Affaire à Tous et al.*, Nos. 1904967, 1904968, 1904972, 1904976/4-1, ¶ 37 (the court ordered further proceedings after a two-month period to allow for the relevant French ministers to take remedial action).

224 *Id.* ¶ 35.

satisfactory manner. [225] In explicitly requiring actions/changes from the errant party/parties, non-repetition orders thus better fulfill climate litigation's enforcement and compliance value vis-à-vis orders for damages.

3. "Loss and Damage" Cases

Existing answers to questions of remedies in "loss and damage" cases do not directly contribute toward climate litigation's enforcement and compliance value insofar as no court has issued any direct orders to corporations yet.

The sole proceeding that has made it to the remedies stage nevertheless indicates the potential for future litigants in "loss and damage" cases to realize climate litigation's enforcement and compliance value. The Philippine Commission on Human Rights' National Inquiry on Climate Change (the Carbon Majors Inquiry) maps out two routes for future litigants to demand change from errant corporations. The first category of litigants includes those who have suffered human rights abuses at the hands of Carbon Majors.[226] Here, Carbon Majors may be compelled to offer remediation should human rights abuses arise from their business operations, so long as they do business within the jurisdiction of the Philippines.[227] The second category of litigants includes shareholders of fossil-based companies.[228] Here, shareholders of fossil-based companies may receive damages for liability arising from Carbon Majors' continued oil exploration investments for largely speculative purposes, as well as acts of obfuscation of climate science.[229]

Further, the proposed approach to questions of remedies in pending "loss and damage" cases regarding tort claims can further contribute toward advancing climate litigation's enforcement and compliance value. This approach of proportional compensation based on global GHG emissions of the defendant corporation is advocated for by the applicants in *Holcim* and *Lliuya*. The former has asked for proportional compensation for climate damages suffered on Pari island based on significant and quantifiable GHG emissions by Holcim (0.42% of all global industrial carbon dioxide (CO_2)) and for Holcim to contribute financially

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[225] *See, e.g.*, Robert J. Rhee, *A Financial Economic Theory of Punitive Damages*, 111 MICH L. REV. 33, 48–49, 87 (2012) (arguing that the variance in punitive damages is not accounted for in standard law and economic theory); Keith N. Hylton, *Punitive Damages and the Economic Theory of Penalties*, 87 GEO. L.J. 421, 423, 458–60 (1998) (arguing for a change to how punitive damages are approached in order to adequately deter the offender from offensive conduct).

[226] *See generally* NATIONAL INQUIRY ON CLIMATE CHANGE REPORT, *supra* note 210, at 112–14 (describing that a business enterprise—including Carbon Majors—may be compelled to offer remediation due to inflicting human rights abuses).

[227] *Id.*

[228] *Id.*

[229] *Id.* at 131.

to flood-protection measures;[230] the latter has asked RWE to make a pro rata contribution to flood protection measures in proportion to its contribution to global GHG emissions.[231] These quantitative approaches are practicable. Given advancements in attribution science enabling lawyers and litigants to identify with precision the cumulative CO_2 emissions of large corporations, judges may be able to use such scientific data to make precisely quantified orders for compensation.[232] Achieving action from the errant corporation in the form of damages is thus possible.

4. Interim Conclusions

Overall, the courts' answers to questions of remedies contribute toward fulfilling climate litigation's enforcement and compliance value in case-specific ways. In "mitigation" cases, such value is advanced through a range of punitive and non-punitive orders. However, the extent to which such value can be achieved is contingent on governmental willingness to comply.

In "failure to adapt" cases, non-repetition orders achieve such value through requiring policy-related changes from errant governments. Courts in such cases may, however, be unable to fully achieve such value. This could nevertheless be mitigated through integrating accountability mechanisms within ordered measures. Non-repetition orders, in directly compelling change from errant governments, also better achieve climate litigation's enforcement and compliance value in "failure to adapt" cases compared to orders for damages.

In "loss and damage" cases, such value has not yet been achieved since no court has issued any direct orders to corporations thus far. Potential can nevertheless be found within existing cases. The sole court that has made it to the remedies stage has mapped out how future litigants may demand change from errant corporations. Moreover, the proposed method of quantification of damages in pending cases holds at least some promise in further advancing climate litigation's enforcement and compliance value—it aligns with advancements in attribution science.

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230 Wewerinke-Singh, *supra* note 17, at 551.

231 Nina Koistinen, Catherine Higham & Joana Setzer, *Will Polluters Pay? Evidentiary Hearings in the Case of Lliuya v. RWE in the Wider European Context*, LONDON SCH. OF ECON. & POL. SCI.: GRANTHAM RSCH. INST. ON CLIMATE CHANGE & THE ENV'T (Mar. 17, 2025), https://www.lse.ac.uk/granthaminstitute/news/will-polluters-pay-evidentiary-hearings-in-the-case-of-lliuya-v-rwe-in-the-wider-european-context/ [https://perma.cc/CDS4-H4FR].

232 Schellenberg Whittman, *The Role of Attribution Science in Climate Litigation Against Companies,* ESG DISPS. REP., Apr. 2023, at 1, 3 https://www.swlegal.com/media/filer_public/24/67/2467c628-13de-4f63-b973-1218d0306bc4/sw_esg_report_no2_apr23_en.pdf [https://perma.cc/MD2Z-NPNH].

D. The Current State of Climate Reparations: Domestic Climate Litigation

1. The Four Pillars of Climate Justice

But how just—or unjust—is this current state of climate reparations under climate litigation before domestic courts using domestic and international law (here, the PA)? Akin to the assessment undertaken in Part III.B, this question will be answered using the four pillars of climate justice—procedural justice, recognition justice, distributive justice, and intergenerational justice.

Litigants have been able to achieve procedural justice through climate litigation so long as 1) domestic courts do not disregard their arguments, and 2) applicants are not limited by jurisdiction-specific legal doctrines and procedural rules. In "mitigation," "failure to adapt," and "loss and damage" cases, courts have enabled applicant participation in judicial processes. Such participation has been achieved through recognizing the standing of a range of individuals, harnessing constitutional procedures and constitutional/fundamental rights, and quantifying the potential value of the damage caused by corporate defendants respectively.

Litigants may also be able to achieve recognition justice through climate litigation's ability to recognize the inequalities suffered by applicants through "loss and damage" cases. Through enabling directly affected citizens to address how large corporations have breached their human rights, courts have allowed these citizens to demonstrate how the GHG emissions of large corporations have disproportionately and unjustly affected them. This dimension of justice is, however, not as strongly established in existing "mitigation" and "failure to adapt" cases. Applicants in these cases generally did not opt to single out potential inequalities they faced stemming from potential protected characteristics (e.g., indigenous status).[233] This may be attributable to these cases' emphasis on proving governmental failures to adhere to international standards and/or examining the severity of climate change's impacts on the populace and their rights more generally.

Intergenerational justice has similarly been achieved through "mitigation" and "failure to adapt" cases, though this will ultimately depend on the approaches to the separation of powers and causality taken by the selected court. This is achieved through courts evaluating the fulfillment of governmental obligations with respect to climate change, adopting an evolutionary—rather than strictly textual—approach to existing constitutional rights and legal concepts, and directly introducing the concepts of intergenerational justice and future generations into their

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[233] *See generally* Luporini, *supra* note 20, at 218–23 (defining "targeted adaptation cases" as "cases that seek to compel States to protect specific communities"); *see infra* Part VI.A.

jurisprudence. These thus address the impacts of climate change on future generations. More broadly, climate litigation can not only ensure that governments are living up to their adaptation obligations, but also encourage a transnational judicial culture that is willing to collectively develop the law to meet the ever-changing exigencies of climate change. This dimension of justice has, however, not been explored to a similar extent in existing "loss and damage" cases. The human rights lens explored by *Carbon Majors* may nonetheless facilitate the invocation of intergenerational justice in such cases in the future.

Lastly, distributive justice can be achieved through a range of punitive and non-punitive remedies in "mitigation" cases, non-repetition orders in "failure to adapt" cases, and damages in "loss and damage" cases. Yet the extent to which such value can be achieved is contingent on 1) whether these cases even reach, or have even reached, this stage to begin with, and 2) governmental willingness to comply with the letter and spirit of court orders. It follows that "mitigation" and "failure to adapt" cases can achieve distributive justice, while "loss and damage" cases have the potential to do so in the future.

2. Interim Conclusions

In examining the ability of climate litigation to achieve climate justice at the level of individuals as a whole, "mitigation" and "failure to adapt" cases can satisfactorily achieve procedural, intergenerational, and distributive justice, while "loss and damage" cases have achieved procedural and recognition justice, and have the potential to achieve intergenerational and distributive justice.

The limitations of this conclusion must be noted. First, the conclusion involved cases taken *as a collective*. Not every "mitigation" and "failure to adapt" case has been able to achieve procedural, intergenerational, and distributive justice. Based on the above analysis, only three out of the eight domestic "mitigation" cases—*Do-Hyun Kim*, *Klimaatzaak*, and *Six Youths*—and three out of the six domestic "failure to adapt" cases analyzed—*Amazon Fund*, *Shrestha*, and *Future Generations*—were able to do so. Further, as mentioned earlier, not every "loss and damage" case has made it to the remedies stage, thereby preventing definitive conclusions on the distributive justice of these cases.

Further, existing climate litigation has not been able to wholly remedy all the climate justice issues associated with international governance mechanisms under the PA. It is important to note from the outset that "mitigation," "failure to adapt," and "loss and damage" cases fundamentally involve citizens suing their home State or major corporations operating within their State. These cases thus do not directly tackle inequalities between developed and developing States: no existing case within these categories has involved a developing State itself bringing a case against a developed State. This is especially so for

"failure to adapt" cases. The current litigation configurations under this category of climate litigation cases include 1) developed State citizens suing a developed State government and 2) developing State citizens suing a developing State government.

Inequalities between developed and developing States—perpetuated by international governance mechanisms—may, however, be tackled indirectly through Global South citizens and judiciaries in "loss and damage" cases.[234] In helping citizens from developing States directly achieve compensation for damage caused by major corporations, these cases can be used to at least remedy some existing climate change-related damage. This may thus remedy the distributive justice issues of international governance mechanisms under the PA. The ability of citizens to do so will nonetheless be contingent on 1) their ability to access legal services and 2) whether their home court rules in their favor.

VI. SECURING CLIMATE REPARATIONS THROUGH INTERNATIONAL CLIMATE LITIGATION

Building upon Part V's conclusions on domestic courts, this Part will assess how climate litigation can be harnessed to obtain climate reparations for both States and individuals at the international level. Parts VI.A, VI.B, and VI.C will thus extend our mapping of climate litigation from the domestic to the international sphere. In doing so, these Parts will examine the potential of "mitigation," "failure to adapt," and "loss and damage" cases to better obtain climate reparations under international law—beyond solely the PA—and courts.

A. "Mitigation" Cases

Two notable "mitigation" cases from the European Court of Human Rights (ECtHR) exist at the international level. The first is *KlimaSeniorinnen v. Switzerland*,[235] which involved an association of elderly Swiss women bringing an action against Switzerland for the State's insufficient mitigation action.[236]

This case stands to enhance procedural justice for European litigants who have exhausted domestic remedies. The Court delineated criteria for standing in "mitigation" cases, creating a more restrictive standing test for individuals vis-à-vis associations.[237] This resulted in the finding that

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[234] *See supra* Part III.A.5.

[235] KlimaSeniorinnen v. Switzerland, App. No. 53600/20, ¶¶ 10, 25 (Apr. 9, 2024), https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-233206%22]} [https://perma.cc/77GT-GYC5].

[236] *Id.*

[237] Marko Milanovic, *A Quick Take on the European Court's Climate Change Judgments*, EJIL:TALK! (Apr. 9, 2024), https://www.ejiltalk.org/a-quick-take-on-the-european-courts-climate-change-judgments/ [https://perma.cc/T9GF-5GVT].

while the Swiss women did not have individual standing, their association did.[238] Kennedy believes that human rights generalizes too much in delegitimizing the suffering of more "typical" people.[239] This is true insofar as international climate litigation can incentivize a sort of exceptionalism in pleadings, thereby shaping the jurisprudence in a way that may be underinclusive in failing to protect all those vulnerable to climate change.[240] Yet, by making it easier for associations rather than individuals to bring cases, *KlimaSeniorinnen* prevents such exceptionalism from occurring. Rather, it encourages more "typical" people who are nevertheless suffering the impacts of climate change to collectively bring their human rights claims to—and be heard by—courts.[241]

The implication of this is that *KlimaSeniorinnen* does not strongly establish recognition justice. It was more focused on discussing what an Article 8-compatible climate mitigation legal framework by States would look like than highlighting the particular vulnerabilities of the elderly Swiss women.[242] However, this trade-off might have been necessary. Since the Grand Chamber did not want to focus on individual recognition tied to specific protected characteristics at the standing stage, it would not have made sense for the Chamber to then subsequently switch course when considering questions of rights and obligations.[243]

KlimaSeniorinnen also stands to enhance intergenerational justice through tackling the issue of the separation of powers. The Court effectively signaled to domestic European courts that it did have competence to—and should—act in the climate change context. It did so through first holding that "the necessity of addressing the urgent threat posed by climate change . . . [and] the general acceptance that climate change is a common concern of humankind" meant their competence in the climate change context could not be excluded.[244] It has also been suggested that the Court's hope was likely to leave room for domestic courts and tribunals to further manage climate litigation, based on its established principles.[245] Indeed, the Court explicitly highlighted the

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238 *See id.*

239 David Kennedy, *The International Human Rights Movement: Part of the Problem?*, 15 HARV. HUM. RTS. J. 101, 111–12 (2002).

240 *See infra* Part VI.B. (discussing *Daniel Billy and Others v. Australia*)

241 *See* Sicilianos & Deftou, *supra* note 31 (noting that *KlimaSeniorinnen* may encourage enhanced participation of NGOs in climate change litigation).

242 *See* Başak Çali & Chhaya Bhardwaj, *Watch This Space: Executing Article 8 Compliant Climate Mitigation Legislation in* Verein KlimaSeniorinnen v. Switzerland, EJIL:TALK! (July 15, 2024), https://www.ejiltalk.org/watch-this-space-executing-article-8-compliant-climate-mitigation-legislation-in-verein-klimaseniorinnen-v-switzerland/ [https://perma.cc/X LH6-6WST].

243 KlimaSeniorinnen v. Switzerland, App. No. 53600/20, ¶¶ 462, 480 (Apr. 9, 2024).

244 Milanovic, *supra* note 237.

245 *Id.*; Ole W. Pedersen, *Climate Change and the ECHR: The Results Are In*, EJIL:TALK! (Apr. 11, 2024), https://www.ejiltalk.org/climate-change-and-the-echr-the-results-are-in/ [https://perma.cc/5HXZ-2PAW].

"crucial role of domestic courts in enforcing State obligations related to climate change."[246]

The second notable "mitigation" case is *Duarte Agostinho and Others v. Portugal and 32 Others*,[247] which involved six youth applicants bringing claims against multiple respondent States.[248] This case was a missed opportunity to further enhance litigants' ability to achieve procedural justice at the European level once domestic remedies have been exhausted. Here, the Court declared the claims against all respondent States, save Portugal, inadmissible, on jurisdictional grounds and rejected the application against Portugal on procedural grounds, signaling that cross-border climate claims against foreign States face steep hurdles under the current admissibility framework.[249] This is despite the Court's explicit recognition that emissions can indeed adversely affect the rights of people beyond a State's borders.[250]

Overall, these international "mitigation" cases stand to further advance procedural justice for litigants before European courts, though they do not go quite as far as they could have. Even as further advancing procedural justice may have come at the cost of achieving greater recognition justice, this is arguably a necessary trade-off in this context. They also stand to enhance litigants' ability to achieve intergenerational justice through tackling the issue of the rightful separation of powers in relation to climate litigation.

B. "Failure to Adapt" Cases

One notable "failure to adapt" case exists at the international level. *Billy v. Australia* ("*Billy*")[251] involves eight Torres Strait Islanders—an indigenous minority group—bringing a communication before the Human Rights Committee (HRC).[252] These Islanders alleged Australia's failure to take adequate adaptation (and mitigation) measures to combat climate change's effects.[253]

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246 Annalisa Savaresi, Verein KlimaSeniorinnen Schweiz and Others v Switzerland*: Making Climate Change Litigation History*, 34 REV. EUR., COMPAR. & INT'L ENV'T L. 279, 283–84 (2025).

247 Duarte Agostinho & Others v. Portugal & 32 Others, App. No. 39371/20 (Apr. 9, 2024), https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-233261%22]} [https://perma.cc/5A3T-7F7C?type=image].

248 *Id.* ¶ 11.

249 Corina Heri, *On the Duarte Agostinho Decision*, COLUM. L. SCH.: SABIN CTR. FOR CLIMATE CHANGE L. (Apr. 16, 2024), https://blogs.law.columbia.edu/climatechange/2024/04/16/on-the-duarte-agostinho-decision/ [https://perma.cc/TN2B-NLLL].

250 *Id.*

251 Hum. Rts. Comm., 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 (Sep. 18, 2023) [hereinafter *Views Adopted*].

252 *Id.* ¶¶ 1.1, 2.1.

253 *Id.* ¶¶ 2.7–3.7.

Billy stands to enhance how domestic courts currently approach the question of rights and obligations. Through extending the applicability of indigenous rights to climate change, the HRC enables "failure to adapt" litigation to additionally achieve recognition justice. In this case, it held that Australia's failure to adopt timely and adequate adaptation measures violated the authors' right to enjoy their minority culture—one closely associated with territory and traditional resource use.[254] By interpreting Article 27 of the International Covenant on Civil and Political Rights (ICCPR) to include safeguarding the Islanders' cultural identity, the HRC acknowledges that Australia limited the Islanders' ability to transmit their culture and traditions to "their children and future generations."[255] This thus encourages future litigants to single out potential inequalities faced by them stemming from protected characteristics.

Billy could nevertheless have done better at achieving intergenerational justice. It ultimately fell short of augmenting the limited international jurisprudence on adaptation obligations.[256] In doing so, this case failed to equip domestic courts with sufficient guidance on how to (better) examine a State's implementation of adaptation measures through a human rights lens. The majority did not closely examine the existing state of adaptation measures in the Torres Strait Islands—at least in relation to the authors' allegation of a breach of the right to life. Instead, the majority took a more future-oriented approach. Unquestioningly accepting Australia's argument that it has been "taking adaptive measures to reduce existing vulnerabilities and build resilience," the majority believed "the time frame of 10 to 15 years… could allow for intervening acts" by Australia.[257]

The partial dissent of Bulkan, Kran, and Sancin nonetheless illuminates the majority position's flaws. In examining the actual number of adaptation measures implemented by Australia at the time the Views were issued (1 out of 34), these Members realized that "promises of future projects are insufficient remedies."[258] They also attributed the authors' soil erosion and lost crops to flooding—flooding that more expeditious seawall construction by Australia would have averted.[259]

Moreover, *Billy* provides an alternative litigation route for litigants who did not manage to receive sufficient justice domestically. It ensures procedural justice through creating a relatively low barrier for admissibility: the HRC accepted the communication on the grounds that

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254 *Id.* ¶¶ 8.13–8.14.

255 *Id.*

256 This limited state of adaptation jurisprudence is, at least in part, attributable to domestic climate change legislation's relatively heavier focus on mitigation. *See* Luporini, *supra* note 20, at 211–13.

257 *Views Adopted*, *supra* note 251, ¶ 8.7.

258 *Id.* ¶ 6 (containing Annex V, the "Joint Opinion of Committee Members Arif Bulkan, Marcia V.J. Kran and Vasilka Sancin (partially dissenting)").

259 *Id.*

the *risk* of rights violations from serious adverse climatic impacts that have occurred, and are ongoing, is "more than a theoretical possibility."[260] The HRC's non-repetition order also ensures distributive justice. In recognizing that the authors "would likely be unable to finance adequate adaptation measures themselves" given limited resources, the Committee ordered, *inter alia*, that Australia provide adequate compensation to the Islanders for the harms suffered.[261] This creates a fairer allocation of climate change's burdens between affected citizens and errant governments.

Despite its availability, applicants' ability to actually use this litigation route depends on two considerations. First, applicants must fulfill several procedural requirements. Under the First Optional Protocol to the ICCPR, these include, *inter alia*, the general need to exhaust domestic remedies and the need for the applicants' home State to have consented to the treaty body's jurisdiction to receive complaints.[262] Further, future applicants wishing to use this HRC precedent before the HRC itself—or any other international human rights treaty body—will likely have to draw parallels between their case and *Billy* as closely as possible. Given that *Billy* is the sole international "failure to adapt" case to date, and that the HRC closely integrated the Islanders' indigenous practices in its reasoning in finding a breach of Article 17, the degree to which the HRC may be willing to extend this precedent under Article 17 to other non-indigenous applicants in the future is not entirely clear. [263]

Overall, "failure to adapt" cases at the international level complement litigation before domestic courts. *Billy* has opened a new door for indigenous applicants to sue governments for inadequate measures based on indigenous rights, thereby enabling such litigation to additionally achieve recognition justice for individuals. *Billy*, however, failed to further advance intergenerational justice: it does not advance the limited international jurisprudence on adaptation obligations.

Even if the interested applicants were not indigenous, *Billy* may nevertheless provide a desirable alternative route for them: these litigants have the possibility of litigating breaches of the right to private, family, and home life. This alternative route thus ensures procedural and distributive justice. The extent to which future litigants can rely on this route will nevertheless depend on 1) their ability to fulfill procedural requirements and 2) the extent to which they can draw parallels with *Billy*'s established precedent.

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[260] *Id.* ¶¶ 7.9–7.10.

[261] *Id.* ¶¶ 7.10–11.

[262] *Id.* ¶¶ 7.2–7.3; Riccardo Luporini & Annalisa Savaresi, *International Human Rights Bodies and Climate Litigation: Don't Look Up?*, 32 REV. EUR., COMPAR. & INT'L ENV'T L. 267, 272–74 (2023).

[263] *Views Adopted*, *supra* note 251, ¶¶ 8.10, 8.12.

C. "Loss and Damage" Cases

Approaches to legal causation for determining compensation under international law reinforce the strength of the proposed proportional compensation approach advanced in pending "loss and damage" cases—an approach that may best achieve distributive justice.[264] The prevailing standard of causation under international law is a sufficiently direct and certain causal nexus.[265] Such a standard does not, however, directly indicate the extent to which historical causes should be considered. Further, in its first environmental compensation decision, the International Court of Justice (ICJ) developed its own valuation method for environmental damage by "adopting an overall assessment of the impairment or loss of environmental goods and services prior to recovery, rather than attributing values to specific categories of environmental goods and services and estimating recovery periods for each of them."[266] This method lacks sufficient clarity. While the ICJ expanded on the considerations that must be accounted for in an overall valuation,[267] it provided no mathematical proof as to how it arrived at its final damages award of $120,000 to Costa Rica for its environmental damage suffered.[268] The ICJ's approach thus renders achieving distributive justice challenging: it provides inadequate guidance on how to appropriately allocate the burdens of climate change.

Institutionally, the ICJ is a potential suitable forum for extending existing "loss and damage" litigation beyond the citizen-corporation framing. It not only facilitates an inter-State framing of such litigation but also allows developing States to claim damages as remedies.[269] This contrasts with complaints before UN human rights treaty bodies. Although these bodies can consider inter-State communication procedures, they do not award damages as remedies.[270] Litigation before

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[264] For further elaboration on how the proposed proportional compensation approach achieves distributive justice see *supra* Part V.C.3.

[265] André Nollkaemper, *Causation Puzzles in International Climate Litigation*, 33 ITALIAN Y.B. INT'L L 25, 31 (2022).

[266] Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicar.), Judgment, 2018 I.C.J. 15, ¶ 78 (Feb. 2).

[267] *Id.* ¶ 75, 83.

[268] *Id.* ¶ 86.

[269] It is notable that the ICJ recently concluded in its advisory opinion on climate change that "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." *See* Obligations of States in Respect of Climate Change, Advisory Opinion, 2025 I.C.J., ¶ 420 (July 23).

[270] *See, e.g.*, *Introduction: Committee on the Elimination of Racial Discrimination*, UNITED NATIONS: HUM. RTS. OFF. OF THE COMM'R, https://www.ohchr.org/en/treaty-bodies/cerd/introduction [https://perma.cc/7P24-82H6] (last visited Mar. 2, 2026) (describing the work of the Committee on the Elimination of Racial Discrimination, which does not include awarding damages in consideration of inter-State complaints).

the ICJ may thus enable climate litigation to directly tackle the developed-developing State inequality perpetuated by the existing climate governance regime under the PA, which could serve to reduce the intergenerational and distributive injustice caused by these mechanisms.[271]

It should nevertheless be noted that the availability of the ICJ as a suitable forum is subject to two overarching considerations. First, the applicant developing State must be able to establish standing and the ICJ's compulsory jurisdiction in their case. While a directly injured State may straightforwardly invoke the international responsibility of the breaching State,[272] *jus standi* before international courts may be obtained—even if the claimant is not a directly injured State—when *erga omnes* environmental obligations are litigated.[273] Obtaining the latter is, however, only a possibility. There is ultimately a dearth of practice on this question, which is partially attributable to challenges with determining the legal effects of *erga omnes* obligations more generally.[274] *Locus standi* before the ICJ will also generally not be granted to States claiming a violation of an *erga omnes* obligation, should 1) the State's subjective interest fail to be injured, or 2) any pleaded material injury likely be unrealized in the future.[275]

Second, for a developing State to bring a contentious climate case against a developed State before the ICJ, the developed State must have consented to the Court's jurisdiction. The State can consent either by making a declaration under the UNFCCC recognizing the ICJ's jurisdiction;[276] by accepting the compulsory jurisdiction of the ICJ under Article 36(2) of the ICJ Statute;[277] or by referring the case to the ICJ by special agreement (*compromis*).[278] Yet only the Netherlands has accepted the ICJ's compromissory jurisdiction over UNFCCC and PA-related disputes.[279] Major emitters like China and the United States have not

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271 *See supra* Part III.

272 Julian Edwards, *The Equal Interests of Injured and Non-Injured States for Communitarian Norms*, 23 L. & PRAC. INT'L CTS. & TRIBUNALS 438, 440 (2024); Int'l L. Comm'n, Rep. on the Work of Its Fifty-Third Session, at 117–18, U.N. Doc. A/56/10 (2001).

273 Maiko Meguro, *Litigating Climate Change Through International Law: Obligations Strategy and Rights Strategy*, 33 LEIDEN J. INT'L. L. 933, 937 (2020).

274 Jutta Brunnée, *International Environmental Law and Community Interests: Procedural Aspects*, *in* COMMUNITY INTERESTS ACROSS INTERNATIONAL LAW 151, 174 (Eyal Benvenisti & Georg Nolte eds., 2018).

275 Yasuhiro Shigeta, *Obligations to Protect the Environment in the ICJ's Practice: To What Extent Erga Omnes*, 55 JAPANESE Y.B. INT'L L. 176, 198–99 (2012).

276 UNFCCC, art. 14(2)(A), May 9, 1992, 1771 U.N.T.S. 107.

277 Statute of the International Court of Justice art. 36, ¶ 2.

278 *Id.* art. 36, ¶ 1.

279 DAPO AKANDE, NAOMI HART & MUBARAK WASEEM, ESSEX COURT CHAMBERS, CLIMATE CHANGE LAW. CURRENT PERSPECTIVES: CLIMATE CHANGE AND PROCEEDINGS BEFORE THE ICJ AND ITLOS 3 (2022), https://essexcourt.com/wp-content/uploads/2022/10/Climate-Change-and-Proceedings_Week9.pdf [https://perma.cc/VB4C-9B9N].

accepted the ICJ's compulsory jurisdiction.[280] In view of this, China and the United States would likely not consent to the Court hearing a contentious "loss and damage" case against them.

Whether climate litigation can directly tackle the developed-developing State inequality perpetuated by international governance mechanisms will also depend on the extent to which the ICJ is willing to move beyond its existing environmental jurisprudence. A principle that may be invoked in inter-State "loss and damage" litigation is the prevention principle, which obliges States to avoid causing environmental harm.[281] This is likely to be the case: a majority of State participants in the ICJ advisory proceedings on climate change argued that the prevention principle applies to anthropogenic GHG emissions.[282] But established jurisprudence differs. The ICJ has traditionally taken the application of this principle to mean that States ought to negotiate with each other to find an agreed solution, with the Court refusing to impose a specific outcome on them.[283] This risks, however, perpetuating the power inequalities experienced by developing States under international governance mechanisms.[284]

Overall, international law supplements domestic "loss and damage" cases undertaken by affected citizens against errant corporations. It first does so by suggesting that proportional compensation—the approach that can best achieve climate justice—is the most appropriate approach to undertake regarding "loss and damage" claims. International law additionally supplements domestic "loss and damage" cases by extending their ability to deliver climate justice from individuals to States. Indeed, the ICJ potentially offers a suitable forum for inter-State "loss and damage" litigation. This directly tackles the developed-developing State inequality perpetuated by international governance mechanisms under the PA, and potentially better secures climate justice at the level of States. The viability and desirability of such litigation will nonetheless be largely dependent on whether 1) the developing State bringing the case

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[280] *Declarations Recognizing the Jurisdiction of the Court as Compulsory*, INT'L CT. OF JUST., https://www.icj-cij.org/declarations/ [https://perma.cc/E2K4-86PT] (last visited Feb. 14, 2026).

[281] *See Loss and Damage*, LEGAL RESPONSE INT'L (Oct. 10, 2013), https://legalresponse.org/resource/loss-and-damage/ [https://perma.cc/R5ZT-TAXV] (last visited Mar. 2, 2026)

[282] Thomas Burri, *The ICJ's Advisory Opinion on Climate Change: A Data Analysis of Participants' Submissions*, AM. SOC. OF INT'L L. INSIGHTS, Dec. 9, 2025, at 1, 4–5.

[283] *See, e.g.*, Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, 1996 I.C.J. 226, ¶ 105 (July 8) (holding that there is an obligation to negotiate in good faith to bring nuclear disarmament under international control but refusing to impose specific guidelines); Gabčíkovo-Nagymaros Project (Hung./Slovk.), Judgment, 1997 I.C.J. 7, ¶¶ 140–141 (Sep. 25) (holding that the final result of the negotiations at issue are to be conducted and agreed upon by the parties). *See also* Obligations of States in Respect of Climate Change, 2025 I.C.J., ¶¶ 274–279 (July 23) (confirming that the prevention principle applies to anthropogenic climate change but refusing to prescribe specific outcomes).

[284] *See supra* Part III.

can establish standing and the ICJ's compulsory jurisdiction, and 2) the extent to which the ICJ is willing to develop its climate change-related jurisprudence beyond its existing environmental jurisprudence.

VII. IMPLICATIONS FOR FUTURE CLIMATE LITIGATION

After analyzing domestic and international climate litigation through the framework established in Part II, Part VII.A will highlight the overarching limits climate litigation finds itself subject to in seeking to achieve climate reparations, namely 1) the interface of domestic and international legal principles, and 2) international governance mechanisms. This illustrates our terrain's deeply intertwined nature. Part VII.B will then identify the implications of the above analysis for the international law on mitigation, adaptation, and loss and damage.

A. The Overarching Limits of Climate Litigation

The overall ability of climate litigation to achieve climate justice for both States and individuals is subject to two overarching limits. The first overarching limit is that of the extent to which domestic courts wish to integrate the letter and the spirit of international legal norms into their domestic jurisprudence. Some may not perceive this as a limit, given that international law—beyond solely the PA—has increasingly found its way before domestic courts. Indeed, the increasing invocation of international obligations concerning climate change before domestic courts can be attributable to international law's growing tendency toward "inward looking" obligations—obligations that often require States to undertake specific measures within their jurisdiction.[285] In addition to directly invoking obligations under the PA, a growing number of litigants before domestic courts have also been harnessing violations of international human rights obligations to hold States responsible.[286] Such a perspective nevertheless fails to acknowledge that domestic courts are the ultimate arbiters of their domestic jurisprudence.

Two key implications flow from this. First, domestic courts are not obliged to adopt the approaches of other domestic and international courts when it comes to "failure to adapt" and "loss and damage" cases.[287] Further, the extent to which domestic courts wield discretion over the integration—and interpretation—of international norms would depend on whether their State adheres to a monist or dualist treatment of international law.[288] Even if international law were to establish

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285 Savaresi, *supra* note 164, at 287–88.

286 Meguro, *supra* note 273, at 940.

287 VICKI C. JACKSON, CONSTITUTIONAL ENGAGEMENT IN A TRANSNATIONAL ERA 268–69 (2010).

288 *See supra* Part V.B.

approaches to further enhance domestic "failure to adapt" cases, domestic courts are not obliged to (wholly) integrate these approaches into their jurisprudence. Courts are, however, somewhat compelled to do so. Indeed, considering international approaches "dispel[s] the appearance of disregard for what are properly viewed as shared legal concerns."[289]

The second overarching limit extends beyond the scope of climate litigation itself—that of the existing climate governance regime under the PA. Climate litigation may go some way in tackling the distributive and intergenerational dimensions of climate justice at the level of States, for its outcomes have the potential to affect the outcomes of international negotiations.[290] Yet it cannot be expected to wholly eradicate the power inequalities between developed and developing States that are evinced in international governance mechanisms under the PA. These inequalities ultimately originate beyond the legal system itself.[291] Power inequalities can nonetheless be addressed under Global South-led and SIDS-targeted proposals—these initiatives precisely seek to at least minimize them.[292]

It must be noted that "inefficiency" is not an overarching limit of climate litigation. Climate litigation may not necessarily be a less efficient manner of achieving climate justice vis-à-vis international governance mechanisms, both under and beyond the PA. International governance mechanisms could more extensively address climate change-related issues, insofar as they ensure that all affected citizens—not just those able and willing to litigate—may achieve climate justice.[293] But international governance mechanisms are not without their shortcomings. Some scholars argue against harnessing litigation to obtain compensation, instead preferring a negotiated scheme recognizing collective responsibility for climate change.[294] In seeking to achieve a more equitable distribution of the costs and burdens of climate change, this proposed scheme connects historical colonial injustice and current/future climate crisis.[295]

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289 JACKSON, *supra* note 287, at 255.

290 *See, e.g.*, Nollkaemper, *supra* note 265, at 49; Wewerinke-Singh, *supra* note 17, at 561; Wewerinke-Singh & Salili, *supra* note 76, at 688.

291 *See, e.g.*, Irene Lodigiani, *From Colonialism to Globalization: How History has Shaped Unequal Power Relations between Post-Colonial Countries*, GLOCALISM: J. CULTURE, POL. & INNOVATION, July 31, 2020, at 1, 2, 16–17, 19 (discussing how neocolonialism contributes to entrenched inequality between developed and underdeveloped States); Kennedy, *supra* note 239, at 116–118 (discussing the failures of the human rights movement in addressing inequality).

292 *See infra* Parts III.A.5, III.B.2.

293 Daniel Bodansky, *The Role of the International Court of Justice in Addressing Climate Change: Some Preliminary Reflections,* 49 ARIZ. ST. L.J. 689, 706–707 (2017).

294 Nollkaemper, *supra* note 265, at 49.

295 *See generally* OLÚFẸ́MI O. TÁÍWÒ, RECONSIDERING REPARATIONS 1–13, 69–103, 149–190 (2021) (arguing for a forward-looking, constructive account of reparations that links historical, colonial, and racial injustice to present and future distributive obligations, including allocating the burdens of global crises more equitably).

Yet, multilateral climate negotiations progress slowly. In having historically taken decades to complete, these negotiations leave affected citizens unable to receive appropriate compensation expeditiously. Even if bilateral climate change negotiations were to advance more quickly than litigation, their outcomes can still, *inter alia*, require developing States to accept security considerations from developed States. For example, the Australia-Tuvalu Falepili Union Treaty requires Tuvalu to mutually agree with Australia any security- or defense-related engagement with third parties.[296]

B. Implications for Implementing the International Law on Mitigation, Adaptation, and Loss and Damage

Three implications follow from the above analysis for the international law on mitigation, adaptation, and loss and damage. First, although domestic law has "run out" in relation to climate change, it may be the imperfections of the international law on adaptation and loss and damage under the PA encouraging the extension of domestic law to meet the exigencies of climate change.[297] This is not to say that the PA should remain flawed. Rather, the analysis merely acknowledges that domestic and international legal systems can reinforce each other. This also does not equate imperfection with inutility. Although the PA itself provides neither clear adaptation and loss and damage obligations nor a directly litigable scheme for "loss and damage,"[298] the PA has facilitated the integration of human rights obligations into the climate regime through domestic climate litigation.[299]

Moreover, international law, where used to support climate litigation, should not be thought of as wholly distinct from international governance mechanisms. The international law used to support climate litigation could itself call for further action under international governance mechanisms; the ICJ's approach under the prevention principle is an example of this.[300] The above analysis also indicated that at least some of the limits of international law—and of climate litigation more broadly—could be tackled by Global South-led and SIDS-targeted proposals.

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296 *See* AUSTRALIA-TUVALU FALEPILI UNION TREATY, AUSTL.–TUV., art. 4(4), Nov. 9, 2023 (entered into force Aug. 28, 2024).

297 *See* Scott J. Shapiro, *The 'Hart-Dworkin' Debate: A Short Guide for the Perplexed*, (Univ. of Mich. L. Sch.: Public Law and Legal Theory Working Paper Series, Working Paper No. 77, 2007) (describing the notion of the law "run[ning] out").

298 *See infra* Part III.A.

299 *See infra* Part V.B; John H. Knox, *The Paris Agreement as a Human Rights Treaty*, *in* HUMAN RIGHTS AND 21ST CENTURY CHALLENGES POVERTY, CONFLICT, AND THE ENVIRONMENT 323, 323–324 (Dapo Akande ed., 2020)

300 *See infra* Part VI.C.

Finally, the international legal provisions on mitigation, adaptation, and loss and damage under the PA might not, in themselves, adequately achieve climate justice. These provisions can nonetheless be better implemented through a combination of domestic and international law and courts. Domestic courts operate at the interface of domestic and international law, with domestic approaches strengthened and/or reinforced by international norms (beyond the PA) and courts. Such a domestic-international legal interaction under climate litigation secures climate justice to a greater extent for both States and individuals than 1) the existing climate governance regime under the PA, and 2) domestic courts using domestic law and the PA respectively.

VIII. CONCLUSION

This Article explored the concept of climate reparations by mapping its complex terrain while providing a compass for navigation. After laying the groundwork for orientation, it began its exploration of international governance mechanisms. Using the compass of climate justice, it found that the existing climate governance regime under the PA somewhat advances the procedural and recognition dimensions of climate justice. That being said, this regime has failed to adequately achieve the distributive and intergenerational dimensions of climate justice at the level of States.

The topography of this terrain varies. Assuming wide and expeditious implementation, Global South-led and SIDS-targeted proposals possess the potential to achieve all the dimensions of climate justice in the future. The overall ability of international governance mechanisms to achieve climate reparations is, however, subject to broader limits: 1) non-uniform understandings of climate finance concepts under the PA, 2) overarching political dynamics, and 3) non-negligible risks of ISDS on the implementation of climate reparations. Strong minilateral international governance mechanisms are thus necessary to achieve climate reparations for States.

This Article then shifted its focus to climate litigation. Again, using its compass, it found that climate litigation before domestic courts using domestic law and the PA has largely been able to secure climate justice at the level of individuals. "Mitigation" and "failure to adapt" cases have satisfactorily achieved procedural, intergenerational, and distributive justice. "Loss and damage" cases have achieved procedural and recognition justice, and have the potential to achieve intergenerational and distributive justice.

But this topography is similarly far from uniform. Looking beyond domestic law and courts, climate litigation can be harnessed to better—albeit not fully—secure climate reparations using international law (beyond solely the PA) and courts. International "mitigation" cases indeed stand to further enhance procedural and intergenerational justice.

International "failure to adapt" cases enable such litigation to additionally achieve procedural, recognition, and distributive justice. And international "loss and damage" cases reinforce the distributive justice that can be achieved, while having the potential to tackle inter-State inequalities perpetuated under the PA. Climate litigation's ability to secure climate reparations is nevertheless subject to broader limits in relation to 1) the interface of domestic and international law/litigation, and 2) international governance mechanisms. These limits notwithstanding, climate litigation using domestic and international law and courts is ultimately necessary to better achieve climate reparations for individuals and States.

Overall, the dual elements of this terrain—international governance mechanisms and climate litigation—are deeply intertwined, their topographies both mutually reinforcing and constraining one another. International governance mechanisms under the PA regime have, unfortunately, largely failed. Yet, at least some of their shortcomings can be remedied through 1) Global South-led and SIDS-targeted proposals as well as 2) climate litigation using domestic and international law and courts.

More importantly, we must not lose sight of the lens through which we have been viewing this terrain to begin with. Only by remedying past wrongs and preventing future harms can we align thinking about climate reparations with the very nature of climate change—that of a justice-related problem not simply afflicting the present, but also implicating the past and future.

APPENDIX I

List of "mitigation," "failure to adapt," and "loss and damage" cases

S/N	*Case (Year Filed, Status)*	*Category of Case*	*State(s) Involved*	*Judicial Body*
1	*Associação Último Recurso et al. v. Portuguese State* (2023, pending)	Mitigation	Portugal	Supreme Court of Portugal
2	*Do-Hyun Kim et al. v. South Korea* (2020, decided)	Mitigation	South Korea	Constitutional Court of Korea
3	*Duarte Agostinho and Others v. Portugal and 32 Other States* (2020, decided)	Mitigation	Member States of the Council of Europe, and Norway, Russia, Switzerland, Turkey, Ukraine, and the United Kingdom	European Court of Human Rights
4	*Finnish Association for Nature Conservation and Greenpeace v. Finland* (2022, decided)	Mitigation	Finland	Supreme Administrative Court of Finland
5	*Greenpeace v. Spain II* (2021, decided)	Mitigation	Spain	Supreme Court of Spain
6	*KlimaSeniorinnen v Switzerland* (2020, decided)	Mitigation	Switzerland	European Court of Human Rights

7	*La Rose v. Her Majesty the Queen* (2019, pending)	Mitigation	Canada	Court of Appeals of Canada
8	*Six Youths v. Minister of Environment and Others* (2021, decided)	Mitigation	Brazil	Federal Court of São Paulo
9	*VZW Klimaatzaak v. Kingdom of Belgium & Others* (2014, pending)	Mitigation	Belgium	Court of Appeal of Brussels
10	*Daniel Billy and others v. Australia* (2019, decided)	Failure to adapt	Australia	United Nations Human Rights Committee
11	*Declic et al. v. The Romanian Government* (2023, decided)	Failure to adapt / Mitigation	Romania	Cluj Court of Appeal
12	*Future Generations v. Ministry of the Environment and Others* (2018, decided)	Failure to adapt	Colombia	Supreme Court of Justice of Colombia
13	*Klimatická žaloba ČR v. Czech Republic* (2021, decided)	Failure to adapt	Czech Republic	Prague Municipal Court
14	*Notre Affaire à Tous et al. v. France* (2018, pending)	Failure to adapt	France	Administrative Court of Paris
15	*PSB et al. v. Brazil (on Amazon Fund)* (2020, decided)	Failure to adapt	Brazil	Supreme Federal Court

16	*Shrestha v. Office of the Prime Minister et al.* (2017, decided)	Failure to adapt	Nepal	Supreme Court of Nepal
17	*Asmania et al. v Holcim* (2022, pending)	Loss and damage	Switzerland, Indonesia	Pending
18	*Baihua Caiga et al. v. PetroOriental S.A.* (2020, decided)	Loss and damage	Ecuador, China	Family, Women, and Children Judicial Unit
19	*Lliuya v. RWE* (2015, on appeal)	Loss and damage	Germany, Peru	Essen Regional Court
20	*Philippine Reconstruction Movement and Greenpeace v. Carbon Majors* (2015, decided)	Loss and damage	The Philippines	Commission on Human Rights