

Environmental Justice and Climate Litigation: Expanding the Role of Courts in Protecting Vulnerable Communities

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ABSTRACT

Climate change is increasingly understood as an environmental justice problem because its harms are distributed unevenly and disproportionately imposed on groups with the least capacity to adapt, including indigenous peoples, coastal and small-island communities, informal urban residents, older persons, women, children, and low-income workers. Climate science confirms that vulnerability is shaped by exposure, sensitivity, and adaptive capacity, and that these factors are strongly mediated by inequality and governance (IPCC, 2022). In parallel, climate litigation has expanded globally as claimants challenge inadequate mitigation, adaptation failures, and climate-inconsistent public and private decision-making (United Nations Environment Programme [UNEP], 2023).

This article examines how courts can legitimately expand their role in protecting vulnerable communities through environmental justice-oriented climate adjudication. Using doctrinal and comparative methods, it synthesizes rights-based reasoning, due diligence standards informed by the best available science, and procedural justice requirements (information, participation, non-discrimination, and effective remedies). The analysis draws on landmark decisions such as *Urgenda Foundation v. State of the Netherlands* (Supreme Court of the Netherlands, 2019), *Leghari v. Federation of Pakistan* (Lahore High Court, 2015), the UN Human Rights Committee's decision in *Billy et al. v. Australia* (Human Rights Committee, 2022), and the European Court of Human Rights judgment in *Verein KlimaSeniorinnen Schweiz v. Switzerland* (European Court of Human Rights, 2024). It also incorporates authoritative developments in international law, including the ITLOS advisory opinion on climate change and the law of the sea (International Tribunal for the Law of the Sea [ITLOS], 2024) and the ICJ advisory opinion on states' climate obligations (International Court of Justice [ICJ], 2025).

The article argues that courts need not become climate policymakers to provide effective protection. By enforcing minimum legal duties grounded in rights, reasoned decision-making, and science-informed due diligence, courts can correct systemic under-protection of vulnerable communities while respecting institutional boundaries. The article concludes by proposing an Environmental Justice Climate Adjudication Framework for standing, standards of review, evidence handling, and remedies.

KEYWORDS: Environmental justice; climate litigation; human rights; vulnerable communities; due diligence; remedies; climate governance

INTRODUCTION

Climate change has emerged as one of the most profound legal and ethical challenges of the twenty-first century. Unlike traditional environmental harms, which are often localized, temporally bounded, and attributable to discrete actors, climate change is cumulative, transboundary, and intergenerational in nature. Its impacts permeate nearly every sphere of human life, affecting health, food security, water availability, housing, livelihoods, and cultural survival. Yet, despite its global character, climate change is not experienced uniformly. Scientific assessments and socio-legal research consistently demonstrate that its burdens fall disproportionately on communities that have contributed the least to greenhouse gas emissions and possess the weakest adaptive capacities (IPCC, 2022; OHCHR, 2019).

This asymmetry places environmental justice (EJ) at the center of climate governance and climate adjudication. Climate change is not merely an environmental or economic problem; it is fundamentally a

problem of inequality, power, and legal protection. Vulnerable communities—such as indigenous peoples, small-island and coastal populations, informal urban settlers, subsistence farmers, older persons, women, children, and low-income workers—are systematically exposed to higher climate risks while simultaneously facing exclusion from decision-making processes and limited access to legal remedies (Schlosberg, 2007; Atapattu, 2018).

In response to persistent regulatory inertia and governance failures, climate litigation has expanded rapidly across domestic and international jurisdictions. Courts are increasingly being asked to adjudicate claims that link inadequate climate action with violations of constitutional rights and international human rights obligations. According to the United Nations Environment Programme (UNEP, 2023), climate litigation has evolved from procedural environmental disputes into a sophisticated body of rights-based and accountability-oriented claims. This judicial turn raises critical questions regarding the legitimacy, scope, and potential of courts to address climate injustice.

This article advances the central argument that courts can legitimately expand their role in climate governance to protect vulnerable communities without overstepping democratic boundaries. Courts do not need to design climate policy; rather, they can enforce minimum legal standards grounded in human rights, due diligence, scientific rationality, and procedural fairness. Environmental justice provides the normative lens through which such judicial engagement can be coherently justified.

Part I of this article establishes the conceptual and theoretical foundations of environmental justice in the climate context and examines the emergence of climate litigation as a judicial response to vulnerability and governance deficits. It situates climate litigation within broader debates on rights, inequality, and institutional responsibility, laying the groundwork for the doctrinal and remedial analysis in Parts II and III.

ENVIRONMENTAL JUSTICE: CONCEPTUAL FRAMEWORK AND EVOLUTION

Origins and Core Dimensions of Environmental Justice

The concept of environmental justice originated in grassroots movements opposing the disproportionate siting of hazardous waste facilities in marginalized communities, particularly in the United States. Over time, EJ evolved into a comprehensive normative and analytical framework addressing inequities in environmental governance across local, national, and global scales (Bullard, 2000; Schlosberg, 2007).

Contemporary EJ scholarship identifies three interrelated dimensions:

1. Distributive justice, concerning the unequal allocation of environmental harms and benefits;
2. Procedural justice, focusing on access to information, participation in decision-making, and access to remedies; and
3. Recognition justice, emphasizing respect for cultural identity, social status, and historically marginalized ways of life (Schlosberg, 2007).

These dimensions are particularly salient in the climate context. Climate change amplifies distributive injustice by intensifying risks for populations already facing poverty and infrastructural deficits. Procedural injustice manifests when affected communities are excluded from climate policy formulation and adaptation planning. Recognition injustice arises when legal systems reduce climate harm to economic loss, ignoring cultural, spiritual, and identity-based dimensions of damage, particularly for indigenous peoples (Atapattu, 2018; Knox, 2018).

Environmental Justice in International Environmental and Human Rights Law

Although environmental justice is not explicitly codified in most international treaties, its principles are embedded in international environmental law and human rights law. The principle of common but differentiated responsibilities, for example, reflects distributive justice by acknowledging unequal historical contributions to environmental harm (Rajamani, 2016). Procedural justice is reflected in access-to-information and participation norms, such as those embodied in Principle 10 of the Rio Declaration.

Human rights law has increasingly absorbed EJ concerns. The recognition by the United Nations General Assembly of the right to a clean, healthy, and sustainable environment marks a significant normative development, linking environmental protection with dignity, equality, and well-being (UNGA, 2022). Human rights bodies have further clarified that environmental harm, including climate change, can interfere with rights to life, health, housing, culture, and an adequate standard of living (OHCHR, 2019).

These developments have profound implications for adjudication. By framing environmental protection as a matter of rights, legal systems move climate governance from the realm of political discretion into the domain of legal accountability.

Climate Change, Vulnerability, and Inequality

Scientific Understanding of Climate Vulnerability

Climate vulnerability is now well-established as a socially produced condition, rather than a purely natural phenomenon. The Intergovernmental Panel on Climate Change defines vulnerability as a function of exposure, sensitivity, and adaptive capacity, all of which are shaped by socio-economic and institutional factors (IPCC, 2022).

Empirical evidence demonstrates that communities facing poverty, discrimination, insecure land tenure, and weak public services experience higher exposure to climate hazards and lower capacity to adapt. For example, informal urban settlements are often located in flood-prone areas and lack adequate cooling, sanitation, and emergency services, intensifying the impacts of heatwaves and extreme rainfall (O'Brien et al., 2007). Similarly, small-island communities face existential risks from sea-level rise, while subsistence farmers confront crop failure and livelihood collapse due to changing rainfall patterns.

CLIMATE CHANGE AS A HUMAN RIGHTS ISSUE

International human rights institutions have increasingly recognized climate change as a threat multiplier that undermines the enjoyment of fundamental rights. The Office of the High Commissioner for Human Rights has emphasized that climate change threatens rights to life, food, water, health, housing, and self-determination, with disproportionate impacts on people living in poverty and marginalized communities (OHCHR, 2019).

This recognition has legal significance. When climate harm is understood as rights interference, states are subject to positive obligations to prevent foreseeable harm, protect vulnerable populations, and ensure effective remedies. These obligations do not require absolute prevention of harm but demand reasonable, timely, and non-discriminatory action based on available knowledge (Knox, 2018).

The linkage between vulnerability and rights thus provides a normative foundation for judicial intervention. Courts are not asked to solve climate change but to determine whether legal systems provide adequate protection to those most at risk.

EMERGENCE OF CLIMATE LITIGATION AS A RESPONSE TO GOVERNANCE FAILURE

Growth and Typologies of Climate Litigation

Climate litigation has grown exponentially over the past decade. UNEP (2023) documents a steady increase in the number of climate-related cases, spanning constitutional claims, administrative challenges, tort actions, corporate accountability suits, and international complaints. This expansion reflects growing frustration with political inaction and regulatory delay.

Climate litigation can be broadly categorized into several types:

- Mitigation litigation, challenging inadequate emission reduction targets;
- Adaptation litigation, addressing failures to protect communities from climate impacts;
- Rights-based litigation, invoking constitutional and human rights guarantees;
- Corporate accountability litigation, targeting fossil fuel companies and greenwashing practices; and

- Procedural litigation, focusing on environmental assessments and decision-making processes (Setzer & Higham, 2024).

From an environmental justice perspective, the most significant trend is the rise of rights-based and adaptation-focused litigation, often brought by or on behalf of vulnerable communities.

The Judicial Turn and Its Rationale

The turn to courts is not accidental. In many jurisdictions, political processes have failed to internalize climate risk adequately, particularly where vulnerable populations lack political influence. Litigation becomes a mechanism for marginalized groups to seek recognition, participation, and protection (Vanhala, 2012).

Courts offer several advantages in this context. First, they can assess whether state action meets minimum legal standards of rationality and fairness. Second, they can provide remedies where administrative processes have stalled. Third, judicial decisions can catalyze broader governance reforms by clarifying legal obligations (Peel & Osofsky, 2015).

At the same time, judicial involvement raises concerns about institutional legitimacy. Critics argue that courts lack expertise and democratic mandate to adjudicate climate policy. However, as Part II will demonstrate, courts increasingly frame their role narrowly—as enforcing rights, due diligence, and procedural obligations—rather than dictating policy outcomes (Fisher et al., 2017).

ENVIRONMENTAL JUSTICE AS A NORMATIVE JUSTIFICATION FOR JUDICIAL ENGAGEMENT

Environmental justice provides a powerful justification for judicial involvement in climate governance. Where climate harm disproportionately affects vulnerable communities, failure to act implicates equality, dignity, and non-discrimination—core legal values that courts are institutionally designed to protect.

Courts have long played a role in correcting majoritarian blind spots and protecting minority rights. Climate change presents a similar challenge: the costs of inaction are deferred, dispersed, and borne by those with limited political voice. In such contexts, judicial enforcement of minimum standards can enhance, rather than undermine, democratic legitimacy (Sabel & Simon, 2004).

Environmental justice also informs remedial design. Remedies that ignore vulnerability may perpetuate inequality, while EJ-sensitive remedies—such as implementation oversight and participatory adaptation measures—can translate rights recognition into tangible protection.

THE RIGHTS-BASED TURN IN CLIMATE LITIGATION

Climate Harm as Rights Interference

One of the most significant developments in contemporary climate litigation is the explicit framing of climate change as a violation of fundamental rights. This “rights-based turn” has shifted climate disputes from the realm of political discretion into that of legal accountability. Courts are increasingly asked to assess whether inadequate mitigation or adaptation measures constitute unlawful interference with rights such as life, health, dignity, housing, private and family life, and cultural integrity (Peel & Osofsky, 2015; Savaresi & Auz, 2019). From an environmental justice perspective, rights-based litigation is particularly significant because it foregrounds the lived experiences of vulnerable communities. Rights discourse allows courts to recognize climate harm not merely as abstract environmental degradation but as concrete injury to human beings, especially those already facing social and economic marginalization (Atapattu, 2018).

The legal logic underpinning this approach rests on positive obligations. States are not only required to refrain from rights violations but must take reasonable measures to protect individuals from foreseeable and preventable harm. When climate risks are scientifically established and impacts are predictable, failure to act may amount to a breach of these positive obligations (Knox, 2018).

URGENDA FOUNDATION V. STATE OF THE NETHERLANDS: MINIMUM MITIGATION DUTIES

Facts and Judicial Reasoning

The *Urgenda* litigation represents a watershed moment in climate adjudication. In its final judgment, the Supreme Court of the Netherlands held that the Dutch government's inadequate emission reduction targets violated its obligations under Articles 2 and 8 of the European Convention on Human Rights, which protect the rights to life and to private and family life (Supreme Court of the Netherlands, 2019).

The Court relied heavily on scientific consensus, including reports of the Intergovernmental Panel on Climate Change, to establish the foreseeability and severity of climate harm. It reasoned that when there is a "real and immediate risk" to the lives and well-being of citizens, the state has a duty to take preventive measures within its power (Supreme Court of the Netherlands, 2019).

Crucially, the Court rejected the argument that climate policy fell exclusively within the domain of political discretion. While acknowledging that the government retained freedom to choose specific policy instruments, the Court held that it could determine whether the state had met its minimum legal obligations.

ENVIRONMENTAL JUSTICE SIGNIFICANCE OF URGENDA

Although *Urgenda* was not brought explicitly on behalf of a particular vulnerable group, its implications for environmental justice are substantial. The Court recognized that insufficient mitigation increases systemic risk for all, but disproportionately harms those least able to protect themselves from climate impacts. By enforcing minimum mitigation duties, the judgment indirectly protects vulnerable populations who are more exposed to climate hazards and less able to adapt (Burgers, 2020).

From a doctrinal standpoint, *Urgenda* demonstrates how courts can balance institutional restraint with effective protection. The Court did not prescribe detailed climate policies; instead, it enforced a legal floor based on human rights and scientific evidence. This approach provides a model for EJ-oriented adjudication that respects democratic processes while preventing rights erosion through inaction (Fisher et al., 2017).

LEGHARI V. FEDERATION OF PAKISTAN: IMPLEMENTATION AND CLIMATE GOVERNANCE

Climate Inaction as Constitutional Failure

In *Leghari v. Federation of Pakistan*, the Lahore High Court addressed a petition alleging governmental failure to implement Pakistan's National Climate Change Policy. The petitioner argued that climate inaction violated constitutional rights to life, dignity, and property. The Court agreed, holding that climate change posed a "serious threat" to present and future generations and that governmental delay constituted a breach of fundamental rights (Lahore High Court, 2015).

Unlike *Urgenda*, which focused on mitigation targets, *Leghari* centered on implementation failure. The Court recognized that policy documents without execution offer little protection to citizens, particularly vulnerable populations dependent on agriculture and climate-sensitive livelihoods.

Structural Remedies and Environmental Justice

The most innovative aspect of *Leghari* lies in its remedial approach. Rather than issuing declaratory relief alone, the Court established a Climate Change Commission composed of government officials, experts, and civil society representatives to oversee implementation (Lahore High Court, 2015).

From an environmental justice perspective, this remedy is particularly significant. Vulnerable communities often suffer not from the absence of policy but from lack of implementation. Structural remedies address this "governance gap" by ensuring accountability over time. Scholars have noted that such dialogic and supervisory remedies are well-suited to complex, long-term problems like climate change (Sabel & Simon, 2004; Fisher et al., 2017).

Leghari thus illustrates how courts can enhance climate justice by focusing on institutional performance rather than policy substitution.

BILLY ET AL. V. AUSTRALIA: INDIGENOUS RIGHTS AND CULTURAL SURVIVAL

Climate Change and Minority Rights

In *Billy et al. v. Australia*, members of the Torres Strait Islander communities brought a complaint before the United Nations Human Rights Committee alleging that Australia's failure to protect them from climate impacts violated their rights under the International Covenant on Civil and Political Rights (Human Rights Committee, 2022).

The Committee found that Australia had violated Articles 17 and 27 of the Covenant, which protect against arbitrary interference with private and family life and guarantee minority cultural rights. The decision recognized that climate change threatened the Islanders' homes, livelihoods, and cultural practices, which are deeply connected to their land and marine environment.

Recognition Justice in Climate Adjudication

This decision is particularly important for environmental justice because it explicitly recognizes cultural loss as a form of climate harm. Traditional legal frameworks often reduce environmental damage to economic loss, marginalizing non-market values. By contrast, the Committee acknowledged that climate change can undermine cultural identity and community continuity, especially for indigenous peoples (Atapattu, 2018). The case also reinforces the principle that states have duties not only to mitigate climate change but also to adapt and protect vulnerable communities from foreseeable impacts. The Committee emphasized that delay or inadequacy in adaptation measures can amount to rights violations, even where harm has not yet reached catastrophic levels (Human Rights Committee, 2022).

VEREIN KLIMASENIORINNEN SCHWEIZ V. SWITZERLAND: VULNERABILITY AND PROPORTIONALITY

The ECtHR's Climate Jurisprudence

In *KlimaSeniorinnen*, a group of elderly women challenged Switzerland's climate policies before the European Court of Human Rights, arguing that inadequate mitigation exposed them to increased heat-related health risks. The Court held that climate change can fall within the scope of Article 8 of the European Convention on Human Rights, which protects private and family life (European Court of Human Rights, 2024).

The Court emphasized that states must maintain an adequate regulatory framework capable of limiting climate risks and must demonstrate consistency between targets, measures, and implementation. It applied a proportionality-based review to assess whether Switzerland's actions met its obligations.

Vulnerability-Sensitive Adjudication

From an environmental justice standpoint, *KlimaSeniorinnen* is notable for its explicit engagement with vulnerability. The Court recognized that older persons are particularly susceptible to heat-related harm and that this heightened risk is legally relevant. This represents a move toward vulnerability-sensitive standards of review, where the adequacy of state action is assessed in light of its impact on high-risk groups (Setzer & Higham, 2024).

The judgment also clarifies that courts can evaluate the coherence and effectiveness of climate policy frameworks without dictating specific policy choices. This reinforces the legitimacy of judicial review in climate cases and provides a template for EJ-oriented adjudication in rights-based systems.

INTERNATIONAL LAW GUIDANCE: DUE DILIGENCE AND STATE OBLIGATIONS

ITLOS Advisory Opinion on Climate Change

In 2024, the International Tribunal for the Law of the Sea issued an advisory opinion characterizing

greenhouse gas emissions as marine pollution under the United Nations Convention on the Law of the Sea. The Tribunal emphasized states' obligations to prevent, reduce, and control pollution using the best available science and acting with due diligence (ITLOS, 2024).

This opinion strengthens environmental justice arguments by reinforcing that climate obligations are legal, not merely aspirational. Due diligence provides a flexible yet enforceable standard that can be adapted to domestic adjudication.

ICJ Advisory Opinion on Climate Obligations

The International Court of Justice's 2025 advisory opinion further clarified that states have binding obligations under international law to address climate change and that failure to do so may entail legal consequences, including responsibility for harm (International Court of Justice, 2025).

Although advisory opinions are not binding, they carry significant persuasive authority. Domestic courts can draw upon this reasoning to support vulnerability-sensitive review and to counter arguments that climate issues are non-justiciable.

ENVIRONMENTAL JUSTICE AND THE QUESTION OF JUDICIAL LEGITIMACY

A recurring critique of climate litigation is that it risks judicial overreach. However, the cases analyzed in this section demonstrate a consistent judicial strategy: courts do not prescribe policy instruments but enforce minimum legal standards grounded in rights, reasoned decision-making, and scientific evidence (Fisher et al., 2017).

From an environmental justice perspective, judicial intervention is justified where political processes systematically under-protect vulnerable communities. Courts serve as institutional correctives, ensuring that equality, dignity, and non-discrimination are not sacrificed to inertia or short-term political interests (Sabel & Simon, 2004).

REMEDIES IN CLIMATE LITIGATION: FROM SYMBOLIC RECOGNITION TO EFFECTIVE PROTECTION

Judicial recognition of climate-related rights violations has limited value unless it translates into tangible protection for affected communities. Environmental justice scholarship has long cautioned that legal victories can remain symbolic when remedies fail to alter underlying structures of vulnerability (Schlosberg, 2007). In climate litigation, this concern is particularly acute due to the long-term, cumulative, and multi-sectoral nature of climate harm. Effective remedies must therefore go beyond declaratory relief and address implementation, adaptation, and equity.

Courts have increasingly acknowledged that climate change requires remedial innovation. Traditional remedies—such as injunctions or damages—are often ill-suited to systemic risks that unfold over decades. As a result, climate jurisprudence has seen the emergence of structural remedies, supervisory mechanisms, and dialogic orders designed to ensure compliance while respecting institutional competence (Fisher et al., 2017). From an environmental justice perspective, the adequacy of remedies should be evaluated against a core question: do they reduce vulnerability and enhance adaptive capacity for those most at risk?

STRUCTURAL AND SUPERVISORY REMEDIES

Structural Remedies as Instruments of Climate Justice

Structural remedies are judicial orders that require ongoing institutional action rather than one-time compliance. These may include action plans, timelines, reporting obligations, and independent oversight mechanisms. Such remedies are particularly suited to climate governance because climate risks demand sustained, coordinated responses across sectors (Sabel & Simon, 2004).

The *Leghari* case illustrates the environmental justice potential of structural remedies. By creating a Climate Change Commission to oversee policy implementation, the Lahore High Court directly addressed the

governance gap that disproportionately affects rural and marginalized populations (Lahore High Court, 2015). Rather than dictating policy content, the court ensured institutional accountability, thereby enhancing protection for climate-sensitive communities.

Structural remedies align with EJ principles by addressing procedural injustice. Vulnerable communities often lack access to political processes that ensure implementation. Judicial supervision can correct this imbalance by compelling state agencies to act transparently and consistently (Fisher et al., 2017).

Dialogic Remedies and Democratic Legitimacy

Dialogic remedies—orders that require governments to respond, revise, or justify their actions—are increasingly favored in climate cases. Such remedies maintain democratic legitimacy by allowing elected branches to choose policy instruments while ensuring that decisions meet legal standards of adequacy and rationality (Sabel & Simon, 2004).

In *KlimaSeniorinnen*, the European Court of Human Rights emphasized coherence between targets, measures, and implementation, without prescribing specific mitigation strategies (European Court of Human Rights, 2024). This approach exemplifies how courts can promote climate justice without assuming a policymaking role.

ADAPTATION JUSTICE AND THE PROTECTION OF VULNERABLE COMMUNITIES

Adaptation as a Central Environmental Justice Issue

While early climate litigation focused primarily on mitigation, adaptation has emerged as a central concern for environmental justice. Vulnerable communities often face immediate climate risks—heat stress, flooding, water scarcity—that cannot be mitigated in the short term (IPCC, 2022). Failure to adapt therefore constitutes a failure to protect fundamental rights.

Adaptation justice requires that protective measures be designed and implemented in ways that prioritize those at greatest risk and avoid reinforcing existing inequalities (Grasso, 2010). Courts play a critical role in scrutinizing whether adaptation policies meet these criteria.

Judicial Recognition of Adaptation Failures

The decision in *Billy et al. v. Australia* underscores the legal significance of adaptation. The UN Human Rights Committee held that Australia’s failure to implement adequate adaptation measures violated the rights of Torres Strait Islanders, even though the harm was gradual rather than catastrophic (Human Rights Committee, 2022). This reasoning is crucial for EJ because it recognizes that delay itself can constitute a rights violation when vulnerability is high.

Similarly, domestic courts increasingly assess whether governments have considered climate risk in urban planning, disaster preparedness, and public health policy. Administrative law remedies requiring climate risk assessment and reasoned justification can prevent maladaptation that shifts risk onto marginalized populations (Peel & Osofsky, 2015).

Safeguards Against Maladaptation

Maladaptation—policies that reduce risk for some while increasing it for others—poses a serious threat to environmental justice. Examples include coastal defenses that protect affluent areas while displacing flood risk to informal settlements or relocation programs that undermine cultural integrity (IPCC, 2022).

Courts can mitigate maladaptation by requiring inclusive decision-making, human rights impact assessments, and non-discrimination in adaptation planning (OHCHR, 2019). Such procedural safeguards ensure that adaptation measures do not reproduce structural injustice.

LOSS, DAMAGE, AND REPARATIVE JUSTICE

Loss and Damage as an Emerging Legal Concept

Loss and damage refers to climate impacts that cannot be avoided through mitigation or adaptation, such as permanent land loss, cultural destruction, and displacement. These harms disproportionately affect vulnerable communities, particularly small-island states and indigenous peoples (Page, 2006).

While international negotiations have increasingly acknowledged loss and damage, domestic legal systems are only beginning to grapple with its implications. Climate litigation provides a potential avenue for reparative justice, although attribution and causation challenges remain significant (Mayer, 2016).

Judicial Engagement with Reparative Claims

Recent advisory opinions strengthen the legal basis for reparative claims. The ICJ's advisory opinion clarifies that failure to address climate change may entail legal responsibility, including obligations of cessation and reparation (International Court of Justice, 2025). Although advisory opinions are not binding, they influence domestic courts by clarifying normative expectations.

From an EJ perspective, reparative remedies must recognize non-economic loss, including cultural harm and loss of identity. The *Billy et al.* decision provides an important precedent by acknowledging cultural loss as a cognizable injury (Human Rights Committee, 2022).

ADDRESSING THE LEGITIMACY CRITIQUE: COURTS AND SEPARATION OF POWERS

A persistent critique of climate litigation is that it undermines democratic decision-making. However, this critique often rests on an overly narrow conception of judicial function. Courts have long enforced constitutional and human rights limits on political discretion, particularly where minority rights are at stake (Kysar, 2010).

Climate change presents a classic case of systemic risk combined with political underrepresentation. Vulnerable communities often lack the political power to influence climate policy, while the costs of inaction are deferred to the future. In such contexts, judicial enforcement of minimum legal standards enhances democratic legitimacy by ensuring accountability and protecting fundamental values (Fisher et al., 2017).

The cases analyzed across Parts I and II demonstrate that courts are careful to avoid policy substitution. Instead, they focus on procedural adequacy, coherence, and rights protection—core judicial functions.

AN ENVIRONMENTAL JUSTICE CLIMATE ADJUDICATION FRAMEWORK (PROPOSED)

Drawing on the jurisprudence analyzed in this article, this section proposes a framework to guide courts in EJ-oriented climate adjudication.

Standing and Access to Justice

Courts should adopt flexible standing rules where credible climate risk affects vulnerable communities. Representative actions and public interest litigation are particularly appropriate where harm is diffuse and long-term (Vanhala, 2012).

Standard of Review

Where state action disproportionately affects vulnerable groups, courts should apply heightened scrutiny. The adequacy of measures should be assessed through due diligence, informed by best available science (ITLOS, 2024; IPCC, 2022).

Evidence and Scientific Literacy

Courts should accept authoritative scientific assessments and require governments to address them transparently. Absolute certainty should not be required where risk is foreseeable and severe (Finkel, 2020).

Procedural Environmental Justice

Courts should enforce participation, access to information, and non-discrimination in climate decision-making. Procedural justice is essential to prevent maladaptation and exclusion (OHCHR, 2019).

Remedies and Implementation

Remedies should prioritize vulnerability reduction and adaptive capacity. Structural remedies, supervisory mechanisms, and periodic review are particularly suited to climate justice (Sabel & Simon, 2004).

CONCLUSION

Climate change is reshaping the relationship between law, governance, and justice. As this article has demonstrated, climate litigation has emerged as a critical arena in which environmental justice claims are articulated and adjudicated. Courts across jurisdictions increasingly recognize that inadequate climate action threatens fundamental rights and disproportionately harms vulnerable communities.

This article has argued that courts can legitimately expand their role in climate governance by enforcing minimum legal standards grounded in human rights, scientific evidence, and procedural fairness. Landmark cases—from *Urgenda* and *Leghari* to *Billy et al.* and *KlimaSeniorinnen*—illustrate how judicial intervention can promote environmental justice without encroaching upon democratic policymaking.

Ultimately, the effectiveness of climate adjudication will depend on remedies. Judicial decisions must translate rights recognition into tangible protection, particularly for those most exposed to climate risk. An environmental justice framework provides both a normative justification and a practical guide for courts navigating this challenge.

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