



NUS Law Working Paper 2026/006

NUS Asia-Pacific Centre for Environmental Law Working Paper 26/02

Transnational Litigation and the Quest for Climate Justice in the Global South

Jolene Lin

jolene.lin@nus.edu.sg

Associate Professor, Faculty of Law, National University of Singapore

[Uploaded April 2026]

© Copyright is held by the author or authors of each working paper. No part of this paper may be republished, reprinted, or reproduced in any format without the permission of the paper's author or authors.

Note: The views expressed in each paper are those of the author or authors of the paper. They do not necessarily represent or reflect the views of the National University of Singapore.

Transnational Litigation and the Quest for Climate Justice in the Global South

Jolene Lin*

With a focus on the Philippine Human Rights Commission's 2022 Carbon Majors Report and a small constellation of four transnational climate lawsuits, this chapter examines the potential for transnational litigation to advance corporate climate accountability. It also seeks to identify pathways for future research that can underpin a rewarding and meaningful research agenda on climate justice in the Global South.

I can say that typhoon Sendong was one of its kind. There were several typhoons that hit us, but never as strong as such typhoon. We seemed unaware of a looming disaster that would befall our family. I never thought this would kill thousands of lives including my three children, one son-in-law and four grandchildren. I did not know that day was the last time I will see them. But the saddest part was that their bodies remain missing up to this day.

– Amalia Bahian, a survivor of Tropical Storm Washi (local:Sendong)¹

1. Introduction

Tropical Storm Washi devastated the Philippines on 16 and 17 December 2011. While it was not a powerful storm by standard measurements, the extremely heavy rain “rushed down mountain slopes and converged on coastal communities overnight, while people were sleeping.”² The ensuing flash floods left 957 dead and 1,582 injured as of December 20.³ Each year, the Philippines gets hit by an average of twenty typhoons.⁴ Two super typhoons since Tropical Storm Washi – Yolanda and Odette - have left the country struggling to rebuild communities and livelihoods. The figures are staggering. Typhoon Yolanda affected 3.5 million families, caused 6,300 deaths and caused damage to property amounting to 93 billion Philippine pesos (approximately 2

* Associate Professor, Faculty of Law, National University of Singapore; Director, Asia Pacific Centre for Environmental Law (APCEL). I am grateful to my colleagues at APCEL and to the editor of this Handbook for valuable feedback on this chapter.

¹ Commission on Human Rights of the Philippines, *Report of the National Inquiry on Climate Change* (2022) 37.

² National Aeronautics and Space Administration (NASA), ‘Tropical Storm Washi’ (NASA Earth Observatory, 20 December 2011) <https://science.nasa.gov/earth/earth-observatory/tropical-storm-washi-76702/#:~:text=Tropical%20Storm%20Washi%20devastated%20the,an%20intense%20typhoon%20or%20hurricane> (accessed 30 March 2026).

³ Ibid.

⁴ Republic of the Philippines, ‘Tropical Cyclone Information’ (PAGASA) <https://www.pagasa.dost.gov.ph/climate/tropical-cyclone-information> (accessed 30 March 2026).

This manuscript will be published in Colin Mackie (ed.), *A Research Agenda for Corporate Environmental Law* (Edward Elgar Publishing, 2026).

billion US dollars).⁵ Typhoons will only become more intense and dangerous due to climate change.⁶

While it is one of the most vulnerable countries to the impacts of climate change⁷, the Philippines has only contributed 0.7% to historic global greenhouse gas (GHG) emissions and its per capita emissions in 2023 was 2.7 metric tons of carbon dioxide equivalent.⁸ It is not a major emitter. For perspective, the United States' historic share of global emissions stands at 17.5% and its per capita emissions in 2023 was 18.2 metric tons.⁹ Several countries of the Global South have similar emissions profiles to the Philippines and are just as vulnerable.¹⁰ That the burden of climate change impacts falls disproportionately on those who have hardly contributed to causing climate change sits at the heart of the quest for climate justice in the Global South. Climate justice is understood here as referring to the ways in which "climate change impacts people differently, unevenly, and disproportionately, as well as redressing the resultant injustices in fair and equitable ways".¹¹ This quest takes on greater complexity when one considers that the Global South comprises of countries connected by shared histories of colonial domination, the historical legacies of which have created unequal global conditions in terms of standards of living, access to resources and, indeed, adaptive capacity and experiences of climate change impacts.¹²

One pathway for the pursuit of climate justice lies in the use of courts. Climate litigation over the past ten years has accelerated and entered a phase of greater complexity and diversity (e.g., geographical scope and the type of actors involved). At least 226 new climate cases were filed in 2024, bringing the total number of cases

⁵ Republic of the Philippines, 'Final Report on Effects of Typhoon "Yolanda" (Haiyan)' (National Disaster Risk Reduction and Management Council, 6-9 November 2013) https://www.greenpeace.org/static/planet4-philippines-stateless/2019/05/8006f16f-8006f16f-final_report_re_effects_of_typhoon_yolanda_haiyan_06-09nov2013.pdf (accessed 30 March 2026).

⁶ Intergovernmental Panel on Climate Change (IPCC), Sixth Assessment Report – The Physical Science Basis, Chapter 11: Weather and Climate Extreme Events in a Changing Climate, "Section 11.7.1 Tropical Cyclones" <https://www.ipcc.ch/report/ar6/wg1/chapter/chapter-11/> (accessed 30 March 2026).

⁷ The Climate Risk Index (CRI) ranks countries by the human and economic toll of extreme weather events, the severity and frequency of which are increased by climate change. See Germanwatch, 'Climate Risk Index 2026' <https://www.germanwatch.org/en/cri> (accessed 30 March 2026).

⁸ Climate Change Tracker, 'Philippines Greenhouse Gas Emissions' <https://climatechangetracker.org/nations/greenhouse-gas-emissions/philippines> (accessed 30 March 2026).

⁹ Climate Change Tracker, 'United States of America's Greenhouse Gas Emissions' <https://climatechangetracker.org/nations/greenhouse-gas-emissions/united-states-of-america> (accessed 30 March 2026).

¹⁰ Climate Risk Index (CRI) n 7. The 2026 edition of the CRI shows that all countries are affected but those in the Global South are particularly impacted, the top ten most affected countries being St. Vincent and the Grenadines, Grenada, Chad, Papua New Guinea, Niger, Nepal, the Philippines, Malawi, Myanmar and Vietnam. These countries are also some of the world's smallest emitters of GHGs.

¹¹ F. Sultana, 'Critical Climate Justice' (2022) 188 *The Geography Journal* 118 at 120.

¹² Nicole Curato, Graham Smith and Rebecca Willis, 'Deliberative Democracy and Climate Change: Exploring the Potential of Climate Assemblies in the Global South' (International IDEA, 2024) at 7 <https://www.idea.int/sites/default/files/2024-06/deliberative-democracy-and-climate-change.pdf> (accessed 30 March 2026).

This manuscript will be published in Colin Mackie (ed.), *A Research Agenda for Corporate Environmental Law* (Edward Elgar Publishing, 2026).

filed to date to nearly 3000 across 60 countries globally.¹³ Over 80% of cases filed in 2024 can be described as strategic litigation, i.e. that “claimants [plaintiffs] seek to both win the individual case and influence the public debate or change the behaviour of a targeted group of actors in relation to climate action.”¹⁴ The majority of climate cases are filed by non-governmental organizations (NGOs) and individuals, which is consistent with the continuing use of strategic litigation to influence climate governance outcomes.¹⁵

At the same time, while discussions of accountability for climate impacts have traditionally focused on states and their pivotal role in regulating private actors (including corporations), there is growing focus on corporations as their role in climate change processes is better understood.¹⁶ Elsewhere, my colleagues and I have argued that a legal and regulatory ‘ecosystem’ for global corporate climate accountability is emerging with developments that include advisory opinions on state obligations in relation to climate change, harmonized climate risks disclosure laws and findings reached in domestic corporate climate litigation.¹⁷

One sub-set of climate litigation is of particular salience to the pursuit of corporate climate accountability in the Global South – transnational cases which are filed by individuals or communities from the Global South against high GHG-emitting companies in the courts of their home jurisdiction in the Global North. As will be seen in the discussion in Part 4 below, these claimants are bringing claims in their own capacity or on behalf of deceased relatives to seek compensation from defendant companies which have allegedly caused the claimants’ injuries through their material contribution to causing climate change. These cases are therefore also referred to as “polluter pays cases”¹⁸ and “loss and damage litigation” which is defined as disputes that “challenge the particular emissions contributions of certain stakeholders to adverse climate change impacts, where claimants seek reparations for climate harm.”¹⁹ This chapter uses the term “transnational climate litigation” to emphasise the

¹³ Joana Setzer & Catherine Hingham, ‘Global trends in climate change litigation: 2025 snapshot’ (London: Grantham Research Institute on Climate Change and the Environment, London School of Economics and Political Science, 2025) at 3 <https://www.lse.ac.uk/granthaminstitute/wp-content/uploads/2025/06/Global-Trends-in-Climate-Change-Litigation-2025-Snapshot.pdf> (accessed 30 March 2026).

¹⁴ *Ibid* at 4.

¹⁵ NGOs and individuals filed just over 60% of cases in 2024; *Ibid* at 17. In the Global South, nearly 40% of cases are filed by NGOs. 6.25% of cases are filed by global environmental NGOs in their own name or as lead plaintiff and 37% are filed by domestic environmental NGOs; see Jolene Lin and Jacqueline Peel, *Litigating Climate Change in the Global South* (OUP 2024) 58.

¹⁶ Christopher Wright and Daniel Nyberg, ‘Corporations and climate change: An overview’ (2024) 15(6) *WIREs Climate Change* e919.

¹⁷ Suzanne Varrall, Roanna McClelland, Jolene Lin and Jacqueline Peel, “The Emerging Legal Ecosystem for Global Corporate Climate Accountability: Amplifying or Diluting Responsibility?” (forthcoming, on file with author).

¹⁸ Joana Setzer & Catherine Hingham, ‘Global trends in climate change litigation: 2024 snapshot’ (London: Grantham Research Institute on Climate Change and the Environment, London School of Economics and Political Science, 2024) at 31 <https://www.lse.ac.uk/granthaminstitute/wp-content/uploads/2024/06/Global-trends-in-climate-change-litigation-2024-snapshot.pdf> (accessed 30 March 2026).

¹⁹ Maria Antonia Tigre and Margaretha Wewerinke-Singh, ‘Beyond the North-South Divide: Litigation’s role in resolving climate change loss and damage claims’ (2023) 32(3) *Review of European, Comparative and International Environmental Law* 439.

This manuscript will be published in Colin Mackie (ed.), *A Research Agenda for Corporate Environmental Law* (Edward Elgar Publishing, 2026).

cross-border element whereby plaintiffs from Global South jurisdictions are suing major carbon emitters in the Global North.

Transnational environmental pollution litigation is generally on the rise²⁰, but the specific sub-set of transnational climate litigation is just developing. At the time of writing, there are just four cases that have been filed and/or decided globally: *Lliuya v. RWE*, *Asmania et al v. Holcim*, *Pakistani Farmers v. RWE and Heidelberg Materials* and *Victims of Typhoon Odette v. Shell*. With a focus on these four cases, this chapter provides preliminary analysis and indicates potential directions for future research that could support the quest for climate justice in the Global South.

This chapter is structured as follows. Following this Introduction, **Part 2** draws on the academic literature to provide contextual background about corporate climate litigation. This is intended to help readers appreciate the broader (strategic) aims of such high-stakes litigation against corporate defendants. Following that, **Part 3** uses the Philippines Commission on Human Rights (CHR) report in its landmark National Inquiry on Climate Change to provide the facts that explain why transnational climate litigation has focused on certain corporations, particularly the fossil fuel industry. The CHR report was released in 2022 after an inquiry that lasted seven years. It is, to date, the first and only comprehensive inquiry by a national human rights institution to examine the impacts of climate change on human rights and to consider the role of forty-seven major fossil fuel-producing companies (the Carbon Majors companies) in driving the global climate crisis, obstructing climate action and contributing to climate harm. While the inquiry was investigative in nature and not a type of legal proceeding, the extensive and careful documentation of the role of the Carbon Majors in causing climate change helped provide the bedrock of facts to develop and pursue litigation strategies to hold Carbon Majors accountable. This leads to **Part 4** of this chapter which provides an account of the four transnational corporate climate cases, of which only *Lliuya v. RWE* has been decided. The *Pakistani Farmers* case and the *Victims of Typhoon Odette* case were filed in December 2025, just three months before the time of writing. **Part 5** offers some reflections on these cases and highlights future research pathways. **Part 6** concludes.

2. Some preliminary questions

At this juncture, it is worth engaging with some fundamental questions. Why litigate? Why are there only four transnational cases when compensation and accountability for climate change are such pressing issues? What do these cases seek to achieve by advancing novel and untested case theories? It is beyond the scope of this chapter to explore these questions in detail. However, some brief reflections will provide helpful context for the rest of this chapter.

²⁰ *Municipio de Mariana and others v BHP Group (UK) Ltd and BHP Group Ltd* [2025] EWHC 3001 is one of the largest civil claims ever lodged in England and Wales; Bianca Castro, 'BHP 'strictly liable' for pollution caused by Brazil dam collapse, High Court in London finds' (The Law Society Gazette, 14 November 2025).

This manuscript will be published in Colin Mackie (ed.), *A Research Agenda for Corporate Environmental Law* (Edward Elgar Publishing, 2026).

The scholarship on legal mobilization has identified a range of explanations to account for how and why groups and individuals turn to the law (or mobilize the law) and what happens when they do.²¹ These explanations include legal stock²² (*i.e.* what environmental and climate laws exist in the jurisdiction to serve as litigation ‘hooks’?), the legal opportunity structure²³ (*e.g.* standing rules, rules governing litigation costs, the structure and independence of the judiciary) and resources (including financial, legal, informational and moral/normative resources). In the climate litigation ecosystem that is made up of several actors (including prosecutors, NGOs and judges) who engage across jurisdictional borders to share legal knowledge, develop case strategies and coordinate campaign narratives, “Why litigate?” is a question the answers to which go beyond a win in the courtroom for legal remedies.²⁴ A lawsuit may be brought as a test case to establish a precedent that can inspire similar litigation elsewhere or have its success “replicated”. Perhaps the most well-known example is *Urgenda v. the Netherlands*.²⁵ The Urgenda Foundation, the organization which brought this case, set up the Climate Litigation Network to “harness this legal strategy, support other cases against big polluters and strengthen the growing wave of climate litigation.”²⁶

Climate litigation is often part of a broader climate advocacy campaign which can be domestic, regional or global. The #STOPEACOP alliance against the East African Crude Oil Pipeline is an example. It is a global advocacy campaign that brings together over 260 NGOs which aim to stop the construction of the oil pipeline and related infrastructure “with public mobilizations, legal actions, research, shareholder activism and media advocacy.”²⁷ Even if the plaintiffs lose the case, the “loss” in the courtroom can have indirect effects²⁸ that are overall positive, such as raising awareness and placing the issue on the political and regulatory agenda and narrative change about accountability and responsibility for climate change which can have material consequences in multilateral negotiations. In short, ‘success’ is not solely defined by a favourable judgement when it comes to strategic climate litigation. As Batros and Khan have put it, “[a] case is litigated strategically when it is not seen in isolation (with the judgment as the solution or an end in itself) but rather as one step

²¹ See Lisa Vanhala, ‘Environmental Legal Mobilization’ (2022) 18 Annual Review of Law and Social Science 101 for an excellent review of the scholarship in this field.

²² See, for example, Lisa Vanhala, ‘Is legal mobilization for the birds? Legal opportunity structures and environmental non-governmental organisations in the United Kingdom, France, Finland and Italy’ (2018) 51(3) Comparative Political Studies 380; Chris Hilson, ‘The visibility of environmental rights in the EU legal order: Eurolegalism in action?’ (2018) 25(11) Journal of European Public Policy 1589.

²³ Chris Hilson’s 2002 study first fleshed out this concept; see Chris Hilson, ‘New social movements: the role of legal opportunity’ (2002) 9(2) Journal of European Public Policy 238-55.

²⁴ On the multiple actors that work across borders to share information resources and legal strategies, thereby creating transnational networks that facilitate norm diffusion and the flow of financial and legal support towards Global South climate litigation, see Chapter 5 in *Litigating Climate Change in the Global South* n 15.

²⁵ Case Number/ECLI: ECLI:NL:HR:2019:2007 (Supreme Court).

²⁶ Climate Litigation Network, <https://climatelitigationnetwork.org> (accessed 30 March 2026).

²⁷ #STOPEACOP, <https://stopeacop.net/our-coalition/> (accessed 30 March 2026).

²⁸ See Karen Beckwith, ‘Narratives of defeat: explaining the effects of loss in social movements’ (2015) 77(1) Journal of Politics 2 on how social movements, after sometimes bitter defeats, make sense of these losses and give meaning to them; also see discussion of *Wijana, Sufarlan, Astawa and Greenpeace Indonesia v. Governor of Bali* which was technically a legal defeat but for the NGOs and lawyers involved, “the case was a success in terms of building local environmental and climate change litigation capacity, strengthening the climate change advocacy movement, and drawing lessons for future litigation efforts” in *Litigating Climate Change in the Global South* (n 15) 152

This manuscript will be published in Colin Mackie (ed.), *A Research Agenda for Corporate Environmental Law* (Edward Elgar Publishing, 2026).

in a bigger effort to achieve the ultimate goal. This contrasts with the perspective of many lawyers who see their case as the whole game. According to the latter view, a judgment in their favour is a win; game over.”²⁹

It is no wonder that there are only a handful of transnational corporate climate lawsuits. They are expensive, requiring a lot of time and resources especially when one considers that the defendants are wealthy corporations which have deep pockets to finance protracted and complex legal proceedings. A single win can, however, be built upon in future litigation anywhere in the world. A final observation is that not all impacts of climate litigation are advantageous or beneficial for the quest for climate justice. A “bad” precedent can lead to political or public backlash. It can also entrench a rule that is not favourable for climate accountability until future litigation successfully overturns the ‘bad’ case. The risks of “bad cases” are well known and are not typically lightly swept aside. However, the decision to proceed with a novel case is often not one (or should not be one) that is taken only by the lawyers.³⁰ For the litigant community in the Global South that wants to have its story heard and a chance at some redress for bearing the brunt of climate change, for the youths who are anxious for their future and want to see credible climate action now, the risks of ‘bad’ cases are outweighed by the potential gains of systemic change and social transformation.

3. What the World Learnt from the Philippines National Inquiry on Climate Change

In 2015, the Commission on Human Rights of the Philippines (the Commission) was petitioned to conduct an inquiry on the impact of climate change on the human rights of the Filipino people and the role of the “carbon majors”.³¹ Apart from presenting climate change as a human rights issue, the Petition made a novel assertion: that businesses or corporations, not just states, are obliged to respect and uphold human rights as set out in the United Nations Guiding Principles on Business and Human Rights (UNGP).³²

²⁹ Ben Batros and Tessa Khan, ‘Thinking Strategically about Climate Litigation’ in Cesar Rodriguez-Garavito (ed), *Litigating the Climate Emergency: How Human Rights, Courts and Legal Mobilization Can Bolster Climate Action* (CUP 2022) 104.

³⁰ For thoughtful reflections on the role of lawyers in climate litigation, see Steven Vaughan, ‘Let’s Talk about the Lawyers: Climate Change Litigation, Professional Ethics and ‘Good’ and ‘Bad’ Case Outcomes’ (Lawyer Watch, 25 March 2024) <https://lawyerwatch.wordpress.com/2024/03/25/lets-talk-about-the-lawyers-climate-change-litigation-professional-ethics-and-good-and-bad-case-outcomes/> (accessed 30 March 2026).

³¹ Environmental Science for Social Change, ‘National Inquiry on Climate Change’ <https://essc.org.ph/content/nicc/> (accessed 30 March 2026). The Carbon Majors refer to the entities covered by the Carbon Majors database of the world’s largest oil, gas, coal and cement producers; <https://carbonmajors.org> (accessed 30 March 2026). Also see Richard Heede, ‘Tracing anthropogenic CO₂ and methane emissions to fossil fuel and cement producers, 1854-2010’ (2014) 122 *Climatic Change* 229 (the Heede Carbon Majors Study).

³² *Report of the National Inquiry on Climate Change* n 1 at 3; United Nations Office of the High Commissioner for Human Rights, ‘Guiding principles on business and human rights: Implementing the United Nations Protect, Respect and Remedy framework’ (2011) https://www.ohchr.org/documents/publications/guidingprinciplesbusinessshr_en.pdf (accessed 2 January 2026). The UN Guiding Principles on Business and Human Rights (UNGP) are based on three pillars: the state duty to protect human rights, the corporate responsibility to respect human rights (“meaning to act with due diligence to avoid infringing on the rights of others and address adverse impacts with which they are involved”) and the need for victims of business-related human

Despite calls by companies to dismiss the petition and contestations about whether the Commission had jurisdiction to conduct such an inquiry into activities that occurred outside the Philippines but which had impacts on the human rights of the Filipino people, the Commission decided to proceed and in doing so, adopted a facilitative and inclusive approach towards its investigations.³³ The Commission held twelve public hearings - eight in the Philippines, two in New York City and two in London.³⁴ Sixty-five witnesses were heard and 239 documents submitted to the Commission, not including the experts invited by the Commission and documentary evidence submitted officially to the Commission.³⁵ The hearings were livestreamed on the internet and teleconferencing facilities were set up to enable parties from all over the world to participate and have their voices heard.³⁶

The final report spans some 160 pages. It undertakes a systematic analysis of climate science, the human rights dimensions of climate change, the severe impacts of climate change on the human rights of the Filipinos, and the contribution of the Carbon Majors companies' products and operations to climate change.³⁷ The report also compiled evidence that the fossil fuel industry has been on notice of the climate change risks from their products for more than fifty years but has misled the public, regulators and investors about these risks for decades. It is on this last point that the rest of this part of the chapter elaborates upon because these are, shockingly, little known facts.

The Commission was presented several types of evidence including copies of internal documents from the fossil fuel industry, and publications compiling these and similar internal documents (e.g. the Climate Deception Dossiers by the Union of Concerned Scientists³⁸). The Commission was also made aware of Benjamin Franta's groundbreaking archival research³⁹ that showed that even before Charles Keeling published his seminal 1960 article on the concentration of atmospheric carbon dioxide at the South Pole, oil industry leaders were aware that their products were causing carbon pollution which could have dangerous consequences.⁴⁰ The Commission concluded that scientists, including those employed by the carbon major companies, already knew about the harms that carbon dioxide from fossil fuels posed to the climate "...as early as the 1930s, with 1965 being the latest year that the fossil fuel industry can claim ignorance of such knowledge."⁴¹

rights abuses to have access to remedies; see <https://www.ungpreporting.org> (accessed 2 January 2026).

³³ *Report of the National Inquiry on Climate Change* n 1 at 4-5.

³⁴ *Report of the National Inquiry on Climate Change* n 1 at 21.

³⁵ *Ibid.*

³⁶ *Ibid.*

³⁷ Published and peer reviewed studies show that about 21% of all global GHG emissions from fossil fuel combustion and cement production were from products sold by the 47 respondent Carbon Major companies; Commission Report, *Report of the National Inquiry on Climate Change* n 33 at 99.

³⁸ Union of Concerned Scientists, *The Climate Deception Dossiers* (29 June 2015) <https://www.ucs.org/resources/climate-deception-dossiers> (accessed 30 March 2026).

³⁹ Benjamin Franta, 'Early oil industry knowledge of CO₂ and global warming' (2018) 8 *Nature Climate Change* 1024.

⁴⁰ *Report of the National Inquiry on Climate Change* n 1 at 100-108.

⁴¹ *Report of the National Inquiry on Climate Change* n 1 at 101.

This manuscript will be published in Colin Mackie (ed.), *A Research Agenda for Corporate Environmental Law* (Edward Elgar Publishing, 2026).

Despite this knowledge, the Carbon Major companies “engaged in wilful obfuscation and obstruction to prevent meaningful climate action” and took “measures to convince the public that the use of their products would not lead to significant harms”.⁴² The National Inquiry report contains two shocking examples. First, in 1996, the American Petroleum Institute (API) published a study, “Reinventing Energy: Making the Right Choices” which claimed to “show that when facts – not commonly held misconceptions – are used, there is no persuasive basis for forcing Americans to dramatically change their lifestyles to use less oil”.⁴³ Secondly, in 1991, coal companies formed the Information Council on the Environment (ICE), which launched a national campaign “to disparage climate science and cherry-pick the data to highlight claims of cooling temperatures to confuse the public.”⁴⁴ Through a lobbying firm subcontracted by a group called the American Coalition for Clean Coal Electricity, the coal industry sent forged letters, appropriating the letterheads from respected constituent groups representing seniors and women, to members of Congress to influence the votes on the American Clean Energy and Security Act of 2009, which proposed a federal carbon emissions reduction plan.⁴⁵ The Commission noted that climate denial and efforts to delay the global transition away from fossil fuels are still ongoing, adding “Sadder still is that these obstructionist efforts are driven, not by ignorance, but by greed.”⁴⁶

Since the publication of the CHR Report in 2022, President Donald Trump returned to the White House for the second time with a pledge to “...drill, baby, drill”, adding that the United States has “the largest amount of oil and has of any country on Earth – and we are going to use it”.⁴⁷ Against this background, it is not surprising that victims of climate change are aggrieved and want to see justice done. In the search for fairness and accountability, people who are suffering from the impacts of climate change have turned to the courts.

4. Transnational Climate Litigation: A Pathway for Climate Justice in the Global South

This section provides an overview of four transnational climate cases from across the globe. It can be argued that these cases build on the CHR report as a foundational source of primary evidence of the role of corporations in causing climate change. There are, of course, many other important evidentiary sources to support climate litigation against the Carbon Majors, but in the Global South context, it would be appropriate to give due recognition to the groundbreaking work of the Philippine human rights commission. Furthermore, as will be discussed below, *Victims of Typhoon Odette v. Shell* is a case which has a clear link to the CHR report as the claimants have explicitly stated that their legal arguments build on those identified in the report.

⁴² *Report of the National Inquiry on Climate Change* n 1 at 105.

⁴³ American Petroleum Institute, *Reinventing Energy: Making the Right Choices* (1996) 6. A digital copy of this book can be found on the Climate Files: <https://www.climatefiles.com/trade-group/american-petroleum-institute/1996-reinventing-energy/> (accessed 23 January 2026).

⁴⁴ *The Climate Deception Dossiers* n 38 at 19.

⁴⁵ *The Climate Deception Dossiers* n 38 at 16-17.

⁴⁶ *Report of the National Inquiry on Climate Change* n 1 at 110.

⁴⁷ National Public Radio (NPR), ‘Trump wants to “drill, baby, drill.” What does that mean for climate concerns?’ (15 November 2024) <https://www.npr.org/transcripts/nx-s1-5181963> (accessed 23 January 2026).

Of the four cases considered in this section, only *Lliuya v. RWE* has been decided and therefore offers some jurisprudential insights. Nonetheless, this chapter takes the view that all four cases are important as they raise novel questions of law as well as deeper questions about the use of Global North courts to pursue accountability and compensation for communities in the Global South that have been unduly harmed by climate change impacts.

Lliuya v. RWE

In 2015, Saul Luciano Lliuya – a Peruvian farmer and mountain guide who resides in Huaraz, Peru – filed a lawsuit in the District Court of Essen, Germany, against Rheinisch-Westfälisches Elektrizitätswerk Aktiengesellschaft (RWE AG), Germany’s largest electricity producer.⁴⁸ The lawsuit is a general nuisance claim grounded on Section 1004 of the German Civil Code.⁴⁹ Lliuya alleged that (i) RWE “knowingly contributed to climate change” through GHG emissions and (ii) this contribution renders RWE partially responsible for the adverse impacts caused by the melting of mountain glaciers near his home and the substantial increase in volume of Lake Palcacocha, a glacial lake located above the city of Huaraz.⁵⁰ In other words, the increased flooding risks posed to Lliuya’s property due to the substantial increase in size of the glacial lake (which might then overflow and break its dam) is the “interference” caused by RWE as property owner.

Lliuya sought the following remedies. First, that RWE is held responsible for a proportion of the costs associated with implementing safety measures and that proportion is derived from RWE’s share of historical greenhouse gas (GHG) emissions. Secondly, that RWE bears the same proportion of the adaptation expenses that the plaintiff and local authorities in Huaraz are expected to incur from installing flood protection measures and other risk management measures to mitigate future risks including the loss of life due to glacial lake outburst flooding linked with high confidence to anthropogenic climate change-induced glacial retreat.⁵¹ Based on the Carbon Majors study and further calculations, RWE’s contribution to global industrial GHG emissions since the beginning of the industrial age (1751 onwards) stands at 0.47%, which is therefore the proportion of costs sought by Lliuya.

⁴⁸ For a comprehensive overview of the case and the relevant legal documents, see The Climate Case: Saul vs. RWE <https://rwe.climatecase.org/en> (accessed 30 March 2026).

⁴⁹ Section 1004 is typically drawn upon when people seek relief from neighbours for damage or potential harm to their property. It states “If the ownership is interfered with by means other than removal or retention of possession, the owner may require the disturber to remove the interference. If further interferences are to be feared, the owner may seek a prohibitory injunction.”

As Noah Walker-Crawford puts it in his fascinating account of this case, “In their arguments, Saul’s lawyers expand the legal conception of neighbourliness to encompass relations across the planet: as climate change connects RWE and Saul, it makes them neighbours.”; Noah Walker-Crawford, ‘Climate change in the courtroom: An anthropology of neighborly relations’ (2023) 23(1) *Anthropological Theory* 76, 78.

⁵⁰ Higher Regional Court of Hamm, Judgement of 28 May 2025, 5 U 15/17 (*Saul Luciano Lliuya v. RWE AG*) 4-7. An unofficial English translation of the judgement is relied upon in this chapter: https://rwe.climatecase.org/sites/default/files/2025-06/Judgement%20OLG%2028_05_2025.pdf (accessed 30 March 2026).

⁵¹ *Ibid.*

This manuscript will be published in Colin Mackie (ed.), *A Research Agenda for Corporate Environmental Law* (Edward Elgar Publishing, 2026).

The court of first instance dismissed Lliuya's claim on the basis that there was a lack of redress mechanisms as well as a direct chain of causation. On causation, the court took the view that it was not possible to establish a linear causal link between RWE's GHG emissions and the risks of flooding that the plaintiff's property was exposed to.⁵² Further, the court took the view that "...the contribution of individual greenhouse gas emitters to climate change is so small that any single emitter, even a major one such as the defendant, does not substantially increase the effects of climate change."⁵³ On appeal, the Higher Regional Court of Hamm overturned the lower court's ruling on the causation arguments and allowed the case to proceed to trial. On 28 May 2025, the court issued its decision. The court dismissed the claim on factual grounds, *i.e.* that the plaintiff had failed to demonstrate that the flood risks pose a sufficiently imminent threat of damage to his property. However, the case is a pathbreaking one as the court also held that, in principle, companies responsible for large scale emissions can be held liable under German civil law for climate-related harms they contribute to.⁵⁴ Specifically, the court held that the fact that the plaintiff lives in Peru does not prevent him from asserting a claim against the defendant which is domiciled in Germany. The court stated "[t]he distance between the source of the disturbance and the affected property is irrelevant; proximity is not a prerequisite – both according to the wording and the meaning and purpose of [Section 1004 of the German Civil Code]"⁵⁵.

Asmania et al v. Holcim

The claimants in this case are Asmania, Arif Pujianto, Mustaghfirin and Edi Mulyono. They live on the island of Pari in Indonesia which is being flooded more frequently as a result of rising sea levels. In the plaintiffs' view, the defendant company – Holcim - bears joint responsibility for this, because, as one of the world's largest cement manufacturers, it has emitted and continues to emit significant amounts of CO₂ and thereby contributes to climate change.⁵⁶ Asmania and his co-plaintiffs argue they have suffered breaches of personality rights⁵⁷ and damage to their property

⁵² District Court of Essen, Decision of 15 December 2016, 2 O 285/15 (*Saul Luciano Lliuya v. RWE AG*) 5.

⁵³ *Ibid* at 6.

⁵⁴ For discussion, see, for example Verena Kahl and Ezio Costa, 'One Step Back and Two Steps Forward: The Significance of Lliuya's Defeat for the Success of Future Climate Litigation across the South-North Axis' (Verfassungsblog, 12 November 2025) <https://verfassungsblog.de/liuya-rwe/> (accessed 30 March 2026); Noah Walker-Crawford, Jameela Joy Reyes and Nicholas Petkov, 'Luciano Lliuya v. RWE: a major step forward for climate justice' (Grantham Research Institute on Climate Change and the Environment, 9 July 2025) <https://www.lse.ac.uk/granthaminstitute/news/luciano-liuya-v-rwe-a-major-step-forward-for-climate-justice/> (accessed 30 March 2026).

⁵⁵ Higher Regional Court of Hamm, *Saul Luciano Lliuya v. RWE AG*, n 51 at 35.

⁵⁶ Cantonal Court of Zug, 1st Division, A1 2023 9, *Asmania et al v. Holcim Ltd* (decision of 19 December 2025) (henceforth referred to in this chapter as the "Admissibility Decision"), Para. 1 of Facts.

⁵⁷ Pursuant to Article 28 of the Swiss Civil Code. In Section. 3.6.2.1 of the Admissibility Decision, the court offered a helpful summary of what personality rights are under Swiss law: Personality rights are absolute rights with effect against everyone. The legislature has deliberately refrained from defining the term "personality" and has designed Article 28 of the Swiss Civil Code to be a general clause that is capable of interpretation to take account of changing values and priorities. A wide variety of claims for protection can be derived from the physical, mental and social dimensions of personality rights including the right to privacy and the right to economic freedom.

This manuscript will be published in Colin Mackie (ed.), *A Research Agenda for Corporate Environmental Law* (Edward Elgar Publishing, 2026).

caused by climate change.⁵⁸ On 30 January 2023, the plaintiffs filed the lawsuit against Holcim. In a decision handed down on 30 June 2023, the judge opined that the proceedings would first be confined to the preliminary issue of whether the claimants satisfied the necessary procedural requirements.⁵⁹ If it is established that a procedural requirement is not met, the case cannot proceed to a hearing on merits and must be dismissed. The procedural requirements are, namely, whether they have a legitimate interest in the proceedings, whether they have formulated their demands properly in the prayer for relief and whether they have satisfactorily shown that the court is indeed the right forum and has jurisdiction over the matter.⁶⁰

Like *Lliuya v. RWE*, this case is a pro rata climate accountability lawsuit in which the quantum of damages sought by the plaintiffs is based on the defendant company's contribution to historic GHG emissions. According to calculations by the Climate Accountability Institute, Holcim is responsible for almost 0.5% of global emissions since 1950.⁶¹ Holcim has emitted twice as much carbon dioxide as Switzerland during the same period.⁶² Where *Asmania et. al. v. Holcim* goes further than *Lliuya v. RWE* is in relation to the claimants' seeking an injunction to compel Holcim to reduce its carbon emissions (Scopes 1, 2 and 3) by 69% by the end of 2040 (relative to its 2019 emissions levels).⁶³

On 19 December 2025, the Cantonal Court of Zug handed down its decision to allow the case to proceed on the basis that all the procedural requirements were met.⁶⁴ While the court's decision was solely concerned with admissibility and did not address the merits of the case, it offers some interesting insights which will be discussed in more detail below.

Pakistani Farmers v. RWE and Heidelberg Materials

Referred to as the "Climate Cost Case", this case was filed by 39 farmers from Sindh Province, the region in southern Pakistan most affected by the unprecedented floods of 2022.⁶⁵ The defendant companies are RWE, one of the largest electricity producers in Europe, and Heidelberg Materials, one of the world's largest cement

⁵⁸ For example, one of the plaintiffs, Mr. Pujianto, lost his home to seawater flooding on 4 to 5 December 2021 up to a depth of about 20 centimetres. As part of their case, the plaintiffs submitted a study by Dr. Hinkel and his team at Global Climate Forum – "Present and future impacts of climate change and sea level rise on the island of Pari" – which shows that Mr. Pujianto's house would not have been destroyed but for the seawater floods caused by climate change; see Plaintiff's Closing Submissions, Para. 4 (on file with author).

⁵⁹ Admissibility Decision, Para. 4 of Facts.

⁶⁰ Admissibility Decision, Para 1.1 of Considerations.

⁶¹ Richard Heede, 'Carbon History of Holcim Ltd: Carbon dioxide emissions 1950-2021' (Climate Accountability Institute, 7 July 2022) https://www.climatecasechart.com/documents/asmania-et-al-vs-holcim-na_36e4 (accessed 30 March 2026).

⁶² HEKS/EPER, *Holcim's Climate Strategy: Too little – too late* (January 2023) 3; https://www.ecchr.eu/fileadmin/user_upload/HEKS-EPER_Climate_Analysis_DEF.pdf (accessed 30 March 2026).

⁶³ Admissibility Decision, Para. 1.1 of Prayers for Relief.

⁶⁴ Admissibility Decision n 57.

⁶⁵ "Climate Cost Case: Pakistan" <https://www.climatecostcase.org/en/the-case> accessed 30 March 2026).

This manuscript will be published in Colin Mackie (ed.), *A Research Agenda for Corporate Environmental Law* (Edward Elgar Publishing, 2026).

producers. RWE and Heidelberg Materials are identified as “Carbon Majors” that are responsible for at least 0.68% and 0.12% of global industrial emissions since 1965.⁶⁶

The case builds on the legal foundations established in *Lliuya v. RWE*, where the German courts accepted in principle that a major emitter could be held liable for climate-related damages abroad.⁶⁷ The claimants are seeking compensation for property and physical damage that had already occurred due to the floods, grounding their claim on Section 823 of the German Civil Code which sets out the principle that the person who has committed a harmful act must compensate for damage caused.⁶⁸ In the context of climate change, this provision also finds parallels in the “polluter pays” principle which recognises that those responsible must bear the costs of environmental and climate change harms.

Two organizations, Medico International and the European Centre for Constitutional and Human Rights (ECCHR), are supporting the lawsuit.⁶⁹ ECCHR is also supporting the residents of Pari Island in their lawsuit against Holcim (see above discussion). RWE’s response to the lawsuit has been to emphasize that “[c]ivil liability of German companies for global climate damage is massively damaging to Germany as an industrial location” and creates legal uncertainty as German companies potentially face litigation “from all over the world”.⁷⁰ Further, RWE takes the view that this case is “yet another attempt to shift climate policy demands to German courtrooms” and that such attempts to sue “German companies for climate damage anywhere in the world [are] legally inadmissible. RWE has always operated its plants in accordance with applicable law.”⁷¹

Victims of Typhoon Odette v. Shell

The 103 claimants in this case are those who suffered injury and/or property damage as a result of Super Typhoon Odette, as well as those bringing claims on behalf of those killed during the storm.⁷² The claimants are seeking financial compensation from the defendant company, Shell, for the damage they have suffered and potential injunctive relief to prevent further violations of their right to a healthy environment.⁷³ While the claim has been brought in the courts of England and Wales (Shell is domiciled in the United Kingdom), the law that will be applied is that of the

⁶⁶ Ibid.

⁶⁷ Ibid.

⁶⁸ Ibid.

⁶⁹ This is not the first time both NGOs are coming together to support strategic litigation. In 2014, Medico had co-organized a campaign in support of textile workers in Southeast Asia. Medico also partnered the ECCHR to support a lawsuit filed by 4 survivors of a tragic accident at the factory of Ali Enterprises in Pakistan against Kik, a German textile company: <https://www.medico.de/sie-klagen-gegen-kik-15954/> (accessed 30 March 2026).

⁷⁰ Olaf Winter, ‘Climate lawsuit by Pakistani farmers: RWE considers claim for damages unfounded’ (Essen, 20 January 2026) <https://www.rwe.com/en/press/rwe-ag/2026-01-20-climate-lawsuit-rwe-considers-claim-for-damages-unfounded/> (accessed 30 March 2026).

⁷¹ Ibid.

⁷² Official website of the Odette Case Campaign: <https://www.odettecase.org> (accessed 30 March 2026). This campaign is coordinated and supported by Greenpeace Philippines, the Legal Rights and Natural Resources Centre (LRC), the Philippine Movement for Climate Justice, and Uplift.

⁷³ Ibid.

This manuscript will be published in Colin Mackie (ed.), *A Research Agenda for Corporate Environmental Law* (Edward Elgar Publishing, 2026).

Philippines where the harm occurred.⁷⁴ The case is brought on four causes of action in Philippine law.⁷⁵ First, that Shell caused damage to the Claimants in a manner contrary to morals, good customs or public policy.⁷⁶ Secondly, that Shell violated the constitutional rights of the Claimants, including their right to a balanced and healthy ecology.⁷⁷ Thirdly, that Shell acted negligently as they had the opportunity to mitigate climate harm, and an obligation to refrain from obfuscating climate science, but failed to do so.⁷⁸ Fourthly, that Shell has been unjustly enriched, profiting enormously from their contribution to anthropogenic climate change at the expense of the claimants.⁷⁹

The Letter Before Action (LBA) notifying Shell of intended legal proceedings in England and Wales was filed on 23 October 2025. It alleges that Shell was aware for decades that the burning of fossil fuels is a primary driver of climate change and that, despite this knowledge, it expanded its production and sale of fossil fuels, tripling its greenhouse gas emissions between 1965 and 2021. It also sets out the claim that Shell has materially contributed to climate change and, in turn, made Typhoon Odette more likely and more severe. On 9 December 2025, the case was filed at the High Court. As noted by the lawyers who represent the victims of Typhoon Odette, “[t]his is the first case to directly link death, injury and property destruction in the Global South to a fossil fuel giant in the Global North.”⁸⁰

4. Future Research Directions

While fossil fuel companies would have promoted climate denial in the past⁸¹, they now largely accept the scientific consensus in recent legal claims. For example, in the Court of Appeal (The Hague) decision in *Milieudéfensie v. Shell*, Shell did not dispute the district court’s finding of facts on the phenomenon of climate change.⁸² The defendant company submitted evidence of its climate policy, including a March 1998 publication “Climate Change: What does Shell Think and Do about It” which stated the following about the role of Shell companies in the energy markets: “They must play their part in the necessary precautionary measures to limit greenhouse gas emissions. Shell companies expect to do the following: Reduce emissions of

⁷⁴ Ibid.

⁷⁵ Hausfeld News, ‘Shell hit with legal action over climate damages by Typhoon Odette survivors’ (23 October 2025) <https://www.hausfeld.com/news/shell-hit-with-legal-action-over-climate-damages-by-typhoon-odette-survivors> (accessed 30 March 2026).

⁷⁶ Articles 19, 20 and 21 of the Philippines Civil Code.

⁷⁷ Section 16 of Article II of the 1987 Philippine Constitution.

⁷⁸ Law of quasi-delict and environmental tort under Articles 2176 and 2177 of the Philippines Civil Code.

⁷⁹ Article 23 of the Philippines Civil Code.

⁸⁰ Hausfeld News, ‘Survivors of deadly Philippines ‘super typhoon’ take Shell to court over climate harms’ (11 December 2025) <https://www.hausfeld.com/news/survivors-of-deadly-philippines-super-typhoon-take-shell-to-court-over-climate-harms> (accessed 30 March 2026).

⁸¹ Naomi Oreskes and Erik M. Conway, *Merchants of Doubt: How a Handful of Scientists Obscured the Truth on Issues from Tobacco Smoke to Climate Change* (Bloomsbury Press, 2015); Geoffrey Supran and Naomi Oreskes, ‘Rhetoric and frame analysis of ExxonMobil’s climate change communications’ (2021) 4(5) *One Earth* 696.

⁸² ECLI: NL: GHDHA: 2024:2100, Court of Appeal (The Hague), Case Number: 200.302.332/01 (English translation), Paras. 3.1 and 3.2.

greenhouse gases in their own operations as well as helping their customer to do the same.”⁸³

However, opinions diverge on the role of corporations in addressing climate change. While defendants acknowledge their activities contribute to climate change and that they have a key role to play in the global energy transition, they emphasise that climate change is a multi-causal problem and their actions alone will make little or no difference as there are several other corporate emitters.⁸⁴ In fact, brought to its logical conclusion, almost every individual or entity that uses any form of fossil fuels is a GHG emitter. In this context, how would responsibility be determined and liability apportioned?

First, while it is indeed the case that there are numerous emitters, corporate accountability lawsuits do not aim to pin the responsibility on just any emitter but on major emitters particularly those who have had extensive knowledge of the risks and impacts of climate change but took action to conceal such information and to continue to profit from their climate-destructive activities. Climate attribution science has made significant advancements in recent years, allowing robust data-backed claims about material contribution to be made.⁸⁵ As climate attribution science continues to advance, establishing the causal links between the actions of defendant companies and the injury sustained by the claimants will become easier. This will be a big step forward for climate justice as it is the case that, traditionally, determining causation (in a legal sense) has been one of the greatest obstacles to holding corporations accountable for causing climate damage.⁸⁶ One important direction for future research, it is suggested, focuses on explaining and theorising the linkages between climate attribution science and legal liability as well as the use of climate science in the courtroom. This line of research is likely to have interesting connections with existing scholarship on law and science. In the Global South context, it should be noted that there tends to be a lack of long-term, reliable observational records that are necessary to identify and understand climate extremes.⁸⁷ As such, any demand for precise attribution evidence in climate litigation would disadvantage exactly the data-poor regions most vulnerable to climate impacts.⁸⁸ Future research about the role of

⁸³ Ibid, Para. 3.25.

⁸⁴ Noah Walker-Crawford, 'Save the Climate but Don't Blame Us: Corporate Arguments in Climate Litigation' (2026) *Transnational Environmental Law* 1, 2 (published online on 19 February 2026) doi:10.1017/S2047102525100186.

⁸⁵ See, e.g. Christopher W. Callahan and Justin S. Mankin, 'Carbon Majors and the Scientific Case for Climate Liability' (2025) 640 *Nature* 893; Yann Quilcaille et al, 'Systematic Attribution of Heatwaves to the Emissions of Carbon Majors' (2025) 645 *Nature* 392; Nerilie J. Abram et al, 'Quantifying the Regional to Global Climate Impacts of Individual Fossil Fuel Projects to Inform Decision-Making' (2025) 4(92) *Climate Action* <<https://doi.org/10.1038/s44168-025-00296-5>>.

⁸⁶ Geetanjali Ganguly, Joana Setzer and Veerle Heyvaert, 'If at First You Don't Succeed: Suing Corporations for Climate Change' (2018) 38(4) *Oxford Journal of Legal Studies* 841, 849. See also Benoit Mayer, 'Victims in Climate Litigation' (2025) 74 *International and Comparative Law Quarterly* 811, 825 discussing causation tests that 'require a certain degree of causal proximity.' This author disagrees, however, with Mayer's inflexible interpretation of a highly limited number of tests as well as his discounting of the ability of courts to evolve causal requirements to meet new situations (see *ibid* 813).

⁸⁷ Editorial, 'Climate Research in the Global South' *Nature Communications* (15 September 2025) <<https://www.nature.com/articles/s41467-025-63884-3>> (accessed 30 March 2026).

⁸⁸ Ernest Lim, 'A Theory of Attribution in the Age of Complex Phenomena: Lessons from AI and Climate Change' (forthcoming, on file with author).

This manuscript will be published in Colin Mackie (ed.), *A Research Agenda for Corporate Environmental Law* (Edward Elgar Publishing, 2026).

climate science in litigation as well as international climate negotiations on loss and damage should consider the implications for Global South communities and normative guidance on how these issues ought to be navigated to achieve fair outcomes.

Another direction for future research should involve more innovative thinking and scholarship about the role of causation in liability systems and, in the specific context of corporate climate litigation, how different tests of causation can be used by the courts to achieve accountability and justice. The ‘but for’ test plays a central role in causation analysis and tends to be a default legal heuristic across most legal systems. Put simply, the question posed by the test is whether ‘but for D’s conduct, would P have suffered the injury?’ In most instances, the but for test provides sound answers but it sometimes fails to find a causal link when there is one.⁸⁹ Tort law jurisprudence, however, has shown that the law can respond to novel challenges with creative solutions. Established doctrines provide a basis for P to prove causation on the basis that (1) D’s wrongful emissions materially contributed to the P’s harm or that (2) D materially increased the risk of harm and the harm would not have occurred but for the amalgamation of wrongful conduct by various tortfeasors (including D) whose wrongful emissions also materially increased the risk of harm.⁹⁰ As climate litigation against companies emerge in the Global South, there is ample need for further research on causation tests across different legal systems and lessons that can be drawn to advance climate accountability.

The principle of Common but Differentiated Responsibilities and Respective Capabilities (CBDR-RC) is a central normative pillar of the international climate change legal regime.⁹¹ As a principle of international environmental law, it applies primarily to states but there are now signs of judicial willingness to extend the application of this principle to corporate actors. A powerful articulation of this idea of differentiated corporate obligations can be found in the International American Court of Human Rights’ Advisory Opinion 32/25 on the Climate Emergency and Human Rights.⁹² According to the Court, “[i]n the context of the climate emergency . . . while all companies can contribute to meeting mitigation targets, some of them have a greater responsibility because of the risk created by the activities they carry out.” The IACtHR holds that “States should establish differentiated climate action obligations based on the current and historical contribution of companies to climate change and impose stricter duties on companies that engage in activities that generate higher GHG emissions.”⁹³ This novel accountability pathway warrants further reflection and

⁸⁹ As the UK Supreme Court recently explained: “It has . . . long been recognised that in law as indeed in other areas of life the “but for” test is inadequate, not only because it is over-inclusive, but also because it excludes some cases where one event could or would be regarded as a cause of another event. An example . . . is a case of two fires, started independently of each other, which combine to burn down a property. . . . It is natural to regard each fire as a cause of the loss even if either fire would by itself have destroyed the property so that it cannot be said of either fire that, but for that peril, the loss would not have occurred.”; *Financial Conduct Authority v Arch Insurance* [2021] UKSC 1.

⁹⁰ See Mark A. Geistfeld and Sandy Steel, ‘Causation and Climate Change in Tort’ in Douglas A. Kysar and Ernest Lim, *The Oxford Handbook of Climate Change and Private Law* (OUP, September 2026).

⁹¹ Article 3(1), 1992 United Nations Framework Convention on Climate Change; Article 4(3), 2015 Paris Agreement.

⁹² Inter-American Court of Human Rights, *The Climate Emergency and Human Rights*, Advisory Opinion OC-32/25, July 3, 2025.

⁹³ *Ibid*, para. 350.

This manuscript will be published in Colin Mackie (ed.), *A Research Agenda for Corporate Environmental Law* (Edward Elgar Publishing, 2026).

legal scholarship. For instance, the proposition sounds inherently attractive but how would the CBDR-RC principle be applied in practice? Can it be applied in legislative reforms and if so, how would it intersect with existing corporate climate legal frameworks?

5. Conclusion

As the impacts of climate change continues to cause massive damage and human suffering in the poorest parts of the world, the calls for corporations that continue “business as usual” to take moral and legal responsibility for their actions will grow louder. Since the issuance of the Carbon Majors report in 2022 by the Philippine Human Rights Commission, corporations have been put on notice of the extent of public knowledge of their actions and omissions in relation to climate change. Transnational litigation of the kind discussed in this chapter aim to hold corporations accountable and to advance climate governance. There are many who are sceptical of the value of this type of lawsuits, pointing to the slim chances of success in the courtroom and the improbability of overcoming orthodox legal thinking about issues such as causation. These concerns are not to be taken lightly. However, the law is a set of rules and norms societies have created to enable human co-existence and flourishing. In the face of the greatest threat to humanity’s existence as we know it, surely humanity is not a prisoner of its own creation and cannot reimagine a different set of norms for a different world?