



# Aligning Nepal's Climate Commitments with the International Court of Justice (ICJ) Advisory Opinion

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Published by:

Prakriti Resources Centre, June 2026

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Citation: Prakriti Resources Centre (PRC), (2026). Aligning Nepal's Climate Commitments with the International Court of Justice (ICJ) Advisory Opinion.

### **Acknowledgement:**

This publication has been developed through the support of the ClimateWorks Foundation under the Strengthening Civil Society Engagement project. PRC sincerely acknowledges the assistance of the following individuals from World's Youth for Climate Justice (WYCJ) and Prakriti Resources Centre (PRC) in its production: Anusha Shrestha, Unnati Khadka, Rishansa Koirala and Santa Kumar Maharjan.

We also acknowledge the participants who participated in the consultations and provided their valuable feedback and input on the paper.

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# Executive Summary



This paper examines Nepal's climate governance framework through the authoritative lens of the International Court of Justice (ICJ) Advisory Opinion on Climate Change (ICJ AO), with a particular focus on Nepal's Nationally Determined Contribution (NDC) 3.0, the operationalization of Loss and Damage (L&D), and the evolving role of climate litigation. It assesses whether Nepal's climate actions meet the ICJ's clarified legal standards on ambition, due diligence, human rights protection, and accountability under international law.

The analysis finds that Nepal demonstrates meaningful procedural compliance and normative alignment with the Paris Agreement and the ICJ's guidance, particularly through progressive NDC submissions, early net-zero commitments, sectoral mitigation ambition, and comprehensive adaptation planning. Nepal's differentiated circumstances as a low-emitting, climate-vulnerable Least Developed Country are appropriately reflected in its NDC design, including its reliance on international cooperation, consistent with the principle of common but differentiated responsibilities and respective capabilities.

However, the paper identifies structural weaknesses that limit full legal compliance. These include heavy dependence on conditional international finance, weak domestic enforcement mechanisms, limited quantification of mitigation outcomes, and gaps in monitoring, transparency, and due diligence. While Nepal's Loss and Damage commitments are conceptually robust, their implementation remains constrained by reliance on exogenous funding and the absence of an immediate domestic compensation mechanism.

In response, the paper argues for the establishment of a National Loss & Damage Facility grounded in human rights obligations, domestic due diligence, and sovereign fiscal preparedness. It further demonstrates how the ICJ Advisory Opinion strengthens climate litigation pathways in Nepal by clarifying causation standards, reinforcing state obligations under human rights law, and enabling courts to translate international climate norms into enforceable domestic remedies. Overall, the paper positions the ICJ Advisory Opinion as a critical bridge between international climate law, human rights, and national accountability in Nepal's climate response.



# 1. Assessing Nepal's Nationally Determined Contributions (NDC)

On 23 July 2023, the International Court of Justice (ICJ) issued its advisory opinion on climate change obligations addressing states' responsibilities under international law, including the Paris Agreement. The opinion was issued in response to the UN General Assembly Resolution 77/276 adopted on 29th March 2023 where the Court addressed the urgent threat of anthropogenic climate change, emphasizing states' legal obligations to protect the climate system from greenhouse gas emissions and the consequences of failures to do so.

ICJ also clarified that the National Determined Contribution (NDC) under the Paris Agreement is a legally binding obligation, subject to objective assessment, and requiring stringent standards. The Court emphasized that all mitigation efforts must aim to keep the global temperature rise limit below 1.5°C, making this target the central guide for all related obligations (Government of Nepal 2024). State obligations in relation to NDCs are categorized into procedural, substantive, fulfilment and additional obligation.

## 1.2 Assessment of Nepal's NDCs in Light of the ICJ Advisory Opinion

### A. Procedural Compliance

The Court asserted that states must prepare, communicate, and maintain successive NDCs—while taking domestic actions to achieve the goals set out— which must be submitted every five years. These are considered 'obligations of results' (legal duty) and failure to submit them constitutes a violation of international law.

Nepal has been submitting its NDCs under the UNFCCC every five years, in 2016, 2020, and 2025. Progressive steps have been taken in implementing NDC through national plans and policies such as through Energy Development Roadmap 2081 which aims to achieve 28,500 MW electricity capacity by 2035 (Energy Development Roadmap 13). There have been concrete indicators showing progress through substantive achievements, such as 16% increase in EV imports during the first ten months of the 2024-25 fiscal year (Ghimire). Similarly, in 2022 Nepal achieved 43.38% out of 45% forest coverage aimed to be fulfilled by 2030 (Forest Research and Training Centre 18).

## **B. Progression and Highest Ambition:**

The ICJ states that successive NDCs must represent a “progression” and reflect “highest possible ambition”. Meaning, every new NDC must be more ambitious than the previous one, while being strong enough to contribute meaningfully to achieving the Paris Agreement’s goal. Nepal’s NDC 3.0 satisfies this requirement by extending the commitment period to 2035 and advancing the net-zero target to 2045 (Government of Nepal, 1) showing stronger long-term planning. It significantly increased renewable energy capacity from 15,000 MW by 2030 to 28,500 MW by 2035 (Government of Nepal 3). This encourages strengthening transport electrification targets, expanding electric rail from 200 km to 300 km (Government of Nepal 5), and improving household energy, waste, and adaptation measures.

## **C. Differentiated Standard of Assessment:**

The ICJ AO emphasizes evaluation of the NDCs based on differential criteria in accordance with the principles of common but differentiated responsibilities and respective capabilities (CBDR&RC) in the context of historical emissions and development status. Since Nepal can be categorized as a limited emitter and climate-vulnerable country, it has planned NDC 3.0 with practical yet significant goals, such as increasing the use of renewable energy to 28,500 MW by 2035. Additionally, approaches such as increasing use of electric vehicles and adopting comprehensive adaptation plans, while acknowledging reliance on conditional international support for some interventions reflects Nepal’s national circumstances and developmental constraints, demonstrating a responsible and context-sensitive climate commitment consistent with the ICJ’s CBDR-RC guidance.

## **D. Alignment with the 1.5°C Goal:**

ICJ AO states that while the target of the Paris Agreement is to keep global warming below 2°C, the key target is to limit temperature rise to 1.5°C. Nations should prepare climate strategies with the best available science in an effort to achieve this goal. Nepal’s NDC 3.0 meets this target by setting net-zero emissions by 2045, five years prior to the global goal, along with its Long-Term Low Emission Development Strategies (LT-LEDS) 2021, which targets low emissions by 2030 and net-zero by 2045. This shows that Nepal’s NDC is not just symbolic but is scientifically aligned with the ICJ’s standard for meaningful action on climate change.

## **E. Adaptation Planning as a Legal Duty:**

Nepal's NDC 3.0 meets the obligation (Paris Agreement art. 7(9)) reaffirmed by ICJ AO to adapt, plan, and implement action through national laws, plans and policies including National Adaptation Plan (NAP) 2021-2050 and Local Adaptation Plans of Action Blueprint (LAPA) 2019. It has enlisted the adaptation priorities along with specific target years in the sectors ranging from agriculture and food security, forests, biodiversity and watershed conservation, water resources and energy, industry, tourism, natural and cultural heritage, health, drinking water and sanitation, disaster risk reduction and management and awareness raising and capacity building. The total cost of NDC's adaptation priorities are estimated to be in the range of USD 18 to 20 billion dollars (Government of Nepal 26), which are expected to be met from international climate finance and support.

## **1.3 Inclusion of Loss and Damage (L&D)**

The ICJ notes that the Paris Agreement includes obligations of cooperation on loss and damage associated with unavoidable climate change risks such as floods, landslides, or permanent loss of livelihoods. Nepal's NDC 3.0 responds to this by including a separate chapter on Loss and Damage and recognizing the seriousness of occurrences such as floods, landslides, GLOFs, drought, and heatwaves. It aims to enhance its institutions, build an integrated data platform, and develop the National Framework on Climate Change-Induced Loss and Damage.

## **1.4 Gaps and Limitation**

### **A. Dependence on Conditional Finance**

The ICJ AO requires states to make best possible efforts in setting climate targets, assessed according to their capacity. While Nepal, as a Least Developed Country, is not expected to match the ambition of a developed nation, it must still show that it is using its domestic resources to the fullest extent possible. However, 96–97% of Nepal's target to reduce emission is conditional on international support (Government of Nepal 15). If the estimated USD 62.916 (Government of Nepal 2) billion in international finance does not materialize, Nepal would be able to deliver only around 3% of its pledged emission reductions. This heavy reliance on conditional targets may raise questions about whether its unconditional contribution adequately reflects its maximum domestic effort despite being a LDC.

## **B. Weak Domestic Implementation Mechanisms**

The ICJ AO states that countries must not only set climate targets, but also take real domestic actions that are reasonably capable of achieving those targets. Many of Nepal's NDC 3.0 targets, such as increasing electric vehicle (EV) sales to 95% (Government of Nepal 4), depend mainly on what private actors like consumers, businesses, and importers choose to do. The government has made some initiatives such as tax exemption and reduced duties (The Kathmandu Post), reduced registration fees and road taxes, and development of charging stations (Republica). However, if clear laws, binding policies, and effective incentives or penalties are not introduced, these targets may remain policy intentions rather than concrete actions.

## **C. Credibility of Finance Requests**

The ICJ holds that climate finance has to be provided by developed states so that developing states, including Nepal, are assisted. The amount required by Nepal is approximately USD 63 billion (Government of Nepal 33), which reveals that securing climate finance is an important factor in meeting Nepal's national targets. ICJ clarifies that climate finance cannot be an objective but must be used for realizing concrete results, including controlling global warming under Article 2 of the Paris Agreement. However, lack of credible institutional and financial systems and processes could hinder securing finances, which could adversely impact meaningful contribution to the mitigation of emissions or enhancing climate resilience.

## **D. Limited Domestic Due Diligence**

The ICJ AO emphasizes that States must exercise due diligence in formulating and implementing their NDCs, which means they must do the utmost to ensure that their climate actions are ambitious and feasible. The NDC 3.0 submitted by Nepal covers efforts made to satisfy this aspect. The document identifies clear specific plans in key sectors such as renewable energy, electric transportation, clean cooking energy, waste, and climate adaptation, which show a clear concern for adaptation and mitigation. However, dependence on external support through climate finance, technology, and capacity-building, undermines whether the actions will actually be implemented. Additionally, the lack of fully developed national enforcement, monitoring, and administrative mechanisms limits the country's ability to translate planning into action.

## **E. Partial Compliance with Ambition Standards**

The ICJ AO establishes that NDCs must represent a State’s maximum possible ambition, specifically contributing to the 1.5°C temperature goal and the stabilization of greenhouse gas concentrations. Nepal’s NDC 3.0 exhibits a bifurcated alignment with this standard. On the one hand, Nepal demonstrates substantial sectoral ambition, particularly through its commitment to expand renewable energy capacity to 28,500 MW and achieve a 95% electric vehicle adoption rate by 2035— efforts that are commendable given its status as a low-emitting, climate-vulnerable nation. On the other hand, the NDC fails to fully satisfy the ICJ’s requirement for “adequate and measurable” contributions due to two primary structural deficiencies: the absence of a transparent, economy-wide emission reduction target aligned with a 1.5°C trajectory, and a heavy reliance on conditional international financing. Consequently, while the policy measures reflect high intent, the lack of quantitative certainty and the dependency on external support mean that Nepal’s NDC 3.0 only partially fulfills the qualitative legal standards prescribed by the ICJ.

## **1.5 Areas of Improvement and recommendation**

### **A. Strengthening Due Diligence**

The ICJ emphasizes that parties must exercise stringent domestic due diligence in implementing climate obligations and have strict domestic obligations of due diligence in fulfilling their climate commitments. In the context of Nepal, many NDC goals such as achieving 95% electric vehicle (EV) sales by 2035 or expanding the use of electric cookstoves to 2.1 million households (Government of Nepal 3) currently lack statutory enforcement mechanisms. Introducing a Climate Change Act incorporating such goals will provide a legal mandate on these issues and will specifically charge certain ministries with these duties. This will form a functional domestic system capable of targeting particular sectoral goals and will show that the country is doing everything within their capability as required by the ICJ's obligations of conduct.

### **B. Addressing the Conditionality Dependence**

To address Nepal's dependence on conditional international finance support to meet its targets, Nepal could shift towards feasible, low-cost measures that require strong regulatory action, such as removing fossil fuel subsidies or mandating green building codes. Such measures would enhance Nepal's claim that it is exerting the "highest possible ambition" with its domestic resources.

### **C. Improving Transparency and Quantification**

The credibility in Nepal's NDC 3.0 could be compromised by the fact that many subsequent policies have "unquantifiable" contributions which widens the transparency. Nepal should mandate immediate modelling of these policies and clarify in its information to facilitate clarity, transparency and understanding (ICTU) tables that these measures act as additional buffers. Such an approach would likely demonstrate over-performance and higher ambition, reinforcing compliance with the Paris Agreement's transparency requirements.

### **D. Strengthening Loss and Damage Implementation**

The Loss and Damage section currently provides only partial data, ignoring non-economic losses such as cultural, health, and biodiversity impacts. Having a formal registry on L&D at the national level along with consistent indicators for addressing non-economic losses would be a concrete basis for claiming international support for cooperation on loss and damage. Evidence-based reporting is vital to put loss and damage into timely practice as per article 8 of the Paris Agreement.

## **E. Ensuring a Just and Inclusive Transition**

Even though the concept of a 'just transition' is acknowledged within the NDC submitted by Nepal, social provisions to safeguard affected personnel in the transition to non-fossil fuels are broadly general in nature. The inclusion of social provisions in the plan, including retraining of affected staff, social assistance, and labor market policies, within the NDC, helps to bring this into conformity with commitments under the Paris Agreement pertaining to social rights and facilitation of labor market transition.

### **1.6 Under NDC 3.0 Draft Implementation Plan**

The NDC 3.0 draft implementation plan is an operational framework translating the NDC 3.0 commitments into sector-based, concrete and time bound actions and plans. It works as a roadmap to actions, resources and responsibility to achieve the mitigation, adaptation and loss and damage objectives committed to by the NDC 3.0. Overall the plan is appreciable considering the development priorities and agendas but here are some points that needs to be further worked on:

- » Introduce parallel domestic efforts on implementation instead of reliance on conditional international finance.
- » Requirement of a mandatory minimum standard for the implementation plan where each sector should have a minimum requirement to appoint one lead agency, annual achievement complementing the end achievement/target, and clear budget policy.
- » Equity should not just be framed as vulnerability and should additionally cover access to resources, decision-making and participation, and the overall impact over the implementation.
- » Monitoring, Evaluation and Learning (MEL) should be made more consistent with clearly defined indicators for specific sectors.



## 2. Operationalizing a National Loss & Damage Facility

### 2.1 Obligation to Compensate: The Internal Human Rights Imperative

While the discourse of climate justice frequently focuses on high-emitting nations' accountability to the Global South, the ICJ AO establishes a parallel, inward-facing obligation for the Nepal Government. The Court determined that environmental protection is a "precondition for the enjoyment of human rights," encompassing the rights to life, health, and an adequate standard of living (ICJ AO para. 373).

As a result, Nepal as a state still has the fundamental fiduciary duty to its own nationals to lessen the negative effects of climate change, even though it contributes only marginally to global emissions. Regardless of the source of the emissions, the ICJ explained that a state may violate its international human rights responsibilities if it does not take the necessary steps to prevent serious harm (ICJ AO para. 377).

This establishes a jurisprudential foundation for domestic compensation. The state may be held accountable for the subsequent breach of the right to life or home if it does not take "stringent" due diligence in preparing for predictable dangers, such as Glacial Lake Outburst Floods (GLOFs) (ICJ AO paras 138, 280-282). The ICJ reinstated that when such a commitment is violated, there entails a secondary duty to provide complete reparations, including compensation in cases when restitution is practically unattainable. As a result, the creation of a National Loss & Damage Facility is a necessary mechanism to meet the state's legal obligation to "respect, protect and ensure" human rights against the "imminent threat" of climate calamity, rather than just a charitable welfare measure (ICJ AO para. 377).

### 2.2 Articulation of Harm

The legal challenge of establishing causation has historically been a major obstacle to claiming loss and harm. However, according to the ICJ AO, the "diffuse and multifaceted nature" of climate change does not exclude the establishment of state responsibility or make the identification of a causal relationship impossible (ICJ AO para. 434). A legal criterion requiring a "sufficiently direct and certain causal nexus" between the wrongdoing (or inaction) and the harm sustained was approved by the Court.

This strict legal requirement is met by Nepal's NDC 3.0, which offers the evidence. Through the official adoption of "state-of-the-art climate change attribution methodology," the Nepal government has established a link between legal certainty and scientific probability. According to certain attribution analyses used in the NDC, anthropogenic climate change raised the probability of the September 2024 heavy rainfall event by "about 70%"(Government of Nepal 2025, p. 30).

This scientific certainty makes specific harms compensable under the paradigm envisaged by the ICJ. Compensable injuries are no longer abstract; they are quantitative and traceable. These include economic losses (the destruction of infrastructure outlined in NDC 3.0) as well as non-economic losses (displacement, loss of cultural heritage, and psychological trauma), all of which are recognized by the ICJ as impediments to the full enjoyment of human rights (ICJ AO para.376).

## **2.3 Gaps in Current Frameworks and The Risk of Exogenous Reliance**

The current climate governance architecture in Nepal, as expressed in NDC 3.0, outlines ambitious adaptation methods, however, it specifically states that mitigating loss and damage is dependent on "incoming financial assistance from the Fund for Responding to Loss and Damage (FRLD)"(Government of Nepal 2025, p. 31). This reliance creates a temporal gap, endangering the rights of vulnerable communities. International disbursement cycles are frequently bureaucratic and slow, whereas climate calamities such as GLOFs necessitate quick intervention to avoid loss of life and facilitate evacuation.

The ICJ AO highlights that the standard of due diligence demanded of nations is "stringent" because of the "urgency involved" and the "seriousness of the threat" (ICJ AO paras 138-254). Relying only on projected overseas funds may fail to achieve this level of urgency. If the state waits for foreign funds to arrive while its citizens are displaced or without shelter, it may be violating its commitment to take "all appropriate measures" to protect rights (ICJ AO para.281). A National Loss & Damage Facility would address this shortcoming by providing an immediate, local fiscal buffer, or "quick reaction" mechanism, that bridges the gap between the commencement of a disaster and the delivery of foreign relief.

## 2.4 Structure of the Proposed National Facility

To comply with the ICJ's mandate and the operational realities of NDC 3.0, the National Loss & Damage Facility should be organized as a hybrid vehicle with two distinct funding windows:

### **A. The Public Fund (Domestic Resource Mobilization):**

While the NDC stresses international assistance, it also pledges to mobilize "internal sources such as national budgets" (Government of Nepal 2025, p. 32). The Facility should be funded by a special domestic budget allocation to ensure control over urgent relief operations. Furthermore, the Facility has the potential to implement the "polluter pays" idea on a domestic scale. Although the ICJ acknowledged that "polluter pays" is not yet a general rule of customary international law for interstate interactions, it did recognize its use in national laws. Nepal should levy a climate resilience tax on high-emission imports (e.g., private vehicles, fossil fuels) to generate revenue for the Facility, ensuring that domestic consumption of carbon-intensive commodities funds the rehabilitation of the climate-vulnerable.

### **B. Risk Transfer Mechanisms:**

NDC 3.0 offers a strategy to allow "risk transfer (such as insurance) of the most vulnerable" (Government of Nepal 2025, p.36). The National Facility should serve as the sovereign backstop for various climate risk insurance programs. By pooling risk at the national level and acquiring sovereign catastrophe bonds, the Facility can ensure liquidity amid large-scale disasters. This is consistent with the ICJ's judgment that nations must employ "all means at their disposal," including administrative and financial procedures, to reduce harm (ICJ AO para.281).

The suggested hybrid model for Nepal is a tried-and-true approach that is already gaining popularity among peers who are vulnerable to climate change, not just a theoretical legal necessity. For example, the Pacific Resilience Facility (PRF) provides a clear example of a locally held sovereign fund that avoids the bureaucratic delays of foreign finance by offering instantaneous, small-scale liquidity (Forum Secretariat, n.d.). In a similar vein, the Caribbean Catastrophe Risk Insurance Facility (CCRIF) shows how risk-pooling and parametric insurance can guarantee very immediate reimbursements after significant weather occurrences (World Bank 2012). Additionally, Bangladesh's National Mechanism on Loss and Damage provides an example of how a fellow LDC might combine registries for non-economic losses with domestic reserve funds (Climate Action Network 2018).

Nepal can move from a state of "exogenous reliance" to a model of sovereign resilience by implementing these comparable frameworks, guaranteeing that its "due diligence" duties under the ICJ AO are satisfied with practical, tried-and-true fiscal measures.

## 2.5 Access to Justice and Reparation

The establishment of the Facility must be accompanied by a strong grievance redress system. According to the ICJ AO, international law includes remedies for breach of duties, including the “performance of the obligation of reparation” (ICJ AO para.443).

If the National Loss & Damage Facility is constituted as a statutory entitlement rather than a discretionary benefit, it will provide a route for climate lawsuits. Citizens harmed by climate-induced displacement may seek judicial review if the Facility fails to give enough help, citing the ICJ’s findings on the “right to a clean, healthy, and sustainable environment” as a standard for the state’s response (ICJ AO para.392). This establishes a domestic accountability loop, ensuring that the state’s “discretion” in handling climate funding is exercised in good faith and in compliance with human rights commitments.



### 3. Climate Litigation

Climate change litigation can range from peripheral cases where climate related arguments are not the main issue or it could be strategic climate litigation that is coupled with various advocacy efforts in the public sphere as well. Such cases can be ‘framework’ or ‘systematic’ mitigation cases that challenge the government’s overall efforts to mitigate climate change which includes both challenges to inadequate ambition of emissions reduction targets and/or their implementation. Such cases primarily deal with the “Ambition Gap” between State commitments and mitigation/enforcement efforts.

With the ICJ AO emerging as an authoritative international guidance that bridges the gap between voluntary pledges and binding legal obligations of States, more domestic legal remedies can be invoked to transform international standards into enforceable national measures ensuring state accountability. The ICJ findings will help to mitigate climate change under the UNFCCC and Paris Agreement, and will assist national and regional courts in adjudicating future cases. One of the main assertions done by the States in framework cases is that UNFCCC and Paris Agreement do not enforce mitigation obligations, and such climate treaties are “entirely discretionary” and non-binding in nature. ICJ, rejecting the argument, held that mitigation obligations under Article 4 of UNFCCC can only be met by “the adoption of any policies and the taking of corresponding measures” (ICJ AO para.208).

#### 3.1 Climate Litigation trends in Nepal

Nepal’s judiciary has made exemplary decisions concerning environment protection beyond the sub-region, expanding its influence in the Global South. As one of the most climate-vulnerable countries, it is only fitting that the judiciary recognised the right to a clean environment as a fundamental right as early as 1995 through the Godavari Marble case. This has been further reiterated in the more recent Padam Bahadur Shrestha v. Office of the Prime Minister case, 2018. Through public interest litigations, Nepal’s judiciary has often stepped-in where the legislative and executive lack. However, while Nepal is active in international climate conversations, the implementation of its International obligations and domestic ambitions are often fragmented.

In Nepal, climate change litigation has been used to challenge local planning decisions (Shailendra Prasad Ambedkar v. Office of the Prime Minister 2021), enforcement of existing protective laws such as EIA compliance (Prakash Mani Sharma v. Council of Ministers 2020), rights-based litigation, suing private corporations (Suray Prasad Sharma Dhungel v. Godavari Marble 1995) and use of public trust doctrine (Ramchandra Simkhada v. Office of the Prime Minister 2012). Some of these cases have been able to establish new precedents such as establishing Locus Standi to sue on behalf of “nature”, most of them focus on the proper implementation of existing frameworks as a part of government’s mitigation and adaptation strategy, and only a few cases have demanded for a framework change.

Despite progressive verdicts, lack of compliance and enforcement continues further jeopardizing Nepal’s climate vulnerability. ICJ AO has asserted that state obligations regarding climate change are not just treaty-based (therefore voluntary) but grounded in customary international law (CIL) and international human rights standards. Nepal’s Judiciary adheres to the duty of due diligence, regulation of private entities and intergenerational equity even before ICJ AO. But the critical a

## **3.2 Standing, Causation and Attribution**

The Constitution of Nepal guarantees the right to live with dignity (Constitution of Nepal 2015, article 16) which was interpreted by the Supreme Court (Suray Prasad Sharma Dhungel v. Godavari Marble p.462) to encompass the right to a clean and healthy environment (Constitution of Nepal 2015, article 30). Moreover, environment protection is also deemed as a state responsibility under the directive principles (Constitution of Nepal article 51). These constitutional provisions provide a basis for climate related claims. Similarly, Article 133 of Constitution empowers Supreme Court to issue writs of habeas corpus, mandamus, prohibition, certiorari, and quo warranto to enforce fundamental rights. This gives the Supreme Court an extraordinary jurisdiction to implement climate policies, adaptation plans or Paris Agreement commitments.

### **A. Nepal’s Progressive views on Standing**

Nepal’s judiciary has been upholding its progressive views on Locus Standi in bringing forward cases concerning the environment and by extension climate change. Over the past 30 years, various individuals, NGOs and concerned stakeholders have used public interest litigation to ensure right-based interpretation and enforcement to combat non-compliance to existing protective mechanisms. Standing, at least in case of Nepal, does not comprise pressing issues, however ICJ AO’s emphasis on intergenerational equity suggests that standing rules must be broadened to allow youth groups to invoke such mechanisms.

## **B. Causation and Attribution**

Under the ICJ AO, States have a legally binding duty to prevent climate harm (ICJ AO para 272). In the Nepali context, this means that failures in action (such as granting permission for a development activity in an ecologically vulnerable location) or omissions (failing to implement adaptation measures) can be attributed to the state as internationally wrongful acts. A major hurdle in climate litigation is proving a direct link between a specific government failure and a particular climate-induced disaster, such as a Glacial Lake Outburst Flood or landslide.

When the State is a party to a case, a causal link can be established between insufficient national climate targets and impacts of climate change interfering with individual and collective rights (Městský soud v Praze 2022). The Court noted that ‘there is no doubt that human activity is the central cause of climate change’ (ICJ AO para 283) and that insufficient national measures constituted a violation of the Paris Agreement (ICJ AO para 280). Across various jurisdictions, Courts have been drawing links between anthropogenic events such as GHG emission and climate-related extreme and slow-onset events (Massachusetts v EPA 2007). They have been engaging in general and case-specific legal evaluation of scientific evidence of climate change through human activities.

## **C. Individual liability over Private Actors**

It is exceedingly difficult to attribute individual liability. Specific causation and attribution to harm or increased risk to harm must be demonstrated to be proven for making individual actors liable. Nevertheless, experts argue that limited or lack of data cannot be interpreted as a lack of contribution of human activities to intensity and frequency of climate-induced events (Friederike Otto et al. 2022). The determination of “significant harm to the climate system and other parts of the environment” must take into account the best available science, which is currently to be found in the reports of the IPCC (ICJ AO para 278).

It is essential that Courts engage in an interdisciplinary method in such cases, where precedents can be formed backed by science (ICJ AO p.88). IPCC, which stands as the authority in climate attribution science (ICJ AO para 284), explores attribution in three key categories: trend (long-term climatic shift), source (human and natural contributors) and event (specific weather occurrences linked to broader climatic trends).

Globally, climate litigation trends concerning attribution can be categorised into four key areas (Friederike E.L. Otto et al. 2025):

- The determination of the scope of relevant emissions,
- The review of national climate targets and measures,
- The permissibility of emission intensive projects or activities, and
- Courts’ willingness to use and review general (environmental) law concepts to develop climate litigation.

In line with the ICJ's observation that fossil fuel subsidies and licenses can constitute 'wrongful acts' attributable to the State, Nepal must enhance its regulatory scrutiny. Litigation should target the omissions of public authorities when they fail to enforce EIA conditions on private developers or failure to implement existing mechanisms. By applying the Public Trust Doctrine, the State can be held liable for 'failing to regulate' private actors whose activities degrade the climate-resilience of local communities. Practice of taking climate science can generate scientific evidence of attribution which can create law-informed scientific research that will be essential for assigning individual liability. However, it is essential that courts take scientific evidence to establish presumption of liability, so long as it reflects "best available science" instead of insisting on scientific certainty. To ensure these scientific findings are effectively utilized, the research suggests mobilizing expertise—such as specialized climate consultants—to help the judiciary interpret complex data management systems and scientific models during the litigation process. This ensures that court decisions are grounded in academic rigor and current scientific reality.

### **3.3 Role of Human Rights in Climate Litigation**

The ICJ AO affirmed that the governments' obligations under international human rights law also apply to climate change where it referenced climate litigation in national and regional courts. In the backdrop of ICJ finding that States must take international climate change obligations while implementing their human rights obligations, the ICJ enforces that failing to share mitigation efforts constitutes a human rights violation.

The ICJ concluded that the right to a healthy environment is "essential for the enjoyment of other human rights" is affirmed in findings of national courts in framework cases of the last 10 years. Cases like *Leghari v. Federation of Pakistan*, *Shrestha v. Office of the Prime Minister et al. (Nepal)*, *Future Generations v. Ministry of the Environment and Others (Colombia)*, *Held v. Montana (United States)*, *Do-Hyun Kim (South Korea)*, and the *Hungarian Climate Case* have ensured domestic rights to a healthy environment which is enshrined in the domestic law and constitution of over a hundred countries.

## **A. International Mechanisms**

Upon exhaustion of domestic measures, concerned stakeholders can also opt for various international mechanisms for the fulfilment of their human rights in the context of climate change. Often international rulings can draw attention to critical issues and prompt domestic actors to take timely actions. These mechanisms do not replace the Nepali judiciary or legal systems, but can complement domestic efforts.

ICJAO serves as a bridge to link national failures to international obligations under human rights instruments. As Nepal is a party to most core human rights treaties, their respective treaty bodies can be engaged to promote state accountability. Since ICJ AO affirms that climate change is a “human rights crisis” these treaty bodies are new avenues to protect human rights violations exacerbated by climate change. While none of these spaces are new for human right defenders, climate activists can assert a stronger presence in international climate diplomacy through treaty bodies, UPR and special procedures.

## **B. UN Human Rights Treaty Bodies**

Individuals, NGOs and civil societies can submit ‘communications’ to the specific treaty bodies concerned with rights violated by States due to their act/omission in addressing climate change. Treaty bodies are committees of independent experts established under each core human rights treaties which monitor the implementation of treaty obligations by State parties. Each treaty body is named after the treaty it monitors, such as the Human Rights Committee (CCPR) for the ICCPR or the Committee on the Elimination of Racial Discrimination (CERD) for ICERD.

These treaty bodies perform several key functions, including reviewing periodic reports submitted by state parties, issuing concluding observations and recommendations, developing general comments to interpret treaty provisions, and in some cases, considering individual communications or complaints. The process often involves a constructive dialogue with state party delegations, where experts ask questions and receive responses to assess implementation. Some treaty bodies also conduct country visits or initiate inquiries, particularly when there are serious concerns about human rights violations.

Precedents have already been set by cases such as *Daniel Billy v. Australia* (2022) which was the first case to be brought before the UN Human Rights Committee whereby an international human rights body found that inadequate climate adaptation policy led to violation of the right to privacy, family, home and right to practice one’s own culture. While the Committee upheld that violation of the right to life requires immediate and certain threat to life (*Ioane Teitiota v. New Zealand* 2020), it further elaborated that without robust national and international climate action, the effects of climate change could eventually expose individuals to such risks. This has been taken as a landmark climate-related human rights decision by the UN human rights body and is held as a victory for climate and indigenous rights. Nepal can draw inspiration from such cases and use UN human rights mechanisms for international and national level advocacy.

### **C. Universal Period Review (UPR) and Special Procedures**

The Universal Periodic Review (UPR) is a unique mechanism of the Human Rights Council that calls for each UN Member State to undergo a peer review of its human rights records every 4.5 years. The UPR provides each State the opportunity to regularly:

- \* Report on the actions it has taken to improve the human rights situations in their countries and to overcome challenges to the enjoyment of human rights; and
- \* Receive recommendations – informed by multi-stakeholder input and pre-session reports – from UN Member States for continuous improvement.

Special Procedures are non-judicial, diplomatic avenues that rely on peer review and expert scrutiny. It is the overarching system established by the Human Rights Council to examine, monitor, advise, and publicly report on human rights issues from a thematic or country-specific perspective. This system includes various types of mandates, such as thematic Special Rapporteurs, thematic Independent Experts, thematic Working Groups, country-specific Special Rapporteurs, and country-specific Independent Experts. A Special Rapporteur is one specific type of mandate-holder within the Special Procedures system. They are independent experts appointed by the Human Rights Council to investigate and report on specific human rights issues, either globally (thematic) or in a particular country.

The two special rapporteurs that are directly relevant to climate change concerns are

- \* UN Special Rapporteur on the promotion and protection of human rights in the context of climate change
- \* UN Special Rapporteur on the human right to a clean, healthy and sustainable environment one of the major benefits of expert reports by special rapporteurs is that they can be used in domestic courts as authoritative evidence.

It is clear from the above discussion that international human rights mechanisms can only serve complementarily to national judicial mechanisms. While Nepal's judiciary is progressive in recognising the international standard and reiterating them in domestic cases, it's the implementation that falls short. Legal avenues to redress lacking mitigation and adaptation strategies are not necessarily underutilized in Nepal, but clearly ineffective considering the lack of promulgation of a specific climate change related Act. The challenge is to transform international principles into locally enforceable justice mechanisms. In this light, domestic climate litigation must be transformed to play a regulatory role over state compliance.

# Conclusion



The ICJ Advisory Opinion marks a decisive shift in international laws concerning climate change by transforming voluntary commitments into legally assessable obligations grounded in human rights, due diligence, and customary international law. When Nepal's climate governance scenario is assessed through the lens of ICJ AO, it is evident that Nepal's approach has been driven by principled ambition but deterred by structural, institutional, and financial limitations.

Nepal's NDC 3.0 reflects genuine progression and scientific alignment with the 1.5°C goal, particularly commendable given its minimal historical contribution to global emissions. Its early net-zero target, sector-specific mitigation measures, adaptation planning, and inclusion of loss and damage demonstrate good-faith compliance with international standards. Yet, the ICJ asserts that intent and planning alone are insufficient. Heavy reliance on conditional international finance, weak domestic enforcement, limited quantification, and gaps in monitoring and accountability prevent Nepal's NDC from fully meeting the Court's requirement of "maximum possible ambition" supported by stringent domestic due diligence.

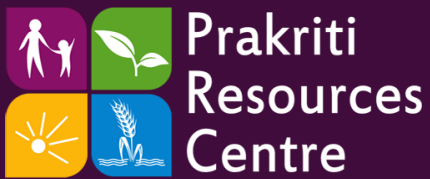
The paper further establishes that loss and damage is no longer solely a matter of international solidarity but a core domestic human rights obligation. The absence of a national compensation mechanism exposes vulnerable communities to delayed relief and legal uncertainty, risking violations of the rights to life, dignity, and adequate housing. A National Loss & Damage Facility—anchored in domestic resources, risk-transfer mechanisms, and statutory entitlements—emerges not as a policy preference, but as a legal necessity under the ICJ's interpretation of state responsibility and reparations.

Finally, the ICJ Advisory Opinion significantly enhances the strategic potential of climate litigation in Nepal. By lowering evidentiary barriers on causation, affirming the relevance of attribution science, and reaffirming the indivisibility of climate obligations and human rights, it equips domestic courts to move beyond declaratory judgments, and moving toward regulating state action and inaction. International human rights mechanisms can complement—but not replace—this domestic enforcement role.

Nepal stands at a critical crossroads now. The challenge ahead is not the absence of legal norms or policy, but the translation of international principles into enforceable domestic action. Aligning NDC implementation, loss and damage responses, and climate litigation with the ICJ's clarified legal standards offers Nepal a pathway from vulnerability-driven compliance toward sovereign climate resilience grounded in rights, accountability, and justice.

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