What International Courts Are Saying About Climate Justice and Why It's a Big Step Forward for the Defense of Indigenous Peoples' Rights

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In July 2025, the International Court of Justice (ICJ) issued an advisory opinion in response to a request from the United Nations General Assembly (UNGA). The UNGA had asked about States' obligations under international law to protect the climate system and other parts of the environment from anthropogenic greenhouse gas emissions, both for present and future generations. It also inquired about the legal consequences for States whose acts or omissions cause significant harm to the climate system, affecting other States, peoples, and individuals. The ICJ identified multiple and overlapping sources of legal obligation, including international treaties, agreements and protocols, the United Nations Charter, customary international law, and international human rights law, and affirmed clear legal obligations on States with respect to climate change.

Earlier that same month, the Inter-American Court of Human Rights (IACtHR) issued its own advisory opinion at the request of Chile and Colombia. The two States asked the Court to clarify the nature and scope of States' obligations to respect, guarantee, and adopt necessary measures to protect substantive and procedural rights affected or exacerbated by the climate emergency. They also sought guidance on the obligations of States to ensure that these rights are not denied to groups in vulnerable situations facing the crisis. Analyzing these questions under the American Convention on Human Rights, and drawing on submissions from States, international organizations, and civil society, the IACtHR identified a range of substantive and procedural rights that States must guarantee under the Convention. The Court further emphasized that poverty and inequality increase the vulnerability of certain groups to the impacts of the climate crisis, thereby creating additional obligations for States to ensure access to the resources necessary to reduce and eradicate such vulnerability.

Both advisory opinions, including through their clear recognition of the rights of Indigenous Peoples as central to climate action, strengthen the legal foundations for the advancement of Indigenous Peoples' rights alongside environmental rights, potentially serving as powerful instruments for advocacy and accountability.

The substance of the International Court of Justice and the Interamerican Court of Human Rights' advisory opinions

What do the Courts say on States' obligations under International Law?

Both advisory opinions provide **unprecedented clarity on States' obligations regarding climate change.** The ICJ and the IACtHR found that climate change directly engages human rights law, clarifying States' duties to mitigate, adapt, cooperate, and provide remedy for climate harm, *as human rights obligations*—not merely environmental or policy concerns. Notably, the ICJ explicitly rejected the idea that climate treaties and conventions—such as the Paris Agreement or the Kyoto Protocol—constitute lex specialis that displace other treaty or customary obligations related to human rights.

Accordingly, **States remain bound by parallel duties under general international law to prevent, mitigate, and repair climate harm,** and both opinions explicitly spotlight climate-destructive corporate conduct. The Inter-American Court affirmed that environmental damage affecting the climate system is, by definition, transboundary in nature, and therefore the human rights obligation to prevent environmental harm– considering it as a rule of customary international law–necessarily includes the duty to prevent climate harm—even when its impacts extend beyond national borders. This interpretation reinforces the Court's broader approach to extraterritorial human rights obligations.

In parallel, the International Court of Justice affirmed that climate obligations possess an *erga omnes* character—duties owed to the international community as a whole and enforceable by all States. Taken together, these findings elevate extraterritorial dimensions of States' climate responsibilities, broadening the global applicability of each Court's conclusions and strengthening cross-regional accountability mechanisms.

Who are the most affected communities and Peoples identified by the Courts?

Both Courts agree that **climate change disproportionately harms communities in vulnerable situations.** The ICJ notes that certain groups—**particularly women, children, and Indigenous Peoples**—are more likely to experience the adverse effects of climate change on their enjoyment of human rights.

The IACtHR goes further, adopting a broad understanding of vulnerability, particularly with respect to Indigenous Peoples. It explicitly recognizes the **collective and territorial dimensions of Indigenous Peoples' rights,** offering a more detailed interpretation of States' obligations in this regard than the ICJ. The Court identifies **Indigenous Peoples as knowledge holders** who must participate in the design and implementation of climate-related policies. It further reaffirms States' duty to ensure **Free, Prior, and Informed Consent** when such measures affect Indigenous Peoples' lands.

The IACtHR also highlights the State's obligation to **protect environmental defenders** within the framework of procedural rights. This is especially relevant for Indigenous Peoples and intersectional groups in vulnerable situations, who are often more exposed to discrimination and violence when exercising their rights to protest or free expression. Affirming the right to defend rights, including environmental rights, as an autonomous right, the Court noted that the best way to solve environmental problems is through broad public participation, adequate access to environmental information, and effective access to justice, and that, in this, environmental defenders are fundamental allies. Finally, the Court stresses that **poverty and inequality exacerbate vulnerability,** affirming that States must guarantee access to the goods and services necessary for a dignified life and address the structural causes that perpetuate and deepen marginalization.

Which rights were identified as threatened by the climate crisis?

Both opinions identify distinct yet interrelated **human rights threatened by the climate crisis.** The ICJ interprets the **right to a clean, healthy, and sustainable environment** as a binding norm of international law, recognizing it as a necessary precondition for the enjoyment of all other human rights. The IACtHR goes further, recognizing **the right to a healthy climate**—as an integral component of the right to a healthy environment— **and Nature itself as a**

subject of rights—a historic shift toward an ecocentric rather than anthropocentric understanding of international law. Notably, the IACtHR affirms that the prohibition against causing irreversible environmental damage is a peremptory norm (*jus cogens*)—a rule that cannot be disregarded and binds all States.

Both opinions emphasize States' obligations to exercise heightened due diligence, requiring them to act proactively, transparently, and ambitiously to prevent foreseeable harm, using all means at their disposal. They also affirm that failure to act may give rise to international responsibility, even in the absence of intent. Thus, States may bear responsibility to cease and remedy climate harm, with the corresponding duties of cessation, non-repetition, and reparation, when their conduct in violation of international law is causally connected to such harm. Importantly, the IACtHR notes that access to justice considerations call for evidentiary flexibilization including in relation to proving a direct causal link.

Beyond **substantive rights,** both Courts recognize a set of **procedural rights.** States are obligated to guarantee access to the best available information, facilitate meaningful public participation in decision-making processes related to the environment and provide effective access to justice for those affected by the climate emergency. The IACtHR also highlighted the duty to adopt measures against climate disinformation. Additionally, an important aspect of the advisory opinions is the identification of groups in vulnerable situations and groups deserving special consideration under the fight against climate change.

How are these rights to be protected according to the Courts?

Both opinions reaffirm the **principles of equity and common but differentiated responsibilities** (CBDR) as guiding norms. This means that developed States bear greater obligations in regard to climate change, due to their capacity, resources, and historical emissions. The Courts further link these principles to **the duty to cooperate**—a customary obligation under international law—framing cooperation as a binding legal responsibility grounded in justice and solidarity. Both Courts also affirm that **States owe duties not only to present populations but also to future generations**, as the sustainability of the global climate system constitutes a matter of shared concern for all humankind.

While primary obligations rest with States, the Courts emphasize their regulatory duty to prevent corporate actors from causing or contributing to harm, and to hold them accountable. Given that States are required to act proactively, transparently, and ambitiously to prevent foreseeable damage, failure to do so may give rise to international responsibility even in the absence of intent. In any case, the IACtHR affirms that business enterprises have standalone human rights obligations in the context of climate change.

Both Courts affirm that compliance with climate obligations requires the progressive phase-out of fossil fuels. The ICJ explicitly warns that continuing to license, subsidize, or expand fossil fuel production may constitute an internationally wrong-

ful act, requiring cessation, guarantees of non-repetition, and full reparation—including the potential revocation of existing licenses or subsidies. By linking State responsibility to corporate and fossil fuel regulation, both Courts clarify how existing legal standards can support securing climate justice.

Additionally, the IACtHR considers that climate-related decisions and policies are to be designed on the basis of verifiable data, which takes into account the systemic factors that can aggravate the risk of vulnerability in certain demographic groups.

Finally, while the IACtHR recognizes the prohibition of irreversible environmental harm as a *jus cogens* norm, the ICJ affirms, as noted above, that States' climate obligations in relation to the protection of the climate system and other parts of the environment, in particular the obligation to prevent significant transboundary harm under customary international law, are of *erga omnes* character. Together, both opinions elevate environmental protection to one of the highest norms of international law, consolidating its central role in protecting human rights and achieving climate justice.

A new tool for climate advocacy?

Together, these opinions mark a decisive **shift from a framework of environmental management to a rights-based, systemic conception of climate justice.** Both Courts frame the climate crisis not merely as an ecological or policy challenge, but as a profound **threat to human dignity, democracy, and the global commons.** In doing so, the embed environmental protection within the broader architecture of human rights and collective responsibility.

The ICJ and IACtHR affirm that international cooperation must be grounded in equity and justice, ensuring that shared but differentiated responsibilities translate into genuine solidarity among States. By placing human rights and intergenerational equity at the center of climate governance, both Courts have strengthened the legal pathways towards systemic change in the climate context.

Cross-Cutting Highlights Specifically Relevant to Indigenous Peoples

Territorial rights & culture

Both Courts acknowledge that climate change poses serious risks to Indigenous Peoples' rights, including their cultural identity, traditional livelihoods, and relationship with their territories. The ICJ notes that Indigenous Peoples may be among those most severely affected by the adverse impacts of climate change, which can impair the enjoyment of their human rights. The IACtHR further highlights that Indigenous Peoples face a disproportionate impact due to their close dependence on ecosystems that are highly vulnerable to climate change and extreme weather events, which exacerbate threats to their lands, food security, and cultural survival.

The ICJ connects climate harm to violations of rights to land, family life, and culture, emphasizing that displacement caused by sea-level rise or resource explotation undermines self-determi nation. The IACtHR clearly interprets Indigenous Peoples' territorial integrity as essential to ensure collective survival and cultural continuity, framing land demarcation and protection as State obligations for climate adaptation and mitigation. States are therefore obligated to **design adaptation plans that safeguard Indigenous Peoples' territories, cultural practices, and housing from climate-related harm.**

Participation & FPIC

Both opinions reaffirm **Indigenous Peoples' procedural rights to participate in decisions affecting their lands and futures.** The IACtHR establishes that States must ***guarantee early, meaningful, and continuous consultation processes,*** and ***ensure free, prior, and informed consent*** when climate policies, infrastructure projects, or energy transitions (such as renewables or critical mineral extraction) impact Indigenous Peoples' territories. These consultations are binding obligations that reflect the principles of equity and self-determination.

While the ICJ does not address state **obligations regarding Indigenous People's rights as directly as the IACtHR, it does discuss the general obligation to provide access to information and participation in environmental decision-making.** This interpretation reiforces procedural rights already recognized under instruments like the Aarhus Convention, the Escazú Agreement and the United Nations Declaration on the Rights of Indigenous Peoples.

Recognition of Climate-Induced Displacement and Territorial Remedies

A particularly significant aspect of the IACtHR Advisory Opinion is its extension of reparations principles for violations of property and land rights to Indigenous Peoples displaced by climate change. The Court affirms that when Indigenous Peoples are relocated or lose their territories due to climate disasters, environmental degradation, or slow-onset phenomena, States must guarantee access to land of similar quality, legal status, and cultural value, ensuring the continuity of their livelihoods and development. Where relocation is not possible, appropriate compensation must be provided with full guarantees and in consultation with affected communities. This finding represents a critical step in recognizing the territorial and reparative dimensions of climate justice for Indigenous Peoples. The ICJ, while not tying its finding to Indigenous Peoples, affirmed in the context of climate-induced displacement the applicability of the customary international law principle of non-refoulement, which prohibits returning persons to situations where they would face a real risk of irreparable harm to the right to life. The ICJ also recognized that States have a duty to cooperate to address sea level rise, the consequences of which, including forced displacement and impacts on territorial integrity, affect the right to self-determination.

Protection of knowledge

Both Courts underscore the importance of knowledge in addressing climate change, though with different emphases. The ICJ refers broadly to the need for contributions from all fields of human knowledge, whereas the IACtHR explicitly recognizes and protects Indigenous Peoples, local, and ancestral knowlege as essential to effective climate governance.

Indigenous Peoples' knowledge is recognized as equal and complementary to scientific evidence in the formulation and monitoring of climate policies, validating the deep empirical and relational understanding of ecosystems developed over generations. The IACtHR urges states to protect these knowledge systems by supporting Indigenous Peoples as knowledge holders and ensuring that their epistemologies actively inform national and international climate strategies.

Protecting knowledge holders has particular implications for the State's obligation to **safeguard the procedural rights of environmental defenders,** especially Indigenous defenders, who face heightened risks of repression when exercising their rights to protest or freedom of expression.

Protection of Environmental and Indigenous Human Rights Defenders

The IACtHR established concrete obligations for the protection of environmental defenders—many of whom are Indigenous Peoples. The Court recognizes that criminalization, arbitrary detention, and disproportionate convictions are among the mainforms of human rights violations faced by these defenders. To address this, States are required to: (i) identify and reform laws that are selectively or repeatedly used to prosecute environmental defenders for their legitimate work; (ii) review and amend ambiguous norms that have an intimidating or dissuasive effect; (iii) ensure that administrative or judicial actions intended to silence defenders are promptly dismissed; and (iv) provide specialized training for police and judicial authorities on inter-American standards of protection. These measures reaffirm the duty of States to guarantee an enabling environment for environmental and Indigenous human rights defenders, free from criminalization or judicial harassment.

Regulating private actors:

Both Courts stress that **States have a regulatory duty to control private and corporate conduct** contributing to the climate crisis, including fossil fuel production, deforestation, and extractive activities in Indigenous territories. The ICJ warns that continuing to license, subsidize, or expand fossil fuel operations may amount to an internationally wrongful act, requiring cessation, guarantees of non-repetition, and reparation. The IACtHR adds that failure to prevent corporate environmental harm — particularly when it affects Indigenous Peoples, with activities such as mining and deforestation — constitutes a breach of the duty of due diligence.

States must therefore adopt and enforce legal and policy frameworks that prevent corporations from causing or aggravating climate-related harm to Indigenous Peoples and their lands.

Areas where further development is needed and practical challenges

Protection of Indigenous Peoples in Voluntary Isolation and Initial Contact (PIACI)

Neither the ICJ nor the IACtHR explicitly addresses Indigenous Peoples in Voluntary Isolation and Initial Contact (PIACI), leaving a significant normative gap. Climate actions such as adaptation infrastructure, REDD+ projects, and carbon market mechanisms could inadvertently expose these Indigenous Peoples to contact-inducing risks, territorial intrusion, or the publication of sensitive geographic and environmental data. Given PIACI's extreme vulnerability and their right to remain uncontacted, international guidance is urgently needed to ensure that climate initiatives fully integrate non-contact guarantees, robust confidentiality standards, and impact-screening protocols before project approval.

Traditional Knowledge Integration

Although the IACtHR recognizes the importance of Indigenous Peoples' knowledge for effective climate governance, neither Court provides guidance on how such knowledge systems should be operationalized in scientific, environmental, or impact assessments. There also remains a lack of clear FPIC requirements with respect to the use of Indigenous Peoples' knowledge. These omissions create a significant implementation gap. In practice, Indigenous Peoples may face substantial barriers to having their epistemologies and methodologies formally acknowledged or incorporated into State-led studies and climate evaluations. Without clear standards for validating, protecting, and integrating Indigenous Peoples' knowledge on an equal

footing with Western science, decision-making processes risk perpetuating epistemic inequities and undermining the participatory rights that the advisory opinions seek to uphold.

Free, Prior, and Informed Consent (FPIC) in Climate Finance and Transition Projects

The IACtHR affirms participation and FPIC as binding obligations in all climate-related decisions, but operational guidance remains limited. Key areas such as renewable energy siting, critical minerals extraction, hydrogen corridors, and carbon market initiatives lack clear FPIC procedures that ensure early engagement, cultural adequacy, and enforceable outcomes. Adaptation and relocation projects similarly require tailored consent processes addressing site selection, cultural continuity, and livelihoods. What is new in the advisory opinion is not FPIC's substance but its scope, as it extends FPIC beyond extractive projects to encompass climate governance itself; to include planning, finance architectures, and adaptation strategies. The opinion links FPIC to enhanced climate due diligence and the State's duty to regulate misinformation and corporate conduct. What remains missing are step-by-step FPIC protocols suited to climate finance, including defined decision stages, consent and veto effects, benefit-sharing floors, and automatic remedy triggers.

Operational Thresholds and Attribution

While both Courts articulate due diligence as the operative standard of conduct and affirm that States may incur responsibility for inaction, they do not specify operational thresholds for compliance. Questions remain regarding how to determine what constitutes "reasonable" mitigation and adaptation, how to apportion responsibility among States based on historical versus current emissions, and how to prove causation in complex, multi-causal chains that connect local projects to global atmospheric changes and localized harms. Without clearer attribution standards or evidentiary presumptions, affected communities may continue to face disproportionate burdens in demonstrating harm and seeking redress.

Science–Law Interfaces and Evidentiary Standards

The opinions reference the use of the "best available science" but provide limited guidance on how this standard should function in practice. Future interpretation will need to clarify how scientific benchmarks, such as carbon budgets, jurisdictional emission caps, or sectoral mitigation pathways, inform the legal assessment of due diligence. Similarly, evidentiary presumptions could be developed to ease the procedural burden on frontline and/or Indigenous Peoples. Establishing clearer science–law interfaces would strengthen the enforceability and transparency of States' climate obligations.

Implementation Capacity and Metrics

While the ICJ confirms that States face concrete legal consequences for breaching climate obligations (including cessation, non-repetition, and reparation) it does not specify how these remedies should be measured or operationalized. Similarly, neither Court provides metrics for evaluating compliance with due diligence or the effectiveness of adaptation and mitigation actions. Future interpretive and policy work should develop clear indicators for compliance, integrating rights-based metrics such as equity in resource allocation, cultural integrity of Indigenous Peoples' lands, and procedural fairness. Strengthening institutional capacity, particularly at the domestic level, will be essential to translate these advisory standards into enforceable practice.

Conclusions, Advocacy Scenarios and Use-cases

The advisory opinions of the International Court of Justice and the Inter-American Court of Human Rights represent a historic milestone in the evolution of international climate law. They mark a decisive shift toward recognizing climate change as a human rights issue and reaffirm the State's legal duty to act with ambition, cooperation, and equity. Both opinions are therefore cause for celebration: they provide long-awaited legal clarity, elevate climate justice to the level of enforceable international norms, and open new opportunities for advocacy—particularly for Indigenous Peoples and other frontline communities.

Yet, translating these standards into enforceable obligations at the domestic and regional levels remains a major challenge. While both Courts set high normative benchmarks and affirm that insufficient climate action may constitute a breach of international law, their transformative impact will depend on the political will and institutional capacity of States to implement them, as well as on the ability of civil society to convert these global standards into concrete advocacy, litigation, and policy outcomes.

Effective implementation further requires strong institutions, technical expertise, and sustained financial investment to carry out adaptation measures, regulate corporate conduct, and guarantee meaningful FPIC. In the absence of these conditions—and given the opinions' recent issuance—their influence on judicial and policy practice is still uncertain, underscoring the need for continued monitoring and advocacy to ensure that these standards evolve into tangible, rights-based climate action.

For Indigenous Peoples, these opinions are especially signifcant. The Inter-American Court's recognition of the collective and territorial dimensions of Indigenous Peoples' rights, as well as of FPIC and the protection of knowledge holders, reinforces interpretive foundations to demand stronger climate governance rooted in justice, self-determination, and cultural continuity. In the ICJ ruling, Indigenous Peoples' rights have also been clearly recognized in relation to climate change. Beyond the final outcome, the arguments raised during the proceedings—particularly those concerning the right to self-determination—offer a valuable repository for future Indigenous Peoples' legal and advocacy efforts. Together, both opinions validate Indigenous Peoples as central actors in the climate transition—not merely as affected communities but as rights-holders and knowledge bearers whose participation is indispensable for legitimate and effective decision-making.

These developments open several key advocacy scenarios in which Indigenous Peoples, their allies, and human rights defenders can strategically invoke the Courts' reasoning:

Legislative and policy transformation

The opinions can inform domestic advocacy when Indigenous Peoples engage in law and policy reform processes, whether to oppose regressive initiatives or to advance new frameworks that align with rights-based and climate-just standards. The principles and obligations articulated by the Courts provide a strong normative basis to argue for coherence between national climate policies, Indigenous Peoples' rights, and international law.

Litigation and legal defense

The reasoning of both Courts can support national or international litigation strategies, helping to frame environmental destruction or climate inaction as violations of human rights and State obligations. Indigenous Peoples and their legal representatives may invoke these opinions to substantiate claims concerning territorial protection, FPIC breaches, or State inaction in the face of foreseeable climate harm.

Non-litigious international advocacy

The opinions can also serve as persuasive tools in international and regional advocacy before non-judicial bodies—such as UN treaty bodies, the Universal Periodic Review (UPR), or special procedures—reinforcing calls for accountability, resource mobilization, and equitable participation in global climate governance.

Ultimately, these advisory opinions should be understood not as endpoints but as powerful instruments for sustained advocacy. Their implementation will require continued monitoring, creative use by civil society, and persistent pressure from Indigenous Peoples and their allies to ensure that the high standards affirmed by the world's highest courts translate into concrete rights, policies, and protection on the ground.


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