# CORPORATE LIABILITY FOR CLIMATE HARM: AN EMERGING FRAMEWORK OF LEGAL ACCOUNTABILITY

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## ABSTRACT

Climate-related disasters are increasingly raising questions about who should bear legal responsibility for their consequences. This paper examines the emerging concept of corporate liability for climate harm, using the 2026 Nepal disaster as its starting point. It explains why major fossil-fuel and cement producers are becoming part of the climate accountability debate, the international and regional legal framework, recent cases against corporate emitters, the principal defences raised by companies, and the legal barriers that remain. The paper shows that corporate climate responsibility is now a serious legal question, although courts continue to face difficulties concerning causation, jurisdiction and the form of any remedy.

**Keywords:** Corporate climate liability; climate litigation; greenhouse gas; fossil-fuel; international law; causation; loss and damage.

## 1. Introduction: Why This Matters Now

Climate-related disasters are raising questions not only about the responsibility of States, but also about whether major corporate emitters may be held legally accountable for resulting harm. The 2026 Nepal disaster provides a timely starting point for examining those questions.

On 26 August 2026, a rock-ice avalanche in Nepal triggered a catastrophic flood and debris flow through the Rasuwa region. More than 1,400 people were killed and thousands were reported missing. Nepal contributes only around 0.1 per cent of global greenhouse gas emissions, but is extremely exposed to a warming climate. The government has requested US$20 million from the UN Fund for Responding to Loss and Damage and has called on major emitters to pay greater attention to the consequences of climate change.[1]

The disaster poses a larger legal question as well. Climate compensation has historically focused on what governments owe to one another. But a significant share of global greenhouse gas emissions can be traced to a small number of fossil-fuel and cement producers. The Carbon Majors database found that 57 corporate and State-producing entities were linked to about 80 per cent of global carbon dioxide emissions from fossil fuels and cement between 2016 and 2022.[2] That does not mean they caused every climate disaster, but it helps explain why their legal responsibility is coming to the fore.

## 2. Why Corporate Liability Is Being Considered

Climate change is caused by cumulative greenhouse gas emissions but is not equally distributed. Large fossil-fuel and cement producers are associated with a significant share of historic and recent emissions, while low-emitting countries can suffer severe consequences such as flooding, drought, extreme heat and glacier loss.

This has changed the climate accountability debate. International climate law has traditionally focused on States because treaties such as the Paris Agreement place obligations on countries. Companies are not parties to those treaties, but domestic courts can apply rules of tort, human

[1] B. Bharadwaj and B. Mosello, "Nepal's floods put the global loss and damage system to the test" (Chatham House, 5 October 2026).
[2] InfluenceMap, The Carbon Majors Database: Launch Report (April 2024).

rights and environmental law to corporate conduct.

Scientific advances have also made the issue easier to analyse. Climate attribution studies can assess whether climate change made a particular event more likely or severe, while emissions databases can estimate the contribution of major producers. These tools do not establish legal responsibility, since courts must still apply rules of causation and proof. They do, however, help identify the links between global emissions, particular contributors and specific forms of climate harm.[3]

## 3. The International and Regional Legal Framework

The most important recent international development is the International Court of Justice (ICJ) advisory opinion of 23 July 2025 on climate change. The ICJ stated that States have legal obligations under climate treaties, customary international law and human rights law to protect the climate system and prevent significant environmental harm. It also confirmed that ordinary rules of State responsibility and causation can apply in the climate context.[4]

The opinion is important, but its limits must be understood. It is advisory rather than a judgment ordering a particular State to pay compensation, and the ICJ deals with States, not private companies.

So the link to companies is indirect. The opinion clarifies the duties of States in addressing greenhouse-gas emissions, while domestic law remains the main route through which companies may be regulated or sued.

Other international and regional courts have moved in a similar direction. In May 2024, the International Tribunal for the Law of the Sea held that human-made greenhouse gas emissions can constitute pollution of the marine environment.[5]

In 2025, the Inter-American Court of Human Rights stated that States should regulate

[3] C. W. Callahan and J. S. Mankin, "Carbon majors and the scientific case for climate liability" (2025) 640 Nature 893–901.
[4] ICJ, Obligations of States in respect of Climate Change (Advisory Opinion, 23 July 2025).
[5] ITLOS, Request for an Advisory Opinion submitted by the Commission of Small Island States on Climate Change and International Law, Case No. 31 (21 May 2024).

businesses to prevent climate-related human rights harm and recognised that major emitters may warrant stricter obligations.[6] These views still operate primarily through duties placed on States, but help explain why corporate climate responsibility is becoming a legal issue.

A related regional development is the European Union's Corporate Sustainability Due Diligence Directive. In its amended form, the Directive will require certain very large companies to address adverse human-rights and environmental impacts in their operations and chains of activities. The 2026 amendments narrowed the regime by removing the climate transition-plan requirement and the harmonised EU civil-liability provisions, leaving civil liability to national law. The amended requirements are to apply from 2029, following national implementation. The Directive thus shows both the growth and the limits of direct legal obligations on companies.[7]

## 4. How Climate Liability Is Coming to Companies

### a. Lliuya v RWE (Germany)

Saúl Luciano Lliuya, a farmer and mountain guide from Huaraz, Peru, contended that emissions from the German energy company RWE AG had contributed to glacier melt and increased the danger of flooding from Lake Palcacocha. He asked RWE to pay a proportion of flood-protection costs reflecting its contribution to global emissions. In May 2025, the Higher Regional Court of Hamm dismissed the claim because the evidence did not show a sufficiently serious flood risk to Lliuya's property. However, the court accepted that a major greenhouse gas emitter could, in principle, be held responsible for climate-related risks in another country. The claimant did not succeed on the facts, but corporate climate liability was not rejected as legally impossible.[8]

### b. Milieudefensie v Shell (Netherlands)

In 2021, a Dutch district court ordered Shell to reduce its emissions by 45 per cent by 2030,

[6] Inter-American Court of Human Rights, Climate Emergency and Human Rights, Advisory Opinion OC-32/25 (29 May 2025), paras. 345–350.
[7] Directive (EU) 2024/1760, as amended by Directive (EU) 2026/470; European Commission, "Corporate sustainability due diligence".
[8] Lliuya v RWE AG, Higher Regional Court of Hamm, I-5 U 15/17 (28 May 2025).

compared with 2019 levels. In November 2024, the Court of Appeal overturned that specific reduction order, while recognising that Shell has a duty to address dangerous climate change. The central difficulty was identifying a legally justified reduction percentage for one company. The Dutch Supreme Court heard the appeal in May 2026, and its decision is expected in 2027.[9]

**c. Smith v Fonterra (New Zealand)**

In Smith v Fonterra Co-operative Group Ltd [2024] NZSC 5, a Māori elder sued seven New Zealand companies involved in greenhouse-gas emissions on the basis of public nuisance, negligence and a proposed climate-system-damage tort. The Supreme Court did not rule that the companies were liable. It restored the claims and allowed them to proceed to trial, holding that New Zealand's climate legislation had not displaced the common law. The case shows that ordinary tort principles may still be used to test corporate climate responsibility, even if final liability remains to be proved.[10]

## 5. Corporate Defences and Legal Barriers to Climate Liability

**a. Causation and a small individual share:** Climate change is the result of emissions by many countries, companies and people over time. A company may argue that its own share is too small to be the legal cause of a particular loss. The RWE case shows the difficulty of this: even if a company's contribution can be estimated, it must still connect that contribution to the specific threatened harm.

**b. Climate policy is determined by governments:** Companies like Shell argue that climate policy involves energy supply, costs, technology and national emissions targets. They contend that such decisions should be made by elected governments through legislation, rather than by judges deciding claims against individual companies.

**c. The substitution problem:** A company might say that if it is ordered to stop producing oil or gas, another producer will meet the same demand. According to this argument, an order against one company might change who produces the fuel without necessarily reducing global emissions.

[9] Milieudefensie v Shell, The Hague Court of Appeal, ECLI:NL:GHDHA:2024:2100 (12 November 2024); Milieudefensie, Supreme Court hearing update (May 2026).
[10] Smith v Fonterra Co-operative Group Ltd [2024] NZSC 5 (New Zealand Supreme Court, 7 February 2024).

**d. No single reduction number for one company:** Companies also argue that climate science does not always provide a single reduction target for an individual business. This was critical in the Shell appeal. The Dutch Court of Appeal accepted the seriousness of climate change and Shell's responsibility to reduce emissions, but did not find a sufficient basis for imposing the exact 45 per cent reduction ordered by the lower court.

**e. Federal pre-emption and statutory limits:** There are also legal limits on governments seeking to impose climate costs directly through legislation. New York's Climate Change Superfund Act required major fossil-fuel companies to contribute to climate-adaptation costs, but a federal district court ruled on 31 August 2026 that the Act was pre-empted and blocked its enforcement.[11] Vermont has a similar law that is also being challenged. These disputes demonstrate that corporate climate liability can depend on which level of government has authority to impose climate-related costs.

## 6. The Current Legal Position

The legal situation is mixed. International law clearly places climate obligations on States, and recent international decisions have highlighted the need for States to regulate private businesses. At the domestic level, courts have shown that claims against corporate emitters can raise legally arguable issues. The RWE case recognised the possibility of civil liability in principle, while Smith v Fonterra allowed tort claims against major emitters to proceed rather than treating climate change as automatically unsuitable for private-law litigation.

At the same time, successful claims against individual companies are difficult. Claimants still face problems of causation, proof of risk, jurisdiction, remedy and division of responsibility among many contributors. The Shell litigation also shows the difference between recognising a company's climate-related responsibility and deciding the exact action a court can order.

Nepal illustrates why this area matters. Following the recent disaster, it sought assistance through an international loss-and-damage mechanism and drew attention to major emitters. That system remains mainly State-centred. Corporate climate litigation asks whether major private producers can also be held directly responsible under national law for part of the harm

[11] West Virginia v James, No. 1:25-cv-00168 (N.D.N.Y., 31 August 2026), memorandum-decision and order.

associated with their emissions.

There is not yet a single uniform rule for corporate climate liability. What has changed is that corporate responsibility for climate damage is no longer only a political or moral principle. It is now being tested through civil claims, human-rights principles, due-diligence laws and climate-cost legislation. The law is still unsettled, but courts are often treating claims against large corporate emitters as genuine legal issues of causation, jurisdiction, liability and remedies.