



Liability Roadmap

This roadmap shows decision-makers and movements how to use a variety of tools— at the local, national, and global levels— to hold polluting industries liable for the damage they knowingly cause.

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PARTNERS



CONTACT US

This liability roadmap is meant to be a living document that will continue to be updated as new opportunities, guidance, and case studies emerge.

Please reach out to info@liabilityroadmap.org if you:

- Would like to suggest an addition to the roadmap, such as a case study, a toolkit, or liability measure not currently reflected here.
- Are a public decision-maker or social justice leader looking for support in advancing one or more of the liability measures laid out in this roadmap.

While we may not be the right people to assist with every request, we will do our best to provide additional resources and connect you to a convening organization that may be able to support you.

LINKS

Visit the liability roadmap online:

<https://liabilityroadmap.org/>

The global call to make big polluters pay:

<https://makebigpolluterspay.org/>

Civil Society Action Center

<https://makebigpolluterspay.org/act>

Liability Roadmap

Polluters are fueling the climate crisis while raking in vast profits.

Polluters should be held liable—and pay for the damage they knowingly cause.

This roadmap shows decision-makers and movements how to use a variety of tools—at the local, national, and global levels—to hold them liable.

What?

Polluting industries must be held liable for the damage they cause. Here, liability refers to using tools (legal, legislative, policy, cultural, etc.) to hold corporations and industries responsible for their roles in driving the climate crisis and undermining action to address it. Learn more:

[What is liability?](#)

Who?

Polluting industries like the fossil fuel, mining, and agribusiness industries have fueled the climate crisis. They've reaped vast profits, all the while knowingly causing harm—and burdening communities around the world with the many social and economic costs of their business practices and climate disaster.

Learn more: [Why liability?](#)

How?

The roadmap contains guidance for decision-makers and movements at four levels of action: international, national, local, and multilevel. Under each, you'll find a variety of approaches that you can harness depending upon the type of leadership you hold. Explore the roadmap beginning on p. 13, or visit the interactive version online at LiabilityRoadmap.org.



Liability requires all of us

Everyone has a role to play in making polluting industries pay for the damage they cause.

Even if you don't identify as a decision-maker, you can get involved in the campaign to make Big Polluters pay, by visiting the civil society action center at makebigpolluterspay.org/act.



Why liability?

Now is the time to hold polluting industries liable.

For years, people and organizations around the world have called for polluting and destructive industries to be held accountable for the damage they have knowingly caused and intend to continue to cause. In 2019, hundreds of organizations and hundreds of thousands of people united to say, with one voice: It's time to make **Big Polluters pay**.¹ This global call urges world decision-makers and movements to act to hold liable the industries and corporations that have fueled and continue to worsen the climate emergency. The **liability roadmap** contains guidance for decision-makers and movements detailing *how* to do this at the local, national, and international level.

Climate inaction is placing entire countries and billions of lives on the line.

The crisis is only deepening. We are breaching environmental tipping point after environmental tipping point. Science now shows that the Arctic sea ice could be completely gone far sooner than predicted (as early as 2035),² which would release the equivalent of 25 years of human emissions into the atmosphere.³ It also shows that we may already be facing around 10 meters of sea level rise.⁴ The climate inaction civil society has warned of is now an increasing certainty.

Climate inaction is placing entire nations and billions of lives and livelihoods directly at risk.^{5 6 7 8} Many of these lives are simultaneously threatened by the COVID-19 pandemic and brutal, systemic racism. Deeply entrenched inequities, perpetuated by corporate greed, have placed Global South communities, Indigenous people, Black and

other people of color, women, workers, farmers, peasants, and low-income people squarely on the front lines of both climate change, COVID-19, and the social and economic crises unfolding around them.

Polluting industries have fueled the climate crisis and delayed climate action -- and they have no plans to stop.

While communities around the world are fighting for their lives, polluting, destructive industries like the fossil fuel industry and agribusiness are preparing to ramp up expansion for their own greed. For example, the recent **Production Gap Report** indicates that there are currently plans to produce more than twice as much fossil fuel by 2030 than is consistent with the commitment made in the Paris Agreement to keep global temperature rise to as close to 1.5 degrees Celsius as possible.⁹ The trading and selling of just four products—industrially produced beef, soy, wood, and palm oil—is the main driver of deforestation in the world.¹⁰ The Intergovernmental Panel on Climate Change attributes 23% of global greenhouse gas emissions to agriculture and land use.¹¹ When adding other elements of the globalized food system, studies suggest this figure is as high as 40%.^{12 13}

At the same time, these polluting corporations depend on a system built on corporate fascism and the exploitation of people, racism, and the oppression of women. And they manipulate this system to their benefit, treating human lives—especially the lives of people of color, women, and frontline communities such as Indigenous peoples, peasants, fisherfolk, pastoralists, nomadic, and rural peoples -- and the natural world as expendable. They are attempting to profit from the COVID-19 pandemic, and they are demanding government bailouts.^{14 15 16 17 18} Along with pushing for more draconian laws, they are also rolling out PR schemes that paint themselves as saviors in a crisis they were central to orchestrating.^{19 20 21} They regularly use international trade and investment agreements to bypass justice in courts, intimidate governments seeking to

hold them accountable, and access public money through arbitration claims.^{22 23} They are attempting to push forward unreliable and risky climate techno-fixes such as carbon markets and geoengineering that won't work and will exacerbate existing inequities and human rights violations.^{24 25 26} And whether agribusiness or fossil fuels or forestry sector, they are the biggest barriers to systems change, causing delays that make climate change even worse.^{27 28 29 30}



All of this while spurring food shortages as a result of small-scale farmers being cornered into growing genetically modified products to sustain the livestock, meat, and dairy industry instead of feeding local people.^{31 32} They are stealing peoples land, forcing communities around the world away from their homeland, and committing immeasurable human rights abuses and eco-destruction. Examples include: Monsanto's products causing chemical poisoning for farmers, communities, and ecosystems,³³ Big Oil's link to racist police brutality through their funding of police forces in the United States,³⁴ Nestlè's known practice of child labor,³⁵ Shell's reported role in murder in Nigeria,³⁶ and the meat industry's chopping down of 71% of the Amazon rainforest across seven Latin American countries.³⁸

Moreover, these very industries are in large part responsible for the multifaceted crises we're facing. They knew for decades their activities were fueling climate change, but they funded denial and junk science to delay action.^{39 40} They've simultaneously driven the deforestation, extinction, and biodiversity loss crises that drive animals out of their habitat and enable pathogens to spread around the world. They have extracted wealth from and perpetrated environmental racism in communities of color and Indigenous communities around the world. They have eroded the power of governments to effectively address global disasters like the climate crisis and COVID-19—disasters that are increasingly devastating and expensive. As a result, we are now likely to breach 1.5 degrees Celsius of warming by as early as 2030. These polluters are the ones who should be paying, not being bailed out.

By holding polluting industries liable, we can end their abuses, unlock the finance needed to advance real solutions, and justly address the climate crisis.

The need is tremendous. But so are the potential resources that become available when polluting corporations are held to account. For example, in 2019 alone, Exxon Mobil, Royal Dutch Shell, Chevron, BP, and Total S.A. had revenues totaling approximately US\$1.35 trillion.⁴¹ Similarly, in 2018 the combined revenue for the top 10 agribusiness corporations in the world—which include Cargill, Yara International, Syngenta, and Bayer AG—was US\$432.61 billion.⁴² Compare these numbers to the 2019 combined GDP of five of the developing countries (Mozambique, Ethiopia, the Philippines, Fiji, and Bangladesh) hardest hit by climate change: approximately US\$786 billion.⁴³

While vast resources are urgently needed so that frontline countries and communities can address the climate crisis, no amount of financial compensation can absolve the damage and violations that people around the world have endured at the hands of polluting industries. Equally, no amount of compensation buys a license to continue with pollution or abuses. But by holding polluting industries liable—including the fossil fuel, mining, bioenergy, and agribusiness industries—we can, among other things:

- Release urgently needed funding to address the climate emergency by requiring that these actors pay (not only through financial compensation) for the past, present, and future damage they cause(d), and to prevent further damage.
- Revoke corporations' license to continue "business as usual."
- Contribute to bringing about the systemic change needed to ensure a world where people and the planet thrive and where global average temperature rise is kept below 1.5 degrees Celsius, including through delivering real climate solutions such as those laid out in the People's Demands for Climate Justice.
- Help end the status quo that has sacrificed frontline countries and communities in the name of polluters' profits.
- Strengthen international climate action alongside equity, deliver reparations, honor historical responsibility and climate debt, and protect present and future generations.
- Strengthen protection of human rights and Mother Earth.
- End the corporate capture of policy and decision-making processes nationally and in multilateral spaces, strengthening participatory democracy "from the bottom up."

Liability is not a groundbreaking idea. It is a concept that has been practiced by communities around the world for centuries through restitution, reparations, and legal, legislative, cultural, and other means. Some examples of diverse communities around the world that are calling for liability for polluters include: fisherfolk in India,⁴⁴ global social justice movements calling for the payment of climate debt through COVID-19 recovery packages,⁴⁵ Black communities⁴⁶ demanding reparations in the U.S., and legal experts all over the world.⁴⁷ When done comprehensively, holistically, and equitably, liability also has the potential to proactively end (not only respond to) practices that are abusive to people and nature.

This roadmap is a tool that charts exactly how to hold Big Polluters liable.

The liability roadmap presented here draws from the vast experiences of communities and social movements around the world, particularly those across the Global South and the front lines of the climate emergency. It presents decision-makers—including government officials, civil society, and movements at all levels of government—with a menu of measures and tools they can use to 1) finance the systems change we urgently need, 2) access publicly controlled solutions, and 3) justly address the climate crisis.

Of course, enacting the policies and measures laid out here is simply the first step: There will be much work to do to ensure these measures are fully implemented and move us toward the transformative change the world needs.

Amidst a global pandemic, an international recession, and a public health crisis, the unjust systems that have fueled climate change and caused centuries of great injustice are crumbling. We are now faced with the choice to lay the foundation for a better, livable world—one where people and nature thrive—or to fall back on the systems of oppression, racism, and colonialism that have only served to entrench the power of an elite few. That more

beautiful, fairer world becomes possible in part by holding accountable and liable the industries that have knowingly driven countries, communities, and the planet to the edge of collapse.

Science shows that the actions we take now will shape the course of action for the next 10 years,^{48 49} and in turn they will determine whether we are set to experience environmental and social collapse. Decision-makers around the world should lead by example and embrace the unprecedented moment we are in to shift power into the hands of people and communities and work together to build new, equitable, people-centered systems now.

What is liability?

Liability, here, refers to using tools (legal, legislative, policy, cultural, etc.) to hold corporations and industries responsible for their roles in driving the climate crisis and undermining action to address it. When fully implemented in accordance with the principles laid out here, liability should advance justice, address inequality, help communities on the front lines of the climate emergency access the resources they need and are owed, and deliver reparations owed to communities on the front lines of climate change—particularly women, youth, peasants, and communities of color including Black and Indigenous communities. Liability as envisaged in this roadmap is a necessary step to begin to repair the vast harm done, avoid future harm by ending abusive polluting practices, and help justly address the climate crisis. But liability (and particularly financial liability) does not make up for harms done, nor does it provide a license for such harms to continue.

The industries that have fueled the climate crisis, funded climate denial, and blocked just climate progress for decades must pay for the damage they have caused and continue to cause. In other words, liability embraces the logical rationale of “if you break it, you buy it,” or “if you burn my house down, you should be the one paying for it.” Corporations are profiting from burning our common home. Holding these industries liable means ensuring that they are held responsible criminally, civilly, financially, and otherwise; and that these practices which continue to drive these crises are brought to an end.

As this liability roadmap illustrates, meaningful actions that can help hold polluting industries liable are diverse and can be implemented by a variety of government, political, civil society, and cultural decision-makers locally to globally. Some examples of these decision-makers include but are certainly not limited to:

- academics
- activists
- attorneys general
- diplomats
- environmental defenders
- governors
- heads of state
- Indigenous or tribal leaders
- lawyers
- mayors
- members of Congress/Parliament
- ombudspersons
- policymakers
- public advisers
- representatives from frontline communities
- social movements
- U.N. Special Rapporteurs
- representatives to regional human rights institutions
- women and youth coalitions

Principles for advancing liability

Measures taken to hold polluting industries liable should employ a combination of legislation and litigation to spur actions that advance corporate accountability through a variety of actions, including those that are civil, criminal, legal, cultural, and administrative. Measures to advance liability should adhere to the following principles:

Be regulatory and mandatory

Be regulatory and mandatory for the relevant corporation(s), not self-regulatory or voluntary.

Honor differentiated responsibilities

Respect the principle of common but differentiated responsibilities and respective capabilities⁵⁰(CBDR-RC) as enshrined in the United Nations Framework Convention on Climate Change and in international and climate change law, which acknowledges that countries that have contributed the most to climate change have the responsibility to take the greatest and fastest action.

Directly support frontline communities

Provide publicly governed mechanisms that channel large-scale finance to directly support the communities on the front lines of the climate crisis: those who are leading the way in just and gender-responsive solutions⁵¹ and who are unduly experiencing the greatest impacts.

Frontline communities control public finance

Place control of that public finance in the hands of these frontline communities and under public control in general.

Protect rights of people

Protect the rights of local communities, Indigenous peoples, peasants, fisherfolk, pastoralists, nomadic and rural people, and women as stewards of nature.

Recognize and protect the rights of nature

Recognize and protect the rights of nature in harmony with protecting rights of the stewards, acknowledging nature sustains all life on Earth and must be respected, preserved, and treated with reverence.

Ensure equitable access to real solutions

Ensure equitable access to real, community-led, and gender responsive solutions to adapt to and mitigate the effects of climate change.

Finance real solutions at scale

Make feasible the implementation of real solutions by accessing vast finance to implement them at scale, while rejecting polluting industry schemes like carbon markets, net-zero, negative emissions, and geoengineering and ending abusive business practices.

Fund reparations toward climate/ecological debt

Fund reparations toward the climate and ecological debt owed to communities most affected by the climate crisis, not shareholders or other actors such as investors.

Promote phaseout of polluting products

Contribute to a rapid phaseout of polluting products like fossil fuels⁵² and destructive activities such as deforestation in line with what is needed to keep global temperature rise to 1.5 degrees Celsius,⁵³ not become a “license to further pollute.”

Help fund a just transition

Help communities fund a just transition⁵⁴ that protects workers’ rights and livelihoods.⁵⁵

Avoid dependence on polluting industries

Guarantee workers or communities are not made to become dependent on polluting industries, directly or indirectly.

Help end corporate impunity

Contribute to ending corporate impunity and other business practices that are exposing nations and communities to the threat of extinction.

Shift costs from people to entities responsible

Shift the costs of climate change from people and communities to the entities responsible for both global greenhouse gas emissions and the intentional deceit that has inexcusably delayed climate action.

Deny immunity to corporations

Deny transnational corporations immunity or protection from liability, including through Investor-State Dispute Settlements (ISDS).

This list is not exhaustive, but it should be used to assess the strength of steps taken by decision-makers to advance the measures in this roadmap.

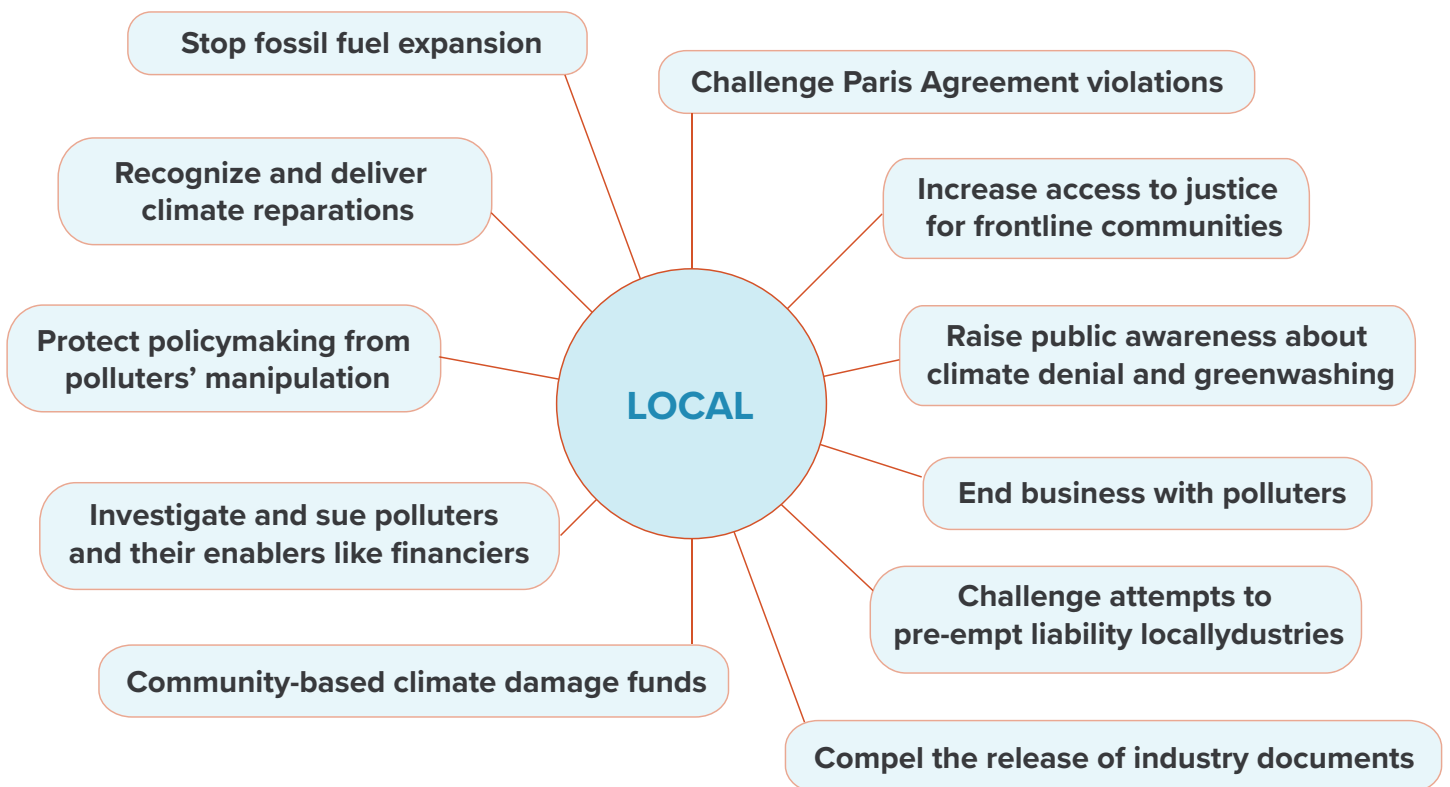
The liability roadmap

Explore each level to see how you can take action to hold polluting industries liable.

The roadmap contains guidance for decision-makers at four levels of action: international, national, local, and multilevel. Under each, you'll find a variety of approaches that you can harness depending upon the type of decision-making authority you hold.

Advancing liability locally to globally relies on a combination of approaches:

- 1) strengthening international legal instruments and institutions that already exist,**
- 2) drawing from best practices and precedents, and**
- 3) enshrining new, bold, and visionary aspirations for what is needed to transform systems and advance justice.**



Local, territorial, state, province

Stop fossil fuel expansion

Pass short- and longer-term local regulations that curb the ability of fossil fuel corporations to extract, transport, or promote their product in local jurisdictions.

What does this look like?

- Cities, towns, and communities take proactive action to Stand Against Fossil Fuel Expansion (SAFE) by becoming SAFE cities that pass local laws to prohibit fossil fuel projects.⁵⁶
- Implement local government resolutions that commit to immediately ending fossil fuel and agri-business expansion in your city, town, or community.
- Pass a moratorium that immediately prohibits the development of any new fossil fuel infrastructure, beginning with wealthy and diversified countries that are best positioned to do so.
 - Just as a community in Washington state (U.S.) did.⁵⁷
- Follow through with legislation that makes these restrictions permanent, which also has the additional effect of protecting against environmental hazards like oil spills.
- Prohibit the transport or storage of fossil fuels through or in your jurisdiction.
 - As South Portland, Maine (U.S.) did in 2014, when tar sands were no longer allowed to pass through the city.⁵⁸
 - Or as Portland, Oregon (U.S.) did in 2016, when it became the first major municipality in the U.S. to prohibit the bulk storage of fossil fuels, essentially ceasing oil trains from passing through the jurisdiction.⁵⁹
- Defund police departments, which have long used their power both to violently protect polluting industries' infrastructure over people's lives and to terrorize and communities of color.^{60 61}
 - Instead, invest funding in measures that make communities safer, healthier, and more sustainable such as education, restorative justice, and community-based renewable energy infrastructure.⁶²

Challenge Paris Agreement violations

Hold specific polluting and destructive corporations, or groups of them, to account for their climate inaction by suing them for failing to comply with the Paris Agreement commitments.

What does this look like?

- Sue countries, polluting and destructive corporations, or related actors for violating the right to a safe and clean environment, including by driving deforestation or failing to have adequate, ambitious, and just climate action plans that are fully aligned with the commitments of the Paris Agreement to keep average global temperature rise to as close to 1.5 degrees Celsius as possible.
- This argument led to the successful challenge in the U.K.,⁶³ where a new runway at Heathrow International Airport was ruled illegal since it was not in line with the U.K.'s Paris Agreement commitments.
- Similarly, incompatibility between Royal Dutch Shell's climate action plans and the Paris Agreement commitments has led civil society organizations and over 17,000 citizens in the Netherlands to sue Royal Dutch Shell for failing to align its business practices with the action necessary.⁶⁴

Increase access to justice for frontline communities

Implement a variety of measures to ensure communities on the front lines of the climate crisis have access to legal mechanisms for advancing climate justice, including through Global North- Global South solidarity.

What does this look like?

Climate cases in the Global South generally only indirectly implicate climate change, among other reasons because of the limited access to justice.⁶⁵ These barriers to justice could be in part addressed by advancing subnational/local strategies that:

- Develop or strengthen inclusive processes that allow communities direct access to legal actions. Tools that can help achieve this include:
 - Strengthen or advocate for effective partnerships amongst governments and between governments and civil society⁶⁶ to:
 - Organize sources of data. Case management from legal aid providers, both government and civil society, can be beneficial to understand trends in justice needs, who is lacking access to justice, geographic spread of justice services, what assistance communities need to resolve disputes, the experience of marginalized groups, and the utility and impact of legal aid and paralegal services.
 - Establish a financial fund that can support legal assistance needs.
 - Establish programs with law faculties that can support the legal cases.
- Implement and strengthen community governance frameworks, and create opportunities for cross sub-national learning on effective mechanisms that allow communities to access legal actions directly, allowing actors to:
 - Learn from and share best practices in order to strengthen case management and data collection.
 - Strengthen sub-national South-South and frontline community collaboration, in particular by developing training programs that better enable local communities to access and use legal systems.
- Formalizing opportunities for North-South and frontline solidarity that allows for:
 - Partnership between impacted communities and individuals in the Global South and international allies and legal experts who help facilitate access to justice and accountability.
 - Seizing opportunities where legal action is currently being taken internationally or in the Global North to align this action with what will benefit impacted communities in the Global South.

Raise public awareness about climate denial and greenwashing

Through education, media engagement, and resolutions, build political will for polluting industry liability and deformalize corporate impunity and business as usual.

What does this look like?

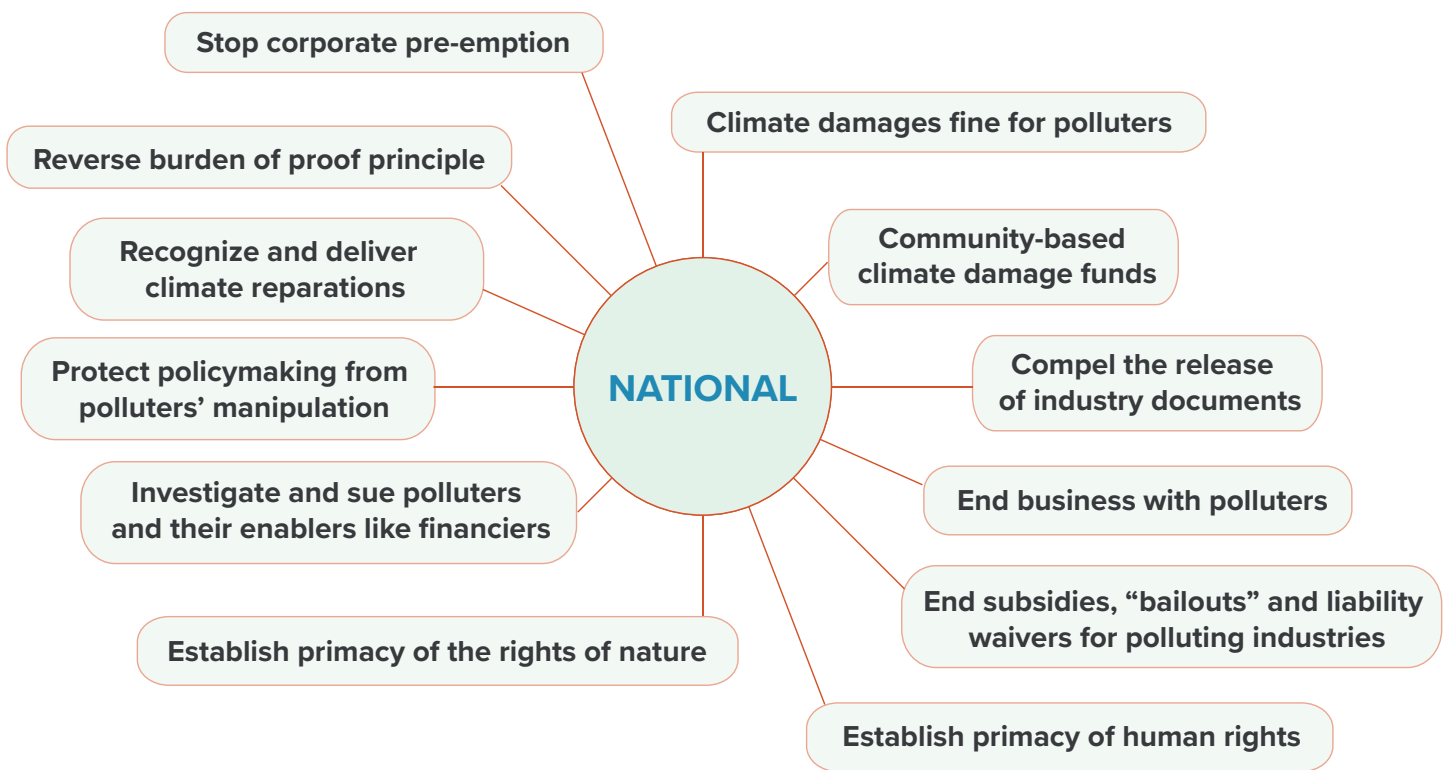
- Raise awareness, inform, and educate decision-makers and the public regarding corporations' role in exacerbating climate change,^{67 68 69 70} the need to protect climate policies from vested corporate interests,^{71 72 73} as well as the strategies and tactics used by corporations to interfere with the setting and implementation of climate action^{74 75} and liability measures^{76 77} at every level of governance, including through greenwashing.^{78 79 80}
- Increase awareness through public materials, media, and local resolutions and/or investigations that expose the fossil fuel industry's (and other polluting industries') historic and ongoing practice of using individuals, front groups, and trade organizations to act, openly or covertly, on their behalf or to take action to further industry interests.^{81 82}
- Mandate public school curricula that critically examine the intersections between polluting industries' global expansion and abuses and the political, economic, and social impacts of colonialism, imperialism, and racism.

Challenge attempts to pre-empt liability locally

Play a watchdog role, exposing and challenging insidious attempts at the local level by polluting corporations to seize opportunities to avoid liability for harms caused.

What does this look like?

- Coordinate with government officials and decision-makers at all levels of governance to ensure that cities and communities have the ability to pursue liability against polluting industries without the possibility of pre-emption at the regional, country, and/or international level.
- Identify and challenge attempts by the industry to pre-empt local liability claims for past, current, or future harms through legislation, voluntary agreements, litigation, or other means.



National

Establish primacy of human rights

Reaffirm and operationalize, through national and international human rights law, the need for human rights to be upheld by States and respected by transnational corporations as well as their subsidiaries, controlled companies, and any entity in their global value chain and their representatives. Uphold clear guidance on what is considered a violation of human rights and what the appropriate punishments are for violations.

Provide access to justice and remedy for affected people and workers in the home and host country of the transnational corporation, and in any other country where it has substantive assets, or in a dedicated international jurisdiction such as an international court on transnational corporations and human rights.

What does this look like?

- Establish the primacy of human rights and enshrine:
 - The primal obligation of a State and its representatives to protect these rights and develop the appropriate national legislation to secure its implementation.
 - A corporation's legal obligation to respect human rights as well as the common good, not subject to any law of the originating country providing immunity to transnational corporations operating in other countries.

Mechanisms for individuals or entities to hold polluters liable for violating these rights.

- Adopt measures that facilitate a transition to a non-polluting system, including policies and practices that:
 - Ensure people are aware of their rights.
 - Provide what is necessary to conserve the environment, rehabilitate it, and repair the damage.
 - Ensure violations of these rights will not happen again.

- Clearly define in law what is considered a violation of these rights and the civil, criminal, financial, administrative, or any other type of action that can be taken when violations occur.
- In creating guidelines for how to define a violation of human rights in national law, governments should take into account:
 - The Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law adopted in 2005 by the United Nations General Assembly.⁸³
 - The obligation to respect, ensure respect for, and implement international human rights law and international humanitarian law, drawing from guidance and agreements such as the Human Rights Committee,⁸⁴ the Committee on the Elimination of Discrimination against Women,⁸⁵ the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests,⁸⁶ the Declaration of Indigenous Rights (UNDRIP),⁸⁷ and the United Nations Declaration of Rights of Peasant and Other People working in Rural Areas.⁸⁸
 - A victims' right to remedies, including:
 1. Access to justice.
 2. Reparation for harm suffered.
 3. Access to relevant information concerning violations and reparation mechanisms.
 - The updated set of principles for the protection and promotion of human rights through action to combat impunity (impunity principles) endorsed by the United Nations Commission on Human Rights (succeeded by the Human Rights Council in 2006).⁸⁹ Some important concepts include:

1. General obligations of States to take effective action to combat impunity.
 2. The inalienable right to the truth.
 3. The establishment and role of truth commissions.
 4. Jurisdiction of international and internationalized criminal tribunals.
 5. Measures for strengthening the effectiveness of international legal principles concerning universal and international jurisdiction.
 6. Restrictions on prescription.
 7. Rights and duties arising out of the obligation to make reparation.
 8. Reparation procedures that allow for restitution, compensation, rehabilitation, and guarantees of non-repetition.
 9. Publicizing reparation procedures.
 10. Scope of the right to reparation.
- Establish the liability of parent and outsourcing companies over the activities of their subsidiaries, controlled companies, and any entity in their global value chain.
 - Read this briefing on France’s “duty of vigilance” law, passed in 2017, which provides a groundbreaking precedent for this.⁹⁰ Though imperfect in large part due to corporate lobbying, this precedent should continue to be built upon.
 - Expand the legal obligation of corporations to include CEOs, managers, and those in positions of power within corporations.
 - Adopt legislation that enshrines climate commitments made at institutions such as the United Nations Framework Convention on Climate Change into law so that corporations can be held accountable to respect them.

Stop corporate pre-emption

Implement regulations through national legislation that stop polluting corporations from attempting to pre-empt being brought to justice or to abuse processes meant to uphold justice.

What does this look like?

- Adopt and enforce safeguards against any abuse of rules such as those pertaining to prescription and amnesty, among others that fosters or contributes to impunity.^{91 92}
 - Prescription—either of prosecution or penalty—in judicial, administrative, and other cases should not occur for periods that render no effective remedy available.
 - Prescription should not apply to crimes under international law that are by their nature imprescriptible. When it does or must apply, prescription should not be effective against civil or administrative actions brought by victims seeking reparation for their injuries.
 - Stop attempts by polluting corporations to avoid justice and fair trials, such as:
 - Appealing to move legal claims to parts of the judicial system that favor a corporation.
 - Countersuing.
 - Granting the same (or greater) privileges to the committer of crimes as those that the crimes are committed toward.
 - Incorporate pre-emption clauses for international litigation.
 - Through legislation or litigation, ensure that the corporation being held liable is not able to pre-empt further or future liability actions from governments and/or victims at the sub-national level.
 - Adopt provisions that allow for the implementation of strict liability regimens, especially for environmental litigation cases.⁹³
 - Adopt constitutional reforms that allow the inclusion of nature rights and environmental rights.
1. All action taken to protect the rights of nature must reinforce and support the rights of people, local communities (including peasants, fisherfolk, nomadic, and rural peoples), Indigenous peoples, and collective rights.

Reverse burden of proof principle

Increase access to justice against corporate impunity by ensuring that the burden of proving whether harm or abuses were committed by transnational corporations or certain actors should fall to on those responsible for the act, under the legal principle of “res ipsa loquitur” (the mere occurrence of the act implies negligence), and not to the past, present, and future victims of such abuse.

What does this look like?

- provisions to reverse the burden of proof principle to help ensure victims are better positioned within justice processes that displace national law.
- Adopt provisions to place the burden of proof on polluting and destructive corporations, not the people holding them accountable.

Establish primacy of the rights of nature

Formalize in national law, including amendments to constitutions, the right of nature to be protected in a manner that reinforces and also protects human rights, including the rights of people, local communities including peasants and rural folk, Indigenous peoples, and collective rights.

What does this look like?

- Formally recognize the rights of nature, enshrining its right to be protected and conserved, and concretize the primacy of the rights of nature and human rights above all else.

- All action taken to protect the rights of nature must reinforce and support the rights of people, local communities (including peasants, fisherfolk, nomadic, and rural peoples), Indigenous peoples, and collective rights.

Countries where similar action has been taken include Ecuador, Bolivia, India, and New Zealand, though it is essential to note that in all cases, meaningful implementation is yet to be achieved. [Click here to read more about the measures in each of these countries.](#)

Climate damages fine for polluters

Implement and collect fines from corporations for polluting activities, such as fossil fuel extraction, to help justly and directly finance a shift off of polluting products. The cost of such a fine must not be placed upon people but rather be collected from corporations by governments and publicly governed to serve the people.

What does this look like?

- The payment of the fine must not be used to permit or legitimize more pollution to take place or create dependence on continued pollution as a source of income. Therefore, implementation of climate damages fines must be in accordance with the guidelines detailed below.
- Establish a national climate damages fine for every unit that polluting corporations pollute or extract.⁹⁴
- Corporations must be legally barred from passing on the cost of the fine to consumers, and they must demonstrate that the payments are coming directly from their net revenues or profits.
- A climate damages fine should incentivize a reorientation by the polluting and power-producing industries away from fossil fuels or other polluting products by reducing the profits they derive from that activity. This also would make them a less attractive investment option.
- The fine should only be one option utilized by governments in a suite of complementary financial measures, including others such as the removal of subsidies for fossil fuel or agrochemicals, to make polluting industry business increasingly non-viable.
- In the same spirit, the use of climate damages fines should reinforce, not replace, a government's responsibility to mobilize and allocate public finance to address climate change and the subsequent needs of communities. Any governments utilizing such a fine must do so alongside safeguards that ensure the resources raised will serve communities and be protected against corruption.
- The design of the fine should ensure that it escalates annually, and upon repeated occurrences, making polluting industries' business increasingly unprofitable year on year and raising billions of dollars annually to address climate impacts while contributing to a phase out of the product (such as fossil fuels) by mid-century.⁹⁵
- It must be a fine at source (e.g., for fossil fuel corporations a fine on extraction or for agribusiness at the start of the food supply chain) with the cost borne directly by the corporations, not the country where the activity is taking place.
- Implementation of the fine must include reporting transparently on what is being paid and to whom, making it more difficult for polluters to lobby policymakers and enforcers for preferential rules and prices.
- Finance received through the collection of such a fine should:
 - Be used only to serve the public interest by addressing climate impacts or funding a just transition. The latter could include activities such as to fund decentralized, community-led renewable energy solutions as well as decentralized food systems, including local farms that ensure care and restoration of land.
 - In no way be used to directly or indirectly promote fossil fuel or other polluting activities.
 - Directly contribute to the international financing facility for Loss and Damage and go directly to communities to address climate impacts. Wealthy, industrialized countries should contribute significantly more (at least 50%) of resources gathered through climate damages fines. Similarly, the bulk of resources raised through these fines in lower-income countries enduring the greatest impacts of climate change should go directly to support impacted communities in-country, on a sliding scale basis.

End subsidies, “bailouts,” and liability waivers for polluting industries

End a variety of investments and mechanisms that artificially prop up polluting industries and insulate them from addressing the damage they’ve caused, including but not limited to subsidies and perverse incentives, bailouts, and liability waivers.

What does this look like?

- Reject outright any policies or proposals that seek to waive the liability or culpability of corporations, whether it be past, present, or future.^{96 97 98} Guard against these clauses being embedded in otherwise positive climate action legislation.
- Reject any and all “bailouts” that incentivize polluting industries when they must instead be severely regulated and phased out.^{99 100} Rather, fund the relief and recovery people and nature need by advancing liability measures in this roadmap that require corporations to pay for the damage they’ve knowingly caused and the broken systems they have intentionally helped create.
- Stimulus and relief packages such as those responding to the COVID-19 pandemic should be harnessed as opportunities to advance liability measures at the national level and invest in just, resilient systems that are truly in harmony with nature.
- End government subsidies to polluting and destructive industries and corporations,¹⁰¹ with no incremental phaseout period.
- Require financiers such as banks, asset managers, and insurance companies to immediately divest from fossil fuel and deforestation projects.





International

Advancing liability locally to globally relies on strengthening international legal instruments and institutions that already exist, drawing from best practices and precedents, and tapping into bold and visionary aspirations for what is needed to transform systems and advance justice.



Finance for loss and damage

Establish mechanisms within United Nations institutions, such as the United Nations Framework Convention on Climate Change (UNFCCC), as well as multilateral or bilateral funds, such as the Green Climate Fund, that deliver financial support and compensation to frontline communities for climate impacts (loss and damage).

What does this look like?

- Establish a loss and damage financing facility¹⁰² within or across U.N. institutions, which could include the UNFCCC.¹⁰³ This facility should be financed by wealthy countries and support developing countries experiencing climate disasters.
 - The guidelines for its establishment should include requirements that:
 1. Wealthy, industrialized countries contribute to this facility annually in line with their fair share of historical emissions.
 - Allocate an adequate percentage of finance that governments collect through national liability measures, including litigation, climate damages fines, and other measures detailed in this roadmap. These funds will go toward a nation's contribution to the loss and damage financing facility.

2. Funding (whether from the financing facility directly or via national funds) be distributed to and in the control of communities enduring the greatest impacts of climate change.

- The governance of this facility must:

1. Include strong requirements to protect against the risk for conflicts of interests to unduly influence how the finance is distributed.

2. Center the representation and decision-making of communities in the Global South, including women, Indigenous peoples, youth, and local communities (including peasants, fisherfolk, nomadic, and rural peoples).

- Allocate a proportion of multilateral and bilateral funds that finance climate actions to go toward mandatory loss and damage funding.

- Examples of relevant funds include the Green Climate Fund (GCF), Climate Investment Funds (CIF), Global Environment Facility (GEF), and the Adaptation Fund.

- These funds should be handled accountably and transparently, and they should be governed with and by people, not dictated by corporations or the private sector.

Ecocide as a crime in international law

Advance laws in international jurisprudence to protect the earth by criminalizing acts of ecocide, allowing for legal claims against corporations for breaching these laws, and committing acts of ecocide.

What does this look like?

- In relevant international jurisprudence, formally recognize acts of loss, damage, or destruction to ecosystems or the natural world (or ‘ecocide’) as a crime, as civil society¹⁰⁴ along with the island nations of Vanuatu and Maldives have called for,¹⁰⁵ and as previously proposed in 2010 to the International Law Commission (ILC).¹⁰⁶
 - The inclusion of ecocide as a crime in international law should prohibit acts of damage and destruction of the Earth and creates a legal duty of care for all inhabitants that have been or are at risk of being significantly harmed due to these acts. The duty of care applies to prevent, prohibit, and pre-empt both human-caused ecocide and natural catastrophes. Where ecocide occurs as a crime, remedy can be sought through national courts and international legal bodies.
- Ensure that the definition of ecocide addresses not only environmental and climate crimes, but also crimes committed against environmental defenders.^{107 108}
- Acts of ecocide committed by corporations should be punishable and judged upon their impacts rather than intent alone.
- Formally recognize transnational corporations’ role in driving ecocide, and try them when they are accused of violating these laws.
- Formalize an international process that provides and prioritizes access for Global South countries and frontline communities that are enduring the greatest impacts, and where transnational corporations and their subsidiaries are operating, to seek compensation, reparations, and justice for the crimes these corporations have committed and are committing.
 - Similarly, recognize that holding actors accountable for ecocide should be used to advance climate justice to those enduring the greatest harm, and therefore should not be used unfairly by Global North actors or governments against Global South governments.
- Through the UNFCCC and other U.N. institutions, register a formal call for international law to recognize acts of ecocide as a crime.

Binding treaty on transnational corporations and their global supply chains with regards to human rights

Establish a legally binding instrument, currently under development at the United Nations Human Rights Council, to regulate the activities of transnational corporations and other businesses via international human rights law.

What does this look like?

Governments are currently negotiating the text of a draft treaty¹⁰⁹ on business and human rights. This instrument should adhere to the detailed guidance put forth by global civil society¹¹⁰ and:

- Reaffirm and operationalize the primacy of human rights and the rights of nature (see below) over and above international trade and commerce and any associated agreements or treaties.
 - All action taken to protect the rights of nature must reinforce and support the rights of people, local communities (including peasants, fisherfolk, nomadic, and rural peoples), Indigenous peoples, and collective rights.
 - Create national and international legal mechanisms to hold liable and sanction polluting transnational corporations and other businesses, and force them to remediate and restore the environments they have polluted, damaged, or adversely impacted and compensate the affected people.
 - Establish direct obligations for transnational corporations to respect human rights and socio-economic rights covering the activities of their subsidiaries, controlled companies, and any entity in their global value chain.
 - This should also include the direct obligation to respect all relevant United Nations covenants and conventions, including the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)¹¹¹ and the United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas,¹¹² including fisherfolk.
 - Establish a State's obligation to protect human rights and the rights of nature in a holistic and harmonious manner. In other words, the protection of rights of nature should support and further ensure the protection of human and collective rights.
 - Adopt guidelines that prohibit international economic and international financial institutions from giving money toward or participating in activities that directly or indirectly enable corporations to continue to act with impunity.
 - Prohibit international financial institutions from funding the fossil fuel industry and other polluting industries.
 - Prohibit subsidies from going to the fossil fuel and agribusiness industries.¹¹³
 - Eliminate Investor-State Dispute Settlements (ISDS), which serve as a mechanism for corporations to evade legal responsibility or respect human rights and nature, as well as a way to formally condemn States that prioritize to the protection and guarantee of human rights and nature.^{114 115}
 - Suspend all trade and investment treaty negotiations.
 - Expand these measures to default on the payment of outstanding debts as a result of ISDS awards.
 - Revoke the immunity of international financial institutions such as the World Bank's International Finance Corporation (IFC), following the lead of the U.S. Supreme Court's groundbreaking decision that such institutions can be held liable for environmental damages, following the claim brought by Indian fishermen.
- To understand why these measures are necessary to be able to meaningfully advance liability and to counteract attempts by corporations to avoid liability, explore these examples:

- Case study on Chevron and Texaco in Ecuador.
- Case study on Indian fishermen, the World Bank, and the U.S. Supreme Court.

- This report¹¹⁶ with 10 examples of how corporations have hijacked justice through ISDS.

Several jurisdictions have begun to develop versions of regimes that enshrine the rights of nature, including Ecuador, Bolivia, New Zealand, and India. Not all of these regimes take nature as a whole to be a legal person; in some cases, parts of nature—for example a river or a species—are granted personhood or are otherwise equipped to litigate their own rights. Additionally, not all have adequate measures to ensure that protecting the rights of nature serves to reinforce the protection of human rights, which is essential. See here for more information on the measures advanced in these countries.



Fossil fuel non-proliferation

Establish and utilize international mechanisms such as a fossil fuel non-proliferation treaty, via new or existing regimes, to end the proliferation and use of fossil fuels, hold the industry liable for its abuses, and use liability to help fund a just transition centered on real climate solutions.

What does this look like?

There are a variety of possible avenues for establishing international mechanisms to stop fossil fuel proliferation.¹¹⁷ Regardless of the forum and process, such mechanisms should:

- Base these efforts on clear equity principles¹¹⁸ and new forms of international cooperation, building on the experience of other international regimes such as the nuclear non-proliferation regime.¹¹⁹
- Use funds garnered through liability measures to help finance such a transition.
- End all new exploration and production of coal, oil, and gas effectively immediately.
- Reject polluting industry schemes like carbon markets, geo-engineering, and Bio Energy with Carbon Capture and Storage (BECCS) on the basis that they are risky, unproven, inadequate, and full of loopholes that contribute to abuses of human rights and nature.^{120 121 122 123}
- Phase out existing stockpiles and production of fossil fuels in line with keeping global temperature rise to 1.5 degrees Celsius and in line with the principles of a just transition for every worker, community, and country.^{124 125}
- Draw from research that demonstrates that phasing out fossil fuel supply should be prioritized in wealthy, diversified economies that are in the best position to lead in large-scale, transformative action right now with the least social cost.¹²⁶ This includes countries like Canada, the U.K., U.S., and Norway.

People's monitoring body for polluting industry activity

Create a democratically controlled, independent, formal monitoring body that tracks, documents, and publicizes the activities of polluting corporations.

What does this look like?

- While there are already initiatives that monitor and attribute greenhouse gas emissions that can be directly attributed to a specific corporation at source,^{127 128} establish a body to focus specifically on closely monitoring:
 - Indirect emissions that occur throughout the value chain of a corporation (sometimes referred to as Scope 3 emissions).
 - General pollution caused throughout the value chain of a corporation, such as the contamination of water by heavy metals or the pollution caused by waste and garbage in the ocean.
- Identifying actions, inactions, and business decisions of corporations that contribute to or have the consequence of violating environmental and human rights.
- Attempts by polluting industries and corporations to advance climate change denial, deception, greenwashing, and interference with policymaking on all levels of governance; and track and trace the finances spent toward these activities.
- This monitoring body should be housed independently of multilateral or bilateral institutions (i.e., a monitoring body of the people) and should be comprised of independent experts and representatives of frontline communities.
- Monitoring activities should include unannounced and periodic field audits to be able to more accurately identify and access true environmental and social impact of polluting corporations' practices.

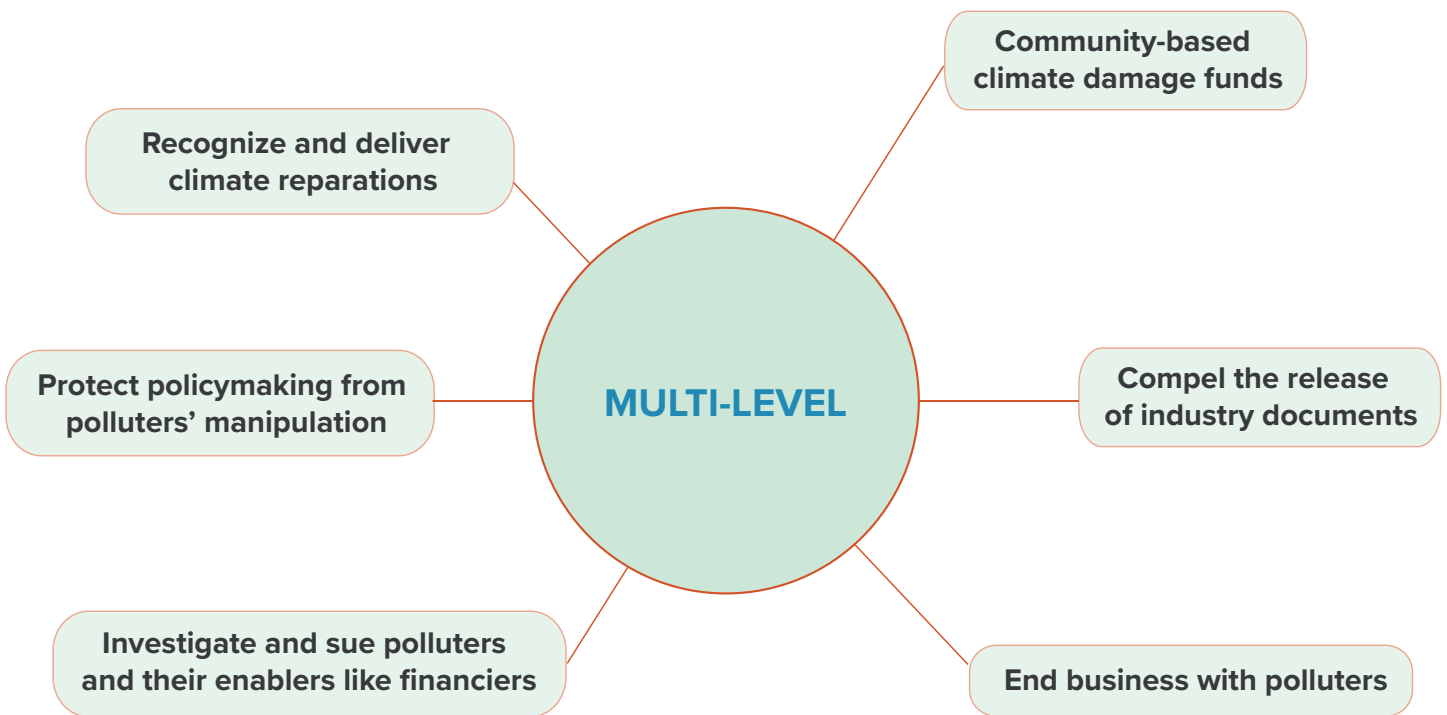
Independent international expert committee on liability

Establish a democratically controlled, independent international liability expert committee to develop guidelines that support the drafting and implementation of binding international, regional, national, sub-national, and local legislation that advances liability mechanisms.

What does this look like?

- This expert group should be housed independently of multilateral or bilateral institutions, and it should be comprised of independent experts, attorneys, and representatives of frontline communities.
- Ensure representation by people on the front lines of the climate and environmental crisis who hold firsthand expertise on polluting industries' abuses and impacts of climate change.
- Ensure the work of this committee is bound by timelines that match the urgency of the need.
- Protect the work of this committee from the undue influence and manipulation of polluting corporations and industries, or those directly or indirectly representing them.





All or multiple levels of action

Investigate and sue polluters and their enablers like financiers

Through a variety of legal mechanisms, people and entities at all levels should initiate investigations and lawsuits that hold polluting and destructive industries and their enablers liable for their multifaceted roles in the climate crisis and wrongdoing.

What does this look like?

- States, regions, communities, and/or individuals formally launch investigations into polluting and destructive industry corporations and actors to firmly establish what they knew about climate change, when, and what actions they did or did not take to address these findings.
 - Investigation and legal claims toward agribusiness can be made on the grounds of direct harm or eco-destruction caused through business practices.
- States, regions, and/or communities formally sue polluting industry corporations for compensation for the damage caused or projected to be caused as a result of their business practices, failure to comply with climate action commitments, or their deception and manipulation.
 - Compensation received should directly support frontline communities and those that endure the direct abuse of polluting and destructive corporations, or to funds that distribute to these communities, such as those detailed here.
- Register legal claims with national and international judicial bodies to expose and challenge the damage and abuses (environmental or related to people and community) endured as a result of specific projects or business practices of transnational corporations.
 - These claims, especially when brought by local communities, have the ability to set groundbreaking precedents that spur lasting change. For example, a local community of Indian fishermen launched a

lawsuit that wound up setting a powerful legal precedent for international financial institutions via the U.S. Supreme Court. Read more about this here.

- Judicial systems should guarantee specific prescribed time frames that should be a matter of months (not years) and that States or legal systems are required to adhere to when liability claims are registered.
- File liability lawsuits against the institutional investors and financiers that enable corporations to pollute, destroy, abuse, and use the corporate personhood or corporate veil to protect themselves.
 - Initiate lawsuits against executives and directors of financial corporations that fail to adequately consider and address climate risks. Just 35 investment banks—like JP Morgan Chase, Wells Fargo, Bank of America and HSBC—have channeled more than US\$2.66 trillion into fossil fuels between 2016 and 2019.^{129 130} There is increasing precedence and potential to sue corporate actors like financiers for breaches of duty of care and diligence.^{131 132}

In recent years, climate change litigation to advance liability claims has been increasing significantly across global jurisdictions. In the past, the majority of these



lawsuits have been brought against governments. We're now, however, witnessing an intensifying focus in launching climate liability cases against corporations based on several robust legal arguments and claims.^{133 134} This shift in focus on holding corporations legally liable for climate change has been facilitated by advancements in climate attribution science; knowledge from previous legal challenges and precedents; increased evidence regarding corporations' climate change denial and deception efforts; increased public action to hold corporations accountable for climate change; and more effective collaboration between governments, attorneys, scientists, and advocates across various jurisdictions and legal contexts.

Some of the most prominent types of legal claims that may be utilized to sue corporations directly, collectively, or individually include but are not limited to:

- Public nuisance
 - Nuisance is an act or omission that interferes with the rights of the community or the public generally. Public nuisance claims focus on the argument that the extraction and promotion of fossil fuels contributes to climate change impacts, such as sea level rise, and that these impacts create a public nuisance that interferes with rights of individuals or communities represented.
 - Negligence
 - Most polluting corporations had prior knowledge of climate change science and impacts, in some cases decades before it was commonly known by the public. Being able to demonstrate this prior knowledge forms the basis for negligence claims related to a corporation's breach of their duty of care by not preventing foreseeable harm and for negligent failure to warn of the likelihood of this harm.
 - Misleading advertising
 - These claims focus on corporate advertising that misled the public regarding the corporation's climate change activities, the nature of its products, or the anticipated impacts of its actions on communities in its supply chain. Misleading advertising cases allege that promotional and advertising campaigns by polluting corporations
- violate national law or even the Organization for Economic Cooperation and Development (OECD) Guidelines for Multinational Enterprises,¹³⁵ which require accurate communications between businesses and people.
- Consumer protection
 - These claims focus on breaches in consumer protection law, which typically forbids corporations from engaging in any unfair or deceptive trade practices. Consumer protection cases assert that polluting corporations engaged in deceptive marketing and promotion of their products by disseminating misleading information refuting the scientific knowledge generally accepted at that time; advancing junk science; and developing public relations materials that prevented reasonable consumers from recognizing the risk that products like fossil fuels would cause serious climate change impacts.
 - Strict liability
 - Rather than alleging fault (such as negligence or tortious intent by the defendant), these cases claim strict liability for "design defects," (i.e., problems with a product's design that render it dangerous to use). In these cases, fossil fuels, for example, are the product, with the defect in this case being the impact of the emissions and the known risks associated with them. For strict liability claims to be robust, the evidence needs to show the defendants engaged in business, sold the product to plaintiffs, the product was used as intended, and it caused harm to the plaintiffs.
 - Human rights
 - Human-rights-based climate litigation focuses on the role of corporations in driving climate change and the related impact on an individual's human rights. These types of claims utilize human rights law to demonstrate corporate obligations to respect human rights such as those expressed in the Declaration on the Rights of Peasants, Peasants and Other People Working in Rural Areas.¹³⁶ These types of claims demonstrate that domestic human rights bodies may also provide leverage for further action

on climate change.

- Other types of claims that have potential to directly hold polluting or destructive corporations liable include:
 - Nature rights.
 - Torts.
 - Administrative actions.
 - Health recovery costs and strengthen sanitary healthcare systems.

- Violation of free, prior and informed consent as recognized under the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIPs).¹³⁷
- Violations under the Convention on the Elimination of All Forms of Discrimination against Women.¹³⁸
- Violations of customary and traditional rights of communities.

See page 49 to read about the lessons learned through the precedent of advancing tobacco industry liability through the Master Settlement Agreement.



Compel the release of industry documents

Through measures laid out elsewhere in this roadmap, or via other means, decision-makers may obtain access to industry documents that evidence wrongdoing. Releasing this data is critical for people, civil society, the media, and officials alike to hold corporations accountable for their harms.

What does this look like?

- Provide for and utilize the right to freedom of information and related legislation,^{139 140} as well as access to information as per Principle 10 of the Rio Convention.¹⁴¹
- Publicly disclose and release any data and documentation from polluting corporations that has been previously withheld from the public, making it possible to monitor and expose their wrongdoings.
- Ensure that the concepts such as “trade secrets” and “intellectual property” do not justify means for corporations to withhold information that could document wrongdoing.

See page 49 to read about how the release of tobacco industry documents through the Master Settlement Agreement in the U.S. helped advance tobacco industry liability.

Protect policymaking from polluters' manipulation

Pass and implement conflict of interest policies and legislation to create the space for policymakers and public-serving actors to advance justice and real solutions free of the undue interference of corporations and those that represent them.

What does this look like?

- Reduce the ability of polluters to advance policymaking that protects their profits by implementing measures to firewall policymaking from their interference and influence.^{142 143 144 145}
- This includes but is not limited to:
 - Instituting a firewall to end polluting industry access to decision-making processes.
 - Addressing vested or conflicting interests.
 - Ending preferential treatment of and rejecting partnerships with individuals and institutions or organizations directly or indirectly representing dirty or destructive industries.

End business with polluters

Withhold a corporation's license to pollute and abuse by blacklisting polluting corporations, especially those that are currently under public scrutiny or investigation.

What does this look like?

- Ban corporations that are currently the subject of legal investigations or found guilty through such investigations (sub-nationally, nationally, regionally, or internationally) for allegations related to fraud, misconduct, or human rights abuses from receiving any privilege or incentives, including but not limited to subsidies, stimulus funds, tax breaks, and access to policymaking spaces and negotiations.
- International institutions such as the U.N. bodies and the World Bank or other financing and investment bodies cease relationships with or blacklist these corporations.
- These measures should also be taken toward polluting corporations and industries in general, in addition to applying them immediately to entities under legal scrutiny.
- End the World Bank's Ease of Doing Business rankings,¹⁴⁶ which grades economies not on the strength of their environmental or corporate accountability policies, but effectively pressures countries to deregulate.
- Cut ties and contracts with such corporations at all levels, including local-level partnerships that allow polluters to "greenwash" their image and buy goodwill among community members.

Recognize and deliver climate reparations

Global South communities, women, youth, peasants, Black and other communities of color, and Indigenous communities are on the front lines of the climate crisis. Recognize that they are owed reparations for the damage wrought by climate change and polluting or destructive corporate practices. And deliver reparations by requiring these corporations to sincerely apologize and address the damage they cause and debts owed, while acknowledging that any amount of financial compensation does not equal justice served.

What does this look like?

- Require corporations to provide public, sincere apologies to communities and individuals that have endured abuse, in some case for decades, and whose lives, livelihoods, homes, and cultures have been adversely affected or lost as a result.
 - Distribute and deliver reparations owed to communities on the front lines of the climate crisis by requiring corporations to pay their climate debt to these communities, while acknowledging such a debt can never be fully paid.
 - Reparations must not create dependence on polluting corporations, and the mechanism for delivery of reparation—whether financial or otherwise—should be led by the affected person or persons.
- One possible mechanism at the international level could include a Loss & Damage financing facility.
- Reparations could be delivered in part through a variety of means, subject to the approval of affected communities, including:
 - Direct compensation for losses incurred (past, present, and future).
 - Restoring land unlawfully or unduly under the control of polluting corporations back to its natural stewards (e.g., Indigenous communities or local/frontline communities including women, peasants, fisherfolk, nomadic, and rural peoples).
 - Making accessible technology that directly helps impacted communities respond to and address the impacts of climate change.
 - Cancel any and all debt from Global South countries or frontline communities that arises out of financing real and legitimate climate action within a country.
 - Align reparations measures with the demands of frontline communities based in a country/jurisdiction calling for reparations.

Community-based climate damage funds

Provide financial support needed to frontline communities and countries that are adapting to climate change while simultaneously enduring its impacts.

What does this look like?

- Establish national or local climate damages/self-defense funds that collect, govern, and disburse the funds retrieved from liability measures advanced internationally, nationally, or sub-nationally.
- These should be community governed.
- Funds should provide for:
 - The development of community controlled renewable energy initiatives.
 - Ensuring food sovereignty.
 - Increasing resilience against climate disasters.

Implementing the measures of the liability roadmap

Decision-makers and movements at all levels should keep the following in mind when implementing the measures laid out in this roadmap:

- Enacting these policies and measures is simply the first step to holding polluting and destructive industries liable: There will be much work for government officials, decision-makers, activists, and civil society alike to do to ensure these measures are fully implemented and move us toward the transformative change the world needs.
- Liability should be applied to all industries and corporations that make business decisions that contribute to climate change and its impacts, or that cause harm to people and nature. In addition to the fossil fuel industry, these industries include but are not limited to agribusiness, forestry, mining, and the energy sector.
- Many of these measures could equally apply to State-owned corporations. Because the national contexts and unique needs vary from country to country, it is worth considering where to apply and how to adapt the principles and measures listed in the liability roadmap to address State-owned polluting corporations. Factors to consider when doing so could include but are not limited to the degree of democratic control over the entity, role, and use of funding from oil/gas revenues, and responsiveness of the entity to transition to regenerative, renewable energy sources.
- Measures implemented at the national level should support and reinforce, rather than contradict, measures implemented at the sub-national and local, and vice versa.



Case studies

Around the world people, communities, organizations, and decision-makers are taking action to hold abusive corporations and industries liable.

These case studies illustrate the power and lifesaving potential of liability, highlight global precedents, and share important lessons learned so far.



Chevron and Texaco in Ecuador

The ongoing struggle by Indigenous communities of the Ecuadorian Amazon to hold Chevron accountable for decades of environmental devastation and human rights abuses provides a profoundly emblematic case highlighting the need for binding international law that prevents corporate impunity and holds polluters liable. Despite numerous legal attempts spanning decades and several international jurisdictions, Chevron continues to successfully avoid being held liable for the corporation's irreparable harm that continues to plague the Amazon.

Indigenous communities and small peasant farmers within the Amazon have been experiencing problems for decades, after Texaco (now Chevron) began drilling for oil on the homelands of Indigenous communities in Ecuador in the mid-1960s.¹⁴⁷ In an effort to maximize profit, the corporation knowingly disregarded standard environmental protections and waste regulations, dumping billions of gallons of toxic wastewater into rivers—polluting groundwater and destroying farm lands.^{148 149 150}

The corporation's operations and pollution over the course of two decades caused direct and irreparable harm to the health and lives of more than 30,000 people in multiple communities.¹⁵¹ Multiple peer-reviewed studies have even found an increased risk of cancer in the area.¹⁵² In response to the abuses, those affected formed the Unión de Afectados y Afectadas por las Operaciones Petroleras de Texaco, or Union of the People Affected by Texaco (UDAPT), to mount a sustained legal challenge to hold the corporation liable for its impacts on these communities.¹⁵³ UDAPT affirms that the company disposed of nearly 650,000 barrels of crude oil and more than 16 billion gallons of wastewater in the rivers and soils of the Amazonian jungle, exacting long-term health impacts such as high rates of cancers, birth defects, miscarriages, and respiratory ailments, among other chronic health conditions.^{154 155 156} And according to Pablo Fajardo, a lead attorney for UDAPT, at least “2,000 people have died from cancer due to toxins and polluted water and air.”¹⁵⁷

In 1993, UDAPT filed a lawsuit against the corporation in the United States as a key legal strategy to hold the corporation accountable for its actions, seeking environmental remediation and reparations for the damages caused. The corporation (then Texaco) requested that the legal proceedings be moved to a provincial court in Ecuador, which in 2011 (after nearly two decades of litigation) ruled in favor of UDAPT and sentenced Chevron-Texaco to ultimately pay a US\$9.5 billion to those affected communities.¹⁵⁸ And despite enormous legal challenges and appeals by the corporation, the judgment against Chevron was upheld by the highest judicial authorities in the country. Despite the judgment retaining the status of one of the largest imposed on an oil corporation, no financial damages have been paid to the plaintiffs.¹⁵⁹

During the UDAPT trial, Chevron also sued Ecuador in international courts with the aim of undermining the legal proceedings and judgment in Ecuador while seeking financial compensation.¹⁶⁰ In the midst of the corporation's aggressive legal tactics, Chevron began to withdraw all of its assets from Ecuador and fled the country to avoid paying for damages.

The corporation even resorted to utilizing arbitration under a bilateral investment treaty between Ecuador and the U.S. to receive favorable decisions in an attempt to avoid paying the fine levied in Ecuador.^{161 162} During these proceedings, the corporation argued that the government of Ecuador should have stopped the trial of Indigenous communities and peoples, known as Lago Agrio. The corporation asserted that it had been released from its environmental remediation obligations by an agreement signed with the government and implemented in 1996.¹⁶³ As part of its legal strategy, and in a move that has been called “judicial harassment” by 29 Nobel laureates,¹⁶⁴ the corporation launched charges of corruption, bribery, and fraud during the Ecuadorian trials to both successfully get the original judgment annulled and be awarded hundreds of millions of dollars in costs to be paid by the Ecuadorian government.^{165 166 167}

As part of the ongoing legal saga, the affected communities turned to foreign courts to enforce the Ecuadorian verdict and counteract Chevron's attempts to utilize favorable international jurisdictions to escape accountability. Requests for international solidarity were made through courts in Brazil, Argentina, and Canada.¹⁶⁸

Considering past attempts for accountability along with Chevron's recent legal victory ordering Ecuador to potentially pay millions in legal costs, Pablo Fajardo states: "So, what legal guarantee, if any, do the victims of corporate crimes have? None whatsoever. Economic power is being imposed and companies are buying impunity."¹⁶⁹

At every turn, the people most directly impacted by Chevron's devastation in the Ecuadorian Amazon have been denied access to any form of justice or compensation. The Chevron case illustrates how transnational corporations can escape liability and continue to act with impunity despite grave violations of international law. Chevron's aggressive legal tactics across several

international jurisdictions, use of trade agreements, efforts to pre-empt further liability, and attempts to shield the corporation with complex corporate structures shows how far corporations will go to evade responsibility for their actions, even in the face of overwhelming evidence. The case reinforces the need for an international instrument that obligates corporations to respect human rights while offering communities remedy, reparation and justice.¹⁷⁰

One promising approach is the current development of a legally binding international instrument to do just that. In 2014, Ecuador endorsed and has been supporting the process of a binding treaty at the United Nations,¹⁷¹ chairing the open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights (OEIGWG).¹⁷² This process follows a resolution adopted by the U.N. Human Rights Council, and advances a mandate to elaborate a legally binding instrument to regulate the activities of transnational corporations and other companies in International Human Rights Law.¹⁷³ Read more about this legally binding instrument and how to advance it on page 31.



Big Tobacco Master Settlement Agreement

Recently, there's been increasing attention to the parallels between the tactics—like spreading misinformation—of the tobacco industry and fossil fuel industry.^{174 175} The tobacco industry was trying to prevent public health protections, while Big Polluters are attempting to delay climate action. Now, as legal action against the fossil fuel industry gains steam, the experience of how the tobacco industry was ultimately held liable in the U.S. sheds some helpful light for those seeking to do the same with the fossil fuel industry and other polluting industries.

The fossil fuel industry has spent vast amounts of money over decades to influence or silence public discussion on the effects of their products, in order to weaken political will for action.¹⁷⁶ This is not the first time that corporations prioritizing profits over people have caused great harm. The tobacco industry spent hundreds of millions of dollars misinforming the public about the health impacts of smoking in order to undermine tobacco control efforts.^{177 178}

In the U.S., revelations regarding the tobacco industry's extensive campaign to deceive the public regarding the public health risks of tobacco use came to light through the release of internal industry documents. In May 1994, a whistle-blower leaked internal tobacco industry documents to the press, making headlines in major newspapers across the country.¹⁷⁹ The media coverage of these documents—and the public outrage that followed—emboldened industry whistle-blowers to provide further evidence that the industry knew the harms its products caused.

Throughout that year, there was a slow drip of damning documents, which provided fodder for a steady stream of news stories. While the executives of seven tobacco corporations tried to head off action by telling Congress they didn't believe nicotine was addictive, days later an internal document was released that revealed they were lying. This prompted a sharp increase in legal action

against the industry. The first class-action lawsuit against the industry was filed, and state attorneys general began suing the industry. Over the next 18 months, about a dozen states filed suit.

By the time of the Master Settlement Agreement in 1998, 46 states had filed lawsuits against Big Tobacco. The Master Settlement Agreement is the largest civil litigation settlement in U.S. history, and it resulted in the settlement of the state lawsuits, tobacco corporations paying the states billions of dollars in yearly instalments, new restrictions of tobacco marketing, and the release of millions of internal industry documents that are publicly accessible.¹⁸⁰

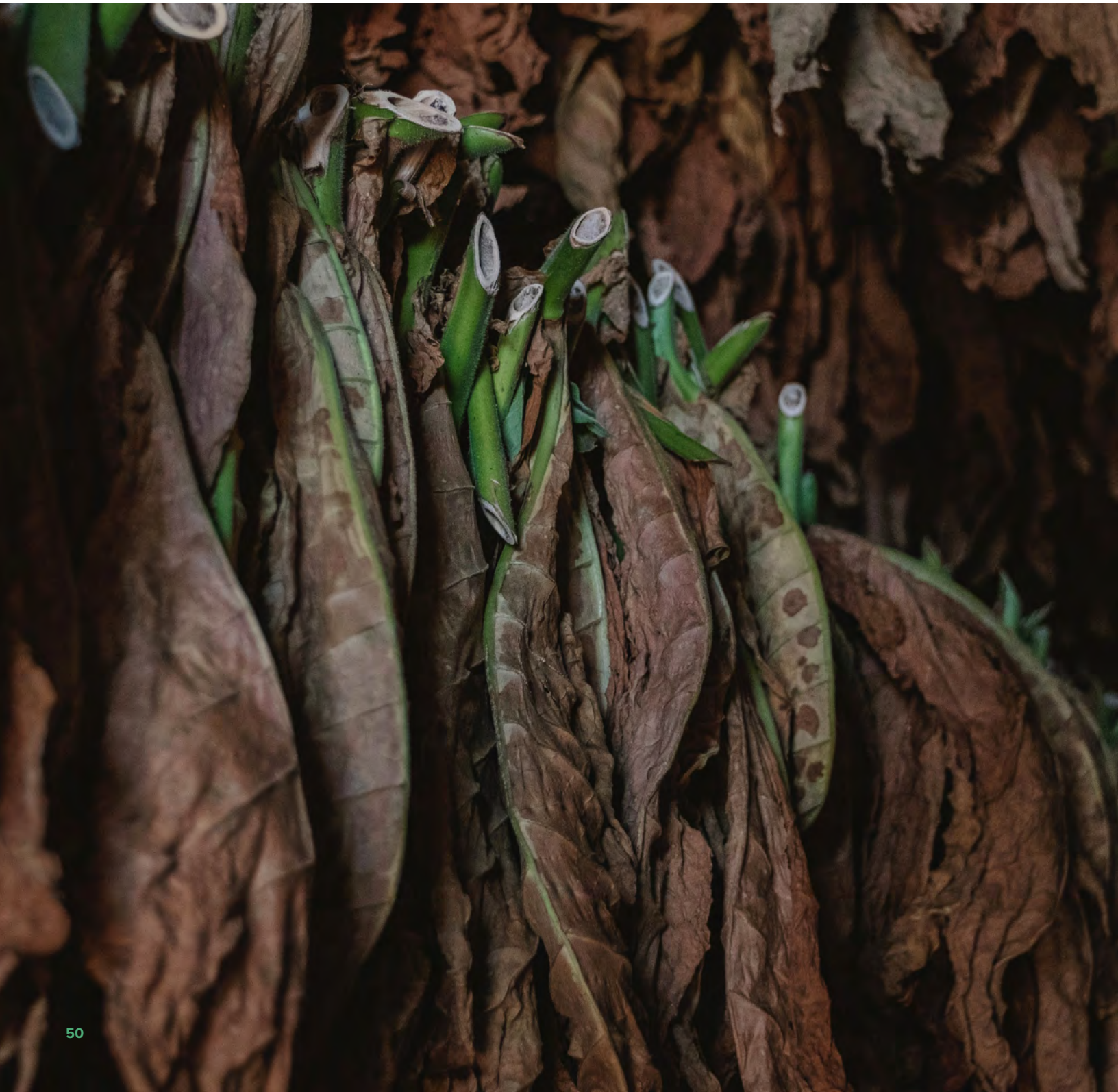
The impacts of these cases were enormous. As the lawsuits mounted, public opinion continued to shift. The Minnesota lawsuit went to trial and resulted in the release of millions of damning internal documents.¹⁸¹ These documents—which made crystal clear the industry's tactics to mislead the public and undermine public health policy—strengthened the resolve of policymakers all over the globe to take action, including delegates of the World Health Organization global tobacco treaty (Framework Convention on Tobacco Control),¹⁸² who were emboldened to fight for strong corporate accountability measures in part because of the release of these documents.¹⁸³

Today, this precedent-setting treaty is saving lives,¹⁸⁴ having paved the way for public health protections in countries all over the world. And in the end, the Master Settlement Agreement forced the tobacco industry to pay billions of dollars in damages in perpetuity. The money served as compensation for taxpayer money that had been spent in connection with tobacco-related diseases and the loss to local economies.

The recent cascade of lawsuits and actions against the fossil fuel industry clearly shows growing momentum to hold polluting industries liable for climate change damages.^{185 186} And as the Master Settlement Agreement experience demonstrates, it is advantageous for public

officials to advance industry investigations and seek to release internal corporate documents that provide evidence to back legal claims to hold corporations liable. As the U.S. tobacco industry investigations and resulting Master Settlement Agreement illustrate, the public disclosure and release of internal fossil fuel or polluting corporation documents would allow for the continued monitoring and exposure of wrongdoing. Applying this lesson would also

help prevent corporate abuses from happening in the first place. The compounding visibility and exposure of these actions is ultimately critical in shifting the public climate and building the political will needed to advance climate justice globally.



Indian fishermen, the World Bank, and the US Supreme Court

Budha Ismail Jam, et al v. International Finance Corporation is a landmark suit led by Indian fisherfolk and farmers residing in Gujarat, India. These fisherfolk and farmers filed civil action against the International Finance Corporation (IFC) for severely damaging the local environment, including the marine ecosystem, and the resulting negative impacts on the traditional way of life caused by the IFC-funded Tata Mundra Ultra Mega 4,150 MW coal-fired power plant. Over 4 million fisherfolk, comprising of approximately 870,000 families, make up India's important fisheries sector.¹⁸⁷ Along the Gujarat coast, generations of fishing communities and farmers rely on and look after Gujarat's natural resources—including fishing, farming, salt-panning, and animal rearing—for sustenance and economic production.

In April 2008, the World Bank Group's IFC Board approved a US\$450 million loan for the Tata Mundra Ultra Mega power plant owned by private firm Coastal Gujarat



Power Limited¹⁸⁸ —a project that has devastated marine life, water, farmland, and air—resulting in both physical and economic displacement of those who resided at the fishing harbors (known as “bundars”).¹⁸⁹ ¹⁹⁰ Though the legal battle spearheaded by fisherfolk and farmers to hold the largest global development institute in the world liable for its abuses is still ongoing, this case demonstrates the technical and legal loopholes under the 1945 International Organizations Immunities Act (IOIA). These loopholes allow international institutions, like the World Bank Group, to seek “absolute” immunity for the economic and environmental harms caused by the projects it finances.¹⁹¹ ¹⁹² ¹⁹³ Even so, this case is setting a historic precedent that can empower frontline communities harmed by corporate abuse to hold the international institutions that enable (and thus are complicit in) these abuses accountable.

The billions of dollars of funding for development projects provided predominantly to countries in the Global South by international financial institutions (IFI) through structural adjustment programs (SAPs)¹⁹⁴ come at a high social and environmental cost for frontline communities, maintaining and perpetuating environmental degradation, inequality, poverty, and dependency.¹⁹⁵ ¹⁹⁶¹⁹⁷ ¹⁹⁸ ¹⁹⁹ These SAPs are pushed on countries with lenient regulations that allow for higher foreign direct investments (FDI), with various regulations and standards often reduced or removed.²⁰⁰ This case is important because it challenges the IFIs that continue to target Global South countries in the pursuit of maintaining the interests of corporations and the capitalist system.

After the Tata Mundra plant began its operations, Indian fisherfolk residing along the Gujarat coast experienced significant threats to vital marine resources, including fish stocks. Bundars located closest to the plant were most affected, with mass quantities of thermal pollution damaging the local marine ecosystem and the transportation of coal from the port to the plant causing substantial coal dust and fly ash to harm the health and wellbeing of both the environment and the local people.²⁰¹ ²⁰² Local fisherfolk reported several environmental and physical harms, including worsening respiratory problems that disproportionately affected the elderly and unusually

warm weather presumably due to significant thermal plume from the plant's outfall channel.²⁰³ Despite the IFC's binding commitments to ensure the project complied with the social and environmental conditions under the loan agreement and the IFC's own Sustainability Framework,²⁰⁴ the Tata Mundra plant caused unprecedented environmental and social damages to the ecosystems that once thrived in Gujarat.²⁰⁵

Though the IFC repeatedly reiterated that “the importance of electricity in ending poverty and building prosperity cannot be understated and the lack of electricity impairs opportunities for education, healthcare, clean water, freedom of movement, and jobs,”²⁰⁶ the IFC's loan caused significantly more harm than good. The IFC's loan that financed the Tata Mundra plant's construction caused direct and irreparable harms, including threats to health, destruction of property, loss of livelihoods, environmental destruction, and economic and physical displacement.²⁰⁷

²⁰⁸ In response to these abuses, in 2011 Machimar Adhikar Sangharsh Sangathan (Association for the Struggle for Fisherworkers' Rights, or MASS) filed a formal complaint to the IFC's Compliance Advisor Ombudsman (CAO). The CAO published findings concluding that the IFC failed to take the necessary steps to ensure the applications of the loan agreement, as well as its failure to uphold its commitments to the local community.^{209 210} In 2013, the CAO released an audit report and criticized the IFC's role in the significant environmental and social harms surrounding the Gujarat coast. Despite these evidenced claims, the IFC ultimately rejected or ignored most of the CAO's findings.^{211 212}

In April 2015, on behalf of a group of local fisherfolk and farmers, EarthRights International (ERI) filed suit against the IFC in federal court in Washington, D.C., where the IFC is headquartered.²¹³ ERI represented the fishermen's organization, MASS, and the Navinal Panchayat (village), a local government entity.²¹⁴ However, the IFC filed a motion to dismiss the complaint citing “absolute” immunity from suit in U.S. courts under the IOIA,²¹⁵ and the District Court judge upheld this notion. When the plaintiffs' appealed,²¹⁶ the U.S. Court of Appeals for the District of Columbia Circuit affirmed the D.C.

Circuit decision, upholding the IFC's “absolute immunity” claim.²¹⁷

On February 27, 2019, a historic, landmark 7-1 decision ruled that international organizations,²¹⁸ including the World Bank Group, can be sued in U.S. courts for its commercial activities.^{219 220} Despite the judgment rendering a monumental precedent for accountability, the IFC filed a new motion to dismiss the case.²²¹ One year later, in February 2020, IFC's motion to dismiss was granted and the judge ruled that “the suit is not, at its core, based upon activity—commercial or otherwise—carried on or performed in the United States.”²²² With the case continuing through U.S. courts, Budha Ismail Jam stated: “to save our livelihoods and protect our environment for future generations, we do not see any other way. We know we are up against a wealthy and powerful institution, but we are determined to make our voices heard. We will continue to seek justice.”²²³

As part of the ongoing legal battle for justice between fisherfolk and farmers against the IFC, this case fundamentally questions the scope of international institutions' immunity to legal suits and to what extent international finance institutions such as the IFC may be held legally liable for the environmental, social, and economic harms it causes from projects it finances. If the IFC is held liable, this will set a precedent that will make it harder for international institutions, including the World Bank, to ignore their moral duty and obligation to protect people and the environment before profit. Justice for the fisherfolk and farmers of Gujarat will also prompt other communities to seek accountability and liability from the IFC.

This case is an important step to ensure financiers like IFIs are held accountable for the harms perpetuated by the projects they fund. However, there are significant challenges and shortfalls faced by the fisherfolk and the farming communities because legal recourse takes an extensive amount of time, resources, and energy to undergo. And despite the historic landmark decision by the U.S. Supreme Court, the Tata Mundra plant is still polluting the land and water in Gujarat, worsening the ecosystems as time goes on.

Primacy of the rights of nature

Ecuador, Bolivia, India, and New Zealand have all taken the initial step to formally recognize the rights of nature and to more firmly concretize the primacy of the rights of nature and human rights above all else. Here's a snapshot of what this looks like in each country:

- **Ecuador:** Following a national referendum in 2008 and with respect to the wisdom of Indigenous cultures, Ecuador became the first country to change its constitution to recognize the rights of nature.²²⁴ Now, under the Ecuadorian constitution, Pachamama (Mother Earth) has rights “to exist, persist, maintain, and regenerate its vital cycles, structure, functions, and its processes in evolution.” Through these constitutional changes, a person or community has the right to advocate on nature’s behalf. Pachamama here is not directly personified. Instead, it is the bearer of rights as “nature,” as distinct from “persons, people, communities, and nationalities” and “natural and judicial persons.”
- **Bolivia:** Though Bolivia was also guided by Indigenous wisdom, contrary to Ecuador the Bolivian legal recognition in 2010 of “Mother Earth” is instead in the nature of a “collective public interest.”²²⁵ Bolivia did not directly grant legal personhood to nature, but instead revokes humans of their dominance over nature and makes them equal. So in this instance, all of nature—which includes humans -- have the same “human” rights, and States should take the necessary measures to protect them. This approach takes a more holistic approach to law—protecting nature as a system instead of as individual components such as a river, lake, etc.
- **India:** After an Indian Supreme Court ruling in 2012, India now grants specific components of nature to be considered or granted rights, rather than protecting nature as a whole.²²⁶ *Animal Welfare Board of India v. A. Nagaraja* allowed for the Indian constitution’s Article 21 right to life could be extended to non-human animals. Since, India’s Ministry of Environment and Forests declared cetaceans (a family of aquatic mammals such as whales and dolphins) to be “non-human persons” in 2012, allowing them

to be protected against harm. And again in March 2017, an Indian court granted the rights of personhood to the Ganga River Basin.

- **New Zealand:** New Zealand also honored the Indigenous approach of taking a holistic view of the relationship between the humans and the natural world.²²⁷ For example, Indigenous Maori tribes may treat a certain river as an ancestor. Such relationships are not just symbolic. This genealogy—or whakapapa—is central to how this tribe engages with the world. This way of respecting nature as family was reflected in law when the Whanganui River was granted legal personhood in 2014, shortly followed by the forest Te Urewera were granted legal personhood in 2014.

It is essential to note that in all four of these cases, establishing nature’s rights in these countries has not yet led to meaningful implementation that has palpably increased access to justice or advanced liability. In some cases, there are concerns that this measure, when taken in isolation and without implementation supported by additional measures in this roadmap, can give the appearance of championing justice and liability without actually doing so. It is also equally important that all actions taken to protect the rights of nature reinforce and support the rights of people, local communities (including peasants, fisherfolk, pastoralists, nomadic and rural peoples, Indigenous peoples, and collective rights) rather than undermining one at the cost of the other. [Read more on page 25](#) about how to establish the rights of nature in ways that advance accountability for polluting industries and deliver justice for people.



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