
“BAHALA NA” IS NOT A LEGAL STANDARD:

*An Analysis of the Preventive Standards in International Environmental Law
and Their Relevance to the Protection of Liberty and Prosperity under the
Conditions of Escalating Climate Risk*

By

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DEDICATION

For the people from my hometown who survived typhoons,

lost loved ones, and kept going...

We deserve better.

ABSTRACT

By calling disasters "natural" we ignore the human choices that render them deadly and the actions that could have prevented their most severe consequences.

Despite being situated in the Western North Pacific typhoon belt, where recurrent tropical cyclones are the rule rather than the exception, the death of even one remains one too many. These hazards, by themselves, do not rupture the institutions meant to safeguard lives; rather, they expose systems that are already frail, under-resourced, and ill-prepared. When these systems inevitably fail, the consequences extend beyond immediate casualties. Such failure perpetuates a cycle of violence inflicted upon the Filipino people. In the process, it strips individuals of security, dignity, and any meaningful sense of recourse.

These conditions are most visible in highly urbanized cities such as Cebu, where climate-related hazards materialize through recurrent flooding, infrastructure failure, and livelihood disruption. Far from being inevitable consequences of geography alone, these climate-related harms are foreseeable outcomes of land-use changes, infrastructure planning, and the regulatory tolerance of environmental degradation in high-risk zones.

This study examines how prevailing legal doctrine continues to frame environmental disasters as fortuitous events, thereby displacing the standard of due diligence that governs preventive environmental obligations. It argues that this framing forecloses legal attribution precisely where harm should meet accountability, and attribution should yield justice.

Employing doctrinal legal analysis, it examines international treaties, customary international law, and authoritative interpretations of the International Court of Justice, contextualized through the lived realities of climate-vulnerable communities such as Cebu City. In its 2025 Advisory Opinion, the ICJ affirmed that environmental obligations do not end at abstract policy commitments. Such obligations include obligations of conduct aimed at preventing environmental harm and the protection of those who bear the brunt of its ugliest consequences.

Cyclical climate-related disasters hinder liberty and prosperity of all people not incidentally but structurally. Repeated loss of life and livelihood undermines

social security; this situates environmental stability as a precondition to the enjoyment of other economic and human rights rather than merely a peripheral in policy concern.

The raison d'être of international climate commitments lies in the rejection of environmental catastrophes as “legally neutral” occurrences. Catastrophes are the by-products of systemic neglect and the absence of due diligence. Under the conditions of climate crisis, environmental protection is not ancillary to the rule of law; it is one of its most urgent expressions.

TABLE OF CONTENTS

	<i>Page</i>
CHAPTER ONE: INTRODUCTION	1
I. Context and Background of the Study	1
A. Climate-Related Harm: Problems of Displacement, Infrastructure Damage, and Livelihood Disruption	1
B. Urban Flood Risk and Structural Environmental Vulnerabilities	3
C. Cebu City Under the Microscope: Urban Development Patterns and Recurrent Floodings	5
II. Statement of The Problem and Presentation of Issues	8
III. Significance of the Study	9
IV. Methodology and Research Design	9
 II. CHAPTER TWO: INTERNATIONAL ENVIRONMENTAL LAW AND THE MATERIAL CONDITIONS OF HUMAN LIFE	 11
A. Due Diligence as a Standard of Preventive Economic Governance	11
1. THE LEGAL STANDARD: THE OBSERVANCE OF DUE DILIGENCE	11
2. THE CORE STATE OBLIGATION: THE DUTY TO PREVENT SIGNIFICANT ENVIRONMENTAL HARM	13
3. THE GOVERNING PRINCIPLE: PRECAUTION AS A MODE OF PREVENTION AMID SCIENTIFIC UNCERTAINTY	15

B. Operationalizing Due Diligence: Procedural Safeguards against Environmental Harm	16
1. THE DUE DILIGENCE REQUIREMENT: THE MANDATORY CONDUCT OF ENVIRONMENTAL IMPACT ASSESSMENT	17
2. THE CORE COMPONENTS OF PREVENTIVE GOVERNANCE : THE DUTY OF NOTIFICATION, CONSULTATION, AND COOPERATION:	18
C. Scope of the Duty: Foreseeability and Economic Risk	20
1. THE FORESEEABILITY REQUIREMENT: THE LEGAL POINT OF ENGAGEMENT	20
2. THE VISIBILITY OF HUMAN-INDUCED CLIMATE HARM: THE CASE OF CEBU CITY	23
CHAPTER THREE: INTERNATIONAL ENVIRONMENTAL LAW AND HUMAN RIGHTS	29
A. Environmental Harm as a Condition of Human Liberty	29
1. THE SHIFT: FROM PARALLEL REGIMES TO NORMATIVE CONVERGENCE	29
2. THE GREENING OF RIGHTS: JUDICIALIZATION OF ENVIRONMENTAL PROTECTION	32
B. Substantive Environmental Rights as Preconditions of Human Existence	33
1. THE SUBSTANTIVE DIMENSION: THE RIGHTS RECOGNIZED UNDER INTERNATIONAL LAW	33
2. THE CROSSROAD: THE INTERDEPENDENCE OF HUMAN RIGHTS	37

IN THE CONTEXT OF ENVIRONMENTAL ISSUES	
3. HITTING THE LIMIT: THE ANTHROPOCENTRIC VIEW	38
C. Localizing Global Risk: Cebu City and The Reproduction of Environmental Harm	39
1.THE POLICY FRAMEWORK: THE STRUCTURE OF PHILIPPINE ENVIRONMENTAL LITIGATION	42
CHAPTER FOUR: CONCLUSION AND RECOMMENDATIONS	46

CHAPTER ONE: INTRODUCTION

“There is no punctual moment of disaster; the world doesn't end with a bang, it winks out, unravels, and gradually falls apart.”

-Mark Fisher

I. CONTEXT AND BACKGROUND OF THE STUDY

A. CLIMATE-RELATED HARM: PROBLEMS OF DISPLACEMENT, INFRASTRUCTURE DAMAGE, AND LIVELIHOOD DISRUPTION

Climate change, the defining challenge of the twenty first century¹, places environmental protection at the fault line between governance and daily survival—nowhere more so than in nations whose economies depend on the fragile balance of their natural ecosystems. The impacts of climate change have entered a phase where they are not only episodic disturbances but a persistent condition that shapes human existence. Atmospheric concentrations of carbon dioxide, as well as methane and nitrous oxide, are at the highest levels in the last 800,000 years,² signaling the emergence of a new climate norm beyond historical variability. This escalation is no longer confined to scientific projections; it is a lived reality, most acutely and disproportionately experienced by communities at the margins.³

In the Philippines, this imperative is too often overshadowed by a troubling pattern: action arrives only in the wake of catastrophe. Policies gain urgency only after devastation has already carved its toll—after lives are lost, communities displaced, and damage rendered irreversible. This reactive stance raises a pressing question: must environmental

¹ A. Mostafavi, *Resilience of Infrastructure Systems to Sea-Level Rise in Coastal Areas: Impacts, Adaptation Measures, and Implementation Challenges*, 8 Sustainability 1115, 1115–1134 (2016).

² World Meteorological Organization, *State of the Global Climate 2024* (2024), <https://wmo.int/publication-series/state-of-global-climate/state-of-global-climate-2024>.

³ World Meteorological Organization, *WMO Report Documents Spiralling Weather and Climate Impacts* (2024), <https://wmo.int/news/media-centre/wmo-report-documents-spiralling-weather-and-climate-impacts>.

stewardship always be born from tragedy, or can it be reshaped as a proactive force shaping resilience before disaster strikes?

As early as 2014, the Intergovernmental Panel on Climate Change[“IPCC”]⁴ reported that the rise of urban climate-related risks brings widespread adverse impacts on health, livelihoods, assets, and economic and ecological systems. These risks are disproportionately borne by populations in informal settlements and hazard-prone areas, where limited infrastructure and adaptive capacity, compounded by vulnerabilities related to age, income, or disability, intensify exposure and harm.⁵

In 2024, global temperature surpassed 1.5°C above the pre-industrial era, with the global mean near-surface temperature reaching approximately 1.55 ± 0.13 °C above the 1850-1900 average.⁶ This warming has intensified climate hazards, amplifying the frequency and severity of tropical cyclones, floods, droughts, and related events.⁷ These hazards produced the highest number of new displacements recorded in the past sixteen years, while simultaneously deepening food insecurity and inflicting extensive economic losses.⁸

Crossing this threshold marks an unprecedented and likely irreversible shift in climatic conditions.⁹ Among the most destructive events were tropical cyclones, including Typhoon Yagi, which struck Viet Nam, the Philippines, and southern China, triggering widespread flooding, infrastructure failure, and forced evacuations.¹⁰ There is neither

⁴ IPCC, *Climate Change 2014: Impacts, Adaptation, and Vulnerability*, Contribution of the Working Group II to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change (Cambridge University Press 2014) at 538. [hereinafter “IPCC 2014”]

⁵ *Id.*

⁶ U.S. Global Leadership Coalition, *Climate Change and the Developing World: A Disproportionate Impact*, <https://www.usglc.org/blog/climate-change-and-the-developing-world-a-disproportionate-impact/>.

⁷ Intergovernmental Panel on Climate Change, *Climate Change 2021: The Physical Science Basis — Working Group I Contribution to the Sixth Assessment Report* [hereinafter “IPCC 2021”]

⁸ *Id.*

⁹ Y. Li et al., *Challenges in Forecasting Super Typhoon Yagi (2024)*, 14 *Tropical Cyclone Rsch. & Rev.* 317 (2025), <https://doi.org/10.1016/j.tcr.2025.08.007>.

¹⁰ World Meteorological Organization, *WMO Report Documents Spiralling Weather and Climate Impacts* (2024), <https://wmo.int/news/media-centre/wmo-report-documents-spiralling-weather-and->

a shortage of scientific data evidencing this trend, nor an absence of affected populations to support the view that such events remain accidental or unforeseeable.

Instead, scientific consensus affirms that climate change is an immediate and tangible reality, evident in the increasing frequency and intensity of flooding events affecting urban and coastal areas.¹¹ The effects rising sea-level and intensified precipitation place immense pressure on infrastructure systems by rapidly eroding roads and bridges, overwhelming drainage networks, and compromising water and wastewater services.¹² For developing economies recovery is prolonged, as successive climate events, particularly recurring typhoons, compound existing damage and defer the restoration of lives, livelihoods, and economic stability.

B. URBAN FLOOD RISK AND STRUCTURAL ENVIRONMENTAL VULNERABILITIES

Adverse environmental impacts are intensified by contemporary patterns of urbanization. Rapid and often unplanned urban growth has transformed natural landscapes into dense and largely impermeable environments. This is brought about by government sanctioned urban planning which do not include consideration for natural waterways in times of heavy precipitation. These changes in land use, marked by the loss of wetlands, reduced permeable surfaces, and extensive land reclamation, have disrupted natural hydrological processes and accelerated surface runoff.

[climate-impacts](#); Y. Li, J.C. Chan, X. Li, W. Feng & Y. Zhang, *Challenges in Forecasting Super Typhoon Yagi (2024)*, 14 *Tropical Cyclone Research & Review* 317, 317–322 (2025), <https://doi.org/10.1016/j.tcr.2025.08.007>.

¹¹Q. He & B.R. Silliman, *Climate Change, Human Impacts, and Coastal Ecosystems in the Anthropocene*, 29 *Current Biology* R1021, R1021–R1035 (2019); S. Tong et al., *Current and Future Threats to Human Health in the Anthropocene*, 158 *Environment International* 106892, 106892–106902 (2022).

¹² A. Mostafavi, *Resilience of Infrastructure Systems to Sea-Level Rise in Coastal Areas: Impacts, Adaptation Measures, and Implementation Challenges*, 8 *Sustainability* 1115, 1115–1134 (2016).

As a result, highly urbanized areas are inadequate to manage these conditions, evident by severe flooding even in the absence of typhoons.¹³ These land-changes results to climate-induced flooding now intersecting with the urban itself¹⁴, converting what were once natural hazards into systemic urban risks that directly affect critical facilities, water and sanitation systems, livelihoods, and local economies.¹⁵

Among the most vulnerable to this convergence are critical facilities and essential infrastructure, such as hospitals and power plants, which are increasingly at risk to flooding and storms. Inundation of these facilities can lead to catastrophic failures in public safety, including the loss of medical equipment and widespread power outages that cascade through other sectors.¹⁶

In the Philippines, a country that experiences an average of 20 tropical cyclones annually, these occurrences disrupt electricity supply, damage health facilities, and impair emergency response.¹⁷ The failure of

¹³ Why Metro Cebu floods: A crisis rooted in rain, growth, and neglect, Cebu Daily News (Aug. 30, 2025), <https://cebudailynews.inquirer.net/653314/why-metro-cebu-floods-a-crisis-rooted-in-rain-growth-and-neglect>. ; Over 200 individuals evacuated in Cebu City due to flood; voyages suspended, ABS-CBN News (July 17, 2025), <https://www.abs-cbn.com/news/weather-traffic/2025/7/17/over-200-individuals-evacuated-in-cebu-city-due-to-flood-voyages-suspended-1146>. ; Rising waters, rising concerns: Cebu City's worsening flood crisis, Cebu Daily News, <https://cebudailynews.inquirer.net/594065/rising-waters-rising-concerns-cebu-citys-worsening-flood-crisis>.

¹⁴ Metro flooding caused by poor urban planning, SunStar Cebu, <https://www.sunstar.com.ph/cebu/metro-flooding-caused-by-poor-urban-planning>; Christine Omela V. Ocampo, Impacts of Land Use and Land Cover Dynamics on Flooding in the Mananga River Watershed Reserve, Metro Cebu, Philippines, 36 J. Env't Stud. 81 (2024). ; Ramon C. Sevilla, Some Observations on the Fate of the Core City Under Metropolitanization: The Case of Cebu City (Int'l Conf. on Urban & Regional Planning). ; Melch Marion C. Demegillo et al., Greening the Flood: Sustainable Urban Solutions for Barangay Lorega, Cebu City, DIT ADS Int'l Multidisciplinary Rsch. J. (July 2025) [*hereinafter* "Greening The Flood"]

¹⁵ Z. Kalantari, C.S.S. Ferreira, R.P.D. Walsh, A.J.D. Ferreira & G. Destouni, *Urbanization Development Under Climate Change: Hydrological Responses in a Peri-Urban Mediterranean Catchment*, 28 Land Degradation & Development 2207, 2207–2221 (2017); I.S. Astuti, K. Sahoo, A. Milewski & D.R. Mishra, *Impact of Land Use/Land Cover Change on Surface Runoff in an Increasingly Urbanized Tropical Watershed*, 33 Water Resources Management 4087, 4087–4103 (2019); J. Wang, C. Hu, B. Ma & X. Mu, *Rapid Urbanization Impact on the Hydrological Processes in Zhengzhou, China*, 12 Water 1870, 1870–1886 (2020).

¹⁶ G. Dharmarathne, A. Waduge, M. Bogahawaththa, U. Rathnayake & D. Meddage, *Adapting Cities to the Surge: A Comprehensive Review of Climate-Induced Urban Flooding*, 22 Results in Engineering 102123, 102123–102141 (2024).

¹⁷ C. Walther, *Literature Review of Studies Related to Climate Change Impacts in the Philippines* (Greenpeace Int'l, Apr. 2015); The Guardian, *Super Typhoon Fung-Wong Hits the Philippines*

these systems magnifies human harm, particularly during disasters when access to medical care and emergency services is most vital.

C. CEBU CITY UNDER THE MICROSCOPE: URBAN DEVELOPMENT PATTERNS AND RECURRENT FLOODINGS

In urban centers such as Cebu City, major hospitals, electrical substations, and transport corridors are located in flood-prone or coastal areas¹⁸, exposing essential services to storm surge and intense rainfall.² During Typhoon Rai (*Odette*) in 2021, widespread power outages across Cebu Province severely constrained hospital operations, compromising medical equipment dependent on electricity, and delayed emergency response, demonstrating how climate-induced disruptions can rapidly escalate into public safety crises.¹⁹

Beyond these critical facilities, climate-intensified flooding also places acute pressure on water and sanitation systems, where failure poses immediate public health risks.²⁰ In the Philippines, over 47% of households remain unconnected to sewerage systems, relying instead on septic tanks that frequently overflow during heavy rainfall and flooding.²¹ Extreme precipitation events overwhelm drainage and

(Nov. 10, 2025), <https://www.theguardian.com/world/2025/nov/10/super-typhoon-fung-wong-philippines>.

¹⁸ SunStar Cebu, *Why Cebu Still Struggles with Floods Despite Government Interventions*, <https://www.sunstar.com.ph/cebu/why-cebu-still-struggles-with-floods-despite-government-interventions>;

IJSRA, *Urban Flood Risk and Infrastructure Vulnerability in Cebu City* (2024).

¹⁹ Philippine Daily Inquirer, *Widespread Power Outage in Cebu Due to Typhoon Odette* (Dec. 2021), <https://newsinfo.inquirer.net/1528738/widespread-power-outage-in-cebu-due-to-typhoon-odette>; SunStar Cebu, *Power, Water, Telco Services Down in Cebu After Odette* (Dec. 2021), <https://www.sunstar.com.ph/cebu/local-news/power-water-telco-services-down-in-cebu-after-odette>; International Organization for Migration, *Typhoon Rai (Odette) Humanitarian Needs and Priorities* (Feb. 2022), <https://crisisresponse.iom.int>; UNICEF Philippines, *Humanitarian Situation Report: Super Typhoon Rai (Odette)* (2022), <https://www.unicef.org/philippines/reports/humanitarian-situation-report-super-typhoon-raiodette>.

²⁰ G. Dharmarathne et al., *Adapting Cities to the Surge*, 22 Results in Engineering 102123, 102123–102141 (2024).

²¹ Asian Development Bank, *Philippines: Water Supply and Sanitation Sector Assessment* (2013), https://www.adb.org/sites/default/files/institutional-document/33810/philippines-water-supply-sector-assessment_0.pdf.

wastewater systems, causing sewage to mix with floodwaters in densely populated urban areas.²²

There are other climate-related harms that affect everyday life, such as stock depletion in fisheries and land degradation in agriculture undermine the livelihoods of millions.²³ This is crucial in the Philippines, where fisheries and agriculture employ approximately 25% of the national workforce and contribute significantly to food security.²⁴ Small-scale fishing communities and rural farmers are particularly vulnerable as their social and cultural identities are often tied to these natural resources.²⁵ The country's fisheries sector alone supports over 1.6 million small-scale fishers, many of whom operate in coastal and near-shore areas highly vulnerable to storms, coral degradation, and warming seas.²⁶

In Central Visayas, rising sea temperatures and stronger typhoons have damaged coral reefs and reduced fish catch reliability. Government assessments report declining municipal fish catches following major storm events, forcing fishing households to reduce income or abandon traditional livelihoods.²⁷

The complexities of socio-economic considerations underscore the necessity of inclusive policies to tackle vulnerabilities and promote social

²² R. Jayasinghe et al., *Integrating Sustainable Urban Drainage Systems (SUDS) for Enhanced Urban Resilience in the Philippines* (2024).

²³ U.N. Conference on Environment & Development, *Johannesburg Declaration on Sustainable Development*, U.N. Doc. A/CONF.199/20 (Sept. 4, 2002), <https://docs.un.org/en/A/CONF.199/20>.

²⁴ Asian Development Bank, *State of the Coral Triangle: Philippines* (2014), <https://www.adb.org/sites/default/files/publication/42414/state-coral-triangle-philippines.pdf>.

²⁵ Johannesburg Political Declaration and Implementation Plan; International Organization for Migration, *Less Catch, Less Cash: How Climate Change Is Affecting Fisherfolk in the Philippines*, <https://roasiapacific.iom.int/stories/less-catch-less-cash-how-climate-change-affecting-fisherfolk-philippines>.

²⁶ Asian Development Bank, *State of the Coral Triangle: Philippines* (2014), <https://www.adb.org/sites/default/files/publication/42414/state-coral-triangle-philippines.pdf>.

²⁷ SunStar Cebu, *Storm-Hit Food Supply Pushes Central Visayas Inflation*, <https://www.sunstar.com.ph/cebu/storm-hit-food-supply-pushes-central-visayas-inflation>; Australian Government, Dep't of Agric., Fisheries & Forestry, *Climate Change Impacts on Fisheries* (2023), <https://www.agriculture.gov.au/sites/default/files/documents/ssr149-part2.pdf>; Int'l Org. for Migration, *Less Catch, Less Cash: How Climate Change Is Affecting Fisherfolk in the Philippines*, <https://roasiapacific.iom.int/stories/less-catch-less-cash-how-climate-change-affecting-fisherfolk-philippines>.

justice. Water supply and sewage systems form the lifelines of urban infrastructure.²⁸

The destruction of homes, property, and business infrastructure leads to immediate loss of income and employment. Severe droughts can wipe out a significant percentage of a nation's crop and livestock production, as seen in the central Asia and Caucasus regions where such events have impacted overall country's gross domestic product.²⁹ Climate-induced disasters impose substantial economic costs on the Philippines. Between 2010 and 2020, weather-related disasters caused an estimated ₱463 billion (*approximately* \$9 billion) in damage to agriculture, infrastructure, and private property.⁷ Typhoons alone account for the majority of these losses, repeatedly destroying homes, businesses, and local infrastructure.³⁰

Low-income neighborhoods, usually located in flood-prone areas with insufficient infrastructure, experience heightened health risks, displacement, and economic losses.³¹ The economic impact of climate-intensified storms is evident in Typhoon Kalmaegi's (*Tino*) effects on Cebu, where damage extended beyond physical destruction to sustained household and market disruption. Local reports recorded approximately ₱1.2 billion in housing damage, affecting over 9,000 families across multiple barangays, forcing households to redirect income toward shelter repair and basic survival needs, thereby weakening local economic stability. These losses were compounded by ₱47 million in agricultural damage, affecting nearly 1,000 hectares of farmland and around 4,000

²⁸ G. Dharmarathne, A. Waduge, M. Bogahawaththa, U. Rathnayake & D. Meddage, *Adapting Cities to the Surge: A Comprehensive Review of Climate-Induced Urban Flooding*, 22 Results in Engineering 102123, 102123–102141 (2024), <https://doi.org/10.1016/j.rineng.2024.102123>.

²⁹ World Health Organization, *Guidance on Water Supply and Sanitation in Extreme Weather Events* (2023); World Bank, *Philippines Climate Change and Disaster Risk Reduction* (2022), <https://thedocs.worldbank.org/en/doc/4ec3282919652f7545bc25c49c1811e4-0070012022/original/PHCCDR-FINAL-formatted.pdf>.

³⁰ Department of Finance (Phil.), *Climate-Related Hazards Led to US\$10-Billion Losses for Low-Carbon-Emission Philippines Over Ten-Year Period*, <https://www.dof.gov.ph/climate-related-hazards-led-to-us10-b-losses-for-low-carbon-emission-phl-over-10-year-period/>.

³¹ K.V. Gough et al., *Vulnerability to Extreme Weather Events in Cities: Implications for Infrastructure and Livelihoods* (2019); A. Chacowry, L.J. McEwen & K. Lynch, *Recovery and Resilience of Communities in Flood Risk Zones in a Small Island Developing State*, 28 Int'l J. Disaster Risk Reduction 826, 826–838 (2018).

farmers, disrupting food production and triggering price increases in key vegetables in Cebu markets.³²

The IPCC 2022 Climate Report as described by the United Nations Secretary-General as “*an atlas of human suffering and a damning indictment of failed climate leadership*”³³ leaves little room for doubt, and even far less for inaction.

II. STATEMENT OF THE PROBLEM AND PRESENTATION OF ISSUES

Environmental protection is indispensable for the protection of human rights and the realization of prosperity, especially for economies intimately intertwined with environmental stability. In the face of climate-related harm, which increasingly manifests as foreseeable and preventable risk, this study examines whether the existing rules, principles, and conventions under international environmental law are sufficient to safeguard both environmental integrity and human dignity.

Specifically, this study seeks to address the following:

1. Whether due diligence under customary international environmental law operates as the governing standard for preventing climate-related harm and promote economic prosperity, particularly in its preventive orientation and reliance on scientific knowledge and foreseeability; and
2. Whether climate-related harm engages human rights obligations, particularly the rights to life, health, and a clean, healthy, and

³²SunStar Cebu, *Cabaero: Real Economic Consequences of Tino*, <https://www.sunstar.com.ph/cebu/cabaero-real-economic-consequences-of-tino>; Philstar (The Freeman), *Typhoon Leaves ₱47 Million in Agriculture Damage* (Nov. 12, 2025), <https://www.philstar.com/the-freeman/cebu-news/2025/11/12/2486688/typhoon-leaves-p47m-agriculture-damage>; SunStar Cebu, *Typhoon Tino Strikes Shelter, Food Security*, <https://www.sunstar.com.ph/cebu/typhoon-tino-strikes-shelter-food-security>.

³³ Climate Change Commission, *New IPCC Report Dubbed “An Atlas of Human Suffering” as Climate Crisis Damages Earth Faster Than We Can Adapt* (Mar. 3, 2022), <https://climate.gov.ph/news/666>.

sustainable environment, and whether States are under a duty to prevent foreseeable threats to these rights.

III. SIGNIFICANCE OF THE STUDY

For States. Environmental protection remains a crucible for governance and everyday life, especially for States whose economies are closely intertwined with environmental stability. Yet in jurisdictions such as the Philippines, it often remains reactive, gaining prominence only in the aftermath of disasters that have already caused significant loss. This study aims to contribute to a more proactive understanding of environmental protection, not only by examining its scientific data, but its legal implications under international law.

For Policymakers and Officers of the Court. The sufficiency of existing environmental laws must be critically examined to ensure that they remain preventive of foreseeable harm. This study aims contributes to the legal discourse by assessing whether current frameworks adequately embody principles of due diligence and prevention. This examination aims to contribute to the plethora of sources to guide courts in resolving claims grounded in environmental harm.

For Legal Scholars. This study aims to contribute groundwork for reassessing existing legal frameworks, with the aim of bridging the gap between legal norms and environmental realities and advancing scholarship on how environmental law can more effectively respond to contemporary challenges. Since environmental law has struggled to keep pace amid evolving economic conditions, shifting State behavior, and the accelerating realities of climate change.

IV. METHODOLOGY AND RESEARCH DESIGN

This study employs a doctrinal legal methodology³⁴, supplemented by contextual and analytical approaches, to examine the applicability and sufficiency of international environmental law in addressing climate-related harm. This includes the examination of:

- a) International treaties;
- b) Customary international law;
- c) General principles of law; and
- d) Authoritative interpretations, including jurisprudence and advisory opinions of international courts and tribunals, especially the International Court of Justice[“ICJ”]³⁵ and other relevant bodies.³⁶

First, this study includes a close examination of customary international law, particularly the principles of due diligence and prevention of significant harm. As well as treaty-based obligations under the climate change regime, including the United Nations Framework Convention on Climate Change [“UNFCCC”]³⁷ and the Paris Agreement. The analysis focuses on the content, scope, and legal implications of these obligations, with particular attention to their preventive orientation and their capacity to address foreseeable environmental risks.

Second, the study adopts a contextual application of legal principles by situating these norms within the realities of climate-related harm, including environmental degradation, economic vulnerability, and risks to human life and health. This approach allows for an assessment of how legal obligations operate not in abstraction, but in relation to the material conditions that underpin human rights and economic prosperity, consistent with the framework of liberty and prosperity.

³⁴ Bhat, P. Ishwara, 'Doctrinal Legal Research as a Means of Synthesizing Facts, Thoughts, and Legal Principles', *Idea and Methods of Legal Research* (Delhi, 2020; online edn, Oxford Academic, 23 Jan. 2020), <https://doi.org/10.1093/oso/9780199493098.003.0005>, accessed 19 Jan. 2026.

³⁵ ICJ Statute, Article 38.

³⁶ *Id.*

³⁷ United Nations Framework Convention on Climate Change, May 9, 1992, 1771 U.N.T.S.

II. CHAPTER TWO: INTERNATIONAL ENVIRONMENTAL LAW AND THE MATERIAL CONDITIONS OF HUMAN LIFE

A. DUE DILIGENCE AS A STANDARD OF PREVENTIVE ECONOMIC GOVERNANCE

The material conditions necessary for human life, manifested through stable livelihood, shelter, subsistence, and economic security, all depend on environmental integrity. Climate-related harm destabilizes these very conditions upon which economic life depends on. How should states, therefore, as the main actors in the international arena, operate within the evolving landscape of international law shaped by scientific advancement and shifting environmental realities? Aptly, how should international environmental law respond to these developments in the 21st century, particularly where these conditions are increasingly placed at risk?

1. THE LEGAL STANDARD: THE OBSERVANCE OF DUE DILIGENCE

Due diligence, as a standard of conduct, occupies a central space in international environmental law. It requires States to employ all the means at its disposal to prevent activities under its jurisdiction from causing environmental harm to another State³⁸ or to persons and property within its own territory.³⁹ It is not deemed to be a stand-alone norm or obligation, rather it is the standard of conduct that is expected from a State in fulfilling its obligation either from a custom or a treaty. An obligation of result is fulfilled by achieving a determined outcome, whereas an obligation of conduct requires States to take all appropriate measures toward that outcome. Under due diligence, liability arises not from the failure to achieve the result, but from the failure to exercise the required level of care in pursuing it.

³⁸ Pulp Mills on the River Uruguay (Argentina v. Uruguay), Judgment, 2010 I.C.J. Rep. 14, 56, ¶ 101. [*hereinafter* “**Pulp Mills**”]

³⁹ Trail Smelter Arbitration (U.S. v. Can.), 3 R.I.A.A. 1905, 1965 (1941). [*hereinafter* “**Trail Smelter**”]

In any case, the standard of conduct shall not be applied in abstraction, as it is not blind to the differing realities of states, rather it is informed by the specific circumstances of each State which may evolve over time.⁴⁰ Regardless of these differences, the obligation remains.

In the *Genocide case*, the court explained that a State incurs responsibility not because the harm occurred, but because it failed to take all measures within its power to prevent it.⁴¹ This takes into consideration the circumstance and national capabilities of the state, which is why this obligation requires an assessment *in concreto*.

In this sense, due diligence is differentiated in application but universal in obligation. Developing States are to maximize their existing capacities, while developed States have higher standard commensurate with their greater resources and capabilities following the principle of common but differentiated responsibilities. The standard of due diligence varies depending on the circumstances to which the standard applies. These circumstances include the level of scientific knowledge or the best science available, and the risk of harm and the urgency involved. Presently, the standard of due diligence attaching to the obligation to pursue domestic mitigation measures is stringent on account of the fact that the best available science indicates that the “[r]isks and projected adverse impacts and related losses and damages from climate change escalate with every increment of global warming.”⁴²

It is a gross misapprehension to conclude that due diligence is a standard that is entirely subjective; there is no unfettered discretion in determining what constitutes due diligence.⁴³ Rather, due diligence requires the State to exert its best efforts to attain the required level of environmental protection,⁴⁴ and it is against this standard of conduct that

⁴⁰ Gabčíkovo-Nagymaros Project (Hung./Slovk.), Judgment, 1997 I.C.J. Rep. 7, 77, ¶ 140. [*hereinafter* “**Gabčíkovo**”]

⁴¹ Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosn. & Herz. v. Serb. & Montenegro), Judgment, 2007 I.C.J. Rep. 43, 180, ¶ 430. [*hereinafter* “**Genocide Case**”]

⁴² IPCC Climate Change 2023: Synthesis Report—Summary for Policymakers, at 14.

⁴³ Obligations of States in Respect of Climate Change, Advisory Opinion, International Court of Justice, 23 July 2025, at ¶270. [*hereinafter* “**Advisory Opinion**”]

⁴⁴ *Id.* at ¶253.

compliance is assessed.⁴⁵ However, in no instance are States required to guarantee the achievement of all the aims embodied in environmental treaties or customs;⁴⁶ rather, what is demanded is the faithful observance of due diligence in the process of pursuing those aims.⁴⁷

This is for good reason. Environmental degradation is cumulative, transboundary, and often long-term, shaped by complex causal chains and the acts of multiple actors beyond the control of any single State. Imposing obligations of result in such a context would detach responsibility from control, rendering States liable for outcomes they cannot fully prevent despite acting with utmost care. Moreover, such a rigid standard would discourage States from participating in cooperative environmental regimes, as the risk of automatic breach would outweigh the incentives to engage in collective action. In contrast, a conduct-based obligation, preserves both accountability⁴⁸ and cooperation, ensuring that States remain bound to act with diligence while still enabling the coordinated efforts necessary to address environmental harm.

Operationally, the principle requires States to establish and maintain a functioning national system comprising of legislation, administrative procedures, and enforcement mechanisms, capable of regulating the activities.⁴⁹ This includes the exercise of adequate vigilance to ensure that such systems operate effectively, with a view to achieving its intended objective.⁵⁰ The standard of due diligence finds its most concrete expression in the State's obligation to prevent significant environmental harm.

2. THE CORE STATE OBLIGATION: THE DUTY TO PREVENT SIGNIFICANT ENVIRONMENTAL HARM

⁴⁵ Pulp Mills, *supra* note 38 at ¶101.

⁴⁶ Advisory Opinion, *supra* note 43 at ¶254.

⁴⁷ Request for an Advisory Opinion submitted by the Commission of Small Island States on Climate Change and International Law, Advisory Opinion, ITLOS Case No. 31, 21 May 2024, ¶ 239. [*hereinafter* “ITLOS Case”]

⁴⁸ Id. at ¶257.

⁴⁹ Climate Emergency and Human Rights, Advisory Opinion AO-32/25, Inter-American Court of Human Rights, 29 May 2025, ¶344. [*hereinafter* “IACtHR AO”]

⁵⁰ ITLOS Case, *supra* note 47 ¶235

It is this preventive orientation of environmental law that is salient in the context of climate change. A State exercising due diligence does not merely respond to climate-related harm, but adopts measures designed to anticipate and prevent it. As such, the duty to prevent significant environmental harm is not limited to discrete instances of cross-border damage but extends to global environmental concerns, including the climate system.⁵¹

This obligation encompasses both 1.) substantive duties, to adopt appropriate measures to avoid harm; and 2.) procedural duties, including notification and consultation.⁵² Together, these form the operational core of due diligence, requiring States to act with care, foresight, and responsibility. Crucially, the obligation is one of conduct, not of result, meaning, States are not required to guarantee that harm will never occur, but to employ all reasonably available means to prevent it.⁵³

Simply, the duty to prevent harm is the objective, while due diligence is the manner of its fulfillment. This duty is showed through regulatory and policy measures aimed at achieving deep, rapid, and sustained reductions in greenhouse gas [“GHG”] emissions, alongside the effective regulation of both public and private actors within a State’s jurisdiction or control.⁵⁴ Thus, it gives concrete form to due diligence, anchoring it on the need of Governments to make legislation to meet this purpose.

The existing regime of prevention is insufficient because environmental risks are intensifying, their impacts are expanding, and scientific knowledge remains incomplete. While prohibiting harmful activities would be most effective, such measures are often constrained by economic considerations, requiring a balance between development,

⁵¹ Advisory Opinion, *supra* note at ¶134

⁵² Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua) and Construction of a Road in Costa Rica along the San Juan River (Nicaragua v. Costa Rica), Judgment, I.C.J. Reports 2015 (II), p. 706, ¶104 [*hereinafter* “**Costa Rica v. Nicaragua**”]

⁵³ Genocide Case, *supra* note 41 at ¶430.

⁵⁴ Advisory Opinion, *supra* note 43 at ¶¶428,448.

risk, and uncertainty.⁵⁵ In this context, the precautionary principle operates to address gaps in prevention, allowing States to act despite uncertainty and adapt legal responses as risks evolve.

3. THE GOVERNING PRINCIPLE: PRECAUTION AS A MODE OF PREVENTION AMID SCIENTIFIC UNCERTAINTY

The precautionary principle makes clear that States must not delay preventive action because of scientific uncertainty. Where there are threats of serious or irreversible harm, *“lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation”*.⁵⁶

Thus, assuming *arguendo* that uncertainties remain as to the precise scope or timing of the impacts of certain activities, such uncertainty cannot stand as a defense for inaction by States. This principle proceeds on the premise that risk need not be fully known before it is regulated, and thus, operates as an integral component of the duty to prevent significant environmental harm.⁵⁷

The International Tribunal for the Law of the Sea [“ITLOS”] required States to act with “prudence and caution,” as seen in the *Southern Bluefin Tuna*⁵⁸ and *MOX Plant*⁵⁹ cases, mandating preventive measures and cooperation even amid scientific uncertainty. While the European Court of Human Rights [“ECHR”], in *Tatar v. Romania*,⁶⁰ has gone further, requiring States to adopt reasonable preventive measures despite uncertain causation. By contrast, World Trade Organization

⁵⁵ Gerhard Hafner & Isabelle Buffard, Obligations of Prevention and the Precautionary Principle, in James Crawford et al. (eds.), *The Law of International Responsibility*, 531 (2010). [hereinafter “Hafner & Buffard”]

⁵⁶ Rio Declaration on Environment and Development, Principle 15, U.N. Doc. A/CONF.151/26 (Vol. I) (1992).; United Nations Framework Convention on Climate Change, art. 3(3), 9 May 1992, 1771 U.N.T.S. 107.

⁵⁷ ITLOS Case, *supra* note 47 at p.46, ¶131.

⁵⁸ *Southern Bluefin Tuna* (N.Z. v. Japan; Austl. v. Japan), Provisional Measures, Order of Aug. 27, 1999, 1999 I.T.L.O.S. Rep. 280.

⁵⁹ *The MOX Plant Case* (Ir. v. U.K.), Provisional Measures, Order of Dec. 3, 2001, 2001 I.T.L.O.S. Rep. 95.

⁶⁰ *Tătar v. Romania*, App. No. 67021/01, Eur. Ct. H.R. (Jan. 27, 2009).

[“WTO”] dispute bodies, including in *EC—Hormones*,⁶¹ have declined to affirm precaution as a binding rule of customary international law.

However, the principle is less certain in some application. In the *Nuclear Tests* case, the argument that precaution should shift the burden of proof to the acting State was left unaddressed. Similarly, in *Gabčíkovo-Nagymaros*, the Court acknowledged the relevance of precaution within a treaty framework but declined to apply it in the absence of clear and imminent peril.⁶² What emerges is not the absence of precaution, but its uneven juridical status. It is invoked, but cautiously.

Further, precautionary principle is limited as it primarily applies under the framework of transboundary harm.⁶³ In contrast, where harm is predominantly domestic, though no less foreseeable, the same rigor is not imposed. This creates an asymmetry in obligation, precaution binds clearly when harm affects others but is less exacting when the consequences are borne within the State itself.

More broadly, the duty to prevent harm under international law finds difficulty in addressing cumulative harm. Climate-related impacts do not arise from isolated acts, but from the aggregation of multiple decisions, each individually permissible, yet collectively destructive.⁶⁴ Thus, while precaution affirms that uncertainty is no excuse for inaction, it does not fully resolve the challenge posed by cumulative and predominantly domestic harm.

B. OPERATIONALIZING DUE DILIGENCE: PROCEDURAL SAFEGUARDS AGAINST ENVIRONMENTAL HARM

⁶¹ Appellate Body Report, European Communities—Measures Concerning Meat and Meat Products (Hormones), WTO Docs. WT/DS26/AB/R, WT/DS48/AB/R (Jan. 16, 1998).

⁶² *Nuclear Tests (Austl. v. Fr.)*, Judgment, 1974 I.C.J. 253.

⁶³ Gerhard & Buffard, *supra* note 55

⁶⁴ Advisory Opinion, *supra* note 43 at ¶133.

1. THE DUE DILIGENCE REQUIREMENT: THE MANDATORY CONDUCT OF ENVIRONMENTAL IMPACT ASSESSMENT

Environmental Impact Assessment [“EIA”] is the procedural mechanism of the preventive obligations under international environmental law.⁶⁵ Its function is not merely technical, it is to ensure that environmental considerations are meaningfully integrated into decision-making, such that authorities are informed before deciding rather than grappling for corrective action.⁶⁶

At its core, an EIA is a structured process for identifying, predicting, and evaluating the potential biophysical, social, and related effects of a proposed activity prior to the making of irreversible decisions.⁶⁷ It is inherently *ex ante*, requiring assessment prior to the implementation of a proposed activity so that environmental risks may be identified and addressed at the design stage rather than after harm has occurred.⁶⁸

A State is not considered to have exercised due diligence if it fails to undertake an EIA for activities posing significant transboundary risks.⁶⁹ This obligation has been codified across multiple treaty regimes, including the United Nations Convention on the Law of the Sea [“UNCLOS”], the Convention on Biological Diversity [“CBD”], and the Espoo Convention, reflecting its consolidation as a procedural norm of international environmental law.

The threshold for triggering an EIA is not fixed, but context dependent. The determination of “significant” impact turns on factors such as the nature, magnitude, and location of the proposed activity, as

⁶⁵ Neil Craik, The Assessment of Environmental Impact, in Emma Lees & Jorge E. Viñuales (eds.), *The Oxford Handbook of Comparative Environmental Law*, 876 (2019).

⁶⁶ Astrid Epiney, Environmental Impact Assessment, in *Max Planck Encyclopedia of Public International Law* (2009), ¶ 7.

⁶⁷ Julia Nakamura, Daniela Diz & Elisa Morgera, International Legal Requirements for Environmental and Socio-Cultural Assessments for Large-Scale Industrial Fisheries, 31 *Rev. Eur. Comp. & Int’l Envtl. L.* 336, 338 (2022).

⁶⁸ *Costa Rica v. Nicaragua*, *supra* note 54 at ¶ 160.

⁶⁹ *Costa Rica v. Nicaragua*, *supra* note 54 at ¶ 104.

well as the sensitivity of the receiving environment.⁷⁰ For example, activities planned in *Ramsar-protected wetlands* are subject to a lower threshold for triggering an EIA because such environments are particularly sensitive.⁷¹

In the Philippines, this obligation is institutionalized through the Environmental Impact Statement [“EIS”] System, under Presidential Decree No. 1586, which requires the securing of an Environmental Compliance Certificate [“ECC”] prior to the implementation of environmentally critical projects or projects located in environmentally critical areas. The process mandates the preparation of an environmental impact assessment, public consultations, and technical review by the Department of Environment and Natural Resources [“DENR”], culminating in the issuance of an ECC that prescribes conditions intended to prevent or mitigate environmental harm.⁷²

This framework reflects, at least in design, the core components of due diligence recognized in international environmental law, the duty to regulate, the duty to assess environmental impacts, and the duty to prevent harm before it materializes.

2. THE CORE COMPONENTS OF PREVENTIVE GOVERNANCE : THE DUTY OF NOTIFICATION, CONSULTATION, AND COOPERATION:

A State’s due diligence obligation does not start, nor does it end at authorization of acts. It persists throughout the life of the activity, demanding ongoing monitoring and reassessment.

Notification operates as the initiating step, arising where a State has reasonable grounds to believe that a proposed activity within its jurisdiction may cause significant environmental. It must be undertaken at the earliest possible stage. While some interpretations suggest that notification is triggered only after an environmental impact assessment

⁷⁰ Advisory Opinion, *supra* note 43 at ¶298.

⁷¹ *Costa Rica v. Nicaragua*, *supra* note 54 at ¶ 154.

⁷² Environmental Impact Assessment (EIA) and Environmental Compliance Certificate (ECC), DENR–EMB, Philippines, at 1–6.

confirms such risk, a more compelling view, grounded in due diligence, recognizes that early notification enables the exchange of information necessary for a reliable assessment itself.⁷³

This naturally gives way to Consultation, which requires States to engage in good faith dialogue aimed at identifying and agreeing upon measures to prevent or mitigate harm. Affected communities, civil society, and other stakeholders should be afforded the opportunity to contribute and participate to decision-making.⁷⁴

Underpinning both notification and consultation is the broader duty of co-operation, a principle that reflects the collective nature of environmental protection. This duty entails sustained and continuous engagement among States, encompassing not only project-specific coordination but also co-operation through exchange of scientific, technical, and legal information, as well as collaborative efforts to address shared challenges such as climate change.⁷⁵

At the domestic level, these obligations are implemented through procedural requirements embedded in Philippine environmental governance. The EIS System which requires public participation as a condition for environmental approval. Its implementing rules, particularly DENR Administrative Order No. 2003-30 or the IRR of the Philippine EIS System, mandate public scoping, stakeholder consultations, and disclosure of environmental impacts prior to the issuance of an ECC. These requirements ensure that affected communities are informed of proposed projects and are given the opportunity to raise concerns during the assessment process.

Complementing this, Republic Act No. 8749 (“Philippine Clean Air Act”) and Republic Act No. 9275 (“Philippine Clean Water Act”) reinforce public participation and access to environmental information as part of environmental governance. Together, these mechanisms are

⁷³ Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention), 25 February 1991, 1989 U.N.T.S. 309, art. 3.

⁷⁴ Costa Rica v. Nicaragua, *supra* note 54 at ¶ 168.

⁷⁵ Advisory Opinion, *supra* note 43 at ¶ 139.

intended to ensure that decision-making is not unilateral but informed by those who will bear the consequences of environmental risk.

Inter-agency coordination is built into the regulatory structure. The DENR exercises primary authority over environmental regulation under Executive Order No. 192 (1987), while coordination with disaster risk institutions is mandated under Republic Act No. 10121 (“Philippine Disaster Risk Reduction and Management Act of 2010”), which created the National Disaster Risk Reduction and Management Council [“NDRRMC”] and requires the integration of disaster risk considerations into development planning.

At the same time, Republic Act No. 7160 (Local Government Code of 1991) vests local government units [“LGUs”] with the authority and responsibility to prepare Comprehensive Land Use Plans [“CLUPs”], which are further guided by Housing and Land Use Regulatory Board [“HLURB”] or the Department of Human Settlements and Urban Development [“DHSUD”] guidelines mandating the incorporation of hazard mapping and environmental constraints. This is reinforced by Republic Act No. 9729 (“Climate Change Act of 2009”), which requires LGUs to formulate Local Climate Change Action Plans [“LCCAPs”] and integrate climate risks into local planning. These statutory frameworks collectively require alignment between environmental approvals, land-use planning, and disaster risk reduction, thereby institutionalizing coordination across governance levels.

C. SCOPE OF THE DUTY: FORESEEABILITY AND ECONOMIC RISK

1. THE FORESEEABILITY REQUIREMENT: THE LEGAL POINT OF ENGAGEMENT

Foreseeability lies at the center of legal accountability and environmental risk governance. It informs the scope of duty by asking a simple question, what risks should a reasonable actor have anticipated?⁷⁶

In environmental context, *foreseeability* is rarely speculative. It is grounded in patterns, probabilities, and measurable trends. As recurring rainfall, rising sea levels, and intensifying climate events are not unknown variables are documented, they have become increasingly predictable.⁷⁷ Even under the traditional “*reasonable person*” standard, a risk is foreseeable where it would occur to the mind of a prudent actor and would not be dismissed as far-fetched. This standard is never abstract. It is shaped by context, expertise, and available knowledge.⁷⁸ A State is expected to anticipate risks that are discernible through science, experience, and data.

This is why foreseeability often functions as a threshold for responsibility. Liability against damage and the obligation to prevent harm, attaches in activities where the harm is reasonably expected. In *Trail Smelter*, responsibility was imposed where industrial emissions caused transboundary harm that could and should have been anticipated, requiring both reparation and the adoption of preventive measures. In *Pulp Mills*, the obligation of due diligence required not only the adoption of appropriate regulatory measures, but also sustained vigilance in their enforcement to prevent foreseeable environmental harm. Similarly, in *Costa Rica v. Nicaragua*, the Court held that where a project carries a risk of significant harm, due diligence requires prior assessment of that risk, including the conduct of an EIA before commencement.

Criticism against this threshold posits that environmental harm rarely presents itself in simple or immediate terms. It emerges cumulatively, systemically, and sometimes invisibly, exposing its consequences in moments least expected. But this is where precaution intervenes. If prevention governs the realm of the foreseeable and

⁷⁶ Neil Keogh, Contaminated Land and Risk Management Issues: How Foreseeable is Corporate Liability?, at 3-4. [*hereinafter* “**Keogh**”]

⁷⁷ A.M. No. 09-6-8-SC, Rationale to the Rules of Procedure for Environmental Cases, 40. [*hereinafter* “**Rationale**”]

⁷⁸ Keogh, *supra* note 76.

calculable, precaution extends legal responsibility into the domain of the uncertain but plausible. It recognizes that in complex environmental systems, waiting for full certainty is itself a form of risk.⁷⁹

In Cebu, the DENR, through its Environmental Management Bureau, requires the issuance of Environmental Compliance Certificates pursuant to Presidential Decree No. 1586, following environmental impact assessment and public consultation processes.⁸⁰ Yet, in practice, these procedures are contested and often deficient.

In a reclamation project in Consolacion, stakeholders alleged the absence of meaningful public scoping and participation, despite such consultation being a requirement of the EIA process.⁸¹ Similarly, in another real-estate development in Cebu City, a project that had secured prior environmental approval from the DENR, the agency itself convened a multi-agency investigation to assess compliance with ECC conditions, including drainage and runoff systems.⁸² As early as 2008, flooding in Guadalupe was already being linked to ongoing subdivision construction, where runoff and construction materials overwhelmed drainage systems and displaced families.⁸³ By 2011, the pattern had not only persisted but intensified. The same development was again subjected to a cease-and-desist order after flooding affected multiple communities.⁸⁴ These are not isolated incidents. They establish a pattern across time, where the risk of

⁷⁹ Rationale, *supra* note 77.

⁸⁰ DENR encourages establishments to secure environmental compliance certificate for projects, Cebu Daily News, 12 July 2017, accessed 9 Dec 2025, <https://cebudailynews.inquirer.net/139341/denr-encourages-establishments-secure-envtal-compliance-certificate-projects>

⁸¹ Consolacion town reclamation proponents accused of not consulting townsfolk, SunStar Cebu, 28 June 2022, accessed 10 Dec 2025, <https://www.sunstar.com.ph/cebu/local-news/consolacion-town-reclamation-proponents-accused-of-not-consulting-townsfolk>

⁸² DENR cites violations in controversial Monterrazas project in Cebu City, ABS-CBN News, 14 November 2025, accessed 11 Dec 2025 <https://www.abs-cbn.com/news/regions/2025/11/14/denr-cites-violations-in-controversial-monterrazas-project-in-cebu-city-1129>.

⁸³ Flooding blamed on subdivision construction, The Philippine Star, 1 April 2008, accessed 9 Dec 2025, <https://www.philstar.com/cebu-news/2008/04/15/56044/flooding-blamed-subdivision-construction>

⁸⁴ Cebu City halts work on Monterrazas till flooding solved, Philippine Daily Inquirer, 27 July 2011, accessed 15 Nov. 2025, <https://newsinfo.inquirer.net/31201/cebu-city-halts-work-on-monterrazas-till-flooding-solved>

flooding associated with land development was already known, this moves the issue squarely within the realm of foreseeability.

IPCC projections indicate that coastal and low-lying areas, like most areas in the Philippines, will face increasing risks of submergence, flooding, erosion, and saltwater intrusion due to rising sea levels, with estimates ranging from 0.36 to 0.73 meters by 2100, alongside more frequent severe tropical cyclones.⁸⁵ These changes, coupled with shifts in precipitation, water temperature, and ocean acidification, are expected to disrupt coastal ecosystems, resulting in declining biodiversity and reduced productivity that threaten human communities reliant on these environments.

Due diligence, as understood in international environmental law, is an obligation of conduct rather than of result. It requires States to act with a certain standard of care, not to guarantee the absence of harm. Yet this raises a fundamental question: how is compliance measured where harm is both foreseeable and recurring? If the standard is satisfied by procedure alone. Accountability, in this context, cannot rest on process divorced from outcome. Having established that climate harm is foreseeable, the analysis turns to whether existing legal standards impose a corresponding duty for actual prevention.

2. THE VISIBILITY OF HUMAN-INDUCED CLIMATE HARM: THE CASE OF CEBU CITY

The Philippines' exposure to frequent typhoons is predictable and where risk is known, the failure to adapt becomes a failure of obligation under international law.

Situated within the Western Pacific Typhoon Belt, the Philippines has long faced a predictable frequency of tropical cyclones.⁸⁶ Where such patterns are established, the law does not treat them as mere natural

⁸⁵ IPCC, *supra* note 5 at 369.

⁸⁶ What Are Typhoons? Causes, Impacts and Solutions, Climate Impacts Tracker, 12 September 2024, accessed 24 Nov 2025, <https://www.climateimpactstracker.com/what-are-typhoons-causes-impacts-and-solutions/>.

events but as foreseeable risks, which demands the application of due diligence. Especially for rural areas, particularly in developing countries, are geographically vulnerable to climate change due to their location in regions where impacts are projected to be most severe, compounded by limited adaptive capacity and a strong dependence on natural resources.⁸⁷ Climate-related hazards affect livelihoods both directly, through crop losses, destruction of homes and natural resources, and displacement; and indirectly by driving up food and energy prices, and fueling political instability.⁸⁸

Cebu City illustrates this pattern visibly.

In 2025 and in a span of two weeks, *Typhoon Kalmaegi* claimed 269 lives, 113 remained missing, and 523 left injured, with ₱490.1 million in infrastructure damage and ₱484.8 million in agricultural losses. It was followed by *Typhoon Fung-wong*, which brought total losses to ₱2.2 billion in infrastructure and ₱1.9 billion in agriculture.

In the past five years alone, the region has experienced multiple high-impact typhoon events, with extreme rainfall reaching up to 428 mm within 24 hours.⁸⁹ During the same period, Metro Cebu has undergone rapid land-use transformation, losing approximately 3.21 square kilometers of green space annually from 1994 to 2019, while built-up areas expanded by around 17.77 square kilometers, significantly reducing natural infiltration and increasing surface runoff.⁹⁰ At present, even moderate rainfall now leads to urban flooding, driven by rapid

⁸⁷ IPCC 2014, *supra* note 5 at 631.

⁸⁸ IPCC 2014, *supra* note 5 at 633.

⁸⁹ Tino's extreme rainfall caused Cebu flooding: PAGASA, ABS-CBN News, 6 November 2025, accessed 24 Nov 2025, <https://www.abs-cbn.com/news/weather-traffic/2025/11/6/tino-s-extreme-rainfall-caused-cebu-flooding-pagasa-1443>.

⁹⁰ Extreme rain, shrinking green spaces blamed for Cebu flooding, The Philippine Star, 11 March 2026, <https://www.philstar.com/nation/2026/03/11/2513382/extreme-rain-shrinking-green-spaces-blamed-cebu-flooding> (last accessed Nov 3, 2025).

urbanization, change in land-use, and inadequate drainage infrastructure.⁹¹

In this light, Central Visayas particularly Cebu, is a case study in foreseeability, where climate risks are visible, measurable, and legally significant. And where such risks persist without adequate preventive measures, it constitutes failure to exercise due diligence.

Corollary, the Philippines is bound within a dense web of international obligations that respond precisely to these risks. As a State Party to the UNFCCC, it is obligated to take measures to mitigate climate change and adapt to its impacts. Under the Paris Agreement, it has committed to nationally determined contributions aimed at limiting global temperature rise and strengthening resilience. These obligations are reinforced by the Convention on Biological Diversity [“**CBD**”], which requires the protection of ecosystems, and the United Nations Convention on the Law of the Sea [“**UNCLOS**”], which imposes duties to prevent marine environmental degradation.

These commitments are not merely external.

Under Article II, Section 2 of the 1987 Philippine Constitution, the Philippines adopts the generally accepted principles of international law as part of the law of the land. As a State Party to the international environmental conventions, the Philippines is bound by obligations of due diligence, prevention, and precaution that operate within its domestic legal framework. The question, therefore, is not only whether these obligations are satisfied, but whether the existing legal framework is sufficient to address present climate-related harm.

The problem is cyclical.

⁹¹ Greening The Flood, *supra* note 14.; Why Metro Cebu floods: A crisis rooted in rain, growth, and neglect, Cebu Daily News, 30 August 2025, <https://cebudailynews.inquirer.net/653314/why-metro-cebu-floods-a-crisis-rooted-in-rain-growth-and-neglect> (last accessed Nov 3, 2025).

Environmentally harmful activities increase concentration of GHG, this drives global warming, which alters the climate system and contributes to more intense tropical cyclones with heavier rainfall, and greater destructive potential.⁹² In Cebu, this cycle is observable. *Typhoon Kalmaegi*'s extreme rainfall overwhelmed river systems and urban drainage capacity, submerging communities, and contaminating water sources. This level of precipitation *per se* is not the sole cause of flooding. Rather, it interacts with changes in land-use.

Where rapid urbanization replaced permeable ground with impervious surfaces, it accelerates runoff and concentrating water in already constrained channels. Urban flood risk in Metro Cebu is therefore not driven by one hazard alone, but by the convergence of hazards.

This transformation is measurable. The steady loss of green space and expansion of built environments has reduced natural absorption capacity while increasing surface flow.⁹³ Rainfall becomes flooding not merely because of intensity, but because urban systems are structurally unprepared to receive it. Development proceeds without sufficient regard to natural waterways, and topography. Infrastructure is approved and constructed without integrating environmental limits. The outcome is, thus predictable, water accumulates where it should have been absorbed, redirected, or discharged. The persistence of cyclical harm evidences a structural failure of preventive due diligence.

The effects follow the same cycle.

Resources are repeatedly diverted to rebuilding and response rather than preventive infrastructure. The cycle sustains itself not because the risks are unknown, but because the response remains incomplete. In 2021 alone over P2.83 billion of governmental aid was released to

⁹² IPCC, Climate Change 2021: The Physical Science Basis, Contribution of Working Group I to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change (Cambridge University Press 2021), at 1157.

⁹³ Extreme rain, shrinking green spaces blamed for Cebu flooding, The Philippine Star, 11 March 2026, <https://www.philstar.com/nation/2026/03/11/2513382/extreme-rain-shrinking-green-spaces-blamed-cebu-flooding> (last accessed 3 Nov 2025).

victims of *Typhoon Rai*⁹⁴, while the World Bank released US\$80 million to help strengthen the Philippines' institutional and financial capacity to manage risks from climate change, natural disasters, and disease outbreaks.⁹⁵ But in 2025 the World Bank released another US\$500 million to support the Philippine Government's recovery and reconstruction efforts in areas battered by *Typhoon Kalmaegi*.⁹⁶

The scale of damage is neither isolated nor marginal. For the entire Philippines, Typhoon Rai damaged 241 road sections, 27 bridges, 8 airports, and 139 seaports, while damaging over 2,028,894 homes amounting to PHP 62,675,818. It also extended to crippling power, water, and communication systems across hundreds of locations.⁹⁷ Agricultural losses were equally severe, with over ₱17,748,148,271.91 in damages, affecting crops, livestock, and critical infrastructure. The impact on labor is immediate, an estimated 4.4 million workers were directly affected, with widespread displacement, income loss, and interruption of economic activity across multiple regions.⁹⁸

These figures are lived conditions. The cycle persists because the response remains to fall short of the preventive obligation under international environmental law.

How is the cycle broken?

⁹⁴ DBM releases P827.18 million to agencies for Typhoon Odette, Department of Budget and Management, <https://www.dbm.gov.ph/index.php/management-2/463-dbm-releases-p827-18-million-to-agencies-for-typhoon-odette> (last accessed Nov 5, 2025).

⁹⁵ World Bank Support for the Impacts of Typhoon Rai in the Philippines ("Odette"), World Bank, 28 December 2021, <https://www.worldbank.org/en/country/philippines/brief/world-bank-support-for-the-impacts-of-typhoon-rai-in-the-philippines-odette> (last accessed Nov 5, 2025).

⁹⁶ World Bank Releases US\$500 Million to Assist Philippines after Typhoon Kalmaegi ("Tino"), World Bank, 28 November 2025, <https://www.worldbank.org/en/news/press-release/2025/11/28/world-bank-releases-us-500-million-to-assist-philippines-after-typhoon-kalmaegi-tino> (last accessed Nov 5, 2025).

⁹⁷ Yoshiki B. Kurata et al., Predicting factors influencing intention to donate for super Typhoon Odette victims: A structural equation model forest classifier approach, *International Journal of Disaster Risk Reduction*, Vol. 81, 15 October 2022.

⁹⁸ Gemma Santos, Typhoon Odette (Rai): Rapid intensification, devastation, and lessons for resilient recovery in the Philippines, *Tropical Cyclone Research and Review*, Vol. 14, 2025, at 520-529.

The solution is neither novel nor in need of discovery. The solution lies in enforcing existing due diligence obligations as substantive, not merely procedural, standards. It is already embedded in the international conventions to which the Philippines is a State Party to. These instruments impose concrete obligations and standards that require the State to act on foreseeable risks to mitigate them.

Breaking the cycle, therefore, lies in ensuring the preventive character of the law. This entails shifting from reactive allocation of resources toward *ex ante* governance, where EIAs must function not as procedural thresholds, but as substantive decision-making tools. ECC must not serve as permissions to proceed, but as enforceable conditions subject to strict and continuous oversight.

The economic dimension of this obligation cannot be separated from its environmental content. As demonstrated, recurrent flooding disrupts transport, halts commerce, damages productive assets, and displaces labor, undermining the material conditions upon which Filipinos depends on. In this context, preventive governance is not merely environmental policy; it is economic necessity.

CHAPTER THREE: INTERNATIONAL ENVIRONMENTAL LAW AND HUMAN RIGHTS

A. ENVIRONMENTAL PROTECTION AS A CONDITION OF HUMAN LIBERTY

Foreseeable environmental harm left unprevented unleashes consequences rarely confined to environmental issues alone. As livelihoods face the risk of peril, so does actual human lives. In that case, the conditions necessary for the meaningful exercise of liberty, manifested through bodily integrity, health, security, and human dignity, are inseparable from environmental stability. How is international law engaged when the failure to prevent environmental harm increasingly implicates the protection of fundamental human rights?

1. THE SHIFT: FROM PARALLEL REGIMES TO NORMATIVE CONVERGENCE

Human rights, as a concept, stands out as one of the most significant achievements of the twentieth century legal thought.⁹⁹ The idea that certain rights are inalienable and universal for human virtue and dignity did not arise from comfort or convenience. It was the result of the lived struggles of marginalized racial, ethnic, and religious communities whose survival demands protection by the State.¹⁰⁰ One need not look further than the daily news to understand that notwithstanding international conventions, abuses continue. Neither the Universal Declaration of Human Rights (UDHR), the Genocide Convention, nor the International Criminal Court (ICC) have put an end to genocide.¹⁰¹ In a time where there is a rise of transnational corporations or corporatocracy,¹⁰² the proliferation of non-state actors raises concern over the protection of these rights.

⁹⁹ Bratspies, Rebecca M., The Intersection of International Human Rights and Domestic Environmental Regulation, 38 Ga. J. Int'l & Comp. L. 649 (2010), at 650. [*hereinafter* "Bratspies"]

¹⁰⁰ Roberta Cohen, Humanitarian Imperatives Are Transforming Sovereignty, 10 Nw. J. Int'l Aff. 2 (2009); Jackson Nyamuya Maogoto, Sovereignty in Transition: Human Rights and International Justice, 7 Notre Dame Austl. L. Rev. 83 (2005).

¹⁰¹ Bratspies, *supra* note 99 at 650.

¹⁰² A. Uhlin, Transnational Corporations as Global Political Actors: A Literature Review, 23 Cooperation & Conflict 231, 235 (1988).

Social and judicial activism shape the limits and boundaries of human rights as more issues become apparent. The rapid advance of technology in particular, exposes mounting evidence that human activities dramatically and irreversibly transform the planet, unraveling the life-support systems upon which all living beings depend.¹⁰³ Thus, the defining moral issue and social justice challenge of the twenty-first century circles around the tragic effects of climate change, just as genocide and the struggle against oppression of stigmatized groups defined the twentieth century.¹⁰⁴

There is an inextricable link between upholding human rights and the enforcement of environmental laws. Legally, this has resulted in the expansion application of human rights provisions in some jurisdictions to account for environmental protection, thus bringing human rights and their institutional arsenal to bear on questions of environmental regulation.¹⁰⁵ One of the obvious illustrations of this tension concerns the devastating impact that water and air pollution have on health and even on the lifespan of humans in many regions of the world.¹⁰⁶

Human rights law has been described as “*law’s best response to profound, unthinkable, far-reaching moral transgression*”.¹⁰⁷ There is great temptation to use this as anchor to put forward environmental issues such as climate change. *Pierre-Marie Dupuy* and *Jorge E. Viñuales* recounts three synergies between human rights and environmental law recognizing a.) a healthy environment as an essential precondition for the effective enjoyment of human rights, b.) utilizing human rights legal frameworks and adjudication as strategic tools for environmental protection, and c.) framing human rights as the foundational social pillar of sustainable development to ensure mutual

¹⁰³ Bratspies, *supra* note 99 at 650.

¹⁰⁴ Amy Sinden, Climate Change and Human Rights, 27 J. Land Resources & Envtl. L. 255, 257 (2007). [*hereinafter* “**Sinden**”]

¹⁰⁵ Pierre-Marie Dupuy & Jorge E. Viñuales, International Environmental Law (Cambridge Univ. Press, 2d ed., 2018), at 358. [*hereinafter* “**Dupuy & Viñuales**”]

¹⁰⁶ Yuyu Chen, A. Ebenstein, M. Greenstone & Hongbin Li, Evidence on the Impact of Sustained Exposure to Air Pollution on Life Expectancy from China’s Huai River Policy, 110 Proc. Nat’l Acad. Sci. 12936 (2009).

¹⁰⁷ Sinden, *supra* note 104 at 257.

supportiveness between the two fields.¹⁰⁸ These synergies demonstrate that environmental protection operates not in isolation but through mutually reinforcing legal frameworks.

The International Court of Justice in its *Advisory Opinion* on Obligations of States in Respect of Climate Change, clarified that climate change also threatens the ability of individuals to enjoy the right to health under Article 12 of the ICESCR, reinforced by Article 25 of the UDHR and Article 24(1) of the Convention on the Rights of the Child.¹⁰⁹ This presupposes environmental conditions capable of sustaining physical and mental well-being. The same structure underlies the right to an adequate standard of living under Article 11 of the ICESCR, encompassing access to food, water, and housing. As emphasized by the Human Rights Council, climate change does not merely affect these rights, it interferes with the conditions that make their enjoyment possible.¹¹⁰

The interaction between these approaches in environmental law and human rights, together with the ICJ's integration of general principles of law as interconnecting norms¹¹¹ that mediate between treaties, custom, and other legal regimes, reflects the evolution of environmental law since its emergence in the Stockholm Declaration (1972). Equity-based principles such as common but differentiated responsibilities and intergenerational equity,¹¹² provide the normative logic that structures these synergies by allocating obligations, balancing competing interests, and guiding the interpretation of legal duties across regimes.

Over time, these principles are transforming international environmental law into a more coherent, systemically integrated legal order rather than a collection of discrete obligations.

¹⁰⁸ Dupuy & Viñuales, *supra* note 105 at 359–360.

¹⁰⁹ Advisory Opinion, *supra* note 43 at ¶379.

¹¹⁰ *Id.*

¹¹¹ Advisory Opinion, *supra* note 43 at ¶204.

¹¹² Advisory Opinion, *supra* note 43 at ¶70.

2. THE GREENING OF RIGHTS: JUDICIALIZATION OF ENVIRONMENTAL PROTECTION

Given this framework, where environmental protection is a precondition to the enjoyment of other rights, and that human rights can be utilized to advance environmental law, the next logical question is how these rights should be treated by judicial bodies. The “*greening of rights*” is best understood as a gradual doctrinal shift in which environmental protection is incorporated into existing human rights rather than creating an entirely new category of rights.¹¹³

This “greening of rights” operates primarily through judicial interpretation. Evident in cases such as *Lopez Ostra and Guerra*,¹¹⁴ where Spain was held responsible for failing to regulate emissions from a waste treatment plant that caused severe odors and health risks to nearby residents, violating the right to private life. While *Fadeyeva and Öneriyıldız*¹¹⁵ demonstrate that states must actively prevent industrial and environmental dangers that threaten human life and well-being whereby Italy was found liable for failing to provide residents with essential information about risks from a chemical factory, breaching its duty to ensure respect for private and family life.

Meanwhile, in *Fadeyeva v. Russia*,¹¹⁶ Russia was held responsible for allowing continued exposure of residents to toxic industrial pollution from a steel plant, and in *Öneriyıldız v. Turkey*,¹¹⁷ Turkey was found in violation of the right to life for failing to prevent a fatal methane explosion at a municipal landfill, demonstrating that states must actively prevent industrial and environmental dangers that threaten human life and well-being. In these cases the rights to life, health, private life, and property are read to include environmental dimensions, allowing courts to compel states to regulate pollution, disclose risks, and ensure public participation. Courts increasingly

¹¹³ Alan Boyle, Human Rights and the Environment: Where Next?, 23 Eur. J. Int'l L. 613, 614 (2012).

¹¹⁴ *López Ostra v. Spain*, App. No. 16798/90, European Court of Human Rights, Judgment, 9 Dec. 1994, ¶¶ 52–58.

¹¹⁵ *Öneriyıldız v. Turkey*, App. No. 48939/99, European Court of Human Rights, Judgment, 30 Nov. 2004, ¶ 70. [hereinafter “*Öneriyıldız v. Turkey*”]

¹¹⁶ *Sergey Zolotukhin v. Russia*, App. No. 14939/03, ECtHR (GC), Judgment, 10 Feb. 2009, ¶ 87.

¹¹⁷ *Öneriyıldız v. Turkey*, *supra* note 115 at ¶¶ 98–101.

treat environmental degradation not as peripheral harm but as a direct impairment of protected interests.

In Justice Weeramantry's view, environmental protection is a vital part of contemporary human rights for "it is a *sine qua non* of rights such as life and health, which captures the doctrinal shift now visible in judicial reasoning."¹¹⁸ The ICJ's recognition that climate change adversely affects rights to life, health, and an adequate standard of living¹¹⁹ illustrates this movement from abstraction to a more coherent application. Environmental norms do not create new rights in isolation; they broaden the content and context of existing ones by specifying the conditions under which they can be meaningfully enjoyed.

B. SUBSTANTIVE HUMAN RIGHTS ENGAGED BY CLIMATE-RELATED HARM

1. THE SUBSTANTIVE DIMENSION: THE RIGHTS RECOGNIZED UNDER INTERNATIONAL LAW

The right to a clean, healthy, and sustainable environment has come to occupy a central place within the architecture of international human rights law, although its status as a independent right remains to be glazed with unclear language. However, the recognition of its importance is not lacking, this understanding is reflected in its formal recognition by the United Nations General Assembly in Resolution 76/300 (2022), as well as in its incorporation across numerous constitutional and regional frameworks. The recognition of a right to a healthy environment has likewise been constitutionalized across jurisdictions, with more than one hundred (100) national constitutions expressly affirming some form of this right.¹²⁰ While formulations vary, the majority link environmental protection to health, and others articulate a right to an ecologically balanced, clean, safe, or wholesome environment. This widespread constitutional recognition underscores that environmental protection is no longer merely aspirational but has attained the status of a legally

¹¹⁸ Gabčíkovo-Nagymaros, *supra* note 40 [separate opinion of Vice-President Weeramantry].

¹¹⁹ Advisory Opinion, *supra* note 43 at ¶377.

¹²⁰ David R. Boyd, The Implicit Constitutional Right to Live in a Healthy Environment, 20 Rev. Eur. Cmty. & Int'l Env't L. 171 (2011).

cognizable right essential to the realization of human dignity and well-being.

The International Court of Justice has emphasized that the environment constitutes the “*living space*” and “*quality of life*” of human beings, suggesting that environmental degradation cannot be treated as external to the protection of human dignity.¹²¹ In this framing, environmental protection is not an ancillary concern, but one that informs the conditions under which rights are realized.

These rights operate under a common premise, that these rights presuppose environmental conditions capable of sustaining human existence.

The Right to Life as recognized as an inherent right under Article 3 of the Universal Declaration of Human Rights, Article 6 of the International Covenant on Civil and Political Rights, and Article 6 of the Convention on the Rights of the Child, is no longer confined to protection against arbitrary deprivation. The Human Rights Committee has affirmed that environmental degradation, climate change, and unsustainable development constitute serious threats to its enjoyment. Thus, States have the institutional obligation to enact legal and frameworks for the protection of human rights against climate related harms which are considered as threat multiplier.¹²² This is true regardless of whether the state is responsible for those effects because, the ICCPR and ICESCR both include obligations to protect human rights from harms caused by third parties.¹²³ Across jurisdictions, the right to life has been interpreted as imposing positive duties on States to anticipate, prevent, and address environmental risks.

¹²¹ Advisory Opinion, *supra* note 43 at ¶155.

¹²² Megan Donald, Human Rights and the Environment: Human Rights, the Environment, and the Right to a Clean, Healthy and Sustainable Environment (Geneva Academy of International Humanitarian Law and Human Rights, Dec. 2022), at 15.

¹²³ Office of the United Nations High Commissioner for Human Rights (OHCHR), Report of the Office of the United Nations High Commissioner for Human Rights on the Relationship between Climate Change and Human Rights, U.N. Doc. A/HRC/10/61 (2009), at 74.

In *Budayeva and Others v. Russia*,¹²⁴ the Court held that liability arose not from the mere occurrence of a natural hazard, but from the State's failure to act despite foreseeable risk, specifically, its omission to implement land-use controls, establish emergency measures, and adequately inform affected communities. The case thus underscores that the breach lies in regulatory and preventive inaction, rather than in the hazard itself. This approach has been echoed beyond Europe. In *Leghari v. Federation of Pakistan*,¹²⁵ the Lahore High Court recognized that the State's failure to implement its own climate adaptation framework constituted a violation of fundamental rights, including the right to life. In *Ioane Teitiota v. New Zealand*,¹²⁶ the Human Rights Committee recognized that slow-onset environmental degradation, particularly rising sea levels, saltwater intrusion, and the depletion of freshwater in Kiribati, could render living conditions incompatible with the right to life with dignity even before actual loss of life occurs. Although the Committee ultimately found no violation on the facts, it established a crucial doctrinal shift, that climate-induced conditions may trigger non-refoulement obligations where environmental harm reaches a threshold that threatens basic human existence, even absent immediate or imminent death.

The right the enjoyment of the highest attainable standard of physical and mental health, protected under Article 12 of the International Covenant on Economic, Social and Cultural Rights, Article 25 of the Universal Declaration of Human Rights, and Article 24 of the Convention on the Rights of the Child, further illustrates this dependency. Health is not determined solely by access to medical care, but by environmental conditions such as air quality, water safety, and ecological stability.¹²⁷ All these which shape exposure to disease and the capacity for well-being.¹²⁸ Climate change is already contributing to adverse health outcomes and, if current projections persist, will increase risks of injury and death from heat waves and fires, worsen undernutrition due to declining food production, reduced labor capacity and productivity, and

¹²⁴ *Budayeva and Others v. Russia*, App. No. 15339/02, ECtHR, Judgment, 20 Mar. 2008, ¶ 151.

¹²⁵ *Leghari v. Federation of Pakistan*, W.P. No. 25501/2015, Lahore High Court, Order, 4 Sept. 2015, ¶ 3.

¹²⁶ *Ioane Teitiota v. New Zealand*, Comm. No. 2728/2016, HRCttee, U.N. Doc. CCPR/C/127/D/2728/2016, 7 Jan. 2020, ¶ 9.8.

¹²⁷ IACtHR AO, *supra* note 49 at ¶ 393.

¹²⁸ IACtHR AO, *supra* note 49 at ¶ 243.

heighten exposure to food-, water-, and vector-borne diseases.¹²⁹ Even the World Health Organization has identified climate change as among the most significant threats to global health, while General Comment No. 14 of the Committee on Economic, Social and Cultural Rights clarifies that States must refrain from polluting air, water, and soil. Judicial and quasi-judicial practice reinforces this understanding, severe environmental contamination, such as that documented in Ogoniland,¹³⁰ has been treated as impairing the right to health not as an indirect effect, but as a direct legal concern.

The right to an adequate standard of living, under Article 11 of the ICESCR and Article 25 of the Universal Declaration of Human Rights, extends this relationship into the material conditions of daily life. Access to food, water, and housing is mediated by environmental stability.¹³¹ Climate-related phenomena with sea-level rise, drought, and desertification, disrupt these conditions by undermining livelihoods and resource availability.¹³² Its effects on food systems are already evident, while some regions have experienced modest gains in productivity, changes in temperature and rainfall, as well as extreme weather events, have negatively affected the production of staple crops such as wheat and maize, and have likewise diminished fisheries productivity.¹³³

Looking forward, climate change is projected to adversely affect the production of major crops across both tropical and temperate regions, with the most severe impacts concentrated in low-latitude countries where food security risks are highest. The right to water, elaborated in General Comment No. 15, entitles individuals to sufficient, safe, and accessible water, while the right to food increasingly incorporates sustainability as a condition of its realization.¹³⁴ These entitlements are

¹²⁹ IPCC 2014, *supra* note 5 at 713.; David R. Boyd, Report of the Special Rapporteur on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment, U.N. Doc. A/74/161, 15 July 2019, ¶¶ 31–32.

¹³⁰ Social and Economic Rights Action Center (SERAC) & Center for Economic and Social Rights v. Nigeria, Comm. No. 155/96, African Commission on Human and Peoples' Rights, Decision, 2002, ¶¶ 52–53.

¹³¹ Advisory Opinion, *supra* note 43 at ¶390.

¹³² *Id.*

¹³³ IPCC 2014, *supra* note 5 at 491

¹³⁴ Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 15: The Right to Water (Arts. 11 and 12 of the Covenant), U.N. Doc. E/C.12/2002/11, 20 Jan. 2003.

not abstract guarantees, they depend on ecological systems capable of sustaining them over time, systems now under increasing strain from climate-related impacts that threaten substantial yield losses and long-term food security.

2. THE CROSSROAD: THE INTERDEPENDENCE OF HUMAN RIGHTS IN THE CONTEXT OF ENVIRONMENTAL ISSUES

The legal significance of these rights lies in its interdependence with other rights. It is not merely one right among many, but the condition that enables the realization of others. Environmental degradation directly threatens civil and political rights, particularly the right to life, which is compromised where environmental conditions undermine the possibility of living with dignity. It also implicates the right to privacy, family, and home, especially where environmental harm results in displacement, destruction of property, or loss of habitable space. These substantive rights are reinforced by procedural guarantees, including access to environmental information, public participation in decision-making, and access to justice; mechanisms that transform environmental protection from discretionary governance into accountable obligation.

These substantive rights are complemented by procedural guarantees that have assumed increasing importance in environmental contexts,¹³⁵ and in their absence, the content of the right risks remaining indeterminate, dependent on administrative discretion rather than enforceable standards.¹³⁶ A similar interdependence may be observed with socio-economic rights. The right to health, recognized under Article 12 of the International Covenant on Economic, Social and Cultural Rights, has been interpreted by the Committee on Economic, Social and Cultural Rights to include underlying determinants such as safe water, sanitation, and environmental conditions.

¹³⁵ Jerzy Jendrośka, The Substantive Right to Environment and the Procedural Environmental Rights under the Aarhus Convention – Part II, 22(2) *Opolskie Studia Administracyjno-Prawne* 43, 48 (2024).

¹³⁶ Christina Voigt, “Doing the utmost”: Due diligence as the standard of conduct in international climate law (Sabin Center for Climate Change Law Blog, 3 Sept. 2025), available at <https://blogs.law.columbia.edu/climatechange/2025/09/03/doing-the-utmost-due-diligence-as-the-standard-of-conduct-in-international-climate-law/> (last accessed 11 Nov. 2025).

Climate-induced risks are not uniformly experienced. Environmental harm is often borne more acutely by certain groups, including indigenous peoples, women, and children, whose exposure is shaped by existing social and economic conditions.¹³⁷ For indigenous communities in particular, environmental degradation may implicate not only subsistence, but the continuity of cultural practices tied to land and natural resources.

The temporal dimension of this right also warrants attention. Environmental protection is frequently framed in terms that extend beyond present interests, invoking responsibilities toward future generations. This introduces a further layer of complexity, where the assessment of State conduct must consider not only immediate impacts, but longer-term consequences that may not yet be fully realized in the present.

3. HITTING THE LIMIT: THE ANTHROPOCENTRIC VIEW

Rather than creating a new category of rights, the situation reflects an alignment of existing legal regimes. Environmental norms such as precaution, prevention, and due diligence, inform the scope of human rights obligations, while human rights law supplies the normative urgency and accountability mechanisms. The *Advisory Opinion* underscores this mutual reinforcement, obligations under environmental treaties, customary law, and human rights instruments are not siloed but are given context in defining State responsibility.¹³⁸ This is the operative core of the “greening” human rights, it does not expand in form but is deepened in substance.

However, despite these developments, the integration of environmental law remains limited. The protection afforded to the environment is derivative and anthropocentric. Under this view, environmental harm becomes legally relevant only when it can be framed as an infringement of individual rights.

¹³⁷ United Nations Entity for Gender Equality and the Empowerment of Women (UN Women), How Gender Inequality and Climate Change Are Interconnected (21 Apr. 2025), available at <https://www.unwomen.org/en/articles/explainer/how-gender-inequality-and-climate-change-are-interconnected>

¹³⁸ Advisory Opinion, *supra* note 43 at ¶139.

The environment itself is not recognized as an independent legal interest, but merely as a condition affecting human welfare. Which is a critical point because of the fundamental difference between the treatment of Human Rights and Environmental law. Human rights law remains territorial and individual-centric, where there is a clear direct link or proximate cause of the infringement of such rights.¹³⁹ But environmental degradation, particularly climate change, is global, cumulative, and only reveals itself over time.¹⁴⁰ This mismatch exposes significant limitations, especially in relation to attribution, causation, and extraterritorial responsibility.

Thus, while courts have made steps that have expanded state responsibility and imposed positive obligations, they have not transformed human rights law into a regime capable of protecting the environment *per se* or vice versa. This results in a framework that though progressive in appearance, remains indirect, contingent, and ultimately insufficient. The “greening” of rights falters when confronted with the structural realities of contemporary environmental harm. While the development of procedural rights, such as access to information, participation, and justice, marks a genuine advancement, it cannot, on its own, provide a fully adequate legal framework for addressing complex, collective environmental challenges.

C. THE LOCALIZATION OF GLOBAL RISK: CEBU AND THE REPRODUCTION OF ENVIRONMENTAL HARM

The relationship between environmental harm and human rights is most apparent where risk is not only documented but reproduced, *frequently*.

In September 2018, without a storm or typhoon falling on the region of Cebu, heavy rains caused a massive landslide that buried people within an area where there was an ongoing quarry operation.¹⁴¹ A total of

¹³⁹ C. Stone, “Ethics and International Environmental Law,” in Daniel Bodansky, Jutta Brunnée & Ellen Hey (eds.), *The Oxford Handbook of International Environmental Law* 291 (Oxford Univ. Press, 2007).

¹⁴⁰ Dupuy & Viñuales, *supra* note 100 at 362.

¹⁴¹ Al Jazeera, Philippines: At least 29 dead in Cebu landslide (21 Sept. 2018), available at <https://www.aljazeera.com/news/2018/9/21/philippines-at-least-29-dead-in-cebu-landslide> (last accessed 20 Apr. 2025).

93 casualties, where 29 people died from the landslide and least 46 bodies were retrieved while search and rescue operations continue,¹⁴² and a further 64 are reported to be missing.¹⁴³ A total of 1,316 families or 4,980 people were affected in six barangays in Naga City, Cebu.¹⁴⁴

In Cebu, flooding is not an isolated phenomena, it is a recurring event due to rainfall intensity, land-use change, and infrastructural limitations.¹⁴⁵ Studies on urban flooding in Philippine coastal cities show that rapid urbanization, inadequate drainage systems, and encroachment into waterways significantly increase flood exposure, particularly in low-lying and informal settlements.¹⁴⁶ In this context, environmental harm is neither accidental nor unpredictable, it is structurally embedded within patterns of urban development and governance. These recurring flood events engage multiple human rights simultaneously, most notably the right to life.

Moreover, disaster risk is not determined by hazard alone, but by exposure and vulnerability, both of which are shaped by governance decisions.¹⁴⁷ In Cebu, this interaction is visible in the concentration of risk in densely populated urban areas with inadequate infrastructure and weak regulatory enforcement. Environmental harm, therefore, is not episodic, it is simply the systemic conditions, including planning failures, insufficient climate adaptation measures, and ineffective enforcement of environmental regulations.

¹⁴² International Federation of Red Cross and Red Crescent Societies, Philippines: Cebu Landslide – Information Bulletin (24 Sept. 2018).

¹⁴³ Al Jazeera, New landslide kills 21, buries houses in the Philippines (20 Sept. 2018), available at <https://www.aljazeera.com/news/2018/9/20/new-landslide-kills-21-buries-houses-in-the-philippines> (last accessed 20 Apr. 2025).

¹⁴⁴ National Disaster Risk Reduction and Management Council (NDRRMC), SitRep No. 02 re Landslide Incident in Naga City, Cebu (Region VII) (21 Sept. 2018).

¹⁴⁵ Christine Omela V. Ocampo, Impacts of Land Use and Land Cover Dynamics on Flooding in the Mananga River Watershed Reserve, Metro Cebu, Philippines, 36(1) J. Env'tl. Stud. 81, 88–89 (2024).

¹⁴⁶ Greening The Flood, *supra* note 14

¹⁴⁷ Omar D. Cardona et al., “Determinants of Risk: Exposure and Vulnerability,” in *Managing the Risks of Extreme Events and Disasters to Advance Climate Change Adaptation* 65, 76 (Cambridge Univ. Press, 2012).

This aligns with the principle of due diligence in international law, which requires States to take all appropriate measures to prevent foreseeable harm.¹⁴⁸ Where risks are known, recurrent, and measurable, failure to act cannot be justified as mere omission; it becomes a question of breach of legal obligation.

The effects truly seep into pipelines. The flooding in Cebu has been linked to water contamination, the spread of waterborne diseases, displacement of families, and loss of livelihood, particularly among vulnerable communities.¹⁴⁹ As recognized in international human rights law, such harms are not merely environmental in character, they represent direct impairments of protected rights, particularly where the State has knowledge of risks and fails to take preventive action. The *Advisory Opinion* affirms that environmental degradation, including climate-related hazards, interferes with the conditions necessary for the enjoyment of fundamental rights such as health and an adequate standard of living.¹⁵⁰

The recurrence of flooding under known conditions also challenges the traditional framing of environmental harm as external or exceptional. When environmental damage arises repeatedly from identifiable structural factors, it becomes increasingly difficult to treat it as beyond State responsibility. Instead, it reflects a failure to regulate, plan, and protect functions that lie at the core of State obligations under both environmental law and human rights law.

In this sense, Cebu exemplifies the limits of the “greening of rights”, while human rights frameworks can recognize and respond to the impacts of environmental harm, they remain reactive and contingent, addressing violations only after such harms have materialized.

What is required, however, is a preventive and systemic approach, one that treats recurring environmental harm as a matter of ongoing legal

¹⁴⁸ Advisory Opinion, *supra* note 43 at ¶280.

¹⁴⁹ Humanitarian Country Team (HCT) & Inter-Cluster Coordination Group (ICCG), Consolidated Rapid Assessment Report: Super Typhoon Uwan (Fung-Wong), Philippines (20 Nov. 2025), at 6.

¹⁵⁰ Advisory Opinion, *supra* note 43 at ¶268.

responsibility rather than isolated incidents. In *Guerra v. Italy*,¹⁵¹ the Court held that the State's failure to provide information about environmental risks violated the right to private life. The breach was not in the absence of regulation, but in the failure to make risk visible to affected communities.

Ultimately, the case of Cebu illustrates a critical point, where environmental harm is foreseeable, repeated, and structurally reproduced, where the failure of the State to act ceases to be incidental and becomes legally and normatively indefensible. It is in these contexts that the limitations of a purely anthropocentric, rights-based approach become most visible. While the greening of human rights enhances recognition and accountability, it remains insufficient to address environmental harm at its source.

1. THE POLICY FRAMEWORK: THE STRUCTURE OF PHILIPPINE ENVIRONMENTAL LITIGATION

Domestically, the Philippine legal system has developed distinct mechanisms to address large-scale environmental harm and to shield environmental defenders from retaliatory litigation. Central among these is the *Writ of Kalikasan*, a special remedy under the Rules of Procedure for Environmental Cases,¹⁵² available where environmental damage may threaten the constitutional right to a balanced and healthful ecology of a magnitude or degree of damage that transcends political and territorial boundaries.¹⁵³ It is preventive and remedial in nature, designed to compel government agencies or private entities to cease environmentally destructive acts and undertake affirmative measures for rehabilitation. It aims to provide judicial relief, and is intended "to provide a stronger defense for environmental rights through judicial efforts where

¹⁵¹ *Guerra and Others v. Italy*, App. No. 116/1996/735/932, ECtHR, Judgment, 19 Feb. 1998, ¶ 60.

¹⁵² Rules of Procedure for Environmental Cases, A.M. No. 09-6-8-SC, Supreme Court, 13 Apr. 2010, Rule 7 (*Writ of Kalikasan*).

¹⁵³ *Paje v. Casiño*, G.R. No. 207257, Supreme Court, 3 Feb. 2015.; Rationale, *supra* note 77 at 133.

institutional arrangements of enforcement, implementation and legislation have fallen short".¹⁵⁴

In *Resident Marine Mammals of the Protected Seascape Tañon Strait v. Secretary*, the Supreme Court recognized the standing of Filipino citizens, as a steward of nature, to bring a suit to enforce our environmental laws, and invalidated oil exploration activities for failure to comply with environmental safeguards, affirming that environmental protection is not merely regulatory but is truly constitutional.¹⁵⁵ Similarly, in *West Tower Condominium Corporation v. First Philippine Industrial Corporation* arising from the Makati oil pipeline leak, the Court granted relief under the writ, ordering measures to address contamination and holding the pipeline operator accountable for risks to health and property.¹⁵⁶ These cases illustrate that the writ functions as a powerful tool for collective environmental protection, particularly where harm is widespread and scientifically demonstrable. A notable illustration is *Paje v. Casiño*, where the Court underscored the importance of citizen suits in environmental governance and cautioned against actions that undermine public participation.¹⁵⁷

Parallel to this, the Philippines recognizes the problem of *Strategic Lawsuits Against Public Participation* [“**SLAPPs**”], which are actions filed not to advocate for legitimate rights but to intimidate, harass, or silence individuals and communities engaged in environmental advocacy.¹⁵⁸ Under the same procedural rules, defendants in environmental cases may raise the SLAPP defense, shifting the burden of evidence to the plaintiff to prove that the action is not intended to stifle participation. The use of national inquiries by human rights institutions demonstrates the operationalization of human rights in addressing environmental harm.

¹⁵⁴ Rationale, *supra* note 77 at 78.

¹⁵⁵ *Resident Marine Mammals of the Protected Seascape Tañon Strait v. Reyes*, G.R. No. 180771, 21 Apr. 2015.

¹⁵⁶ *West Tower Condominium Corp. v. First Philippine Industrial Corp.*, G.R. No. 194239, 16 June 2015.

¹⁵⁷ *Paje v. Casiño*, G.R. No. 207257, 756 SCRA 1 (2015).

¹⁵⁸ John H. Knox, Report of the Independent Expert on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment, U.N. Doc. A/HRC/28/61, 3 Feb. 2015, ¶ 60.

By contrast in Malaysia, the national human rights commission, SUHAKAM, conducted a National Inquiry into the Land Rights of Indigenous Peoples in response to widespread complaints of land encroachment, dispossession, and delays in the recognition of indigenous titles. Rather than treating these as isolated grievances, the inquiry examined the systemic dimensions of environmental and land-related violations by incorporating the lived experiences of indigenous communities across the country.¹⁵⁹ And this is not limited to State actors. State practice further reflects the operationalization of environmental and human rights obligations through the regulation of business activities. For instance, national initiatives such as those undertaken in Denmark have developed guidelines to assist companies in aligning their supply chains with international social and environmental standards. Similarly, the United Kingdom has committed to ensuring that international investment agreements do not undermine the regulatory authority of host States to impose equivalent environmental and social standards on foreign and domestic investors alike.¹⁶⁰

At the corporate level, emerging practices likewise demonstrate the integration of human rights into environmental governance. Companies such as Asia Pulp and Paper Group¹⁶¹ have adopted policies recognizing the rights of indigenous peoples and local communities, including respect for customary land rights, stakeholder engagement, and accessible grievance mechanisms, complemented by transparency tools that enable public monitoring of compliance.

Comparable commitments are evident in the adoption of human rights policies by multinational corporations, which undertake to identify, prevent, and mitigate environmental and human rights impacts within their operations and supply chains. These are reinforced through contractual obligations, independent assessments, and audit mechanisms, with non-compliance carrying consequences such as termination of business relationships. In parallel, corporate initiatives have extended to

¹⁵⁹ *Id.* at ¶ 66.

¹⁶⁰ John H. Knox, Report of the Independent Expert on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment, U.N. Doc. A/HRC/28/61, 3 Feb. 2015, ¶ 80.

¹⁶¹ *Id.* at ¶¶ 81-83.

financial support for environmental protection efforts, reflecting an increasing recognition of the private sector's role in advancing environmental and human rights objectives.¹⁶²

¹⁶² Yanru Li & Anqiang Lin, Assessing the Impact of Green Finance on Financial Performance in Chinese Eco-Friendly Enterprise, *Heliyon* 10 e29075, 16 (2024).

CHAPTER FOUR: CONCLUSION AND RECOMMENDATIONS

I. CONCLUSION

Climate change, the defining challenge of the twenty first century, places environmental protection at the fault line between governance and daily survival. In the Philippines, policies gain urgency only after devastation has already carved its toll—after lives are lost, communities displaced, and damage rendered irreversible.

This study has argued that there should be shift in how compliance is understood and evaluated in the face of escalating climate-induced harm. If the law is to remain faithful to its *raison d'être*, it cannot be satisfied by formal or procedural adherence alone. The increasing severity and persistence of environmental harm, especially upon vulnerable communities and marginalized sectors, it demands a recalibration of the standard by which State conduct is judged.

Due diligence must therefore be clearly characterized not as a merely procedural obligation, but as a substantive standard of conduct requiring demonstrable effectiveness in preventing foreseeable harm. Compliance cannot be inferred from the existence of regulatory frameworks or the adoption of measures in abstract terms. Rather, it must be assessed in light of outcomes. This evolution finds support in the recent Advisory Opinion of the ICJ, as well as emerging jurisprudence from regional courts, which collectively signal a shift from formalism toward effectiveness-based accountability. Environmental law must adapt not by abandoning its foundations, but by interpreting them in light of justice, equity, and contemporary realities.

II. RECOMMENDATIONS

A. ESTABLISHING A COHERENT FRAMEWORK FOR CLIMATE ADJUDICATION¹⁶³

The absence of a dedicated adjudicative body for climate-related obligations reflects the state of mind of States. Environmental concerns continue to occupy a peripheral position, often addressed only when harm becomes immediate and irreversible. This reactive posture is fundamentally incompatible with the preventive orientation of IEL, particularly in the context of climate change, where harm is cumulative, transboundary, and slow to manifest but devastating in effect.

While bodies such as the ICJ and ITLOS have begun to articulate relevant obligations, their jurisdiction remains limited and episodic, which risks inconsistent interpretations and weak enforcement. In response, the international community should consider the development of a coherent adjudicatory framework, whether through the expansion of existing jurisdictions or the creation of a specialized mechanism. Such a framework would promote consistency, strengthen accountability, and ensure that climate-related obligations are not merely articulated, but effectively enforced.

B. CLARIFYING THE RIGHT TO A CLEAN, HEALTHY, AND SUSTAINABLE ENVIRONMENT¹⁶⁴

In the absence of a clearly defined and enforceable right to a clean, healthy, and sustainable environment, litigants are often compelled to rely on derivative or adjacent rights, such as the right to life or health, to advance environmental claims. This indirect approach reflects the inadequacy of existing legal frameworks to fully capture the intersection between environmental degradation and human rights violations.

¹⁶³ Anne McMillan, Time for an International Court for the Environment, Int'l Bar Ass'n (Global Insight), <https://www.ibanet.org/article/71b817c7-8026-48de-8744-50d227954e04>

¹⁶⁴ Helen Keller, A Right to a Clean, Healthy and Sustainable Environment: Or Perhaps Not (Yet)? , Völkerrechtsblog, 05.08.2025, doi: 10.17176/20250806-122339-0.

There is thus a pressing need to articulate this right as a fully enforceable substantive entitlement. This includes defining the obligations it imposes on States, the standards by which compliance is measured, and the remedies available in cases of breach. In doing so, the right can serve as a critical bridge between environmental protection and human dignity, reinforcing the indivisibility of human rights and environmental integrity.