

The law and politics of climate reparations

If Nepal is committed to holding States responsible, it should build scientific evidence and pursue long-term climate justice through systemic reform

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Nepal's \$5B Flash Flood: Legal Obstacles to Climate Reparations and the Path Forward

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The devastating flash flood in Nepal last month, estimated to have caused over \$5 billion in damage, is a humanitarian crisis that is also being politicised for responsibility and reparations under international law.

While Nepal recovers, its political leaders raise questions about the legal responsibility of other States for the floods, if any, without engaging with the actual rules of international climate law. This article anchors the analysis in the [International](#) Court of Justice's (ICJ) advisory opinion on climate change, and examines three issues: which States might bear responsibility, what forms of reparations are legally possible, and how Nepal may approach issues of relief from other States.

The Intergovernmental Panel on [Climate Change](#) confirms that as greenhouse gas (GHG) emissions increase, so does the frequency of climate extremes. The ICJ reiterated

that “international law sets forth obligations for States to ensure the protection of the climate system” from GHG emissions. This lays a conceptual foundation for the claim that certain GHG-emitting States have contributed to Nepal’s floods. Political statements in Nepal have pointed fingers at the US, China, and India as States responsible for the floods. The two primary challenges to such claims, also confirmed by the ICJ, are legal attribution and scientific causation.

Legally, the ICJ clarified that when multiple States contribute to a wrongful act, the responsibility of each may be invoked individually, mirroring Article 47 of the Articles on the Responsibility of States for Internationally Wrongful Acts (ARSIWA). Nepal would need to prove the specific share of emissions attributable to India (historic and current) and demonstrate that they caused the August flash floods. Nepalese political discourse has also not addressed the EU’s historic or ongoing emissions, although any apportionment exercise would inevitably include them.

The closest jurisprudence analogous to the Nepalese situation is *Luciano Lliuya v RWE AG*, where the claimant argued that RWE, a German power corporation, should pay 0.47% (17,000 euros) of the total cost required for his village, under threat from a glacial lake outburst flood. Its key takeaway is evidentiary: that attribution science can ground a proportionate share of responsibility measured by an emitter’s share of cumulative global emissions. Even when apportioning responsibility on a State, the principle of common but differentiated responsibility also poses a challenge for Nepal’s claim against a developing, low-income country like [India](#).

Jurisdiction is another obstacle. Nepal cannot compel India to litigate a climate-damage claim. India’s acceptance of the ICJ’s jurisdiction for contentious cases includes broad reservations, and neither India nor Nepal has accepted compulsory dispute settlement under Article 14 of the UN Framework Convention on Climate Change. Thus, contentious litigation is impossible without India’s consent. Nepal may consider alternative options, such as an advisory opinion, diplomatic negotiations, and domestic litigation in foreign courts; however, none of these guarantees a successful claim.

International law recognises three forms of reparation: restitution, compensation, and satisfaction (ARSIWA, Articles 34-37). Compensation extends only to “financially assessable damage” and only if a sufficiently direct causal link is proven. The attribution and apportionment difficulties discussed above reappear at the quantum stage, making it difficult for Nepal to establish attribution to India. The options of restitution in kind by seeking and receiving technical support, reconstruction aid, and other forms of cooperation are realistic and less politically contentious.

From a policy standpoint, the most effective mechanism for Nepal is not litigation, but the loss-and-damage architecture created precisely because liability litigation claims are so hard to win. Nepal can access the Fund for Responding to Loss and Damage and the Santiago Network by submitting a well-documented post-disaster needs assessment, and through these channels would likely mobilise resources more quickly.

Several States offered assistance to Nepal in disaster relief, but it initially rejected aid from foreign personnel. This reflects Nepal's sensitivities and security concerns. Yet, international law emphasises cooperation. The International Law Commission's 2016 Draft Articles on the Protection of Persons in the Event of Disasters affirm that the affected State must seek external assistance where a disaster manifestly exceeds its national response capacity (Article 11); and it cannot arbitrarily refuse aid (Article 13). The legal question is whether Nepal's decline was arbitrary in light of its own capacity to respond.

India's assistance aligned with the 1950 Treaty of Peace and Friendship, the open-border regime, and the regional disaster treaty — the SAARC Agreement on Rapid Response to Natural Disasters, 2011. However, India has not officially recorded this relief effort as a practice under any treaty. Besides, the India-Nepal Joint Committee on Water Resources and its Joint Committee on Inundation and Flood Management already exist, and real-time hydrological data are shared on river systems. From an international law perspective, India's efforts not only demonstrate its regional solidarity but also advance its restitution efforts, and what is practically possible for India to do given its own national circumstances.

The politicisation of climate justice, including [international](#) responsibility and reparations, is attracting global attention. If Nepal is committed to holding States responsible, it will have to adopt a dual approach: building scientific evidence and pursuing long-term climate justice through systemic reform. Regardless, Nepal should first seek relief through existing mechanisms like the Loss and Damage Fund. Second, it should commission attribution studies to build science. Thirdly, understand and use the option of domestic litigation to secure relief for Nepal. And finally, work with State coalitions to strengthen international mechanisms for financial support after such crises.

For India, the lesson is parallel: formalise its existing relations with Nepal and other States to establish its rules for climate cooperation.