Environmental Impact Assessment: A Procedural Avenue for Enforcing Substantive Climate Obligations

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Two recent legal developments in Latin America invite renewed attention to the potential of *environmental impact assessment* (EIA) as a procedural tool for addressing climate change. At their core, they raise the question of whether EIA, originally designed to assess the localised effects of individual projects, can be an effective tool for tackling the climate emergency. This post argues that it can, but only if climate-inclusive EIA goes beyond formally considering climate change and instead anchors project assessments in the State's substantive climate obligations. As the discussion below shows, this shift is already under way. Yet greater clarity and awareness are needed to unlock EIA's full potential as a mechanism of climate accountability.

On 16 June, the Constitutional Chamber of the Supreme Court of Costa Rica delivered its judgment in the country's first climate case, upholding the application (Resolution No. 022147-2026, not yet published).

Costa Rica is one of the countries most exposed to the consequences of climate change (OECD). Nevertheless, although the Constitutional Chamber is distinguished by its particularly broad standing requirements and sustained engagement with environmental issues, climate litigation in this country has so far remained quite limited.

The Constitutional Chamber has previously referred to climate change in broader environmental proceedings (notably Resolutions Nos. 1838-2024 and 14801-2024). However, the present case is the first one in which climate change constitutes the central issue.

Unlike many climate actions initiated by environmental organisations in other jurisdictions, the Costa Rican case originated primarily in legal scholarship and received the support of leading environmental law experts. It was filed in 2024 by Professor Mario Peña Chacón, and other prominent legal scholars intervened during the proceedings in support of the applicant, as did the United Nations Special Rapporteur on the human right to a healthy environment.

The action was brought against the government and the *Secretaría Técnica Nacional Ambiental* (SETENA) and focused on a specific issue: the failure to incorporate *climate risks* and the impacts of *climate change* into EIAs.

By granting the application, the Constitutional Chamber ordered both respondents to adopt the necessary measures to ensure that climate risks and impacts, as well as mitigation and adaptation measures, are incorporated into EIAs.

Elsewhere in Latin America, the Mexican federal government presented a proposal to overhaul the *Ley General del Equilibrio Ecológico y la Protección al Ambiente (LGEEPA)* on 14 May of this year.

The initiative – which has raised criticism and concerns regarding various aspects of the proposed reform (see CEMDA, for an overview of the main issues) – would substantially reshape the framework for environmental protection established by the law, originally enacted in 1988.

In particular, the reform introduces *strategic environmental assessment* for plans, programs, or projects concerning major infrastructure, and expressly requires the inclusion of climate change in environmental assessments.

Both these developments highlight the potential of EIAs as a procedural tool for addressing climate change in strategic litigation and legislation, while also raising questions about their scope and effectiveness.

While EIA originally focused on local environmental impacts, many countries have extended its scope to consider greenhouse gas emissions, thereby contributing to climate change mitigation one project at a time (S. Mayer).

However, experience shows the fragmented nature of the solutions adopted by courts and legislatures across different jurisdictions, as well as the lack of a common approach and effective implementation.

Three main sets of difficulties emerge from the various attempts to integrate EIAs with climate change considerations.

First, the specific characteristics of climate change distinguish it from other environmental impacts typically considered in EIAs. Its global and diffuse nature makes it difficult – although by no means impossible – to adequately assess the impacts of an individual project on the climate system. It is also difficult to identify a specific community directly affected by the climate impacts of a given project in a way that would, under a traditional approach, justify its participation in assessment and decision-making procedures.

Second, there is the question of the effectiveness of impact assessments in relation to decision-making: EIA obligations do not impose substantive duties mandating particular results but simply prescribe the necessary process for preventing uninformed – rather than unwise – administrative action (as seen in the US case *Robertson v Methow Valley Citizens Council*).

Third, there is the need to properly account for the fundamental relationship between the assessment of an individual project and the State's obligations concerning mitigation and adaptation under international and domestic sources of climate and human rights law.

While the first set of difficulties is primarily rooted in a limited and inaccurate understanding of climate change and can therefore be overcome through the proper use of scientific knowledge and analytical techniques, by taking into account also indirect and extraterritorial emissions and by properly challenging the market substitution argument, the other difficulties identified above require a rethinking of environmental assessment procedures in order to tap the full potential of EIA as a tool for climate change mitigation.

The inclusion (or, rather, the failure to include) climate change in environmental assessment procedures has already been litigated in several jurisdictions around the world and has emerged as a distinct avenue of climate litigation (e.g., UK, South Africa, Australia, India; see here and here for an overview).

In Latin America, the Colombian Constitutional Court's landmark judgment C-260/2024 provides a significant precedent. In Europe, where the EU EIA Directive requires climate-related variables to be included in EIAs, questions have nevertheless been raised regarding whether downstream emissions associated with oil extraction must also be considered (*Finch v Surrey County Council*).

This approach to climate litigation has the advantage of translating States' substantive climate obligations into procedural requirements. The failure to adequately consider climate risks and impacts in an EIA constitutes a procedural defect affecting both the assessment process and the final decision concerning the project or activity whose climate impacts have not been properly evaluated.

For example, in Colombia, the Constitutional Court's judgment C-260/2024 introduced a new ground for annulment in environmental administrative litigation: environmental authorizations granted without an adequate assessment of climate impacts may be declared invalid by administrative courts.

In the Colombian system, this has a further consequence: where a project affects an Indigenous or Afro-descendant community, it is subject to the community's right to prior consultation (*consulta previa*). This consultation, in turn, is subject to being declared invalid where it is not based on a proper assessment of the project's environmental and climate impacts.

However, this strategy remains limited: even where environmental and climate impacts are assessed, projects may still proceed despite their adverse effects on the environment or climate.

For climate-inclusive EIAs to contribute to the effective protection of climate stability, the assessment of each individual case must be conducted in close connection with substantive climate obligations and mitigation/adaptation targets. This requires consideration of cumulative climate impacts, overall emissions, the remaining carbon budget, and emission reduction pathways. Furthermore, the approval of the project must be conditional on compliance with climate obligations and targets, in accordance with the so-called *pro natura* principle, according to which, where different options are available, decision-makers should favour the one most protective of nature and the environment. This principle is gaining increasing recognition, particularly within the Latin American legal context (among other examples, the principle has been developed by the Costa Rican Constitutional Chamber since the 1990s through its case law and is now expressly incorporated into the reform proposal to the Mexican LGEEPA among the guiding principles of environmental policy).

In her submission in the Costa Rican climate case, the Special Rapporteur on the human right to a clean, healthy and sustainable environment clarified that *"[s]ituations must quantify the expected emissions (…) and assess their consistency with national and international climate obligations. In all cases, (EIAs) must determine whether the proposed activity contributes to or undermines the global objective of limiting temperature rise to 1.5°C, thereby contributing—or not—to the State's compliance with its obligations."*

This dimension has so far received limited attention in domestic legislation and case law on EIAs but has become somewhat more visible in international jurisprudence.

The International Court of Justice (ICJ) and the International Tribunal for the Law of the Sea (ITLOS), in their respective advisory opinions on climate change, have emphasised the importance of EIAs within the framework of States' due diligence obligations and the duty to prevent environmental harm, including consideration of cumulative and downstream effects (ITLOS, para. 365; ICJ, para. 298).

The Inter-American Court of Human Rights (IACtHR) has gone further in Advisory Opinion AO-32/25, providing a precise definition of the duty to assess climate impacts and expressly establishing a link between impact assessment, authorisation of activities, and compliance with climate obligations.

In particular, the IACtHR clarified that each State must identify, *in keeping with its mitigation strategy*, the activities subject to environmental and climate impact assessments; that the regulatory framework governing EIAs must specify how the assessment process and its results inform the authorisation of proposed activities (*relationship to decision-making*); and that States must conduct a meticulous assessment of activities that may cause *significant harm to the climate system* before granting approval, *taking into account the best available science, previously defined mitigation strategies and targets, and the irreversible nature of climate impacts*. All of this to adopt the best prevention measures in relation to potential harm to the global climate system (AO-32/25, paras. 358-363).

Under AO-32/25, climate impact assessment is not simply an additional procedural requirement within the EIA process for individual projects but a mechanism through which States implement their broader obligations to protect the climate system.

The European Court of Human Rights (ECtHR) has also addressed this issue. In *KlimaSeniorinnen*, it required States, under Article 8 of the European Convention on Human Rights, to establish a regulatory framework including the determination of GHG emissions reduction targets and pathways and the remaining carbon budget (para. 550) and emphasised the importance of procedural safeguards in the decision-making process (paras. 539, 553-554). Although the Court did not explicitly mention EIAs, its reasoning suggests that EIA-type mechanisms should form part of such a regulatory framework.

In *Greenpeace Nordic v. Norway*, a case grounded in procedural reasoning, the applicants argued that the impact assessment had failed to consider the remaining carbon budget, predetermined temperature thresholds, and emissions reduction pathways. The ECtHR clarified that procedural safeguards in climate-related decision-making include an adequate, timely, and comprehensive EIA, conducted in good faith and based on the best available science (para. 318). And it went further, adding that *«[m]oreover … there must be an assessment of whether the activity is compatible with [public authorities'] obligations under national and international law to take effective measures against the adverse effects of climate change»* (para. 319).

The Court's approach in *Greenpeace Nordic* refines and sharpens the procedural framework set out in *KlimaSeniorinnen* not only does it expressly require an EIA to support climate-related decisions, but it also specifies that the assessment must engage with the climate obligations incumbent on public authorities, thereby relating an individual licensing decision to the State's overall mitigation trajectory. Read together, the two judgments show procedural reasoning operating on two levels at once: at the systemic level, by requiring a regulatory framework fit for climate purposes (*KlimaSeniorinnen*); and at the level of the individual authorisation, by requiring an EIA that actually engages with climate-specific obligations (*Greenpeace Nordic*). This two-tiered structure gives the procedural avenue its practical force.

Thus, although perhaps less explicit on this point than its Inter-American counterpart, the ECtHR also recognises the connection between individual impact assessments and States' obligations to protect the stability of the climate system. Climate-inclusive impact assessment therefore represents a point of convergence between the two regional human rights courts, which have otherwise adopted radically different approaches to climate change (see here or here).

While domestic case law has generally confined climate considerations in EIAs to the procedural dimension, AO-32/25 and recent ECtHR decisions suggest a broader approach: impact assessments may become a means of reviewing whether environmental administrative action is consistent with the State's climate obligations.

Ultimately, this is what a procedural approach to climate litigation through EIAs should achieve. By linking individual decisions to substantive parameters – such as the best available science on cumulative emissions, remaining carbon budgets, and emission reduction pathways – EIA procedures can transform general climate obligations into concrete constraints on administrative decision-making.

The point, therefore, is not merely to ensure that climate change is mentioned or considered in an environmental assessment, but to move beyond limited and ineffective initiatives by requiring decision-makers to demonstrate how the authorization of an individual project aligns with the State's broader climate objectives. In this sense, EIAs can become a genuine mechanism of climate accountability.

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