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Legal and methodological paths to hold banks accountable for climate harm: Key findings from the report 'Who Pays for Climate Breakdown?'

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Introduction

Since the Paris Agreement entered into force in 2016, the world's 65 largest banks have committed US$7.9 trillion to companies conducting business in fossil fuels (Banking on Climate Chaos, 2025). Through the finance they provide, banks enable substantial volumes of greenhouse gas emissions that drive climate change.

Climate litigation against companies that directly emit greenhouse gases has grown rapidly over the past decade (Setzer & Higham, 2025), with courts in several jurisdictions recognising that corporations bear legal obligations for their contributions to climate change. A newer and less tested question is whether banks can be held legally responsible for the emissions of others that their financing enables.

This policy brief highlights the key findings of the report Who Pays for Climate Breakdown? Banks, Financed Emissions and the Road to Climate Accountability ('the clinic report') prepared by the LSE Sustainability Law and Policy Clinic (SLPC) in response to a set of questions posed by ClientEarth. After surveying the principles that can be drawn from global climate litigation against corporations, the report examines how litigants have sought to attribute special responsibility for climate-related harms to banks and other financial institutions, and what methodologies exist to quantify banks' financed emissions.

This policy brief distils these findings. It surveys the legal obstacles to attributing climate harms to banks as a result of the emissions they finance. For each of these obstacles, it explains the legal and methodological approaches that can be utilised by litigants to surmount them, with examples of how these approaches have been deployed.

The Legal Basis for Holding Corporations and Banks Accountable for Climate Damage

Courts in several jurisdictions have accepted that corporations can in principle be held legally responsible for their contribution to emissions that cause climate change (Setzer and Higham, 2025). The most significant legal routes fall into three categories. The first is tort law under which a court can hold a corporation liable for damages caused, or require it to carry out or stop particular conduct (de Jong, 2026). The second is through legal duties regulating corporate conduct, in particular mandatory due diligence regulation that imposes obligations on large corporations to identify and prevent serious environmental and human rights harms across their operations (Rajavuori, Savaresi and van Asselt, 2023). The third is indirectly through claims based on constitutional and administrative law against governments, under which courts in several countries have found that governments bear enforceable obligations derived from constitutional environmental provisions or statutory climate commitments. Such claims could lead to court decisions setting out government obligations to regulate corporations, as seen in the International Court of Justice's Advisory Opinion on obligations of states in respect of climate change. Within each of these three routes, international human rights law standards are in some cases utilised by courts to guide their interpretation of the domestic laws applying to corporations. Human rights standards set out the obligations of governments to prevent corporations from causing harm to human rights as well as the responsibility of corporations to refrain from causing or contributing to human rights abuses (Macchi and Bernaz, 2021).

The availability of each route depends on the jurisdiction. Each of these routes sets different requirements for the level of evidence to establish responsibility and produce different types of remedy. The clinic report notes that litigation against corporations has fallen into two broad categories. 'Backward-looking' claims seek a remedy, most commonly compensation, for harm faced by particular individuals or groups as a result of emissions caused or facilitated by a particular corporation. 'Forward-looking claims' seek injunctions, i.e. court orders requiring corporations to change behaviour. The latter generally face a lower evidentiary bar than 'backward-looking claims' (Steel and Geistfeld, 2025).

In cases that seek compensation, a central challenge is causation: how to show that a specific defendant's conduct contributed to harm resulting from the accumulated emissions of many different governments and corporations over more than a century. Underlying this legal question is the challenge of attribution, the scientific and methodological exercise of quantifying what share of climate harm can be traced to a particular corporation's emissions (Stuart-Smith and others, 2021). The clinic report notes that in compensation claims, attribution must connect a defendant's emissions to specific past harm suffered by the claimant. In claims seeking to require a defendant to change its behaviour, it must establish that the defendant's contribution to the overall problem is sufficient to justify an injunction.

Some courts are progressively moving away from the traditional test for causation, which asks whether the harm would have occurred but for that specific defendant's contribution (the but-for test), in favour of a 'material contribution' standard, which asks whether the defendant made a meaningful contribution to the harm in question (Benjamin and Seck, 2025). This shift is significant. Rather than requiring a claimant to prove that a single corporation caused climate change, it requires showing only that the corporation made a material contribution to global anthropogenic warming and consequently to the relevant harm.

Litigation against banks presents an additional layer of difficulty. Whereas a fossil fuel corporation directly emits and produces products that emit greenhouse gases and locks in future emissions through the development of new fossil fuel infrastructure, a bank enables emissions by providing capital to corporations that do so. Courts must therefore be persuaded that this indirect causal step from financing to emissions to harm is sufficient to ground legal responsibility. The clinic report identifies and names two theories to make this argument. The Enabler Theory provides that a bank should be held directly responsible for the emissions its capital makes possible since finance is a necessary condition for the continuation of fossil fuel activities. The Facilitation Theory stipulates that a bank should bear proportional joint responsibility for the emissions it facilitates, even where its lending could in theory be replaced by another lender.

In order to ground legal accountability in the financed emissions of a particular bank, litigants may need to calculate the particular share of global emissions which can be attributed to the specific bank in question. Such a tool, which has been used by claimants in climate litigation, such as Lliuya v RWE (Germany), is available to calculate the responsibility of each of the major fossil and cement producers: the Carbon Majors Database. However, no similar peer-reviewed attribution study exists for banks' financing of emissions.

Cases against banks are at an early stage. The most significant to date are the summons brought by Notre Affaire à Tous and others v BNP Paribas in France under the Duty of Vigilance Law, and the case brought by Milieudefensie v ING in the Netherlands. Neither has as yet led to a final judgment. Aside from legal cases, international non-judicial mechanisms such as the Organisation for Economic Cooperation and Development (OECD) National Contact Points (NCPs) and UN Independent Experts (appointed by the UN Human Rights Council or General Assembly) have considered complaints against banks for financed emissions. The OECD NCPs apply the OECD Guidelines for Multinational Enterprises ('OECD Guidelines'), non-binding standards that set out expected conduct for responsible business behaviour, including on climate and on human rights. The UN Independent Experts apply human rights standards, including international human rights law and non-legally binding standards such as the UN Guiding Principles on Business and Human Rights (UNGPs).

It should be noted that the clinic report focuses on private commercial banks and does not address the issue of accountability of multilateral development banks, which would require a different legal analysis - on which important work has already been done (Lorenzo and Lin, 2025). Furthermore, it does not address additional legal issues that may arise in the case of state-owned commercial banks - where, among other things, public and international law duties are likely to be even more relevant.

Challenges and Potential Solutions

The report identifies the principal legal and methodological challenges facing litigants who seek to hold banks accountable for financed emissions, and maps the available tools. The box immediately below lists quantitative methodologies that can assist. The table below the box shows the specific strategies and tools that could be used to partially address each challenge. The overall limits of these methodologies are discussed in the next section.

Box: Quantitative methodologies for assessing financed emissions, climate alignment and climate impact

Partnership for Carbon Accounting Financials (PCAF): An international accounting standard that attributes a share of a borrower's greenhouse gas emissions to each financier in proportion to that financier's share of the borrower's enterprise value including cash (EVIC).
Paris Agreement Capital Transition Assessment (PACTA): A tool that measures how well a bank's lending and investment portfolio aligns with different scenarios under which global emissions could be reduced.
Scientific benchmarking: The use of authoritative international scientific standards, principally Intergovernmental Panel on Climate Change (IPCC) carbon budgets and the IEA (International Energy Agency) Net Zero by 2050 scenario, to evaluate whether a bank's financing activities are compatible with global climate goals. Scientific benchmarking does not calculate a bank's financed emissions directly; rather it provides the external reference standard against which those calculated emissions are assessed. The IEA Net Zero by 2050 scenario states that no new fossil fuel supply projects are required beyond those already approved as of 2021, providing a clear threshold against which a bank's continued financing of fossil fuel expansion can be measured.
Social Cost of Carbon (SCC): An economic methodology that quantifies the monetary cost of damage caused by each tonne of CO_2 emitted. It is used in some reports to calculate the financial harm attributable to a bank's financed emissions.

Table: Challenges to holding banks legally accountable for financed emissions, solutions and examples

Challenge	Potential Solutions (where the legal framework permits)	Examples of use (where available)
Cumulative causation: harm results from collective global emissions across time, making it difficult to establish that any single actor caused the damage.	Present an argument based on a bank's material contribution to harm, claiming proportional liability for partial contributions. This does not fully eliminate the challenge. Many courts are moving away from the strict 'but-for' test but approaches vary as to how much contribution is sufficient.	*Lliuya v RWE* (Germany): Court accepted RWE's proportional share of global emissions (~0.38%) as a material contribution. *Smith v Fonterra* (New Zealand): Supreme Court held that cumulative causation must be assessed at trial.

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Courts may be reluctant to determine the specific emissions reduction pathways for particular corporations (e.g. *Milieudefensie v Shell*).	Use IPCC reports, which courts across jurisdictions accept as authoritative scientific baselines, to establish the factual foundation for a bank's responsibility.	KlimaSeniorinnen v Switzerland (European Court of Human Rights): Court accepted a pathway analysis for the government's responsibility (although this does not apply directly to corporate responsibility). *Greenpeace v Eni* (Italy): Court refused to reject claim simply because it concerned climate policy.
	Demonstrate a procedural failure to meet due diligence requirements, including failure to adopt and implement science-aligned transition plans.	*Notre Affaire à Tous and others v BNP Paribas* (France): summons alleges the corporation's vigilance plan fails to adequately address climate risks arising from its fossil fuel financing.
	Apply the precautionary principle and flexible evidentiary standards, to overcome scientific uncertainty about specific reduction pathways without requiring claimants to present, or a court to select, a single definitive pathway.	In its 2025 Advisory Opinion on the Climate Emergency and Human Rights, the Inter-American Court of Human Rights references the use of the precautionary principle as well as taking into account the concentration of technical information in stakeholders with greater institutional or economic capacities.
	Incorporate failures to meet international human rights standards.	*ClientEarth v Saudi Aramco*: Complaint and public communication based on it by UN Special Procedures relies on human rights arguments based on UN Guiding Principles on Business and Human Rights.
	Refer to International Energy Agency Net Zero by 2050 scenario showing any new fossil fuel expansion is incompatible with limiting global warming to 1.5 °C , providing a clear red-line standard for courts to apply.	Second *Milieudefensie v Shell case* (Netherlands): summons calls on Shell, among other things, to refrain from developing or bringing into production any new oil or gas fields, relying mainly on the IEA Net Zero scenario. *Influence Map* report applies the IEA Net Zero scenario.
Indirect causation specific to banks: unlike direct emitters, banks enable emissions rather than produce them, requiring an additional causal step from financing to emissions to harm.	Apply one of two arguments. The **Enabler Theory** holds that finance is a necessary condition for fossil fuel continuation, making banks directly responsible. The **Facilitation Theory** argues for proportional joint responsibility based on contribution. Neither theory has been fully tested in adversarial proceedings.	Milieudefensie v ING (Netherlands): Scope 3 financed emissions data used to argue material contribution via 'partial responsibility' doctrine. Notre Affaire à Tous and others v BNP Paribas (France): financed emissions data used to evaluate whether BNP Paribas fulfilled its duty of vigilance, with the Paris Agreement and IPCC reports cited to assess foreseeability and the adequacy of mitigation measures.

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Indirect causation specific to banks: unlike direct emitters, banks enable emissions rather than produce them, requiring an additional causal step from financing to emissions to harm.	Apply banks' knowledge of and foreseeability of climate harms as the trigger for responsibility. Demonstrate concentration of fossil fuel financing in a small number of banks and the scale of financing they provide	Milieudefensie v ING (Netherlands): claimants used ING's own 2006 internal report to establish that ING's subsequent decisions to increase fossil fuel financing were made knowingly. *Stand.earth* report*:* showing that 10 institutions were responsible for 75% of Amazon oil and gas extraction.
Banks may argue that their financing was provided to overall corporate entities, rather than to specific fossil fuel activities, and they are not responsible for the corporation's use of these funds. They may strengthen their argument by referring to policy to exclude financing of fossil fuel projects.	Demonstrate that the vast majority of fossil fuel financing is unrestricted lending to corporations, rather than specific fossil fuel projects.This can make the point that unrestricted lending circumvents project-level exclusions.	Banking on Climate Chaos (2025) report: found that 94.7% of fossil fuel financing in 2024 was directed to corporations rather than specific projects, demonstrating that project-level exclusion policies leave most bank financing unaffected.
Substitution defence: banks argue that if they divest from a fossil fuel project, another lender will replace them, meaning no real-world emissions reduction results. More complicated arguments may be deployed against accountability in respect of the provision of financial services other than direct lending (e.g. underwriting or arranging transactions).	Use the **Facilitation Theory** to argue for proportional joint responsibility regardless of substitutability. Utilise the PCAF standard, which applies a weighted attribution factor for certain financial services (such as underwriting) rather than full attribution, acknowledging fungibility while still assigning measurable responsibility.	*Milieudefensie v ING* (Netherlands): claimants invoked the 'partial responsibility' doctrine to argue substitution does not negate a bank's individual tort contribution. PCAF standard: 33% weighting when a bank underwrites shares to reflect partial capital contribution.

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Challenge	**Potential solutions (where the legal framework permits)**	**Examples of use (where available)**
Reliance on self-reported data: financed emissions methodologies depend significantly on banks' own disclosures, which may be incomplete, inconsistent, or subject to greenwashing.	Utilise one of several methodologies that supplement self-reported data with independent sources (e.g. Bloomberg, Global Energy Monitor). The PCAF standard uses enterprise value including cash (EVIC) derived from publicly available market data. However, no methodology fully eliminates reliance on bank self-reporting. In some cases, underreporting of emissions may constitute a regulatory breach in its own right and could be challenged on that basis.	Banking on Climate Chaos (2025) report: uses Bloomberg data as independent cross-checks. *InfluenceMap* report: combines bank-specific disclosures with the PACTA to assess portfolio alignment independently.
Jurisdictional limits: legal frameworks, evidentiary standards, and available causes of action differ significantly across jurisdictions, limiting the transferability of litigation strategies	Utilise human rights frameworks drawing on the UNGPs and the OECD Guidelines in litigation in order to strengthen transnational links in climate litigation. Utilise non-judicial mechanisms (OECD National Contact Points, UN human rights Independent Experts) to supplement or precede litigation, or as alternatives when litigation is not feasible. These offer non-binding but reputationally significant routes.	ClientEarth v Saudi Aramco: complaint filed with UN Special Procedures using UNGPs to establish a corporation's responsibility. *OECD NCP complaint* (Netherlands): non-binding settlement between civil society groups and ING whereby ING committed to using the PACTA/PCAF approach. (However, Milieudefensie considered ING's emissions reductions insufficient and thus sought remedy in court).

The list above is not exhaustive. The report considers additional challenges and how they may be resolved, including data gaps, uncertainty as to the extent to which a court can rule on the conduct of a corporation for decisions made outside that territory, and requirements for victims to show that they have been particularly affected by climate change (see Section 1.2 of the Report).

As well as analysing filed cases, the clinic report assesses nine reports that assess particular banks' responsibility for financing emissions. The clinic report provides an evaluation of each of these reports, showing how they have framed banks' responsibility, the accountability methodologies they use, as well as their strengths and weaknesses (see Figures 2-5 in Sections 2.1-2.5).

The Limits of Available Methodologies

The methodologies described in the box above, and the way they have been applied in the reports surveyed in the clinic report, represent the most developed tools currently available for attributing financed emissions to banks and making the legal case for their accountability. However, the report notes that significant limitations remain, illustrating the methodological and judicial ground still to be covered in this emerging area of climate litigation.

Most of these methodologies are legally untested. With the partial exception of the cases against BNP Paribas and ING, financed emissions methodologies have only been deployed outside courts, such as in regulatory advocacy, OECD National Contact Point complaints and communications to UN Independent human rights experts. Whether they will meet judicial standards of proof in a contested trial remains to be seen.

The Facilitation Theory of responsibility relies on assumptions courts have not yet endorsed. This theory argues that a bank bears proportional responsibility even where its capital could have been substituted by another lender. The theory's reception by courts is uncertain.

Dependency on self-reported bank data is a structural vulnerability. Many methodologies rely partly on banks' own disclosures about their financing activities. These disclosures may be incomplete, inconsistently presented, or subject to greenwashing. This challenge applies equally to litigation against other corporations.

Complex accounting formulas may be difficult to present convincingly in court. For example, methodologies such as that produced by the Partnership for Carbon Accounting Financials (PCAF) use the Enterprise Value Including Cash (EVIC) as an attribution denominator. This metric fluctuates with market conditions, meaning that a bank's reported financed emissions can fall not because it is financing less but because its clients' share prices have risen. Courts may find it challenging to assess competing expert evidence on such technical points.

Many frameworks are jurisdiction-specific. Methodologies built around France's Duty of Vigilance Law, Dutch tort doctrine and other laws are not straightforwardly transferable to other legal systems. Human rights frameworks drawing on the UNGPs offer more cross-jurisdictional applicability, but their practical enforceability through domestic courts varies considerably.

The report concludes that further methodological development is therefore needed to support litigation for financed emissions. In addition, the clinic report suggests that some of these limitations will only be surmounted once courts provide further guidance through their judgements on the legal standards and evidence required to attribute responsibility for climate harms to banks' financing.

The LSE's Sustainability Regulation Observatory (SRO) is dedicated to understanding how sustainability regulation works, where it falls short, and how it can be improved. It is part of the LSE's Global School of Sustainability's theme on Sustainable Governance.

Conclusion

Strategic climate litigation against financial institutions is a relatively new and growing trend. Climate litigators and advocates are advancing arguments that seek to move away from the limits of traditional legal tests for responsibility. 'Forward-looking' claims, seeking injunctions and restorative relief will generally face lower evidentiary hurdles in terms of forensically attributing emissions to banks than 'backward-looking' claims for damages. This may prove an influential factor in the nature and timing of litigation which emerges against banks.
The available methodologies for attributing financed emissions to specific banks or assessing their alignment with climate goals, such as PCAF, PACTA and scientific benchmarking as well as the Enabler and Facilitation theories, could provide analytical tools which support this litigation. The extent to which these methodologies (or variants yet to be developed) could underpin successful litigation against banks remains to be determined, particularly as these methodologies remain, for now, largely untested in judicial proceedings.

The clinic report makes a significant contribution to closing that gap by mapping the legal terrain, assessing the available methodologies to attribute responsibility for emissions to banks and beginning to identify the principles that a legally compelling approach to attribution for the financial sector would need to satisfy. This report is the first output of an ongoing partnership between the SLPC and ClientEarth's Accountable Finance team. The next phase of the project will continue in the 2026-2027 academic year.

The ambition of the clinic project overall is that the legal conclusions from this ongoing work will support the development of future peer-reviewed work on the responsibility and legal accountability of systemically important global banks for the emissions and climate impacts they finance. The clinic report is intended to inform and enable those who take that work forward.

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