

Climate Litigation and Norm Dynamics: What's the Role of Domestic Judges?

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Abstract

Domestic climate lawsuits are proliferating, and their framing and resolution increasingly suggest connections to broader global climate governance. This article examines the agency of domestic judges in shaping these connections. By reviewing 1,573 domestic climate decisions for references to five international environmental law (IEL) concepts (norms, principles, and emergent concepts), we demonstrate that domestic judges across regions and legal systems are connecting individual disputes to global climate discourse. Through qualitative review of decisions ($n = 143$) that exhibit evidence of reference to IEL concepts, we next characterize domestic judges' engagement. We show that, collectively, judges' incorporation of IEL concepts (through norm pairing and norm usage) can support their domestic adoption in ways that simultaneously advance global climate governance and reinforce the global effect of those concepts. Ultimately, we urge broader recognition of domestic judges as key agents of norm development in global climate governance and additional global environmental politics analysis of the collective agency exercised by domestic judges.

Keywords: Climate litigation, domestic judges, norms, norm circulation, international environmental law, climate governance, climate law, global environmental politics, agency

As the "now or never" urgency of a serious response to the climate crisis grows increasingly apparent (IPCC 2023), frustration with the pace and ambition of national and international climate action is supporting renewed efforts to identify alternate global climate governance venues and actors (Allan 2019). Potential governance sites highlighted by existing research (e.g., cities, subnational governments, corporations, and nongovernmental organizations; see Hale 2016) may supplement or supplant some formal, state-based climate governance. However, many such alternate venues and actors are limited in their agency, discretion, and perceived legitimacy. In contrast, domestic courts and judges frequently represent powerful agents of accountability that can compel action and enforce remedial measures.

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Climate change poses unique and well-documented challenges to domestic courts and judges, including its systemic character, complexity, uncertainty, and need for ongoing response (Kotzé et al. 2024). Domestic judges may seemingly represent an actor class that is ill-equipped to address urgent, global climate challenges. In many legal settings, judges only formally resolve the cases and claims that are brought to their court, and courts primarily remedy harms that have already occurred. However, several factors suggest that domestic judges merit broader consideration for their contributions to global climate governance. First, climate litigation is proliferating. An international database documents nearly 2,300 active or decided cases (Sabin Center 2023). This litigation is increasingly well distributed geographically, including throughout the Global South (Lin and Peel 2024). Accordingly, the IPCC now formally recognizes domestic climate lawsuits as a factor shaping climate governance outcome and ambition (Setzer and Higham 2022, 1). Second, domestic climate lawsuits increasingly engage with questions relevant to multilevel global climate governance. At least seventy-three current cases directly “challeng[e] governments’ overall responses to climate change” (Setzer and Higham 2022, 1). Some published judgments, including *Urgenda v. The Netherlands* and *Neubauer v. Germany*, highlight courts’ willingness to affirm and enforce national climate commitments (Barritt 2020). These trends suggest that domestic judges’ local actions may influence implementation of the Paris Agreement and other climate governance commitments. Simultaneously, examples suggest judges’ increasing willingness to consider cases that link climate change causes of action to human rights, biodiversity, and other considerations (Peel and Osofsky 2020; Setzer and Higham 2022, 17). In short, climate change litigation is diversifying in form and framing (Setzer and Higham 2024, 7–9). Finally, researchers highlight an apparent increase in domestic judges’ sensitivity to how individual, local judgments may inflect transnational climate law and governance (Barritt 2020). Researchers highlight judges’ increasing willingness to reference other jurisdictions’ climate law decisions and arguments and to explore treaty obligations within domestic judgments (Wegener 2020) in ways that may echo earlier findings of domestic judicial engagement with global human rights norms (e.g., Slaughter 2005).

Together, these developments imply judges’ potentially significant contributions to global climate governance and norm dynamics. This article examines *whether* domestic judges should be acknowledged as key actors in global climate governance and, if so, *how* they might be understood to exercise agency in this context. As an empirical foundation, we evaluate whether and how domestic judges, collectively, reference international environmental law (IEL) in climate change lawsuits. We examine whether judges’ framing of decisions in individual, localized climate cases may contribute to broader norm dynamics in global climate governance and, if so, whether domestic judges merit additional attention as a global environmental politics actor class.

We first highlight complementary research examining domestic agency in global climate governance; domestic judicial contributions to international relations (IR), IEL, and transnational environmental jurisprudence; and judicial engagement with climate change. Next, we outline our analysis, which reviews 1,573 published domestic climate change decisions for indicia of judicial engagement with five specified IEL concepts. Our findings indicate that domestic judges' climate change decisions are broadening and deepening engagement with IEL concepts in ways that mirror the proliferation of climate change litigation. Accordingly, we consider the implications of these findings. We suggest that, collectively, across legal contexts, and irrespective of underlying motivations within disputes, domestic judges are exercising agency when authoring decisions in at least three ways relevant to global environmental politics. First, through "norm pairing," judicial decisions can connect domestic obligations to corresponding IEL concepts, mediating and supporting multilevel norm development in global climate governance. Additionally, judges' explicit and implicit "norm usage" in decisions facilitates domestic contestation, clarification, and affirmation of IEL concepts within global climate governance. Therefore, alongside assessments that affirm domestic courts as key venues in global climate governance (Kotzé et al. 2024), we argue that domestic judges deserve recognition as an important global climate governance actor class and that future global environmental politics scholarship should further explore the mechanisms and dynamics that contour judicial agency.

Domestic Judges, Agency, and Global Climate Governance

The climate crisis has engendered a search for governance actors and venues that can support rapid, meaningful response. First, there is long-standing recognition that state- and subnational-level actors perform critical governance roles (Andonova et al. 2009). These actors can simultaneously exercise formal agency within governments and pursue informal, epistemic engagement and networked exchanges with similarly situated actors elsewhere (Skovgaard 2012, examining finance ministries). In regimes where policymaking intersects with scientific complexity and uncertainty, such exchanges can be particularly impactful, underscoring the importance of understanding how norms are articulated and contested (Lidskog and Sundqvist 2015).

Second, norm dynamics scholars have long examined processes of transnational norm development. Conventionally, the first generation of IR norm scholarship highlighted global norm diffusion facilitated by global norm entrepreneurs, particularly "moral" states and international NGOs, as "good international citizens" in global governance (e.g., Checkel 2001; Finnemore and Sikkink 1998; Risse-Kappen 1994; Risse and Sikkink 1999). Professionals, including lawyers, were identified as playing a significant role in global norm internalization, particularly through mechanisms "socializing people to value certain things" (Finnemore and Sikkink 1998, 905).

The second wave of norm scholarship redirected norm research's attention to norm contestation and transnational, complex political dynamics (e.g., Acharya 2014; Wiener 2018). Importantly, these scholars emphasize local actors' agency in adopting, validating, and (re)shaping global norms in local contexts—in other words, “norm localization.” Norm localization is a political process akin to but extending beyond Finnemore and Sikkink's (1998) concept of norm internalization. It involves social conflicts among different actors supporting various norms, as global norms must undergo validation to obtain local legitimacy formally, socially, and culturally (Wiener 2018). From this perspective, local actors serve as active norm shapers, not merely passive global norm takers, and sometimes they interact closely with state actors (e.g., Belloni 2012). Thus local actors constantly modify and (re)articulate global norms (Jütersonke et al. 2021; Niemann and Schillinger 2016), both in Western and non-Western regions (Acharya 2014; Bloomfield 2016). Collectively, this scholarship provides theoretical grounding to more directly explore the agency of “local” judges in a transnational context that affects global norm dynamics.

Global environmental politics' norm-related debates resonate within the broader development of IR norm research. Many previous global environmental politics literatures highlight the role of nonstate actors as norm entrepreneurs in global environmental governance (e.g., Betsill and Corell 2007). However, fewer studies emphasize the role of local actors (particularly from the non-West) in localizing global environmental norms or contesting those norms in global environmental governance, drawing on the second wave of norm research. Exceptionally, Stalley (2018) explains the emergence of the common but differentiated principle from the non-Western world, and Alger and Dauvergne (2020) examine “translocal politics” in environmental norm diffusion. These emergent assessments emphasize opportunities for global environmental politics scholars to examine different local actor classes and their contributions to transnational norm dynamics.

Third, IR and governance research has long acknowledged judges' important contributions to global governance. This work highlights horizontal, “transjudicial” exchanges between domestic judges across legal systems (Slaughter 2005) and the corresponding influence of doctrines and decisions from other jurisdictions (Alter 2011). Researchers also note domestic judges' vertical engagement with international law and their co-constitutive engagement with international and domestic norms (Alter et al. 2019). These analyses are especially well established in the human rights context, where studies document domestic judges' willingness to apply international law and judges' central roles in structuring a global legal architecture (Slaughter 2005). Global environmental politics scholars have begun complementary examinations in the context of environmental regimes, affirming judges' roles in supporting the emergence (and transnational communication) of constitutional environmental rights and addressing extraterritorial dimensions of corporate environmental accountability (Bertram 2022; Boyd 2018, 133). While researchers underscore that

domestic judges' capacity to engage with international law and legal norms is deeply contextual and jurisdiction specific, these assessments affirm the collective governance effect of domestic judges' actions (e.g., Benvenisti and Downs 2009) and suggest their relevance to agency mapping efforts in global climate governance (e.g., Jänicke 2017).

Likewise, legal scholars have actively explored domestic judges' and courts' contributions to IEL, climate change litigation, and legal norm development. Because law attaches specific meanings and implications to the term *norm*, this research tends to explore the precise legal status and outcomes of individual norms and cases. Nevertheless, researchers increasingly highlight the actors engaged in developing IEL and examine accompanying scalar considerations. Ongoing research exploring individual IEL norms and principles has emphasized domestic courts' important role in advancing and incorporating the concepts (Lawrence 2014; Preston 2021). Likewise, researchers more broadly acknowledge domestic courts' contributions to IEL's development (Bruch 2006). Third, recent scholarship considers the implications of domestic engagement with IEL. For example, researchers argue that, by referencing IEL, domestic judges can bolster local decisions by incorporating international principles and reinforce those principles by increasing their domestic usage (Barritt 2020, 302; Bruch 2006). Accordingly, IEL and global environmental politics scholarship should be seen as deeply complementary.

Recently, attention to judicial engagement with IEL has coincided with proliferating assessments of domestic climate change litigation (e.g., Peel and Osofsky 2020; Setzer and Vanhala 2019). Some explore a question relevant to this article: Why might domestic judges connect individual climate change disputes to ideas originating beyond their own jurisdictions? A first explanation suggests that, because climate change presents novel legal questions, many judges look to jurisdictions that have faced similar questions (Preston 2021, 255). Second, some researchers highlight the broad framing of climate change lawsuits, which increasingly present human rights and other considerations (Barritt 2020, 297). Such lawsuits may invite judges to rule expansively when deciding domestic disputes (Hesselman 2021). Third, judges' increasing willingness to issue strong climate change rulings may reflect a changing sociopolitical landscape. Long-held views of climate change as a political question, best addressed legislatively, may be yielding to perceptions of courts as "firmer ground" venues for climate governance (Burgers 2020). Judges' resultant perception of latitude to engage deeply with climate claims has grown particularly apparent in some regions, including the Global South (Setzer and Vanhala 2019, 4). Finally, judges may increasingly perceive an opportunity, if not an obligation, to address climate change. For instance, Asian and Australian judges have self-identified an important role in "achieving an environmentally sustainable future" (Preston 2006, 40). Elsewhere, judges demonstrate willingness to issue innovative remedies and approaches, appoint commissions to ensure implementation of judicial decisions, and embrace science-based insights

(Pluchon 2018, 143). Altogether, these context-specific assessments of judicial engagement suggest a complementary global environmental politics opportunity to explore whether domestic judges' individual practices are relevant in broader, systemic climate governance contexts.

Finally, domestic climate decisions themselves are increasingly cosmopolitan. Some, including the Dutch *Urgenda v. The Netherlands* decision, have been shown to incorporate IEL norms (Ferreira 2016). However, increasing comparative attention to climate change litigation suggests a need to view individual domestic climate decisions in a more systemic context (Roy and Woerdman 2016). Researchers regularly urge deeper examination at the nexus of law and social science, which could better illuminate the governance effect of climate litigation (Peel and Osofsky 2020, 22, 31–32). We respond by explicitly exploring whether domestic judges deserve broader recognition as key actors in global climate governance. Agency in global governance is often defined as the capacity to effect change, particularly in identifying global governors, yet it remains conceptually ambiguous. Following Hofferberth (2019), we adopt an understanding of agency that includes both individual and collective dimensions—where collective agency is conceived as the capacity and willingness of actors to act and intervene as nexuses of relations and as the cumulative expression of “singular collective actors all the way up” (Hofferberth 2019, 131).

Methods

To identify and characterize judicial engagement with IEL norms/principles in domestic climate lawsuits, we reviewed a sample that included domestic climate change cases¹ filed against a state party² where a judge had issued a published judgment or decision by June 2023 ($n = 994$ US documents, $n = 609$ documents from other jurisdictions). We drew our sample from the Sabin Center for Climate Change Litigation databases; this repository has supported numerous climate litigation assessments (e.g., Burger and Tigre 2023), and it transparently details its scope, review criteria, and limitations.³ We were deeply mindful of our positionality as researchers at Western institutions and our desire to conduct the most globally inclusive analysis possible within the constraints of the Sabin

1. To facilitate congruency across US and global litigation databases, we confined examination to cases, first, defined as “suits against governments” in the Global Climate Change Litigation database or, second, brought in whole or in part against a government actor within the US Climate Change Litigation database.
2. We seek to bound our scope of analysis, rather than to imply any expectation regarding which subsets of domestic climate litigation would be more likely to exhibit indicia of engagement with IEL concepts.
3. These include, among others, “language barriers, levels of media coverage, and public availability of court documents.” To review the Sabin Center’s full discussion of selection, review criteria, and limitations, see <https://climatecasechart.com/about/>, last accessed August 11, 2025.

Center database. Accordingly, we embraced insights from non-English jurisdictions and documents by reviewing court-issued unofficial translations, preparing our own rough translations of non-English documents with Google Translate, and using a suite of common search terms to screen Spanish-language judgments.

In a first round of coding, we examined *whether* domestic judges invoke IEL in published climate change judgments in ways that would suggest their engagement with norms that structure and shape global climate governance. Global environmental politics scholars generally conceptualize norms, in alignment with broader IR understandings, as “collective expectations for the proper behavior of actors” (e.g., Okereke 2008, 26). This conception distinguishes from international law understandings of “norms,” where the term (alongside others, including *principles*) possesses precise contours and implies specific obligations (e.g., Parks and Morgera 2015). Because we sought to broadly explore domestic judges’ engagement with a range of international concepts that may structure multilevel global climate governance, we identified five long-standing IEL concepts that, to date, have achieved diverse levels of climate governance scholarly attention and statuses within IEL, whether as principles, norms, or evolving concepts (Table 1).⁴

Next, we used these five IEL concepts to analyze our case law sample. In first-round review, we examined the full text of each published decision within our sample, using common search terms to seek indicia of reference. In subsequent, open qualitative coding, we examined *how* judges employed these IEL concepts within climate change decisions, descriptively characterizing judges’ exercises of agency in each judgment ($n = 143$) that implied reference to at least one of our five IEL concepts.

Results

In examining *whether* judges exercise their agency of authorship in ways that engage with IEL in domestic climate lawsuits, we found 143 cases that suggested engagement with at least one IEL concept (Table 2). Our case sample indicates broad variation in frequency of reference, with intergenerational and precautionary considerations receiving most attention.

Our findings support two overarching observations: domestic judges’ long-standing, yet increasing, engagement with IEL concepts and the diversity of jurisdictions referencing IEL concepts. First, judges have implicitly or explicitly referenced the selected IEL concepts since 1986, the first year a published decision satisfied our review criteria. However, the volume of references has recently increased markedly, mirroring an overall increase in published

4. We required only domestic judges’ references to the concepts and/or their precepts, not explicit identification of global agreements where these concepts were elaborated.

Table 1
Coded IEL Concepts

<i>Concept</i>	<i>Common Framing/Understanding</i>	<i>Status</i>	<i>Reason(s) for Inclusion</i>
Precautionary principle	"Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation."	General IEL principle	Widespread application; extensive scholarship
Intergenerational equity	Actions must "equitably meet developmental and environmental needs of present and future generations."	Component of sustainable development (general principle of IEL)	Widespread application; extensive scholarship
Polluter pays	National governments should promote internalization of environmental costs and recognize "that the polluter should, in principle, bear the costs of pollution."	General IEL principle	Widespread application; extensive scholarship
No harm	States should not permit their territory or resources to be used in ways that cause damage "to the environment of other states or of areas beyond the limits of national jurisdiction."	Customary environmental law principle	Widespread application; emergent scholarship
Common concern/heritage of humankind	States bear a shared obligation to cooperate in preserving a stable climate system.	IEL concept or emergent principle	Some application; emergent scholarship

To avoid any unintended engagement with ongoing debates regarding the precise legal status of these five elements in IEL, we reference them, collectively, as "IEL concepts." Data are from Rio Declaration, Atapattu (2006), Sands and Peel (2018), Dupuy and Viñuales (2018), and Bodansky and van Asselt (2024).

Table 2
Number of Cases Referencing IEL Concepts

	US Domestic Litigation	Global Domestic Litigation
Intergenerational equity	28 (12.3)	88 (38.6)
Precautionary principle	2 (0.9)	88 (38.6)
Polluter pays	0	13 (5.7)
No harm	1 (0.4)	3 (1.3)
Common concern of humankind	2 (0.9)	3 (1.3)
Total IEL norm references ^a	33 (14.5 of total)	195 (85.5 of total)

Parentheses are percent of total observed references to given IEL concept.

^aTotal cases referencing an IEL concept ($n = 143$) appears lower than the sum of these values because a single case may reference more than one IEL concept.

domestic climate decisions. Therefore the volume of climate change cases referencing IEL concepts has increased, though the percentage of cases doing so has remained relatively stable (Figure 1).

Second, we find that reference (explicit or implicit) to IEL concepts is geographically well distributed across jurisdictions in the Global North and South. We identified apparent references in twenty-two jurisdictions, including Australia ($n = 44$), the United States ($n = 28$), Germany ($n = 12$), Mexico ($n = 9$), and New Zealand ($n = 9$) (Figure 2). This supports broader assessments of domestic climate litigation’s expansion, the increasing salience of Global South climate litigation (Lin and Peel 2024), and the value of examining domestic judicial contributions collectively and across legal cultures.

Second, we examined *how* judges exercise agency by incorporating IEL concepts into domestic climate litigation. As discussed later, we observed at least

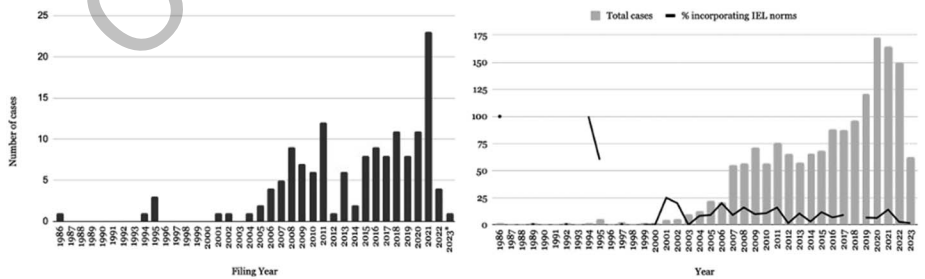


Figure 1
Norm-Referencing/Suggestive Climate Lawsuits

(a) By year and (b) as percentage (solid line) of total volume of climate decisions included in data set (gray bars).

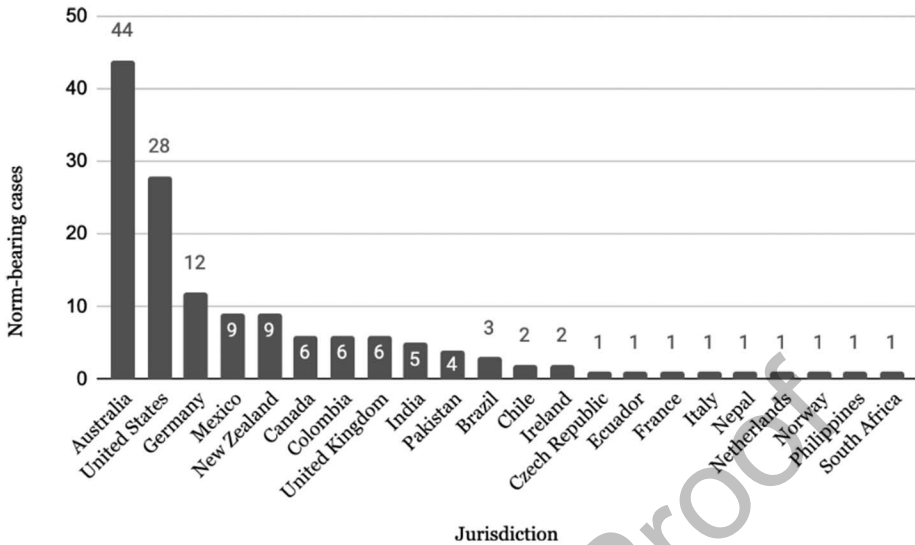


Figure 2
Coded Climate Lawsuits, by Jurisdiction

Table 3
Mechanisms of Domestic Judicial Engagement with IEL Concepts

Mechanism	Meaning	Example
Direct reference	Judicial opinion directly references an IEL concept	"The <i>precautionary principle</i> should be applied in the resolution of water-related disputes" (<i>D.G. Khan Cement Company v. Government of Punjab [India]</i>), at para. 32
Implicit reference	Judicial opinion indirectly references an IEL concept	"If there is scientific uncertainty regarding causal relationships of environmental relevance, a special duty of care ... entails an obligation" (<i>Neubauer et al. v. Germany</i>)
Paired reference	Judicial opinion directly or indirectly references an IEL concept.	"Thus, Law 99 of 1993 included the concept of 'sustainable development' and also established a series of general [international] environmental principles. These principles include ... the precautionary principle, among others" (Atrato River Decision T-622-616 of November 10, 2016 [Colombia])

Examples illustrate references to precaution.

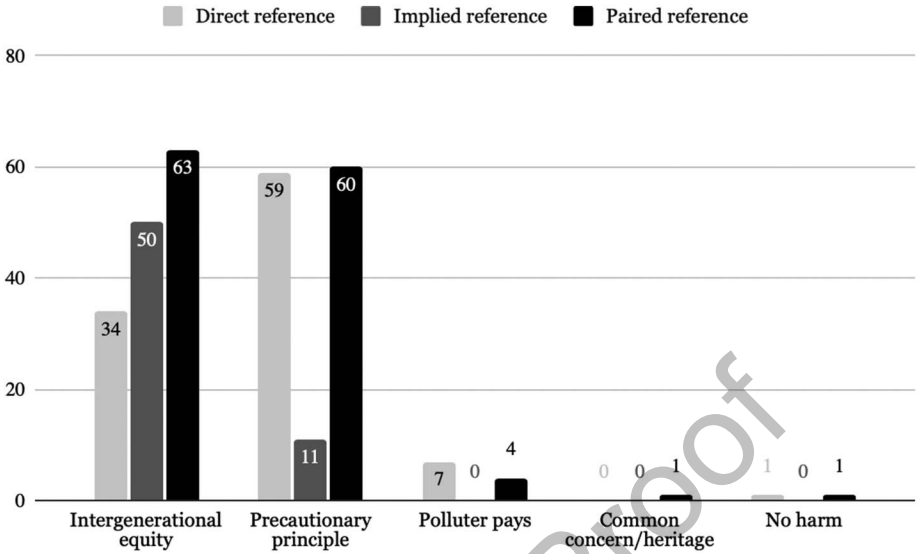


Figure 3
Cases Referencing IEL Concepts, by Mechanism

three mechanisms of reference across individual legal contexts and disputes: *explicit* reference to international formulations of IEL concepts; *implicit* reference to the content of IEL concepts, without specifically naming those concepts; and *paired* reference to IEL concepts that links international and domestic legal obligations (Table 3). Altogether, our findings indicate that judges are clearly referencing IEL concepts across varying legal cultures and contexts, even if analysts might debate the precise numbers of cases reflecting each mechanism, and although cases’ depth of reference varies considerably (Figure 3).

Discussion

Domestic Judges’ Engagement with IEL

Our findings conclusively demonstrate that domestic judges are incorporating IEL concepts into published climate change decisions. While long standing, this practice is broadening to new legal contexts and deepening within established settings. Of our five concepts, we most frequently observed apparent references to intergenerational ($n = 147$) and precautionary ($n = 130$) considerations, though the manner of reference varies widely by decision and legal context. Some decisions make passing reference to IEL concepts already adopted within a country, while others offer extensive analysis and treatment. Because this article examines the collective contributions of domestic judges to global climate governance, we find all references significant, given the

cumulative, transnational impact of individual decisions. Accordingly, we did not examine, at the decisional level, why a judge referenced an IEL concept in a particular way.

Because our findings show that domestic judges, collectively, exert agency (Hofferberth 2019) in ways that shape the use and transnational development of IEL, we next consider *how* judges do so. Through open coding of the 143 domestic judgments with apparent reference to IEL concepts, we identify at least three ways that judges exercise global environmental politics–relevant agency when invoking IEL in domestic decisions (Table 3). First, judges make “direct reference” to IEL concepts in domestic climate change decisions, linking IEL to localized disputes. Second, through “implicit reference,” judges incorporate the normative ideas of IEL into domestic climate change rulings. Third, judges make “paired reference” to IEL concepts and domestic provisions (e.g., statutes, existing domestic case law), thus amplifying complementary obligations across scales.

These findings suggest that domestic judges, collectively, exercise agency in at least two global environmental politics–relevant ways. First, domestic judges serve as “norm pairers” whose published decisions connect domestic obligations with IEL concepts in ways that can increase the legitimacy of both. Second, domestic judges function as “norm users” who, by referencing IEL concepts, support their global adoption and interpretation.

Norm Pairing: Domestic Judges and Dual Legitimation

First, judges who address individual domestic cases collectively contribute to global climate governance through “norm pairing”; judges’ decisions frequently connect IEL concepts to corresponding domestic laws and obligations. As domestic judges engage with climate change cases, they must navigate both their formal agency to address local disputes and awareness of the global resonance and implications of their decisions. We find that judges, across contexts, navigate this tension in part by issuing decisions with legal reasoning that references both IEL concepts and domestic obligations. Within individual disputes, the motivations and resulting forms of norm pairing vary. Jurisdictions and domestic environmental laws differ tremendously in how they view the relationship between international and domestic law, including within environmental regimes, just as individual lawsuits and parties vary in how they invoke these obligations within disputes. Nevertheless, our findings affirm norm pairing within climate litigation across contexts (Figure 3) as a substantial exercise of collective agency by domestic judges.

Our coding revealed at least 128 instances of “norm pairing,” which most frequently manifested when domestic judges paired domestic legal obligations to IEL formulations of intergenerational equity (sixty-three cases) or precaution (sixty cases). We observe at least two broad pathways, across contexts, of judicial norm pairing. First, many domestic judges support their reasoning by explicitly

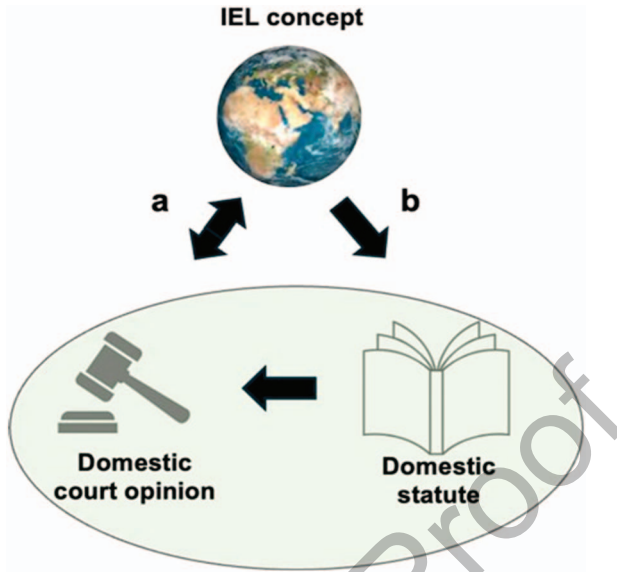


Figure 4
Two Pathways of Norm Pairing

(a) A domestic court opinion combines international and domestic statutory references to an IEL concept. (b) A domestic court opinion references a domestic statute that itself already directly or implicitly includes an IEL concept.

linking a domestic obligation to an IEL concept (Figure 4, pathway a). For example, Pakistan’s High Court compelled the Pakistani government to effectuate its 2012 National Climate Change Policy based on domestic fundamental rights (*Leghari v. Federation of Pakistan*, 2015). The justices affirmed that “international environmental principles like the doctrine of public trust, sustainable development, precautionary principle and intergenerational equity form part of the abovementioned fundamental rights” (para. 3).

In a second “norm pairing” mechanism, judges can reference domestic statutes that already incorporate IEL concepts, thus strengthening linkages between IEL and domestic environmental law (Figure 4, pathway b). This mechanism is exemplified by multiple judgments of the New South Wales (Australia) Land and Environment Court; these reference domestic laws that themselves incorporate IEL formulations of precaution and intergenerational equity. For example, *Anvil Hill Project Watch v. Minister for the Environment and Water Resources* (2006) explored whether the government had adequately considered principles of ecologically sustainable development (ESD) as required by New South Wales’ Protection of the Environment Act. However, the judge’s opinion referenced IEL concepts, as this law itself interprets ESD to include the “precautionary principle” and “inter-generational equity—namely, that the present generation should ensure that the health, diversity and productivity of the

environment are maintained or enhanced for the benefit of future generations” (para. 101[2][a–b]). Similarly, India’s National Green Tribunal issued a 2016 ruling that compelled more expansive response to forest fires in light of anticipated climate change. It justified this order, in part, by noting that “the precautionary principle has been accepted as a part of the law of the land” (*Rajiv Dutta v. Union of India*, 2016, para. 75).

While acknowledging the context-specific nature of individual disputes, we highlight the collective relevance that domestic judges’ norm pairing bears to global environmental politics and norm validation in global climate governance. By authoring climate change decisions that integrate global and domestic legal support, judges can proactively and simultaneously support the legitimation of IEL concepts and domestic obligations. In other words, domestic judges’ norm pairing embodies a “dual-legitimization process,” that is, legitimizing domestic obligations by citing existing IEL norms and legitimizing IEL norms by pairing them with existing domestic regulatory norms. In doing so, both domestic legal norms and the IEL norms can be strengthened through judges’ exercise of agency, that is, singular collective actors “all the way up” (Hofferberth 2019, 131). This judicial strategy may collectively increase social approval and acceptance of their legal decisions, underscoring the urgent need for better climate governance based on domestic norms and the IEL concepts.

This empirical finding reflects IR scholars’ understanding of norm validation through obtaining “legitimacy,” particularly as emphasized in widely recognized norm dynamics literature. Deitelhoff and Zimmermann (2019, 11) highlight that new norms can be more accepted by grafting them “upon previously accepted norms,” and vice versa—that is, a new IEL norm can achieve greater acceptance if grafted upon an existing domestic norm. It can be also understood as a process of norm interpretation and application that affects their robustness (Sandholz 2019) and influences the rearticulation of the normative quality of norms (Wiener 2018). Wiener (2014, 67) argues that “the ultimate goal regarding norm compliance in global governance is about *legitimacy*” (emphasis added) established through norm contestation whereby a political entity reaches an agreement on what to address based on common reasonings. Similarly, Finnemore and Sikkink (1998) emphasize that legitimation represents a primary motivation for actors to adopt global norms during the norm cascade stage. Taken together, judges’ norm pairing may represent a strategy of pursuing “critical approval” to achieve high legitimacy and low contestation (Wiener 2014, 19, 36), both transnationally and locally. This translocal legitimizing process links to judges’ agency beyond individual domestic jurisdictions. Importantly, we observe judges’ norm pairing practices globally, including in Global South and non-West jurisdictions (e.g., Mexico, Colombia, India, and Pakistan; see Figure 2). For instance, Colombia’s domestic judges have localized the precautionary principle and fit it to a specific local context by pairing it with Law 99 of 1993, the country’s general environmental law that established its Ministry of Environment (Table 3). This empirical finding supports Acharya’s

(2018) articulation of norm localization, which involves reshaping global norms to fit local contexts—and which emphasizes the role and agency of local actors (here domestic judges) as “idea-shifters” in global norm contestation.

Norm Usage: Domestic Judges and the Robustness of Domestic IEL

We further identify widespread “norm usage” as a second mechanism by which domestic judges collectively contour global climate governance. Judges’ individual references to IEL have long been studied. However, the frequency and breadth of individual IEL references indicate that this practice, collectively, is highly relevant to global environmental politics understandings of agency in global climate governance, and we find that these highly context- and case-specific practices largely reflect three broad pathways of norm usage.

First, we observe more than 100 instances of direct norm usage in climate lawsuits, where domestic judges explicitly reference IEL concepts (Figure 3). In one such group of climate cases, judges make passing, yet explicit, references to IEL. A clear example is provided by India’s National Green Tribunal, which explored the need to regulate diesel emissions and their effects on snowpack in a mountainous region. The Tribunal ruled that “development may be permitted but with enforcement of appropriate environmental conditions and safeguards. The Polluter Pays principle, the Precautionary Principle and the Principle of Proportionality could be applied as facets of the said balanced approach” (*Court on its own Motion v. State of Himachal Pradesh*, 2014, para. 19).

Likewise, when reviewing a planning decision, a New South Wales Land and Environment Court judge found a proposed action “consistent with the principles of intergenerational equity as it will improve the condition and secure the conservation status of the areas in the long term” (*Hunter Environment Lobby Inc. v. Minister for Planning*, 2011, para. 234).

In a second group of cases, judges’ “norm usage” manifested as detailed discussion and development of IEL concepts. In one example, Judge Hassan (Pakistan) devoted more than three text pages to the precautionary principle and its appearance in various agreements, including the Rio and Stockholm Declarations (*Sheikh Asim Farooq v. Federation of Pakistan, etc.*, 2018, paras. 28–29). Elsewhere, the Second Chamber of Mexico’s Supreme Court undertook detailed consideration of how the precautionary principle and intergenerational considerations might inform a domestic dispute over the ethanol content of gasoline (*Ruling on Modification to Ethanol Rule*, 2020, secs. 1.1–1.2). In this fascinating example, judges highlighted precautionary principle formulations in international agreements (including the Rio Declaration, Convention on Biological Diversity, and Cartagena Protocol on Biosafety), multiple domestic contexts, and academic scholarship (secs. 1.1–1.2).

Third, more than sixty instances (Figure 3) illustrated implicit norm usage, where domestic judges referenced attributes of IEL concepts, even if they did not explicitly name them. While again acknowledging the highly context-specific

nature of legal argumentation, judicial reasoning, and domestic incorporation of international norms (e.g., Verdier and Versteeg 2017), our findings underscore their collective relevance to climate governance. First, implicit norm usage can enable domestic judges to support IEL norm development, even in domestic legal contexts with less receptiveness to formal applications of international law. For instance, we observed implicit reference to intergenerational and precautionary considerations by US federal and state court judges. For instance, Hawai'i's Supreme Court notes that "climate change is a human rights issue at its core; not only does it inordinately impact *young people and future generations*, but it is also a profound environmental injustice" (*In re Hawai'i Electric Light Company, Inc.*, 2023, 15, emphasis added). Other judgments present similar analysis, especially those exploring whether a stable climate is a "public trust" requiring governmental protection. For instance, the Alaskan case *Sagoonick v. State* (2022) emphasized "the importance of Alaska's natural resources for future generations." These findings echo previous research, including beyond the climate change regime, that affirms US domestic judges' intentional engagement with IEL norms and principles in their work (Angstadt 2023, 327).

Second, domestic judges' implicit "norm usage" can further entrench IEL concepts in contexts where they are more generally accepted. For instance, New South Wales' Land and Environment Court's judges explicitly reference the precautionary principle (see earlier) but also frequently make passing, implicit reference to IEL concepts. For instance, in reviewing an appeal of a permit authorizing the extension of an open-cut coal mine, Judge Preston wrote, almost in shorthand, "I do ... consider that some additional safeguards, *consistent with a precautionary approach*, should be incorporated into the conditions of approval to increase the likelihood of successfully delivering net biodiversity gains" (*Ironstone Community Action Group Inc. v. NSW Minister for Planning and Duralie Coal Pty. Ltd.*, 2011, para. 113, emphasis added). These oblique references, while rooted in context-specific motivations, may advance norm dynamics in climate governance through their collective, repetitive effect.

Our findings of domestic judges' norm usage and pairing affirm their collective significance to norm development in global climate governance. Domestic judges' usage of commonly shared IEL norms in multiple jurisdictions shows the judges' important role in global norm diffusion and internalization, implicitly through transnational learning and socialization, which has long represented a central emphasis of norm research in IR and global environmental politics (e.g., Finnemore and Sikkink 1998; Johnston 2001; Park 2006; Risse-Kappen 1994). Earlier norm diffusion literature highlighted the role of state and nonstate actors, including international and domestic NGOs or transnational corporations, as norm adopters (O'Faircheallaigh 2014) but directed less attention to the role of domestic judges. Our research suggests judges as key actors in global climate norm development who function as "norm entrepreneurs" and "transmission belts" (Müller and Wunderlich 2013, 351),

navigating political structural challenges and facilitating global norm circulation (Acharya 2018).

Likewise, our finding of domestic judges as norm users resonates with debates regarding applicatory contestations, or the usage and “practice” of norms. Some IR norm scholars argue that norms can be more strongly upheld and robust if a norm is applicatory and if practices of a norm’s legality continue (e.g., Brunnée and Toope 2019; Deitelhoff and Zimmermann 2019). From this perspective, domestic judges’ norm usage can be understood to increase the validity and robustness of IEL concepts in global climate governance. Accordingly, domestic judges’ “local” norm usage would have “global” effect—strengthening and legitimizing IEL by considering competing climate norms in the world society. This point aligns with Slaughter’s (2005) understanding of global judicial dialogue, as domestic judges’ citation of IEL concepts via “self-conscious conversation” represents a form of horizontal, transjudicial exchange (see also Angstadt 2022). If such norm usage is undertaken by a significant number of judges, it can provide a “badge of legitimacy” (Slaughter 2005, 74) for subsequent use of the same norm elsewhere. This transjudicial deliberation illustrates how domestic judges can function as an epistemic network to influence the development of specific IEL norms. Such influence reflects their collective agency, as conceptualized in Hofferberth’s (2019) theoretical framework.

Conclusions and Future Directions

Our analysis affirms domestic judges as an influential and engaged class of global climate governance actors. Judges are actively incorporating IEL concepts as they draft domestic climate change decisions. These individual exercises of domestic agency become collectively relevant in global climate governance and the development of norms that structure global practices. Therefore, while existing research highlights the influence of IEL in domestic contexts and underscores the proliferation of climate lawsuits, this article affirms domestic judges as key agents and underscores the effect of their collective agency—that is, their capacity to (re)shape norms in global climate governance. Furthermore, across the diverse range of domestic climate judgments, we observe relevant, overarching mechanisms by which domestic judges exercise their agency and support the development of particular IEL norms in global climate governance—most notably, intergenerational equity and the precautionary principle: “norm pairing,” whereby judges use domestic judgments to connect international and domestic statutory formulations of IEL concepts, and “norm usage” (both implicit and explicit), whereby judges apply norms in domestic contexts. These findings underscore that domestic judges’ engagement with climate governance merits more extensive global environmental politics attention.

By complementing robust legal discourse examining judicial engagement with climate change, we believe that this article provides a foundation to more directly examine domestic judges as key climate governance actors. First, this

article explores *whether* and *how* judges engage with IEL norms and principles. Future research could consider *when* and *why* individual domestic judges do so. Existing research suggests that judges could choose to engage with norms in their published climate change decisions for multiple reasons. These include evolving views of the appropriateness of climate regulation through the courts (Scotford 2017), litigants' framing of questions in ways that promote such reference (Setzer and Vanhala 2019), and transnational judicial exchanges that enhance climate litigation's global character (Barritt 2020). Simultaneously, a judge's decision to incorporate IEL concepts within a particular case could reflect more localized considerations, including a judge's intrinsic motivations (Preston 2018), the mandates of domestic statutes, the status that a particular country or legal culture attaches to international law (Verdier and Versteeg 2017), the requests of litigants, or myriad other factors. Therefore future place-based and qualitative studies could explore how these factors influence judicial decision-making within climate governance. In this fashion, global environmental politics insights could be paired to context-specific insights of why some judges choose to—or feel able to—reference IEL norms in their climate decisions.

Second, identifying domestic judges as influential global climate governance actors implies a related question: What outcomes result when domestic judges incorporate IEL concepts into their decisions? We believe such research could explore at least two facets. First, scholars could consider how domestic judges' reference to specific concepts, such as the precautionary principle, has shaped the global elaboration and acceptance of those ideas. Since our research identified many judges who have employed the precautionary principle in legal contexts including Australia (*Paul v. Goulburn Murray*, 2010), Canada (*Pembina Institute*, 2008), and India (*Sukhdev Vihar Welfare Residents Association v. Union of India*, 2013), such research would further link global environmental politics norm dynamics scholarship to ongoing and related climate law research (Atapattu 2006; Preston 2018). Second, our large-*n* analysis identifies numerous contexts in which decisional research could explore on-the-ground outcomes of IEL conceptual reference. Given recent findings that domestic climate litigation can meaningfully shape corporate valuations and stock performance, this attention appears timely and warranted to further elucidate the link between IEL, domestic climate litigation, and climate governance outcomes (Sato et al. 2024; Voeten 2025).

Finally, our large-*n* analysis broadly highlights domestic judges' contributions to normative dialogue through internal (domestic), horizontal (transnational), and vertical (global) exchanges. Future research could further illuminate and contextualize these dynamics through focused analysis of specific modes of normative engagement (including contestation and acceptance) or categories of climate litigation, including "backlash" or corporate climate lawsuits (see Bertram 2022). Likewise, there is ample opportunity to further explore domestic judges' contributions to networked climate governance. Researchers could explore their engagement in the Global South, their influence on South–South

climate dialogue and Global South climate justice, and how domestic judges' engagement with IEL may be structuring an emergent, polycentric "biojustice from below" that centers civil society and grassroots contributions (Dauvergne and Clapp 2023).

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Corrected Proof