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Global & Domestic Litigation, Environmental Destruction & The Climate Crisis



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Civil Law:

- Marc Willers KC (Chair), Garden Court
- Abigail Holt, Garden Court
- Frances Lawson, Garden Court
- Acland Bryant, Garden Court
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International Criminal Law:

- Jodie Blackstock, Garden Court (Chair)
- Jojo Mehta, Co-founder & CEO, Stop Ecocide International
- Dr Andrea Brock, Sussex University
- Katherine Tyler, Legal Director, Kingsley Napley
- Richard Rogers, Climate Counsel
- Paul Clark, Garden Court
- Tom Wainwright, Garden Court



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Small Island States: The Front Line

- Thalia Maragh, Garden Court (Chair)
- Leslie Thomas KC, Garden Court
- Johnnie Chamberlin, ELAW
- John Mussington, Chair of the Barbuda Council, marine biologist & community representative
- Liz Alden Wily, International authority on community land rights, customary land tenure & environmental governance



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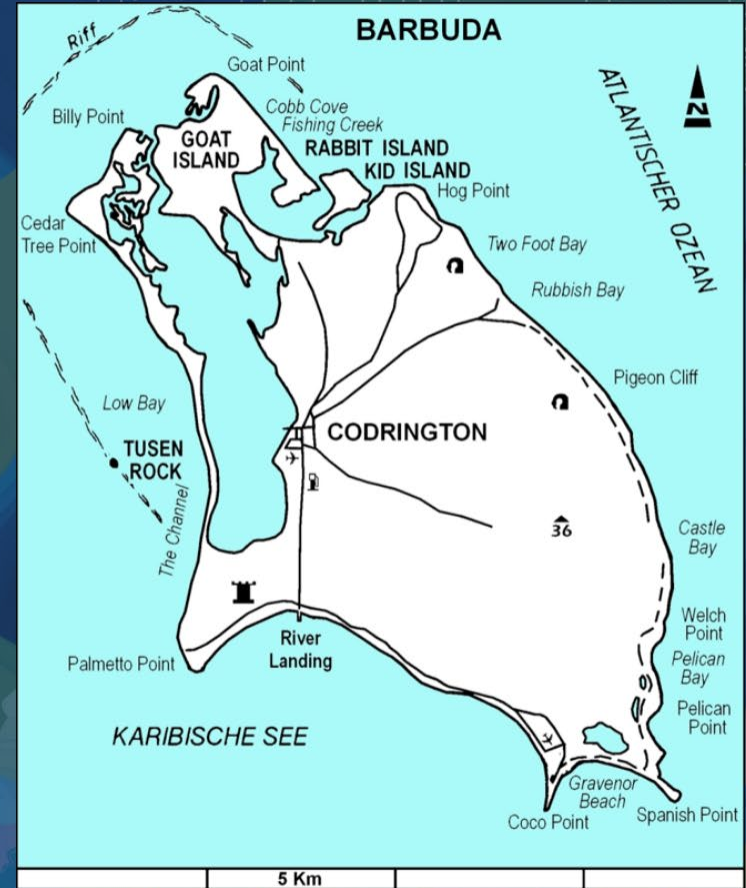


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The Dispossession of Barbudans in a Global Property Rights Context

Liz Alden Wily [PhD]

Political Economist, Tenure Specialist



1 Barbuda has all the hallmarks of a 'community property'

1. historically occupied for ca. 300+ years
2. a small community of 1-2,000 persons, operating as a community
3. the island's land and coastal foreshore used and de facto possessed as community assets
4. allocation of house sites & farms likely originally by elders or leaders with approval of the colonial lessee of the Crown (the Dodrington family), later by elected representatives
5. rules of land access & use made & upheld through consensus
6. majority of the island is collectively used natural resource lands
7. It is also possible that original slaves & reputedly skilled artisans for building brought African commonsense with them
8. The colonial law as of 1904 is also largely commonsense in its rules of responsible access and use including rotating grazing zones (s. 33)
9. And of course after Independence, the Constitution 1981 recognized the existing Barbuda Local Government including its duty to apply other laws, at that time on land matters found in the above 1904 law (last amended in 1983).
10. The Barbuda Local Government Act 1976 was already established, and remains until today. Nine of its 11 members are elected.

2 Barbuda as decolonized and then re-colonized

The Barbuda Land Act, 2007 liberated Barbudans from status as tenants of the Crown/Government. They became co-owners.

‘All land in Barbuda shall be owned in common by the people of Barbuda’ ... and ‘the title shall vest in the Crown on behalf of the people of Barbuda’.

The land referred to the whole island not only the village of Codrington.

The land could not be sold. Leases could be issued, but limited to 50 years.

Majority approval of adult inhabitants was required.

Everything changed between 2016-2018 in amendments to the 2007 law then its full repeal and replacement with a new Barbuda Land Act, 2018, with majority support of Antiguan MPs.

By 2018, Barbudans were legally returned to colonial peonage; this time as tenants of their own Government.

It could freely dispose of their land. Their consent was not required.

In return they could secure leaseholds or freeholds over their village house, business and farm parcels.

The Council's land responsibilities were limited to plot allocation and providing services.

3 Global property rights reform

1. What is curious about the dispossession of Barbudans is how recent it is.
2. This is not least because by 2000, millions of Indigenous Peoples (IP), Afro-Descendants (AD) and Local Communities (LC) were already benefitted from labeled decolonizing laws.
3. Each in its own way upgraded existing customary land rights and parcels as lawful property interests, and which could be registered as such.
4. A number of these laws added to this by provided for restitution of wrongfully taken customary lands upon submission of claims, to be carefully considered by commissions or designated land courts.
5. Further, pertinent climate justice, progressive laws were explicit that -
 - (a) A community could be registered as the owner (in progressive cases in own name as a designated natural person); and
 - (b) That recognized and registrable property included communal lands. These were community forests, rangelands, grasslands, swamplands etc. sustained as either fundamental to community livelihoods or essential supporting sources of livelihood, retained largely intact for these purposes.

4 About Community Lands

A massive estate

Customary land = **5.5 billion ha (42% of the world's lands)**

Public lands = 3.7 billion ha (28% of the world's lands)

Private lands = 2.4 billion ha (18% of the world's lands – mostly urban)

Only 1 billion ha so far registered as community/customary properties

(Source: FAO, ILC & CIRAD, 2026)

A massive constituency

Est. 2.5 – 3 billion people (30 – 36% of the global population of 8.3 billion people)

Communities divisible into —

Indigenous Peoples (IP) with ancestral possession, usually now curtailed in area (ca. 500 million people)

Afro-Descendants (AD) with historical possession (ca. 100 million rural people)

Local communities (LC) customary settled, farming communities, usually also owning communal lands under customary law (ca. 2 billion people)

Legend

Indigenous Peoples' Lands and Territories

Acknowledged by government

- Documented
- Not documented

Not acknowledged by government

- Held or used under customary tenure
- Held or used with formal land claim submitted

View layer options

Local Community Lands

Acknowledged by government

- Documented
- Not documented

Not acknowledged by government

- Held or used under customary tenure
- Held or used with formal land claim submitted

View layer options

Indicative areas of Indigenous and Community land rights

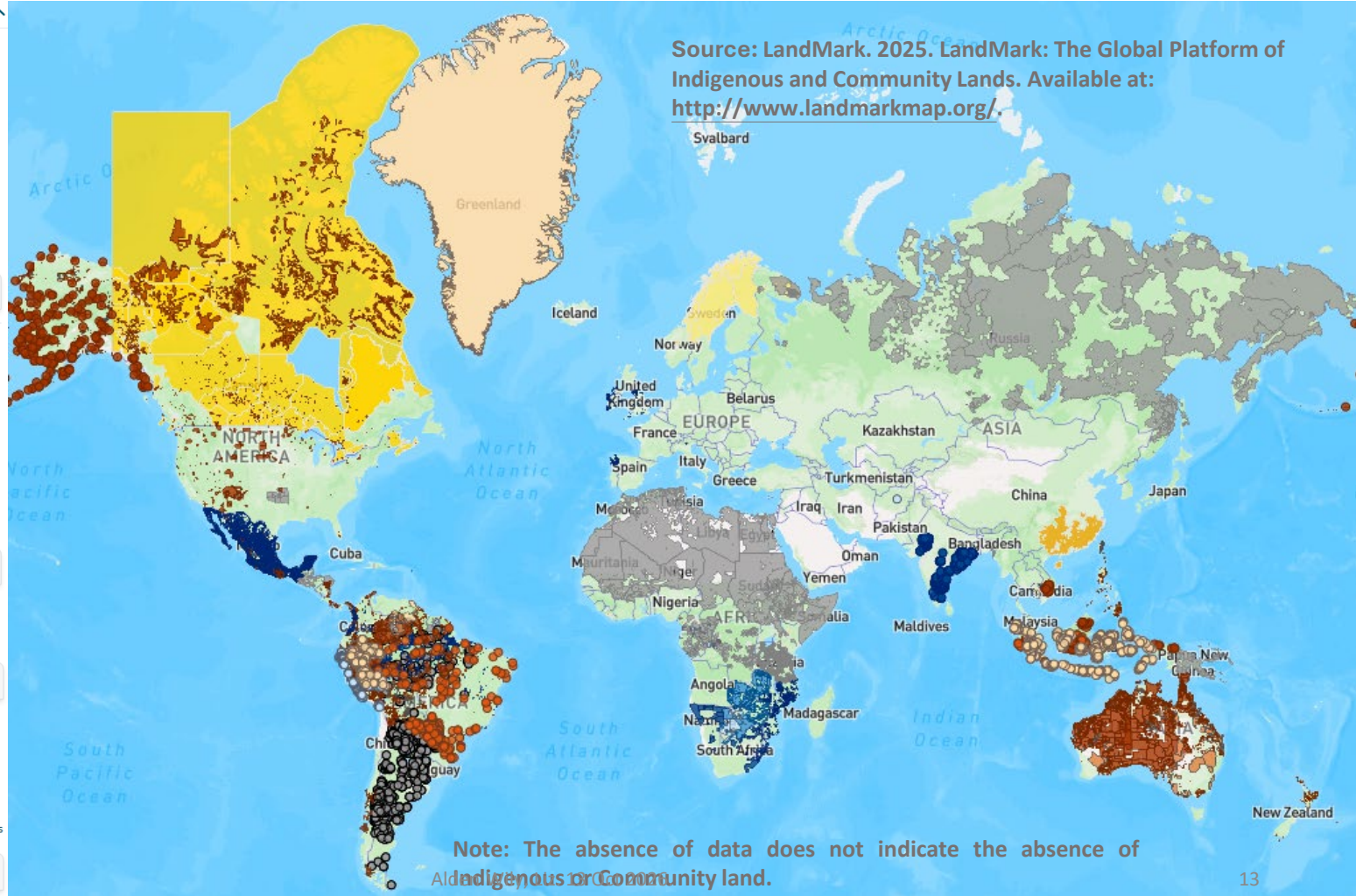
- Indicative areas

View layer options

Indigenous and Community Natural Resource Rights

- Community forest rights
- Community hunting/fishing/wildlife rights
- Community grazing/pasture rights

View layer options



5 Progress in community land security

1. A [2018 analysis of 100 states](#) showed 55 had significantly improved the legal status of customary landholding. Another 18 had made a few positive changes. 78% of the laws were enacted after 1980
2. While many laws were targeted to Indigenous Peoples (IP) dominated, more laws were extending similar improvement to Afro-Descendant communities (AD) and to customary communities who claim neither IP or AD status.
3. Incorporation and trusteeship in local governments was declining: a number of new laws found it less bureaucratic to vest title directly in the community accepting a community as a legal person for this purpose.
4. Community based land administration dominated. Customary rules could apply.

6 The Africa Case as example

1. Africa is a good example as an estimated 84% of the continent is customarily held lands, possession, transfer & use regulated by communities.
2. By 2025, [study of 53 of 55 state land laws](#) found two-thirds (33) had enacted new laws upgrading the status of customary rights. Three more countries have such laws in draft
3. At least 10 states were unable to apply new laws (eg South Sudan) or to advance new laws (eg Somalia, Chad, Sahrawi, CAR, Libya, Mali) due to civil wars or insurgencies. Yet often conflicts were driven by land injustices not only territorial disputes.
4. Not a single African state is 100% behind community land ownership. Legal loopholes are left. Oil, gas, mineral & water extraction instantly trump land rights, and state revenue from tourism, carbon credits, and takings for state parks and reserves come close. Free, Prior and Informed Consent has not seek uptake. Impunity by governments is common, who refuse to apply court orders over disproportional takings takings of customary domains.
5. Yet sufficient law exists in most African states for communities to know they have rights and to campaign in pursuit.
6. In short – as in other regions – community land security including restitution is a work in progress, but one difficult for government to entirely suppress.

Legend

Indigenous Peoples' Lands and Territories

Acknowledged by government

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View layer options

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Indicative areas of Indigenous and Community land rights

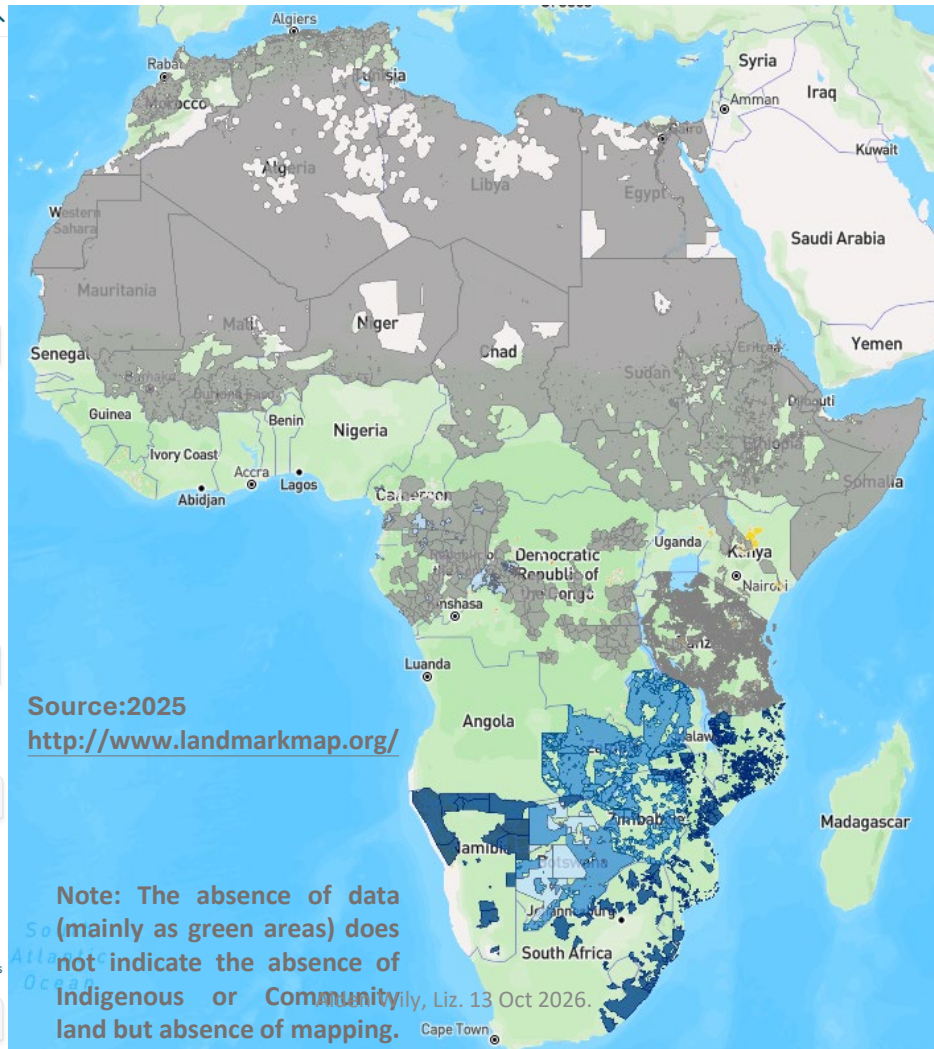
- Indicative areas

View layer options

Indigenous and Community Natural Resource Rights

- Community forest rights
- Community hunting/fishing/wildlife rights
- Community grazing/pasture rights

View layer options



State Law Recognition of Community Lands as Registrable Properties in Africa

Source: Liz Alden Wily, Oct. 2026. N= 53/55 States as recognized by the African Union

Communities: includes Indigenous Peoples (IP) & customary settled communities (LC)

Assessment results against 10 indicators of community/customary land security

BEST PRACTICE LAWS (1 limitation)	POSITIVE LAWS (2-3 limitations)	LEAST POSITIVE LAWS (most limitations)	NEGATIVE LAWS
15 COUNTRIES (28.3%) All new land laws since 1990 Angola, DRC, Ethiopia, Ghana, Guinea Bissau, Kenya, Lesotho, Liberia, Mozambique, Niger, Sierra Leone, South Africa, South Sudan, Tanzania, Uganda.	18 COUNTRIES (34%) All but 1 are new laws since 1990 Benin, Burkina Faso, Burundi, Comoros, Equatorial Guinea, Gambia, Guinea, Madagascar, Malawi, Mali, Morocco, Namibia, Nigeria, Rep. Congo, Sudan, Togo, Tunisia, Zambia	12 COUNTRIES 22.6%) Nine are new laws since 1990, 3 are pre 1990 Algeria, Botswana, Cameroon, Cape Verde, Chad, Djibouti, Eritrea, Eswatini, Gabon, Ivory Coast, Sao Tome & Principe, Senegal	8 COUNTRIES (15.1%) Only 2 new laws since 1990 ; 6 either old or no relevant law 3 in civil war – no new land laws (Sahrawi, Somalia, CAR) 2 abolished customary tenure with ill effects (Mauritania, Rwanda) 3 retain old laws which deny customary rights as property interests (Egypt, Zimbabwe, Libya)

Refer results of legal status review against 10 indicators as of mid 2025 at:

<https://landmarkmap.org/blog/making-progress-an-update-on-state-land-law-recognition-of-indigenous-and-local-community-land-rights-in-africa> and follow instructions for accessing country data by clicking on country

Alden Wily, Liz. 13 Oct 2026.

7 The community lands link with climate change mitigation

1. Communal lands *within community lands* means massive natural resources & a key source of protection. For example, [FAO et al concluded in 2026 that](#) -
 - Collectively managed lands contain 37% of all irrecoverable carbon globally (50.63 Gt.) mainly forest biomes.
 - Peatlands on customary lands span 390 Mha, or 80% of global total, storing 29% of irrecoverable carbon.
 - 84% of customary lands overlap with Key Biodiversity Areas, 33% of global total.
2. Forest laws are enabling communities to declare their own Protected Areas (eg. Village Forest Reserves in Tanzania of which now 1,500 covering 2+Million Hectares).
3. Wildlife Conservancies on customary lands cover 19 Million hectares in Namibia.
4. The [Democratic Republic of Congo \(DRC\) has issued 5 Million ha](#) as community forest concessions owned in perpetuity by ca. 300 communities, under obligations for sustaining cover. It aims to issue 54 Million ha as community concessions by 2030
5. Botswana is the most recent Government to approve restitution of its largest Protected Area to its ancestral San owners (Central Kalahari Game Reserve, 52,800 sq. km).
6. 188 country representatives agreed in December 2022 that the push for 30% of global area as Protected Areas by 2030 must not be at the expensive of customary lands (Global Biodiversity Framework).



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The Role of Climate and Environmental Science in Environmental Litigation

**Johnnie Chamberlin
ELAW Science Team**

Outline

1. What makes a robust Environmental Impact Assessment?
2. The importance of independent scientific evidence
3. How climate science can most effectively inform courts and decision-makers when environmental disputes arise
4. Climate science and Environmental Impact Assessment resources for lawyers

What makes a robust Environmental Impact Assessment?

- **Complete project definition and scope** - including connected, ancillary, induced, and reasonably foreseeable activities.
- **Credible, site-specific baseline** - adequate spatial/temporal coverage and reliable data.
- **Rigorous impact analysis** - direct, indirect, cumulative, long-term, accidental, climate, social, health, and other relevant effects.
- **Meaningful alternatives analysis** - including no action, feasible alternatives, and alternatives capable of substantially reducing impacts.

What makes a robust Environmental Impact Assessment?

- **Explicit treatment of uncertainty and scientific disagreement** - including missing information, assumptions, modeling limitations, and worst-case/low-probability risks.
- **Evidence-based significance determinations** - conclusions must actually follow from the evidence; regulatory compliance alone isn't necessarily enough.
- **Specific and enforceable mitigation/monitoring** - with measurable performance standards, responsibility, funding, adaptive management, and financial assurance where appropriate.
- **Transparent, participatory, decision-useful process** - substantive public/expert comments addressed, tradeoffs exposed, and a clear explanation of why the preferred alternative is justified.



ELAW Oil and Gas EIA Handbook

- ELAW handbook on “How to Evaluate Environmental Impact Assessments for Oil and Gas Projects”, that:
 - Contains a summary of the EIA process
 - identifies and discusses the potential environmental and social impacts of the four categories of oil and gas projects
 - and provides a guide to reviewing the adequacy of EIAs for oil and gas projects
- <https://elaw.org/resource/evaluate-eias-for-oil-and-gas-projects>

How to Evaluate Environmental Impact Assessments for Oil and Gas Projects



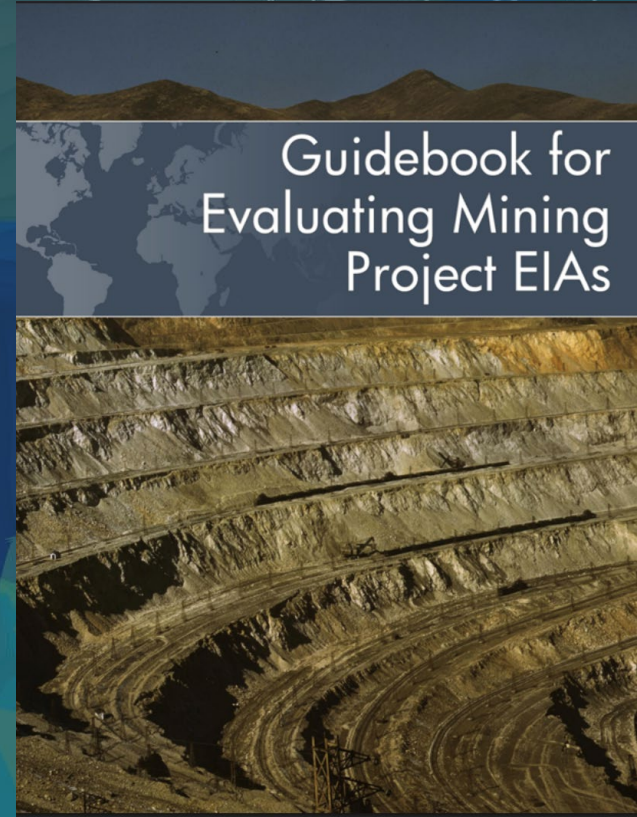
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ELAW Mining Project EIA Guidebook

- Designed to:
- help grassroots advocates and communities understand mining EIAs
- identify flaws in mining project plans, convince decision-makers to reject ill-conceived mining projects
- and explore ways that proposed mining projects could be made socially and environmentally acceptable.



<https://elaw.org/resource/guidebook-evaluating-mining-project-eias>

Sabin Center Climate Impact Assessment Guides

- EIA Guidelines for Assessing the Impact of Climate Change on a Project
 - <https://climate.law.columbia.edu/content/eia-guidelines-assessing-impact-climate-change-project>
- EIA Guidelines for Assessing the Impact of a Project on Climate Change
 - <https://climate.law.columbia.edu/content/eia-guidelines-assessing-impact-project-climate-change>

The importance of independent scientific evidence

Mozambique example:

- EIA: “Historically and statistically, northern Cabo Delgado Province is not a cyclone-prone region...Only one cyclone struck the northern Mozambican coastline in the last 50 years”
- However, we found:
 - Recent maps: “Very High Cyclone Susceptible Region”
 - Reports: “The number of cyclones that hit Mozambique has been increasing over the last decade, as has the intensity of the winds”
 - “landfalling tropical cyclone frequency has increased since the 2000s” due to “warmer sea surface temperature and low vertical wind shear”

The importance of independent scientific evidence

- Gulf of Mexico example:
- EIA: used historic weather/wave data from 1951 - 2010 to describe risks in the project area
- However:
 - 10 warmest years since global records began in 1850 have all occurred since 2014
 - “Climate change increased maximum wind speeds for every Atlantic hurricane in 2024”
 - “hurricanes Beryl and Milton, which impacted the Gulf of Mexico in 2024, would likely not have become Category 5 hurricanes without climate change”



The importance of independent scientific evidence

India example:

- EIA: No sea turtles or live coral found in project area during surveys
- However, we found:
 - They surveyed the wrong location for coral (intertidal areas)
 - Their turtle surveys were inadequate (too short and infrequent) for establishing the presence or absence of sea turtles in the area
 - Other studies describing the area as important sea turtle habitat
 - And recorded sightings of sea turtles in the project vicinity

How climate science can most effectively inform courts and decision-makers when environmental disputes arise

For Small Island states, climate science often comes up in relation to sea-level rise, saltwater intrusion, or impacts to coral, fisheries, and drinking water aquifers.

Climate science can be used to inform decision makers of the risks posed by climate change or how a project could impact a community's climate resilience.



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Current Attribution Study Types

- **Extreme event attribution:** whether, and to what extent, an extreme weather event has been influenced by climate change
 - How much more likely did climate change make the event? How much worse?
 - Could the event have happened absent climate change?
 - But not related to a specific source of emissions
- **Source attribution:** determines the relative contributions of different sectors, activities, and entities (e.g., fossil fuel companies, industries) to climate change (temperature, sea-level rise); but not related to a specific event/harm

Current Attribution Study Types

- **Impact attribution:** seeks to quantify the direct societal and economic consequences of climate change (human-driven warming has increased the total area burned by wildfires, increased hurricane-related damages, and contributed to rising heat-related mortality); not specific emitter or event
- **End-to-end attribution:** draws quantitative linkages between individual emitters and particular harms; Climate attribution that goes from emissions to impact at the corporate level

Attribution Resources - Union of Concerned Scientists

What Is Attribution Science? <https://www.ucs.org/resources/attribution-science>

Study on Research Priorities for Climate Litigation

<https://www.ucs.org/resources/research-priorities-climate-litigation>

The UCS Science Hub for Climate Litigation

<https://www.ucs.org/resources/science-hub-climate-litigation>

Estimating the Sea Level Rise Responsibility of Industrial Carbon Producers

<https://www.ucs.org/resources/sea-level-rise-responsibility-industrial-carbon-producers>



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Glossary of Key Terms for Lawyers

Climate Science in Legal Contexts - Union of Concerned Scientists

<https://www.ucs.org/resources/climate-science-legal-contexts>

This resource is designed to help lawyers navigate scientific concepts that frequently arise in climate litigation. The glossary clarifies these concepts by providing clear definitions, outlining their scientific basis, and highlighting how they may be understood or applied in legal contexts.

Merner, Delta, Carly A. Phillips, William S. Beckett, Charles A. Brown, Robert Byron, Johnnie Chamberlin, Allan Frei, et al. 2026. *Climate Science in Legal Contexts: A Glossary of Key Terms for Lawyers*.
<https://doi.org/10.47923/2026.16135>

GLOSSARY

Climate Science in Legal Contexts

A Glossary of Key Terms for Lawyers

HIGHLIGHTS

Scientific and legal communities often use similar words differently. This resource is designed to help lawyers navigate scientific concepts that frequently arise in climate litigation. The glossary clarifies these concepts by providing clear definitions, outlining their scientific basis, and highlighting how they may be understood or applied in legal contexts. It is intended as a practical reference to build familiarity with scientific terms, better assess expert evidence, and avoid misinterpretations of science in the courtroom.

Glossary of Key Terms for Lawyers

The glossary relies on peer-reviewed studies, general scientific knowledge, and reports from authoritative bodies like the IPCC and the US National Climate Assessment

Foundational scientific concepts - uncertainty, causality, and probability

Measurement, data, and methods - how scientific evidence is generated

Climate and environmental science concepts - attribution science

Risk and impact concepts - risk, vulnerability, and resilience

Public health concepts - epidemiology, relative risk, and health disparities

Indigenous Knowledge and cultural heritage concepts - Indigenous Knowledge systems and cultural harm

Socioeconomic and policy concepts - emissions accounting, externalities, and valuation tools



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Thanks!

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