# Implications of ICJ Advisory Opinion on the Climate Obligations of African States

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On July 23, 2025, at the request of the United Nations General Assembly through a resolution dated March 29, 2023, the International Court of Justice (ICJ) delivered a unanimous opinion on the obligations of states in the context of climate change. In this historic opinion, the court confirmed that there are international law obligations of states to advance climate action, and that there can be legal consequences arising from acts and omissions that cause significant harm to the climate system and other parts of the environment.

Although the advisory opinion is not legally enforceable and binding, it carries significant legal implications on states and ought to influence how African countries make decisions relating to climate policy in the years ahead. Significantly, the decision provides authoritative legal guidance from the world's highest international court, cementing the importance of state climate obligations.

## How the case started

The request for the opinion was initiated in 2019 by a group of students from the University of the South Pacific in Fiji and supported first by Vanuatu, an island state severely affected by the climate crisis. Vanuatu mobilised more states to support the request, and by the time it presented the resolution to the United Nations General Assembly for adoption, it was co-sponsored by 132 countries. These included 28 African countries, among them Ghana, Guinea Bissau, Morocco, Mozambique, Namibia, Rwanda, Uganda, and Tanzania. This solidarity underscored the extensive global support for the advisory opinion.

As an indication of their agency and solidarity in the climate space, several African countries and the AU participated in the case, including through submission of written and oral statements during proceedings. African countries that participated in the case include the Democratic Republic of Congo, Seychelles, Kenya, South Africa, Cameroon, Ghana, Mauritius, and Egypt. The AU and the Organisation of African, Caribbean and Pacific States (ACP) were also involved. Notably, in its written statement to the court, the AU was unequivocal about the severe impacts of the climate crisis on Africa and the need for full reparations for the harm caused by major emitters. The AU raised this point again in its oral presentation before the court in December 2024, framing climate justice as an issue not only of environmental protection, but also of human rights, intergenerational equity, and reparative justice.

## State of climate science

From a climate science perspective, the court's reasoning relies squarely on the assessments of the Intergovernmental Panel on Climate Change (IPCC). Notably, all the parties to the proceedings agreed that the IPCC reports represent the best available scientific evidence on the causes, nature and consequences of climate change, and the impact of anthropogenic greenhouse gas emissions. This convergence leaves little room for challenging the scientific foundations of climate change across legal, policy, and geopolitical contexts, and further diminishes the influence of climate denial, including its resurgence in the United States.

Additionally, the Court affirmed that states have binding obligations under the Paris Agreement to take measures consistent with the Agreement's objective of limiting global temperature rise to **well below 2°C and pursuing efforts to limit it to 1.5°C**, in line with the best available science. This reinforces the expectation that states, particularly major emitters, must pursue ambitious emissions reductions consistent with the 1.5°C pathway.

The Court clarified that the obligations of States in relation to climate change arise from multiple sources of international law. These include obligations under climate treaties such as the Paris

Agreement and the UN Framework Convention on Climate Change, customary international law principles such as the duty to prevent transboundary environmental harm, obligations of due diligence, and international human rights law. By recognising this convergence of legal regimes, the Court confirmed that climate obligations are not confined to climate treaties alone, but are embedded across the broader architecture of international law.

## The climate crisis

The opinion restates the severe and far-reaching consequences of climate change on both natural ecosystems and human populations. These include extreme weather events such as floods, hurricanes, droughts, and heatwaves, which are becoming more frequent and intense, devastating agriculture, displacing populations, exacerbating water shortages, and leading to irreversible loss of biodiversity. Human life and health are also at risk.

These consequences underline the urgent and existential threat posed by climate change, especially to African countries, which have significant capacity constraints. The court noted that these capacity concerns are included in the Paris Agreement, which requires developed countries to provide financial assistance, technology transfers and capacity building to developing country parties.

## State obligations with respect to climate

The court concluded that the negative impacts of the climate crisis may significantly impair the enjoyment of a range of rights protected by human rights law. It found that a clean, healthy, and sustainable environment is a precondition for the enjoyment of many human rights, such as the right to life, the right to health and the right to an adequate standard of living, including access to water, food, and housing. Further, it established that the right to a clean, healthy, and sustainable environment results from the interdependence between human rights and the protection of the environment, and is therefore essential for the enjoyment of other human rights.

The opinion confirms the now universally agreed position that climate change is not only an environmental issue, but also a matter of international legal responsibility and accountability, human rights, equity, and intergenerational equity. In any event, this is not a surprise: the opinion acknowledges that the adverse effects of climate change have been widely acknowledged by the United Nations, including the United Nations Environment Programme and other specialised agencies.

For example, in its Resolution 77/165 of December 14, 2022, the United Nations General Assembly called for the protection of the global climate for present and future generations of humankind. Similarly, in Resolution 76/300 of July 28, 2022, the General Assembly recognised the right to a clean, healthy, and sustainable environment as a human right, formally linking it to other human rights and existing international law.

The court found that states must act to prevent foreseeable climate harm or face international legal responsibility. In this regard, the rules on state responsibility where damage is caused by multiple states means that every injured state may separately invoke the responsibility of every state that has committed internationally wrongful acts that result in damage to climate systems and other parts of the environment. When multiple states are responsible for the same internationally wrongful act, the responsibility of each state may be invoked based on causation, which is to be determined on a case-by-case basis.

## Strategic implications of the ICJ advisory opinion for African countries

### 1. Stronger climate obligations increase legal pressure to phase out fossil fuel expansion

The court held that the well-established rule of international law that notes that the conduct of any organ of a state must be regarded as an act of that state is applicable in the context of climate change. In effect, a state may be found to have committed an internationally wrongful action for failure to take appropriate action to protect the climate system from greenhouse gas emissions, including through activities of its state organs, whether as developer or financier, or through corporations in that state. The court was unequivocal that such fault could result from fossil fuel production and consumption, the granting of fossil fuel exploration licences, or the provision of fossil fuel subsidies. The opinion also clarified that the internationally wrongful act in question is the breach of conventional and customary obligations of the state to prevent significant harm to the climate system and the environment. This is also connected with the obligation to cooperate in good faith for the protection of the environment.

For African countries, the opinion significantly strengthens the legal case for limiting and progressively phasing down fossil fuel expansion while accelerating the scale-up of renewable energy systems. African counties must prioritise the rapid scale-up of renewable energy and take meaningful action to phase out fossil fuels. This must be done within the context of the principle of common but differentiated responsibilities and respective capabilities (CBDR-RC). Additionally, African communities and other stakeholders can enforce the fossil fuels phase-out obligation using the ICJ opinion, including on grounds such as human rights and national climate commitments. As a result, any fossil fuel processes, such as granting of fossil fuel exploration licences, contracts or subsidies, will now be subject to both significant public opposition and legal challenge within the continent. African governments must therefore align their national priorities towards a just and equitable transition from fossil fuels.

Importantly, the opinion also weakens the increasingly common narrative that new fossil fuel expansion in Africa can be justified on development grounds. By clarifying that states have legal obligations to prevent harm to the climate system and pursue emissions reductions in line with the best available science, the Court reinforces that development pathways must be compatible with global climate objectives. This places greater emphasis on accelerating investment in renewable energy, energy access, and climate-resilient infrastructure rather than locking African economies into long-term fossil fuel dependency.

### 2. African countries could use the States' duty of due diligence to push back on fossil fuel projects

The court held that state parties to the Paris Agreement have an obligation to act with due diligence in taking measures in accordance with their common but differentiated responsibilities and respective capabilities. They also have an obligation to pursue measures which can achieve the objectives set out in their successive nationally determined contributions, in addition to obligations of adaptation and co-operation. Moreover, the court found that states have obligations under international human rights law to respect and ensure the effective enjoyment of human rights by taking necessary measures to protect the climate system and other parts of the environment.

On the basis that the climate crisis affects human rights enshrined in core treaties and customary international law, the court concluded that in addition to climate treaties, international human rights

laws and customary international law forms part of the directly applicable law to the question of state obligations in climate matters. Consequently, such responsibility requires stringent due diligence obligation, especially in the fossil fuel industry, to ensure activities within the control of a state do not lead to damage to the climate system. This includes regulation of activities of corporations in that state, as such activities may be found to be in breach of the duty to protect the climate system.

This finding is especially significant for African countries, many of which host foreign oil and gas operators, as it provides a legally grounded basis for policy and regulatory reform. It reinforces the obligation of states to ensure that the activities of multi-national corporations operating within their territories do not undermine their duty to protect the climate system. Additionally, African countries can now confidently rely on the ICJ advisory opinion finding on the duty of due diligence to push back on fossil fuel projects in their countries at a diplomatic level and, instead, redirect such financing to renewables and just transition.

### 3. The opinion will influence findings of the African Court on Human and Peoples' Rights with respect to the request for an advisory opinion on the obligations of states in the context of climate change filed in May 2025

The request for the advisory opinion, filed on May 2, 2025 by the Pan African Lawyers Union (PALU) with support from a coalition of civil society organisations, requests the regional court to clarify the legal obligations of African states in addressing climate change, considering human rights and related treaties. It relates to questions of human rights impacts of climate change and also concerns interpretation of the right to a satisfactory environment as well as clarification of the duty of countries to cooperate internationally and adopt adaptation, mitigation, and resilience measures in the face of the climate crisis.

The ICJ Advisory opinion will in no doubt be a useful tool for the court with respect to the entire request. If the court grants the request and issues an advisory opinion aligned with the ICJ advisory, it will provide both a consistent and authoritative legal guidance on how African states should integrate human rights norms and climate responsibilities into domestic policies, regulation of corporations, and international cooperation. The decision will have huge ramifications for fossil fuel developments in the continent.

### 4. Opportunity to advance compensation claims: the ICJ decision reinforces equity and justice, strengthening African countries' calls for grant-based climate finance and reparations

The opinion confirms that states must provide compensation where restitution for a harm caused by a breached obligation is not possible, as is the case in climate cases. However, the court acknowledges that in the climate change context, reparations in the form of compensation may be difficult to calculate, as there is usually a degree of uncertainty with respect to the exact extent of the damage caused. Effectively, the opinion further strengthens the push for climate finance that is meaningful, adequate, accessible, and equitable, provided through grant-based and concessional mechanisms. For instance, with immediate effect, the opinion can be used by African countries to demand for full operationalisation and adequate funding to the Loss and Damage Fund and more climate finance commitments.

Importantly, the Court recognised that greenhouse gas emissions are inherently transboundary in nature. As a result, States may incur international responsibility not only for emissions produced within their territories, but also where activities under their jurisdiction or control contribute to

climate harm beyond their borders. This finding is particularly significant for African countries seeking accountability from major historical emitters whose actions have contributed disproportionately to the climate impacts experienced across the continent.

For African countries, the opinion represents both a significant victory and a key reference point for authoritative legal reasoning in international climate negotiations and climate litigation. It reinforces intergenerational justice, a critical consideration given Africa's youthful population and its likely future geopolitical implications. The Court's reasoning will also be valuable in domestic and regional proceedings seeking to hold specific States and their corporations accountable. Ultimately, the opinion reinforces the core principles of the Paris Agreement, including equity and common but differentiated responsibilities and respective capabilities.

The opinion also strengthens Africa's long-standing calls for climate justice in international climate finance debates. By recognising the relevance of equity, responsibility, and reparations in addressing climate harm, the Court's reasoning reinforces demands for scaled-up grant-based climate finance, loss and damage support, and meaningful technology transfer. For African countries facing severe fiscal constraints, this legal framing strengthens the case for predictable and concessional financing to support climate resilience, renewable energy expansion, and green industrialisation.

Evidently, the opinion might help in shifting climate action from voluntary commitments toward legally grounded obligations based on legal entitlement, responsibility, equity, and justice. It further strengthens Africa's long-standing equity-based claims, which are rooted in the principles of common but differentiated responsibilities, climate justice, and historical responsibility.

Beyond litigation, the opinion strengthens Africa's negotiating position in international climate diplomacy. It provides authoritative legal backing for longstanding African demands for climate justice, including scaled-up climate finance, operationalisation of the Loss and Damage Fund, and meaningful technology transfer to support energy transitions and climate resilience across the continent.

### 5. Opportunity to increase barriers to fossil fuel projects through strengthened legal and due diligence requirements, including effective environmental impact assessments

The opinion will strengthen African countries' efforts to push for credible pathways towards reducing greenhouse gas emissions and a just transition away from fossil fuels. It will also limit development of fossil fuels in African countries, which has unfortunately been on the rise. For instance, the opinion concludes that the duty of cessation requires states to employ all means at their disposal to reduce their greenhouse gas emissions and take other measures in a manner, and to the extent, that ensures compliance with their obligations.

On the due diligence obligation, the court confirmed that it includes an obligation to conduct effective environmental impact assessments before undertaking any activities that could generate greenhouse gases or cause significant environmental harm. In practice, the opinion expands the grounds for challenging environmental impact assessments for fossil fuel projects. Additionally, parties will now not have to rely on limited grounds such as improper environmental impact assessments, unmitigated environmental risks, social harms, and the risk of stranded assets. Instead, it will be possible to also invoke the lack of compliance with climate due diligence requirements and international law state obligations to protect the climate system.

Monitoring compliance of states with their climate obligations to reduce greenhouse gas emissions will require close tracking of international financing for fossil fuel projects, which can serve as a valuable accountability tool. It will now be possible to link states to local and international fossil fuel projects by tracking project financing, including cases where such projects are directly or indirectly funded by public financial institutions. This means that fossil fuel projects can be challenged on the basis that there is absence of meaningful climate due diligence on the part of the related public financial institution, and that such absence exposes that state to liability. Taken together with heightened climate litigation risks, this is likely to significantly curtail the development of new fossil fuel projects.

The advisory opinion is also likely to significantly shape the trajectory of climate litigation globally and within Africa. Courts increasingly rely on authoritative interpretations of international law when assessing state obligations in climate cases. The ICJ's clarification of state duties, due diligence obligations, and human rights implications provides a powerful interpretive tool that litigants and judges can rely on in domestic, regional, and international proceedings.

### 6. Case for reforming outdated bilateral investment treaties that constrict policy space of African countries

African countries can also use the legal reasoning in the opinion to push for the reform of long-term and outdated bilateral investment treaties that continue to constrict their policy space with respect to climate and environmental regulatory matters. It is a golden opportunity to strategically align bilateral investment treaties with the with the international legal obligation for states to protect the climate system and the environment, so that host African countries are not exposed to compensation claims for enacting climate requirements, such as measures to phase out fossil fuel licensing and subsidy policies.

## What next? The risk of mass exit from climate and human rights treaties

It remains uncertain whether the prospect of legal liability will prompt fossil fuel-dependent African countries to take meaningful action to protect the climate system and scale up just transition pathways, including acceleration of renewables. It is possible for some African countries to seek to limit or block the admissibility of climate litigation in their domestic and regional courts to evade responsibility. In more extreme scenarios, certain fossil fuel-dependent countries could attempt to withdraw from key climate and human rights treaties, further destabilising global climate governance and undermining much-needed international cooperation.

However, one thing remains clear: Africa should seize the opportunity presented by the progressive advisory opinion to advance its calls for climate justice, accountability, and equity. To address structural capacity constraints, climate justice must be accompanied by concessional, grant-based, and predictable climate finance; meaningful technology transfer; and sustained capacity-building to support climate-resilient economies and green industrialisation across the continent. On its part, Africa should prioritise the rapid scale-up of renewable energy and take concrete, time-bound steps to phase out fossil fuels through just and equitable transition pathways that protect workers, livelihoods, communities and public revenues.