

Failing to protect the climate could violate international law

Awareness of the associations between climate change, related extreme weather events and disease prevention and care outcomes is growing in momentum. Extreme weather events resulting from climate change impact disease-affected regions and populations, in particular in the resource-poor parts of the world. Eastern and southern Africa, regions at elevated risk for precipitation extremes, carry >54% of the global burden of people living with HIV. These regions are experiencing annual droughts and/or rainfalls of increasing duration and intensity. There is growing evidence in sub-Saharan Africa of the link between extreme weather events and HIV acquisition risks, and it has been shown that drought and flooding are associated with lower antiretroviral therapy adherence and poorer HIV clinical outcomes among people living with HIV.^[1]

The International Court of Justice (ICJ), well recognised as the United Nations (UN)'s top court (the UN's principal judicial organ in The Hague, the Netherlands), issued an advisory opinion recently which stated that countries that failed to take measures to protect planet earth from climate change could be in violation of international law. Moreover, nations harmed by its effects could be entitled to compensation for damages suffered. Given that this existential problem is of planetary proportions, the landmark advisory opinion referred to the situation as a dire climate crisis, with all forms of life and the health of the planet now under threat. Backed unanimously by the court's 15 judges, the opinion is widely lauded as a turning point in international climate law.^[2] While the opinion is non-binding, *Nature Briefing* writes that it is highly influential and likely to be cited in courts around the world.^[3] Furthermore, last year when the ICJ embarked on this work of clarifying what states' legal responsibility would be on the impact of climate change, *Nature* predicted that this could be one of the most consequential developments in climate policy since the Paris agreement.^[4]

That the high concentrations of greenhouse gases in the atmosphere are warming the planet is a scientific fact. The Paris climate agreement, in which nations pledged to keep average temperatures within 1.5°C of pre-industrial levels, is legally binding in terms of international law. However, as emissions continue to increase, it is predicted with near certainty that global temperature increases will exceed this limit. With the research community's continuing frustration that its warnings are not being heeded, the point of a legally binding agreement if countries can effectively ignore it has started to be questioned. Nevertheless, several individuals, non-governmental organisations and more than a few governments have not given up on the legal route. Given that the Paris agreement lacks an enforcement mechanism, they have resorted to the courts to make accountable all those with climate responsibility, both nationally and internationally.^[4] Public authorities have been seeking compensation from corporations for climate-related harms, under the 'polluter pays' principle, with California having launched legal action against five of the world's largest oil companies and their subsidiaries, demanding that they pay for the costs of their impacts on the environment, human health and their citizens' livelihoods. There was also a demand for assistance to protect the state against the harms that climate change will cause in years to come. In Brazil, the public prosecutor's office and the Brazilian Institute of the Environment and Renewable Natural Resources have been seeking

compensation for harms specifically from greenhouse-gas emissions caused by illegal deforestation.^[4]

By the end of 2023, the Grantham Research Institute on Climate Change and the Environment reported that 2 666 climate-litigation cases had been filed worldwide, with all looking to hold governments and companies accountable for their climate pledges. Of these, the USA had 1 745 cases filed, the UK 139, Australia 132 and Brazil 82. Low- and middle-income countries made up 8% of recorded cases.^[5] The report found that there had been a handful of landmark judgments, with courts in Germany and the UK separately finding that their governments' policies would fail to meet emissions-reduction targets as set out in law. However, most claimants struggle to get a positive result, with much climate litigation stalled by processes and procedures of labyrinthine proportions. Moreover, some respondents (mostly corporations) counter-litigate, and essentially challenge climate laws that they are not comfortable with.^[5] Given these impediments, it is hoped that intervention from the world's highest court could be a game changer. The ICJ heard evidence on two broad questions: firstly, countries' obligations in international law to protect the climate system from anthropogenic greenhouse gas emissions, and secondly, legal consequences for states when their actions or failures to act could cause harm.^[4]

The ICJ Advisory has amplified the cries of the world's scientists and citizens who have been demanding strong action on climate and nature protection, and for protection from climate change as a human right. Despite it being non-binding, it is important for low- and middle-income countries in particular, given our comparatively poorer access to expertise in climate science, policy and law than that of high-income countries. We must bear in mind, though, that legal redress is just one tool in a larger toolbox of actions. The international community has to accept that humanity has no alternative but to decarbonise in a just way, because our collective survival depends on it.^[4] The ICJ Advisory, backed by the highest standards of evidence, must now be used to ensure that all states honour their responsibility for mitigating against climate harms, and protect the environment from emissions. Africa, too, now has a tool to take legal action forward so our environment can be protected against this man-made climate disaster.

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