

CLIMATE JUSTICE & HUMAN RIGHTS

Understanding the ICJ Advisory Opinion on States' Obligations in Respect of Climate Change and its Implications for Food Security in Africa

Promoting Human Rights · Democratic Governance · Justice · Rule of Law

WHAT IS THE ICJ ADVISORY OPINION?

This is a landmark Advisory Opinion by the International Court of Justice on **States' obligations in relation to climate change** and the **legal consequences of failing to meet those obligations**. It clarifies States' obligations under international law to protect the climate and environment for present and future generations. The Opinion is wide-ranging, interpreting climate treaties, other environmental agreements, and customary international law, with implications across many areas of international and domestic law and policy.

Although not legally binding itself, the Opinion makes clear that failure by States to meet their climate obligations may constitute a **breach of international law** and give rise to legal consequences.

The Core Principle

The central message of the ICJ's 23 July 2025 Advisory Opinion on Obligations of States in Respect of Climate Change is that **climate change is not merely a policy or political issue**; it engages binding obligations under international law. States have a duty to protect the climate system and the environment from anthropogenic greenhouse gas emissions, including through due diligence, prevention of significant environmental harm, international cooperation and the protection of human rights.

Importantly, the Court affirmed that these obligations extend beyond States' commitments under the Paris Agreement. States' conduct can therefore be assessed against their broader obligations under international law, including international human rights and environmental law.

THE ADVISORY OPINION AT A GLANCE

What questions did the Court ask?

- ✦ What are States required to do under international law to protect the climate and environment from human-caused greenhouse gas emissions?
- ✦ What are the legal consequences when States cause significant harm to the climate and environment through their actions or failures to act?

The questions also asked the Court to consider the consequences for States and for peoples and individuals affected by, or particularly vulnerable to, the adverse effects of climate change.

What did the Court find?

The Court clarified that States have **legally binding obligations under international law to protect the climate system and the environment from human-caused greenhouse gas emissions**. These obligations arise not only from international climate treaties, but also from customary international law and other applicable rules of international law. The Court affirmed that States must take ambitious measures to prevent and reduce climate harm, adapt to the effects of climate change, cooperate with one another, and provide support to developing States. It also clarified that a State's failure to comply with its applicable climate obligations may constitute an internationally wrongful act and engage **State responsibility**, including, where the relevant legal requirements are met, an obligation to provide reparation.

♦ **States must take ambitious climate action** – The Court confirmed that the 1.5°C temperature goal is the primary temperature goal under the Paris Agreement. States are required to prepare, communicate, and maintain successive nationally determined contributions (NDCs) that reflect their highest possible ambition and represent a progression beyond previous efforts. Their climate action must be capable of contributing to the achievement of the Agreement's temperature goal.

♦ **States have a legal duty to prevent climate harm** – States have obligations under customary international law to prevent significant harm to the climate system and the environment. This requires States to exercise due diligence in regulating activities within their jurisdiction or control that may contribute to climate harm. These obligations can extend to activities undertaken by private actors, where States have regulatory authority over them. States must also undertake appropriate environmental impact assessments where proposed activities may cause significant adverse effects.

♦ **States must adapt climate change** – The Court recognised that States have obligations relating to adaptation to climate change. States must take appropriate measures to strengthen resilience, enhance adaptive capacity and reduce vulnerability to the adverse effects of climate change. Adaptation measures should be informed by the best available science and the particular circumstances and vulnerabilities of affected communities and States.

♦ **States must cooperate and support developing States** – The Court affirmed the importance of international cooperation in addressing climate change. Developed States have obligations under the applicable international legal framework to provide support to developing States, including through climate finance, technology transfer and capacity-building, to enable them to pursue mitigation and adaptation measures. These obligations reflect the principle of cooperation and the differentiated responsibilities of States in addressing the climate crisis.

♦ **Climate obligations extend beyond climate treaties** – The Court made clear that States' climate obligations are not confined to the UN climate treaty regime. Obligations may also arise under customary international law and other applicable rules of international law. This includes the customary obligation to prevent significant environmental harm and the obligation to cooperate in protecting the climate system.

♦ **Failure to comply can engage State responsibility** – Where a State fails to comply with an applicable international obligation, that failure may constitute an internationally wrongful act and engage State responsibility. The legal consequences may include an obligation to cease the wrongful conduct, provide assurances and guarantees of non-repetition, and make full reparation for injury caused, including compensation where the applicable requirements, such as a sufficient causal link, are established.

Why Is The Opinion Significant?

The Advisory Opinion is significant because it clarifies the legal obligations of States in responding to climate change and places climate action within the broader framework of international law.

Goes beyond the Paris Agreement	The court confirmed that States' obligations concerning climate change arise from multiple sources of international law, including customary international law, and are therefore not limited to commitments made under the Paris Agreement. This strengthens the legal framework applicable to States' conduct in addressing climate change.
Strengthens Accountability	By clarifying the legal obligations of States and the circumstances in which failures to comply may engage State responsibility, the Opinion provides a stronger basis for assessing whether State conduct is consistent with international law. Climate change is therefore solely a matter of policy choice or political commitment; States conduct may have legal consequences where applicable obligations are breached.
Guides Climate Action	The opinion provides authoritative legal guidance on what States are required to do to prevent climate harm, reduce emission, adapt to climate change and cooperate internationally. It reinforces the importance of ambitious, science-based and effective climate action, including through national climate policies and measures.
Supports climate negotiation and implementation	The Opinion provides States and climate negotiators with greater clarity on the relationship between climate

	commitments and broader international legal obligations. Its findings can inform the future negotiation and national implementation by reinforcing that climate action should be understood within the framework of legal obligations and State responsibility, rather than voluntary commitments alone.
Reinforces multilateralism	By clarifying the role of international law in addressing global problem that no State can resolve alone, the Opinion reinforces the importance of international cooperation and multilateral action in responding to the climate action.

LEGAL FRAMEWORKS

A. International Legal Framework

- ✦ **UN Framework Convention on Climate Change (UNFCCC), 1992** – The foundational international treaty for addressing climate change. It establishes a framework for international cooperation to prevent dangerous human interference with the climate system and recognises the need for States to address climate change according to their respective responsibilities and capabilities.
- ✦ **Kyoto Protocol, 1997** – The first international agreement to establish legally binding greenhouse-gas emission reduction targets for developed countries and other Parties listed in Annex I. It operationalised the principle of common but differentiated responsibilities, reflecting the greater historical contribution of developed countries to green-house gas emissions.
- ✦ **Paris Agreement, 2015** – A legally binding international treaty that strengthens the global response to climate change. It aims to hold the increase in global average temperature to well below 2°C and pursue efforts to limit it to 1.5°C. States are required to prepare, communicate, and maintain successive nationally determined contributions (NDCs) and to progressively increase their ambition.
- ✦ **Customary International Law** – The ICJ recognised climate-related obligations also arise under customary international law, including the obligations to prevent significant environmental harm and cooperate in protecting the climate system.
- ✦ **International Human Rights Law** – Climate change can affect the enjoyment of fundamental human rights, including the rights to life, health, food, water and an adequate standard of living. The ICJ considered relevant human rights obligations in determining the legal obligations of States in relation to climate change.

B. Kenya's National Legal Framework

- ✦ **Constitution of Kenya, 2010** – The Constitution recognises the right to a clean and healthy environment under Article 42 and places the duties on the State to protect and conserve the environment under Article 69. It also protects socio-economic rights, including the rights to food and water under Article 43.
- ✦ **Climate Change Act, 2016 (as amended)** – Kenya's principal legislation on climate change. It establishes the legal and institutional framework for climate governance and provides for measures to achieve low-carbon, climate-resilient development, including climate mainstreaming, adaptation and mitigation.
- ✦ **Environmental Management and Co-ordination Act (EMCA), 1999** – Provides Kenya's broader framework for environmental management and protection, including environmental impacts assessments, environmental audits and monitoring and participation.
- ✦ **National Climate Change Action Plan (NCCAP)** – Provides the policy framework for implementing Kenya's climate mitigation and adaptation priorities across sectors, translating national climate commitments into practical actions and programmes.
- ✦ **Kenya's Nationally Determined Contribution (NDC)** – Sets out Kenya's climate commitments under the Paris Agreement, including its greenhouse-gas emissions reduction target measures to and strengthen climate resilience and adaptation.

WHO CLIMATE CHANGE AFFECTS

Africa contributes relatively little to global greenhouse gas emissions yet is among the region's most vulnerable to climate change. Climate change is already contributing to losses in food production, water security, livelihoods, health and economic growth across the continent.

SMALL SCALE FARMERS, PASTORALIST & FOOD PRODUCERS

Agriculture employs **55–62% of the sub-Saharan African workforce**, while approximately **95% of cropland is rain-fed**, leaving millions of livelihoods highly exposed to changes in rainfall, drought and temperature. The IPCC estimates that climate change has reduced agricultural productivity growth in Africa by **34% since 1961**.

WOMEN, CHILDREN & MARGINALISED COMMUNITIES

Climate change disproportionately affect people who already experience social and economic inequalities, including women, children, older persons, persons with disabilities and low-income communities. In **48 of 49 African countries assessed by UNICEF**, children are at **high or extremely high risk from climate change and environmental hazards**.

COASTAL & FISHING COMMUNITIES

Fisheries provide the main source of protein for approximately **200 million people in Africa** and support the livelihoods of around **12.3 million people**. Climate change threatens these food and livelihood systems through ocean warming, changing fish stocks and other impacts.

PEOPLE FACING DISPLACEMENT

Climate-related impacts can undermine livelihoods and make some areas increasingly difficult to inhabit, contributing to migration and displacement. Without stronger climate and development action, **up to 86 million people in Sub-Saharan Africa could become internal climate migrants by 2050**.

FUTURE GENERATIONS

Climate change creates long-term consequences for people who have contributed little to historical greenhouse-gas emissions. This makes **intergenerational equity** a central concern of climate justice.

KENYA IN FOCUS: THE NAIROBI CLIMATE CONFERENCE

To translate the global ICJ ruling into a practical, pan-African legal roadmap, Kenya hosted the African States Sensitisation Conference on the ICJ Advisory Opinion on Climate Change from **April 21 to 23, 2026**. Held at the CIFOR-ICRAF Campus in Gigiri, Nairobi, the three-day high-level summit brought together African government officials, judges, legal scholars, and scientists under the banner of "**African-led Climate Solutions**."

The four operational pillars:

✦ Pillar 1: Domestic Enforcement & Judicial Activism

- Action: Loosening strict "legal standing" (locus standi) rules across East Africa.
- Impact: Empowers youth, citizens, and NGOs to sue domestic bodies and stop weak local environmental permitting.

✦ Pillar 2: Formatting Loss & Damage Claims

- Action: Standardising African climate attribution science to legally quantify legal disaster math.
- Impact: Enables States to present immutable, legally binding reparation bills to heavy Western and industrial polluters.

✦ Pillar 3: Trade, Investment & Corporate Accountability

- Action: Reforming bilateral investment treaties and targeting harmful fossil fuel and agricultural subsidies.
- Impact: Shields African states from retaliatory corporate lawsuits when blocking dirty energy projects.

✦ Pillar 4: Technology Transfer & The Green Transition

- Action: Framing green-technology transfer as an absolute legal obligation under the ICJ's cooperation mandate.
- Impact: Forces intellectual property waivers on solar, wind and geothermal tech to help Africa leapfrog fossil fuels.

Key Takeaway

Changing the rules of the game.

- Principal Secretary for Foreign Affairs, Dr. Korir Sing'Oei, stated that the ICJ ruling effectively strips historic polluters of political excuses. Climate commitments are no longer optional political choices, but **legally binding obligations** where states will be held fully accountable.

Weaponising Public Interest Litigation (PIL):

- Legal experts from the University of Nairobi [c1] emphasized that East African courts must now lower strict "standing" rules. This allows citizens, youth groups, and NGOs to easily file PILs to block destructive corporate projects and force local governments to align their budgets with the 1.5°C climate limit.

Kenya and other African countries contribute relatively little to global greenhouse gas emissions yet are among the region's most vulnerable to climate change. Climate change is already contributing to losses in food production, water security, livelihoods, health and economic growth across the continent. The following is a structured breakdown of the **climate crisis in Kenya**:

Climate Impacts and Realities

■ **Extreme Heat and Extreme Drought:** Kenya's mean temperature has risen by approximately **1.9°C** since the pre-industrial era, making extreme, multi-year droughts about 100 times more likely. Arid and Semi-Arid Lands (ASALs) now cover 83% of the country, pushing millions to the brink of starvation.

■ **Erratic Rainfall and Intense Floods:** Traditional rain seasons have shortened or failed, frequently followed by destructive flash floods. Extreme weather in the Horn of Africa has displaced over a million people, degraded agricultural soil, and caused the Rift Valley lakes to expand massively (e.g., Lake Solai expanding by up to 123%), swallowing up homes and schools.

■ **Economic Strain:** With over **75% of the population** relying on rain-fed agriculture for their livelihoods, these impacts cause massive financial devastation. Climate shocks trigger an estimated **3% to 5% annual GDP loss**, which is projected to **climb to 8.5% by 2050**.

■ **Health and Disease Vector Shifts:** Flooding and warming temperatures have expanded the breeding grounds for disease vectors. **Malaria** is now spreading into the historically cooler central Kenyan highlands, while water scarcity has **worsened cholera outbreaks**.

■ **Pioneering Global Climate Justice:** Globally, Kenya is leveraging the ICJ advisory opinion to shift international financing. Leaders are using the ruling to argue that climate funds from rich polluting nations are a **legally binding obligation**, not optional charity. Domestically, Kenyan human rights groups are increasingly embedding a Human Rights-Based Approach (HRBA) into the courts to ensure that all local climate actions protect the rights of smallholder farmers and vulnerable groups.

Climate Change and Human Rights

■ **The Right to Food and Water:** Prolonged droughts in regions like Northern Kenya have left millions facing **"acute food insecurity"**. Scarcity has increased the percentage of Kenyans living under **water-stressed conditions from 15% to 33%**.

■ **Human Security and Conflict:** Depleted pastures and drying water holes have **forced pastoralist communities to migrate into new territories**. This resource scarcity has worsened cattle rustling and inter-clan clashes, particularly in the North Rift.

■ **Rights Violations in Climate Solutions:** Paradoxically, poorly managed government climate initiatives have also violated human rights. For instance, **forced evictions** from key water catchments like the Mau Forest Complex have

Kenya’s Climate Response

- **The Strategic Roadmap (NCAAP 2023 – 2027):** Under the National Climate Change Action Plan, Kenya has budgeted **KES 4.1 trillion** to drive a low-carbon, climate-resilient economy. The country aims for a **32% reduction in greenhouse gas emissions by 2030** across eight priority sectors, including climate-smart agriculture and clean energy.
- **Green Energy Leadership:** Kenya is a global renewable energy hub. Geothermal power, wind, and solar energy make up over **90% of its domestic electricity grid**, and the country continues to invest in expanding off-grid solar infrastructure to rural communities.
- **The 15 Billion Trees Initiative:** To combat severe land degradation and rescue its drying "Water Towers" (forested water catchments), **the government has committed to planting 15 billion trees by 2032** to raise Kenya's national forest cover to 30%.

displaced thousands of residents, cutting off their rights to housing, education, and cultural identity.

- **Vulnerable and Marginalised Groups (VMGs):** Indigenous communities, women, and youth in urban informal settlements (like Kibera) suffer first and worst. National frameworks often suffer from a **"delivery gap"** where local county climate actions fail to meaningfully involve or protect these groups.

WHAT DOES THIS OPINION MEAN FOR FOOD SECURITY IN AFRICA?

Defining Food Security: The Four Pillars & The Right to Food

At its core, **food security** exists when all people, at all times, have physical, social and economic access to sufficient, safe and nutritious food that meets their dietary needs and food preferences for an active and healthy life.

International law divides this concept into **four interconnected pillars**, which are deeply tied to the **Right to Adequate Food** under the International Covenant on Economic, Social and Cultural Rights (ICESCR):

- ◆ **Availability** – The physical presence of food in a country or a community. This relies on stable local agricultural production, functional food reserves, and dependable trade systems.
- ◆ **Access** – The economic and physical capacity of individuals to acquire food. Food may be physically available in a market, but if climate shocks cause hyper-inflation or destroy livelihoods, people lack the financial access to buy it.
- ◆ **Utilisation** – The body’s ability to make use of the nutrients in the food. This requires not just calories, but diverse, nutrient-dense food, clean drinking water, adequate sanitation, and healthcare to prevent disease.
- ◆ **Stability** – The permanent guarantee of the first three pillars. A household is only food secure if their access food remains constant, without the risk of sudden interruptions caused by recurring droughts, floods or seasonal crop failures.

By explicitly linking climate duties to the right to an adequate standard of living, the ICJ Advisory Opinion shifts the fight for African food security from an appeal for charity to a **demand for justice**.

A stronger Hand in International Negotiations (“The Polluter Pays”)	Historically, African nations have had to request adaptation financing and loss-and-damage funds from heavy industrial polluters as a form of development aid. ◆ The Shift: The ICJ opinion establishes that high-emitting nations have a legal duty to cooperate globally, which includes technology transfers, capacity-building, and robust climate financing. Adaptation funding is now a legal obligation, not global goodwill.
Strict Domestic Due Diligence & Food Sovereignty	African governments must protect citizens’ right to life and an adequate standard of living (which explicitly includes food and water) from climate risks. Domestic policies face strict legal scrutiny to guarantee that commercial green-energy plans or carbon credit schemes

	do not displace smallholder farmers or undermine native food production.
Pathways for Climate Litigation & Accountability	By framing climate inaction as a direct breach of human rights law, ICJ hands civil society (such as ICJ-Kenya) an authoritative legal precedent. If states ignore predictable droughts warnings, mismanage strategic reserves, or fail to invest in climate-resilient water networks, vulnerable groups can sue for accountability in domestic courts.

WHAT DOES OPINION MEAN FOR AFRICA?

The **ICJ Advisory Opinion** serves as a powerful legal and strategic turning point for the continent. Rather than viewing climate change merely as an unfortunate environmental or developmental hurdle, the world's highest court elevates climate action into a matter of strict international law.

For African States, communities, and civil society organisations like ICJ-Kenya, this historic ruling delivers critical leverage across eight distinct areas:

- ✦ **1. Phasing down fossil fuels:** It strengthens the legal basis for transitioning away from dirty energy. The Court's interpretation of the **1.5°C threshold** as a primary, binding target means that continued state support, financing, or subsidies for fossil fuel expansion may now be classified as an **"internationally wrongful act."**
- ✦ **2. Demanding Climate Due Diligence:** It gives African States and frontline communities stronger legal grounds to demand accountability. Governments are no longer granted total discretion over their climate plans; they are bound by a rigorous, science-backed standard of **due diligence** to protect human rights including the rights to food, water, and life.
- ✦ **3. Influencing Regional Human Rights Courts:** It directly impacts the jurisprudence of continental bodies like the **African Court on Human and Peoples' Rights (AfCHPR)**. By anchoring climate duties squarely within global human rights frameworks, the ruling provides a blueprint for African jurists to interpret environmental destruction as an active human rights violation.
- ✦ **4. Financing, Compensation, and Loss & Damage:** It fundamentally reshapes the global financial debate. Instead of African nations having to request climate finance as a form of global charity or development aid, the ICJ frames financial assistance, technology transfers, and reparations for **Loss and Damage** as binding legal entitlements.
- ✦ **5. Challenging Polluting Projects:** It vastly strengthens local legal challenges against fossil-fuel and high-emission projects. Civil society can leverage the ruling to demand more stringent Environmental Impact Assessments (EIAs) and launch strategic climate litigation against both state and corporate actors who jeopardise local ecosystems.
- ✦ **6. Reforming Bilateral Investment Treaties (BITs):** It opens an unprecedented door to restructure international trade and investment regimes. Historically, outdated BITs protected foreign fossil-fuel corporations and penalised African states for passing green laws; this opinion gives states the legal cover to amend or exit treaties that actively **constrain domestic climate policies**.
- ✦ **7. Reinforcing the Paris Agreement Framework:** It breathe new legal life into core principles like **Equity** and **Common but Differentiated Responsibilities and Respective Capabilities (CBDR-RC)**. The opinion validates Africa's unique structural position, reminding the world that those who contributed the least to global emissions should not bear the heaviest, unassisted survival burden.
- ✦ **8. Elevating International Climate Diplomacy:** It drastically enhances Africa's collective bargaining power on the global stage. Armed with clear, authoritative legal backing from the ICJ, African delegations and negotiators can go into future UN climate summits with a unified, unyielding voice to demand concrete commitments from high-emitting nations.

Key Message

Climate action is no longer an optional political gesture or an act of global charity it is a binding, enforceable legal obligation tied directly to human survival and fundamental human rights.

For Africa, this completely flips the global power dynamic: it transforms the continent from a **passive victim pleading for climate aid** into a **legal creditor demanding accountability, climate justice, and reparations** under international law.

RECOMMENDATIONS

1. Concrete Policy Recommendations (Actionable Advocacy)

What the **Government of Kenya** and regional bodies must do right now to align their agricultural policies with the ICJ's ruling:

- ✦ **Enact a Climate-Smart Agriculture Due Diligence Framework:** Kenya must formally audit large-scale agricultural and carbon-offset investments to ensure they do not compromise local food security or displace smallholder farmers.
- ✦ **Establish State-Backed Regional Grain and Seed Reserves:** To satisfy the pillar of *Stability*, the East African Community (EAC) should create climate-resilient, community-managed seed banks resilient to recurring droughts and floods.
- ✦ **Legal Customisation of NDCs:** Update Kenya's Nationally Determined Contributions (NDCs) to explicitly tie adaptation targets to human rights metrics, particularly child nutrition and clean water access.

2. Legal Mechanisms: Domestication & Enforcement (Lawyers & Activists)

How to operationalise the advisory opinion within East Africa:

- ✦ **Leveraging Article 42 of the Kenyan Constitution:** Connect the ICJ ruling directly to Kenya's domestic law. Article 42 guarantees the right to a clean and healthy environment. The ICJ ruling means that failing to mitigate climate-induced crop failure is a direct violation of Article 42.
- ✦ **Public Interest Litigation (PIL) Blueprints:** Provide a structural guide on how civil society organisations (CSOs) can sue state agencies or private actors if they approve high-emission or soil-degrading commercial projects without proper Environmental Impact Assessments (EIAs).

3. Case Studies: Frontline Realities in East Africa (Ground-Level Context)

Bridging the high-level legal text from The Hague with current field data from Kenya and the surrounding region:

- ✦ **The Horn of Africa Drought-Flood Cycle:** Highlight the human cost of the extreme El Niño cycles. Documenting how communities faced 5 consecutive failed rainy seasons followed by catastrophic topsoil flooding demonstrates exactly what a "ruptured stability pillar" looks like in practice.
- ✦ **The Carbon Nutrient Drop:** Cite local agricultural testing showing dropping protein and iron levels in regional staples like white maize, explicitly illustrating the *carbon nutrient penalty* under elevated CO₂.

ICJ Kenya

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Promoting Human Rights, Democratic Governance, Justice, and the Rule of Law in Africa since 1959

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