

## THE INTERNATIONAL COURT OF JUSTICE ADVISORY OPINION ON CLIMATE CHANGE: IMPLICATIONS AND POLICY FOR SOUTH AFRICA

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**Abstract:** In July 2025, the International Court of Justice (ICJ) delivered a landmark advisory opinion affirming binding obligations on states under international law to take effective action against human-induced climate change. This paper analyzes the ICJ ruling's legal foundations and implications for South Africa, a climate-vulnerable developing country with socio-economic challenges and coal dependence. The ICJ opinion grounds state duties in treaties, customary international law, and international human rights law, mandating "deep, rapid and sustained" emission reductions, prevention of transboundary harm, and equal legal status for adaptation alongside mitigation (International Court of Justice. (2025). *Advisory Opinion on State Obligations in Respect of Climate Change* (23 July 2025) paras. 47, 50). The paper provides concrete recommendations for reforming South African climate legislation, enhancing ambition, advancing climate justice advocacy, and securing a just transition. A concise policy brief is appended to assist ministers in operationalizing the ruling's imperatives.

**Keywords:** ICJ; Climate change; South Africa; International environmental law.

### Introduction

On July 23, 2025, the International Court of Justice (ICJ) delivered a historic advisory opinion clarifying the legally binding obligations of states to combat climate change (International Institute for Sustainable Development [IISD], 2025; United Nations News, 2025). The ruling

mandates that states must take "deep, rapid and sustained reductions" in greenhouse gas emissions to limit global temperature rise to 1.5°C above pre-industrial levels—consistent with the Paris Agreement's most ambitious target (ICJ, 2025, para. 47; Carbon Brief, 2025). This advisory opinion profoundly shifts international environmental law by grounding these obligations not only in treaties but also in customary international law and human rights law, setting a robust framework for accountability (ICJ, 2025, para. 47; Carbon Brief, 2025). This paper briefly examines the advisory opinion's core findings, the implications for South Africa considering its socio-economic vulnerabilities and climate risks and sets forth recommendations to integrate the ICJ ruling into domestic law and policy. The paper concludes by situating the ruling in the broader international legal context with a focus on justice and equity.

### **Legal Risks and Rights Protection**

The ICJ decisively anchors state climate duties in multiple legal sources, recognizing the interconnectedness of environmental, human rights, and climate law. The Court affirmed that: "States have legally binding obligations under international law to hold the increase in the global average temperature to well below 2 degrees Celsius above pre-industrial levels and to pursue efforts to limit the temperature increase to 1.5 degrees Celsius above pre-industrial levels" (ICJ, 2025, para. 47).

The opinion elaborates that these obligations derive not only from the Paris Agreement but also from "customary international law principles such as the precautionary principle, the duty of due diligence, and principles of international human rights law, which require the protection of rights to life, health, food, water, and a sustainable environment" (ICJ, 2025, paras. 52, 56). This integration creates enforceable responsibilities beyond treaty commitments, reflecting evolving customary norms.

Further, the Court affirms that: "The obligation of states to prevent significant transboundary harm to the climate system applies with full legal force in the context of climate change, entailing a duty of vigilance,

enforcement, and administrative control" (ICJ, 2025, para. 60). Breaching these obligations entails state responsibility, with the Court emphasizing: "States that have committed internationally wrongful acts in breach of their climate obligations are under an obligation to cease said conduct, to prevent its recurrence, and to make full reparation for the injury caused, including through financial compensation or other appropriate remedies" (ICJ, 2025, para. 60).

Moreover, adaptation is legally equated with mitigation: "The Court recognizes that the legal duty of states encompasses both mitigation of greenhouse gas emissions and adaptation measures to respond to the adverse effects of climate change, with both elements having equal legal status" (ICJ, 2025, para. 50). The precautionary principle was restated as: "In circumstances of serious or irreversible harm, lack of full scientific certainty shall not be used as a reason to postpone cost-effective measures to prevent environmental degradation" (ICJ, 2025, para. 58).

These principles align with longstanding jurisprudence in international environmental law fostering state responsibility and due diligence, as reflected in foundational cases such as the Corfu Channel (United Kingdom v. Albania), Pulp Mills on the River Uruguay (Argentina v. Uruguay), and Gabcikovo-Nagymaros Project (Hungary/Slovakia).

## **Implications for South Africa**

South Africa confronts severe socio-economic vulnerabilities, including water scarcity, agricultural stress, health impacts, and energy insecurity, exacerbated by climate change (Climate Journal, 2024). The ICJ opinion imposes urgent legal and policy imperatives.

## **Legal Risks and Rights Protection**

South African climate policies lagging in emission reductions or permitting fossil fuel expansion now face increased legal scrutiny nationally and internationally (Norton Rose Fulbright, 2025; Wadiwala,

2025). The ICJ's linkage of climate action to fundamental rights means South African courts could interpret constitutional rights to life, water, food, and environment more robustly in favour of climate protection (South African Government, 2024; Norton Rose Fulbright, 2025). South Africa and neighbouring states, historically minor emitters but disproportionately impacted, have newfound legal grounds to claim compensation, debt relief, and technology transfer from major emitters (African Climate Wire, 2024; IISD, 2025).

## **Development and Policy Challenges**

South Africa's governance framework (National Climate Change Response White Paper, NDP, Paris Agreement commitments) must integrate the ICJ's "highest possible ambition" standard for mitigation and adaptation (Carbon Brief, 2025; IISD, 2025). Equitable, just transition mechanisms are essential to address the economic and social dimensions of phasing out coal (Tyeler & Mbatha, 2024; TIPS, 2024). Adaptation strategies must focus on vulnerable groups and critical sectors such as agriculture, water, health, and infrastructure (The Conversation, 2025).

## **Policy Recommendations for South Africa:**

1. Align Domestic Law with ICJ Standards
  - a. Embed the 1.5°C target and duty to prevent significant harm in laws like the Carbon Tax Act and Climate Change Bill (Norton Rose Fulbright, 2025).
  - b. Strengthen procedural mandates on transparency, consultation, and reporting.
  - c. Explicitly connect climate obligations with constitutionally protected human rights (South African Government, 2024).
2. Enhance Ambition and Accountability
  - a. Revise NDCs to meet the highest possible ambition with independent oversight (Climate Journal, 2024).

- b. Implement fossil fuel phase-out plans ensuring just transition support for workers and communities (TIPS, 2024).
- 3. Lead Regional and International Climate Justice Efforts
  - a. Advocate for climate finance, technology transfer, and reparations from major emitters, leveraging the ICJ's legal framework (African Climate Wire, 2024).
  - b. Develop legal and scientific capacity for potential climate litigation.
- 4. Support Research and Stakeholder Engagement
  - a. Promote interdisciplinary research on climate impacts and transitions (Springer, 2022).
  - b. Encourage inclusive public participation involving marginalized groups (The Conversation, 2025).

## **Policy Brief for South African Ministers**

To guide ministerial decision-making aligned with the ICJ advisory opinion:

- The ICJ affirms binding obligations to limit warming to 1.5°C and prevent transboundary harm, grounded in law and human rights (ICJ, 2025, paras. 47, 60).
- South African policies must meet heightened legal standards, failure risks litigation and loss of rights protections.
- Prioritize embedding the 1.5°C target in legislation; deepen mitigation and adaptation ambitions with oversight.
- Phase out fossil fuels with just transition safeguards.
- Lead indigenous African climate justice advocacy for finance and reparations.
- Invest in legal, scientific, and public engagement capacity

In addition, the following actions can also be considered:

- Review and reform climate laws incorporating ICJ principles.
- Expand expertise for international negotiations and litigation readiness.

- Engage civil society and vulnerable communities actively.

## **International Legal Context and Global Significance**

The ICJ opinion establishes a binding, cross-cutting climate legal framework integrating treaties, customary law, and human rights law (SWP Berlin, 2025; IISD, 2025).

It empowers vulnerable developing states and Small Island Developing States (SIDS) to assert claims for finance, reparations, and technology transfers (African Climate Wire, 2024). Although advisory and non-binding in the strict sense, the ruling shapes international negotiations, domestic court litigation, and international legal interpretations worldwide (Norton Rose Fulbright, 2025; Opinio Juris, 2025).

To reaffirm its international legal significance and implications for states globally:

- The ICJ affirms binding state obligations under multiple international law sources: climate treaties, customary international law, human rights law, and environmental principles.
- States must take “deep, rapid and sustained” emission reductions to limit warming to 1.5°C and prevent transboundary harm.
- The advisory opinion raises adaptation to equal legal status with mitigation and links climate action to protection of fundamental human rights.
- Although advisory and non-binding, the opinion carries strong legal, political, and moral weight influencing international climate law, diplomacy, and domestic court cases worldwide.
- Vulnerable countries and developing states gain firmer legal grounds to demand climate finance, reparations, and technology support.

Given the ICJ advisory opinion’s global significance and its broader implications for international law and climate action; it is worth cogitating about the following:

## **Landmark in Environmental Law**

The ICJ advisory opinion represents a landmark moment for international environmental law, clarifying that climate obligations arise not only from specialized treaties like the Paris Agreement but also from binding customary international law, human rights law, and states' duties to prevent transboundary harm (International Institute for Sustainable Development [IISD], 2025; Carbon Brief, 2025). The Court rejected arguments limiting climate duties to treaties alone, affirming that customary principles such as due diligence, precaution, and prevention of significant harm to the climate system—treated as part of the global commons—impose *erga omnes* obligations on all states (IISD, 2025; American Society of International Law [ASIL], 2025). This integration creates a comprehensive legal framework requiring states to regulate emissions, phase down fossil fuels, and align national plans with 1.5°C science, fundamentally strengthening global environmental accountability (Carbon Brief, 2025; Columbia Law School Sabin Center for Climate Change Law, 2025).

## **Empowerment of Vulnerable Nations**

The advisory opinion empowers vulnerable countries globally, particularly developing nations and Small Island Developing States (SIDS), to assert legal claims for climate finance, loss and damage reparations, and technology transfer from major emitting states (Stiftung Wissenschaft und Politik [SWP], 2025; IISD, 2025). It underscores principles of equity and common but differentiated responsibilities, recognizing that low-emitting states bear disproportionate burdens and thus merit support for adaptation and reparations when causation is established under state responsibility rules (IISD, 2025; Earth.Org, 2025). This legal clarity bolsters their position in forums like COP negotiations and potential contentious cases, facilitating demands for financial flows and technology sharing as due diligence obligations (SWP, 2025; Earth.Org, 2025).

## **Rights-Based Framework**

The opinion reinforces a global “rights-based” framework for

climate action, obliging all states to protect fundamental human rights—including life, water, food, and a healthy environment—against climate threats, thereby elevating adaptation to a legal imperative equal to mitigation (IISD, 2025; Union of Concerned Scientists [UCS], 2025).

The ICJ linked climate inaction to potential human rights violations, mandating states to implement timely adaptation measures and provide international assistance to vulnerable populations as part of their due diligence duties (IISD, 2025; Carbon Brief, 2025). This approach merges climate and human rights regimes, compelling proactive protection of rights-holders from foreseeable harms and positioning adaptation failures as internationally wrongful acts (Opinio Juris, 2025; UCS, 2025).

## **Normative Influence**

While advisory and not strictly binding, the ICJ opinion wields considerable normative influence worldwide, shaping international negotiations, strengthening domestic court litigation globally, and influencing legal interpretations of state accountability for climate harm (IISD, 2025; Carbon Brief, 2025). Its authoritative clarification of obligations carries moral and political weight, guiding NDC formulations under the Paris Agreement and investor-state dispute reforms to prioritize climate ambition (IISD, 2025; ASIL, 2025). Globally, it equips courts and advocates with precedents for holding states liable, accelerating litigation and policy shifts toward science-based climate justice (Carbon Brief, 2025; Columbia Law School Sabin Center for Climate Change Law, 2025).

## **Conclusions**

The ICJ advisory opinion on climate change is a watershed moment in international environmental law, affirming binding state obligations encompassing treaties, customary international law, and human rights frameworks. For South Africa, this ruling signifies an urgent mandate to enhance climate ambition, reform legal frameworks, and implement a

just and equitable transition that acknowledges its developmental realities. Far from constraining the nation, the opinion provides a jurisprudential basis to balance economic growth with climate stewardship through innovative technologies such as carbon capture and green hydrogen, protecting vulnerable communities while preserving energy security. South Africa's leadership role within Africa and globally positions it uniquely to champion climate justice demands, leveraging the Court's findings to pursue climate finance, technology transfer, and reparations with renewed legal authority. Embracing this transformative moment offers South Africa an opportunity not only to meet its international obligations but also to model sustainable development pathways that reconcile environmental responsibility with social equity and economic dignity.

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