

The International Court of Justice (ICJ) Advisory Opinion on the Obligations of States: Climate Justice Needs a Clear Right to a Clean and Healthy Environment

Abimbola Olowa

<https://orcid.org/0009-0002-4941-3538>

University of Pretoria, South Africa

abimbola.olowa@up.ac.za

Abstract

On 23 July 2025, the International Court of Justice (ICJ) delivered its long-awaited Advisory Opinion on the Obligations of States in respect of Climate Change. The United Nations General Assembly submitted the request for the Opinion following a request from multiple member states seeking guidance on states' obligations to address climate change. This article reflects on the ICJ's Advisory Opinion, focusing on its treatment of the right to a clean and healthy environment. While the Opinion affirms the connection between environmental protection and the enjoyment of human rights, it refrains from explicitly recognising the right to a clean and healthy environment as a distinct norm of customary international law. This article argues that the omission weakens the Opinion's potential to advance climate justice and accountability. It highlights the Court's reliance on derivative framing, examining the political and doctrinal reasons for its caution, and underscores the significance of separate judicial opinions that affirm the right's existence, substance and customary status. In doing so, it contends that the Advisory Opinion leaves the task of consolidation to states, domestic and regional courts, and future international jurisprudence.

Keywords: climate justice; customary international environmental law; International Court of Justice; right to a clean, healthy and sustainable environment; Sustainable Development Goals



South African Yearbook of International Law
#20495 | 15 pages

<https://doi.org/10.25159/2521-2583/20495>

ISSN 2521-2583 (Online)

© The Author(s) 2026



Published by Unisa Press. This is an Open Access article distributed under the terms of the Creative Commons Attribution-ShareAlike 4.0 International License (<https://creativecommons.org/licenses/by-sa/4.0/>)

Introduction

On 23 July 2025, the International Court of Justice (ICJ) delivered its long-awaited Advisory Opinion on the Obligations of States in respect of Climate Change (the Advisory Opinion).¹ Although advisory opinions are non-binding, they carry significant normative weight and strongly shape how international law is understood and developed.² The request, submitted by the United Nations General Assembly and co-sponsored by 132 member states, asked the Court to clarify states' obligations under international law to protect the climate system and environment from anthropogenic greenhouse gas emissions for present and future generations.³

In addressing these questions,⁴ the Court examined states' obligations under international human rights law,⁵ with particular attention to the right to a clean and healthy environment.⁶ The Court recognised the link between environmental protection and the enjoyment of rights such as life, health and an adequate standard of living, but it stopped short of explicitly affirming the right to a clean and healthy environment as a distinct norm of customary international law.⁷ This article critically assesses that omission and considers its implications for the recognition and enforcement of the environmental right in international law.

The Right to a Clean and Healthy Environment

The right to a clean and healthy environment⁸ seeks to guarantee that individuals can live in an environment free from contamination and degradation, enabling them to enjoy

1 International Court of Justice Obligations of States in Respect of Climate Change Advisory Opinion (ICJ Advisory Opinion) 23 July 2025 <<https://www.icj-cij.org/case/187>> accessed 7 August 2025.

2 International Court of Justice 'Advisory Jurisdiction' <<https://www.icj-cij.org/advisory-jurisdiction>> accessed 11 September 2025.

3 Request for Advisory Opinion transmitted to the court pursuant to General Assembly Resolution 77/276 of 29 March 2023 Obligations of States in Respect of Climate Change 2 <<https://www.icj-cij.org/sites/default/files/case-related/187/187-20230412-app-01-00-en.pdf>> accessed 7 August 2025; ICJ Advisory Opinion (n 1 above) 3.

4 *ibid*; specifically, the questions were (a) What are the obligations of states under international law to ensure the protection of the climate system and other parts of the environment from anthropogenic emissions of greenhouse gases for states and for present and future generations? (b) What are the legal consequences under these obligations for states where they, by their acts and omissions, have caused significant harm to the climate system and other parts of the environment, with respect to: (i) States, including, in particular, small island developing states, which due to their geographical circumstances and level of development, are injured or specially affected by or are particularly vulnerable to the adverse effects of climate change? (ii) Peoples and individuals of the present and future generations affected by the adverse effects of climate change.

5 ICJ Advisory Opinion (n 1 above) para 379–404.

6 *ibid* para 387–393.

7 *ibid* para 394–402.

8 There are various formulations of the right to a clean and healthy environment, but for the purpose of this article, 'the right to a clean and healthy environment' will be used consistently.

good health, dignity and well-being.⁹ Although there is no universally agreed-upon definition, the right traces its roots to the 1972 Stockholm Declaration.¹⁰ Over eighty percent of United Nations (UN) member states have, in various constitutional or legislative forms, recognised the right to a healthy environment.¹¹ At the regional level in Africa, this right is expressly entrenched in the African Charter on Human and Peoples' Rights (African Charter), 1981.¹² Article 24 of the African Charter provides that "[a]ll peoples shall have the right to a general satisfactory environment favourable to their development." The incorporation of this provision marked the first explicit recognition of an environmental right within a binding regional human rights instrument.¹³ The African regional human rights system was thus the first to codify such a right and, in *Social and Economic Rights Action Centre and the Centre for Economic and Social Rights v Nigeria*,¹⁴ to articulate its normative content.¹⁵ In that decision, the African Commission on Human and Peoples' Rights found Nigeria in violation of Article 24 and clarified that the provision imposes clear obligations on a government.¹⁶ These include duties to prevent pollution and ecological degradation and associated social harm, to regulate private actors, to undertake environmental monitoring, to ensure

-
- 9 United Nations Upholding the Human Right to a Healthy Environment to Address the Triple Planetary Crisis Common Narrative (2022) 4 <https://unemg.org/wp-content/uploads/2022/12/UN_CommonNarrative_Upholding-Human-Right-to-Healthy-Environment_2022.28.11.pdf> accessed 16 September 2025.
 - 10 UN General Assembly Resolutions 2994/XXVII, 2995/UVII and 2996/XXII of 15 December 1972 <<https://wedocs.unep.org/bitstream/handle/20.500.11822/29567/ELGP1StockD.pdf?sequence=1&isAllowed=y>> accessed 16 September 2025; The first principle in the Stockholm Declaration on the Human Environment, states that 'man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being, and he bears a solemn responsibility to protect and improve the environment for present and future generations.'
 - 11 United Nations Environment Programme (UNEP), the Office of the United Nations High Commissioner for Human Rights (OHCHR) and the United Nations Development Programme (UNDP), 'What is the Right to a Healthy Environment? Information Note' (2023) 7 <<https://www.unep.org/resources/publication/what-right-healthy-environment-information-note>> accessed 19 February 2026.
 - 12 OAU Doc. CAB/LEG/67/3 rev. 5; The right has also been recognised in the following regional instruments: The San Salvador Protocol to the American Convention on Human Rights, 1988 (Protocol of San Salvador), the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus Convention), the Arab Charter on Human Rights, 2004, the ASEAN Declaration on Human Rights, 2012 and the Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin American and the Caribbean, 2018 (Escazú Agreement) prior to the global recognition by the UN Human Rights Council and the UN General Assembly in 2021 and 2022, respectively.
 - 13 Obiora C Okafor and Godwin EK Dzah, 'The African Human Rights System As "Norm Leader": Three Case Studies' (2021) 21 African Human Rights Law Journal 690 <<http://dx.doi.org/10.17159/1996-2096/2021/v21n2a27>> accessed 19 February 2026.
 - 14 SERAC Communication No. 155/96 [2001] ACHPR 35 (27 October 2001).
 - 15 *ibid* 691.
 - 16 SERAC (n 14) para 52.

access to relevant information, and to provide effective remedies to affected communities.¹⁷

Substantively, the right encompasses access to clean air and water, a stable climate, safe and sustainably produced food, non-toxic environments in which to live, work, study and play and the protection of biodiversity and ecosystems.¹⁸ Procedurally, it requires access to information, public participation in environmental decision-making and access to justice.¹⁹ The right resonates strongly with the Sustainable Development Goals (SDGs), particularly SDG 3 (Health), SDG 6 (Water and Sanitation), SDG 13 (Climate Action), and SDGs 14 and 15 (Life Below Water and Life on Land),²⁰ affirming the centrality of environmental protection to human well-being and sustainable development. Like other human rights, its effective realisation depends on international cooperation, solidarity and equity, particularly in addressing global challenges such as climate change and transboundary environmental harm.²¹

The Court's Decision on the Right to a Clean and Healthy Environment

The Court, in discussing the obligations of states under international human rights, noted that states have obligations under international human rights law to respect, protect and ensure the enjoyment of human rights of individuals and peoples.²² It further stated that the environment is the foundation for human life, and the health and well-being of both present and future generations depend on the environment²³ and that the protection of the environment is a precondition for the enjoyment of human rights.²⁴ It then proceeded to highlight that the adverse effects of climate change may significantly impair the enjoyment of the right to life,²⁵ the right to health,²⁶ the right to an adequate standard of living, which, for its part, encompasses access to food, water and housing,²⁷ the right to privacy, family and home,²⁸ the rights of women, children and indigenous peoples.²⁹

17 *ibid* paras 52–57.

18 UNDP-UNEP-UNHCHR, ‘What is the Right to a Healthy Environment?’ (2023) 9 <<https://www.undp.org/sites/g/files/zskgke326/files/2023-01/UNDP-UNEP-UNHCHR-What-is-the-Right-to-a-Healthy-Environment.pdf>> accessed 16 September 2025.

19 *ibid*.

20 United Nations Transforming Our World: The 2030 Agenda for Sustainable Development (2015) (A/RES/70/1) <<https://sdgs.un.org/2030agenda>> accessed 16 September 2025.

21 *ibid*.

22 ICJ Advisory Opinion (n 1) para 371.

23 *ibid* para 373.

24 *ibid*.

25 *ibid* para 377.

26 *ibid* para 379.

27 *ibid* para 380.

28 *ibid* para 381.

29 *ibid* para 382.

In its analysis on the right to a clean, healthy and sustainable environment, the Court noted that the right to a clean, healthy and sustainable environment has been recognised in several regional human rights instruments,³⁰ enshrined in the constitutions or domestic legislation of over 100 states³¹ and interpreted by several regional and national courts.³² It pointed out that the right is inherent in the enjoyment of other human rights and is essential for the enjoyment of other human rights.³³ It then concluded rather ambiguously 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.’³⁴

However, it fell short of explicitly recognising the right to a clean and healthy environment as a distinct norm of customary international law.

A Significant Omission

The ICJ’s reluctance to explicitly recognise the right to a clean and healthy environment as a distinct norm of customary international law is striking. Instead, the Court characterised it as a precondition for the enjoyment of other rights—such as life, health, and an adequate standard of living—without affirming its independent status. This framing risks relegating the right to a derivative position, important only insofar as it supports other established rights, rather than as a standalone entitlement.

Several factors may explain this cautious stance. First, influential states—including the United States of America, China, Germany, the United Kingdom and Russia—have explicitly rejected the notion that the right constitutes a freestanding norm of customary international law, arguing that there is insufficient evidence of the crystallisation of a customary international law norm.³⁵ Second, divergent articulations of the right across

30 ICJ Advisory Opinion (n 1) para 390; These regional instruments include the African Charter on Human and Peoples’ Rights, 1981, which provides in Art 24 that ‘[a]ll peoples shall have the right to a general satisfactory environment favourable to their development.’ Similarly, Art 38 of the Arab Charter on Human Rights 2004 states that ‘[e]veryone shall have the right to an adequate standard of living for himself and his family, ensuring well-being and a decent life . . . and a right to a safe environment.’ The Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, 1988 (Protocol of San Salvador) provides in Art 11 that ‘[e]veryone shall have the right to live in a healthy environment and to have access to basic public services.’

31 ICJ Advisory Opinion (n 1) para 391.

32 *ibid.*

33 *ibid* para 393.

34 *ibid.*

35 The United States of America contended that although regional instruments, domestic legislation, and soft-law developments demonstrate increasing international recognition of the link between environmental protection and human rights, these were not sufficient evidence of the crystallisation of a customary international law norm. (Written Replies of the United States of America (20 December 2024) 8 <<https://www.icj-cij.org/sites/default/files/case-related/187/187-20241220-oth-66-00-en.pdf>> accessed 13 September 2025); China argued that customary international law does not recognise the right, and that there is neither consistent state practice nor a consensus of *opinio juris*

legal systems make it susceptible to different interpretations, which may create uncertainty about its scope and content.³⁶ This is evident in the various forms in which the right has been articulated in different regional instruments.³⁷ However, differences in textual articulation should not undermine or detract from the right's core normative objective: to guarantee that all persons are entitled to conditions necessary for a dignified life, including clean air, safe and sufficient water, healthy and sustainably produced food, a safe and stable climate, protected biodiversity and ecosystems, and non-toxic environments. Third, the Advisory Opinion process itself revealed a lack of consensus, as evidenced by the varied submissions and statements from states.³⁸

Yet the consequences of this omission are profound. Explicit recognition by the Court would have solidified the normative status of the right within customary international law, thereby reinforcing obligations *erga omnes* and strengthening accountability to both present and future generations. Such recognition would also have aligned the Court with progressive regional jurisprudence, most notably the Inter-American Court of Human Rights, which has affirmed the autonomous character of the right to a healthy environment³⁹ and clarified that it is not merely ancillary to other human rights but an

among states. (para 15–16 of the People's Republic of China Written Replies to Judges' Questions (20 December 2024) para 15 <<https://www.icj-cij.org/sites/default/files/case-related/187/187-20241220-oth-13-00-en.pdf>> accessed 13 September 2025); the United Kingdom making reference to its comments on the Advisory Opinion contended that the criteria for the identification of a rule of customary international law has not been met because the Treaty provisions on the right to a clean and healthy environment are not consistent in their content and are not widespread and further that there is insufficient acceptance of an such right as law pointing out that the 2021 UN HRC Resolution and 2022 UN GA resolution are not legally binding (Written Replies to Questions by the United Kingdom of Great Britain and Northern Ireland (20 December 2024) para 8 <<https://www.icj-cij.org/sites/default/files/case-related/187/187-20241220-oth-64-00-en.pdf>> accessed 13 September 2025; Germany in its reply stated that the right derives from and is inherent in already existing international human rights obligations and in its view, the right does not form part of customary international law (Written Reply to Questions by the Federation of Germany) (20 December 2024) 3 <<https://www.icj-cij.org/sites/default/files/case-related/187/187-20241220-oth-25-00-en.pdf>> accessed 13 September 2025 and Russia stated that the right has not crystallised in customary international law (Written Responses of the Russian Federation to Judges' Questions) (20 December 2024) 4 <<https://www.icj-cij.org/sites/default/files/case-related/187/187-20241220-oth-51-00-en.pdf>> accessed 13 September 2025). In summary, these five countries, responding to a question by Judge Aurescu on whether there is an existing customary international law right to a clean, healthy and sustainable environment, indicated that there is none.

36 Baïna Ubushieva and Christophe Golay, 'Research Brief: The Human Right to a Clean, Healthy and Sustainable Environment: Understanding its Scope, States.' (2024) Geneva Academy of International Humanitarian Law and Human Rights.

37 *ibid.*

38 Judges Aurescu, Charleston, Bhandari and Tladi wrote separate opinions on the right to a clean, healthy and sustainable environment; A majority of the eighty-four states considered the right to a clean, healthy and sustainable environment to be an independent right, while ten states argued against the existence of a right to a clean and healthy environment in international law.

39 Para 62 of the Inter-American Court of Human Rights Advisory Opinion on the Right to a Healthy Environment (IACHR Advisory Opinion on RHE) OC-23/17 of November 15, 2017; reiterated in para 273 of the Inter-American Court of Human Rights Advisory Opinion on Climate Emergency

independent right in its own regard.⁴⁰ Moreover, it emphasised that safeguarding this right serves to protect other fundamental human rights.⁴¹

Against the backdrop of escalating environmental degradation—global CO₂ emissions reached a record 37.8 billion metric tonnes in 2023, contributing directly to rising temperatures, extreme weather events, and deteriorating air and water quality worldwide⁴²—the ICJ’s cautious approach risks diluting the potential of this right as a legal tool for justice and sustainability, which provides clarity for governments and international bodies, reinforcing obligations to prevent environmental harm and protect vulnerable communities. By contrast, the affirmation by the Inter-American Court of the autonomous character of the right to a healthy environment (and later the right of nature) has generated tangible juridical consequences, strengthened its justiciability and expanded its remedial reach. This doctrinal shift is reflected in regional and domestic jurisprudence. In *Caso Habitantes de la Oroya v Perú*⁴³ (La Oroya) the Inter-America Court held that the State of Perú had violated the right to a healthy environment, the right to health, the right to personal integrity, the right to life, the right to access to information, the right to political participation, children’s rights and the obligation of progressive development of Article 26.⁴⁴ The Court, referring to its 2017 Advisory Opinion, reaffirmed the right to a healthy environment as an autonomous right which protects the components of the environment, such as forests, rivers, seas and others, as legal interests in their own rights, even in the absence of demonstrable harm or clearly established risk to individuals.⁴⁵ In *City of Bucaramanga and others v. Ministry of Environment and others*⁴⁶ (Bucaramanga), the Administrative Tribunal of Santander, expressly relying on the 2025 Inter-American Court’s Advisory Opinion, held that there was sufficient evidence to declare the páramo ecosystem as a subject of rights.⁴⁷ These decisions demonstrate how the Inter-American Court’s advisory opinions affirming the autonomous character of the right to a healthy environment (and the right of nature) have transformed these rights from declaratory norms into operative legal standards. This reinforces their justiciability and positions them as capable of grounding structural

and Human Rights (IACHR Advisory Opinion on Climate Emergency and Human rights) AO-32/25 of May 29, 2025 <https://www.corteidh.or.cr/docs/opiniones/seriea_32_en.pdf> accessed 7 August 2025.

40 *ibid* para 274.

41 *ibid*.

42 So Won, ‘Global Historical CO₂ Emissions from Fossil Fuels and Industry 1750–2023’ Statista So W. 20 January 2026 Statista <<https://www.statista.com/statistics/264699/worldwide-co2-emissions/>> accessed 21 February 2026.

43 Corte IDH. *Caso Habitantes de La Oroya vs. Perú*. Excepciones Preliminares, Fondo, Reparaciones y Costas Sentencia de 27 de Noviembre de 2023. Serie C No. 511 (Inter-American Court. Case of *Inhabitants of La Oroya v. Peru*. Preliminary Exceptions, Merits, Reparations and Costs. Judgment of November 27, 2023. Series C No 511) (translated with DeepL Translator).

44 *ibid* para 266 (translated with DeepL Translator).

45 *ibid* para 178 (translated with DeepL Translator).

46 680012333000-2018-00196-00 (21 July 2025) (Bucaramanga).

47 *ibid* page 51 (translated with DeepL Translator).

environmental protection and rights-based ecological governance. It is within this context that the separate opinions of individual judges become especially important, offering interpretative guidance and underscoring that the Court itself left unsaid.

Separate Opinions by Other ICJ Judges

Several judges of the ICJ issued separate opinions that moved beyond the Court's cautious stance, explicitly affirming the right to a clean and healthy environment and offering interpretative guidance for future jurisprudence and policy.

Judge Aurescu regretted the Court's 'excessive caution,'⁴⁸ arguing that widespread state practice and *opinio juris*—reflected in international, regional and domestic instruments⁴⁹—already established the customary status of the right.⁵⁰ Drawing on the International Law Commission's framework for the identification of customary law, he further argued that reservations or objections articulated by a limited number of states⁵¹ do not, in themselves, negate the formation or existence of customary norm.⁵² In his view, the Court should have acknowledged this reality expressly in the face of compelling evidence of a general pattern of recognition.⁵³

48 Para 28 of the Separate Opinion of Judge Aurescu <<https://www.icj-cij.org/sites/default/files/case-related/187/187-20250723-adv-01-11-en.pdf>> accessed 13 August 2025.

49 *ibid* para 39–40; Judge Aurescu underscored the cumulative body of evidence supporting the recognition of the right to a health environment, noting that ninety-two states expressly enshrine the right in their constitutions, eighteen recognise it implicitly, 104 provide corresponding legislative protection, and 134 acknowledge it through treaty-based commitments. In total, 164 states across all regions afford at least one form of protection to the right.

50 *ibid* para 41.

51 There was overwhelming support for the adoption of the right to a healthy environment as a human right under the UN General Assembly, with only eight abstentions (Belarus, Cambodia, China, Ethiopia, Iran, Kyrgyzstan, Russia and Syria). During the adoption by the UN HR Council, there were four abstentions (Russia, India, China and Japan), showing the limited number compared to that of the 164 states which supported the existence of the right as customary – UN HRC A/HRC/RES/48/13 (October 2021) 3 and A/RES/76/300 (28 July 2022).

52 *ibid* (n 48) para 45; Para 5 of the commentary to draft conclusion 9 (requirement of acceptance at law (*opinio juris*)) provides that 'it is not necessary to establish that all States have recognized (accepted as law) the alleged rule as a rule of customary international law; it is broad and representative acceptance, together with no or little objection, that is required.'—International Law Commission, 'Draft Conclusions on Identification of Customary International Law, with Commentaries' (2018) Yearbook of the International Law Commission (UN Doc A/73/10) 139 noted by the UN General Assembly on 20 December 2018 (A/Res/73/203) <<https://docs.un.org/en/A/RES/73/203>> accessed 19 February 2026.

53 *ibid* (n 48) para 46; It is important to note that while certain states, including the United States of America, China, Germany, the United Kingdom and Russia, rejected the proposition that the right to a healthy environment has crystallised as a freestanding norm or customary international law. However, among these states, only Russia and China have consistently maintained this position as evidenced by their abstentions during the adoption of the 2021 UN Human Rights Council and the 2022 UN General Assembly, recognising the right to a clean, healthy and sustainable environment as a human right, while the other states voted in favour; *ibid* (n 51).

Judge Charlesworth complemented this reasoning by unpacking the content of the right, noting that the Court had failed to do so.⁵⁴ She explained that it encompasses substantive elements—such as access to a safe climate, clean air, sufficient water, adequate sanitation, healthy food, non-toxic living conditions and thriving ecosystems⁵⁵—and procedural dimensions, including access to environmental information, participation in environmental decision-making, and access to effective remedies, free from intimidation, reprisals and criminalisation.⁵⁶ Her analysis adds substance to Aurescu’s claim and, drawing on the jurisprudence of the Inter-American Court of Human Rights, highlights what it entails in practice, particularly for vulnerable groups.⁵⁷

Judge Bhandari criticised the Court’s characterisation of the rights as merely ‘inherent’ in the enjoyment of other human rights, noting that this does not ‘sufficiently clarify its normative status or the precise nature of its relationship to other established rights.’⁵⁸ By omitting an explicit statement in the Opinion’s conclusion, the Court, in his view, blurred the distinction between recognising climate change’s impact on human rights and affirming the right to a healthy environment as an autonomous entitlement.⁵⁹ His concern reinforces Aurescu’s point about the need for normative clarity while highlighting the risk Charlesworth identified of leaving its content underdeveloped.

While acknowledging some equivocation in the Court’s conclusion on the existence of the right to a clean and healthy environment, Judge Tladi sought to resolve this ambiguity by arguing that the Court’s discussion itself constitutes recognition under international law.⁶⁰ He pointed to the General Assembly’s recognition of the right, which explicitly acknowledged the right,⁶¹ and argued that its language confirms customary status notwithstanding objections by a minority of dissenting states.⁶² Tladi’s interpretation thus aligns with Aurescu’s insistence on customary law status, which also

54 Para 9 of the Separate Opinion of Judge Charlesworth <<https://www.icj-cij.org/sites/default/files/case-related/187/187-20250723-adv-01-08-en.pdf>> accessed 13 August 2025.

55 *ibid.*

56 *ibid.*

57 *ibid.*

58 Para 3 of the Separate Opinion of Judge Bhandari <<https://www.icj-cij.org/sites/default/files/case-related/187/187-20250723-adv-01-05-en.pdf>> accessed 13 August 2025.

59 *ibid.*

60 Para 29 of the Declaration of Judge Tladi <<https://www.icj-cij.org/sites/default/files/case-related/187/187-20250723-adv-01-12-en.pdf>> accessed 13 August 2025.

61 Para 31 of the *Declaration of Judge Tladi*; see also para 1 of the Resolution adopted by the General Assembly on 28 July 2022 (n 51 above).

62 *ibid.* para 31 (n 61 above); Some member states declared that they did not recognise the existence of such a right in customary international law. Notably, the United Kingdom (page 11), New Zealand (page 14), United States of America (page 15), Belarus, Norway and India, Russia (page 6)—see verbatim records of the ninety-seventh plenary meeting of the Seventy-Sixth Session of the UN General Assembly, 28 July 2022 UN doc. A/76/PV.97 <<https://docs.un.org/en/A/76/PV.97>> accessed 13 September 2025.

supports Charleworth's view that the right must be understood as more than an adjunct to other rights.

Together, these opinions advance a richer and more decisive understanding of the right to a clean and healthy environment. They show that it is not only widely recognised in practice, but also has identifiable substantive and procedural dimensions, and should be treated as a distinct and enforceable entitlement. In doing so, the judges collectively provide the clarity and normative authority that the Court could, and perhaps should, have stated more unequivocally.

Although the separate opinions affirm the right's existence and clarify its substance, they cannot substitute for an unequivocal declaration by the Court. The challenge now is to convert this judicial momentum into concrete legal and policy action that secures the right for present and future generations.

Concluding Remarks

The ICJ's Advisory Opinion marks a pivotal moment in the evolution of international environmental law. Yet, by refraining from explicitly recognising the right to a clean and healthy environment as a standalone norm of customary international law, the Court missed an opportunity to entrench its normative status and strengthen its enforceability. Recognition would have reinforced state accountability, guided domestic and regional courts, and provided a powerful tool for advancing climate justice. While the separate judicial opinions help fill the gap by affirming the right's substantive and procedural dimensions and underscoring its customary character, further steps are necessary.

States that have not done so should move decisively to enshrine the right in domestic legislation and climate policies. Beyond aligning with the trend in more than 160 countries worldwide that have adopted the right,⁶³ it would enable courts to provide concrete remedies to affected communities and yield transformative judicial outcomes. Courts—domestic, regional and international—must interpret environmental obligations in light of human rights protection. This will ensure that duties under biodiversity, climate and pollution legislation are not treated as technical or optional but as integral to safeguarding the right to a clean and healthy environment. The recognition of the right to a healthy environment as an autonomous right is particularly important for the African continent, which continues to experience disproportionately severe impacts of climate change despite its comparatively low contribution to global

63 Inger Andersen, 'Making Good on the Right to a Healthy Environment' Speech delivered to the UN Human Rights Council High-Level Informal Presidential Discussion on the Link between Climate Change, Food Security and Health Security, and their Impact on the Enjoyment of Human Rights (20 June 2024) <<https://www.unep.org/news-and-stories/speech/making-good-right-healthy-environment#:~:text=Some%20161%20countries%20legally%20recognize,consider%20new%20environmental%20rights%20instruments>> accessed 1 October 2025; see also para 30 of the Declaration of Judge Tladi; (n 60).

emissions.⁶⁴ Affirming its autonomous character strengthens its normative force and clarifies that environmental degradation constitutes a standalone rights violation, rather than merely a derivative infringement of rights to life, dignity or health. Such recognition strengthens the obligations of states, both within and beyond Africa, to subject environmentally harmful activities to the requisite degree of legal scrutiny, including through regulatory oversight, due diligence obligations and effective remedies. This is especially critical in the African context, where extractive industries and other powerful non-state actors frequently operate in governance environments marked by regulatory asymmetries and enforcement deficits. An autonomous right framework sharpens the state's duties to prevent, regulate, investigate and remedy environmental harm caused by non-state actors, thereby reinforcing accountability between the state and non-state actors.

International bodies should continue to press for its recognition as customary law through General Comments, resolutions and interpretive guidance. Although General Comments do not possess formally binding legal force, they are widely regarded as highly authoritative interpretations of the substantive content of treaty rights and the scope of state obligations under the relevant convention.⁶⁵ In this regard, a General Comment issued by the UN Committee on the Rights of the Child (the Committee)⁶⁶ is instructive. In the General Comment, the Committee affirmed that 'a clean, healthy and sustainable environment is both a human right itself and necessary for the full enjoyment of a broad range of children's rights.'⁶⁷ This articulation is significant because it advances the conceptualisation of the right to an environment as an autonomous human right rather than merely a derivative of other rights. Similarly, resolutions and interpretative guidance, while formally non-binding, carry considerable normative weight as they may serve as evidence of emerging consensus and *opinio juris*.⁶⁸ As such, they contribute to normative clarification, development of state practice, and, in the case of the right to a healthy environment, play an important role in consolidating

64 South African Human Rights Council, 'The Right to Environment, Climate Change, and Human Rights (2022–2023)' 10; According to the UN, the six biggest emitters (China, the United States of America, India, the European Union, the Russian Federation and Indonesia) collectively account for more than half of all global greenhouse gas emissions. By contrast, the forty-five least developed countries together contribute approximately three percent of total global greenhouse gas emissions – UN Climate Action: What is Climate Change? <<https://www.un.org/en/climatechange/what-is-climate-change>> accessed 20 February 2026.

65 UN Sustainable Development Group UN Human Rights Treaty Bodies <<https://unsdg.un.org/2030-agenda/>> accessed 19 February 2026.

66 General Comment No. 26 (2023) on children's rights and the environment, with a special focus on climate change, CRC/C/GC/26, adopted by the Committee at its ninety-third session (8–26 May 2023).

67 *ibid* para 8.

68 Ahmad Alsharqawi, Ahmad Bani Hamdan and Moh'd Abu Anzeh, 'The Role of General Assembly Resolutions to the Development of International Law' (2021) *Journal of Legal, Ethical and Regulatory 2*; Shannon Bosch, 'The International Humanitarian Law Notion of Direct Participation in Hostilities – A Review of The ICRC Interpretive Guide and Subsequent Debate' (2017) 17 *PELJ* 1003 <<https://doi.org/10.17159/1727-3781/2014/v17i3a2277>>

its doctrinal foundation and strengthening the case for its recognition as an independent and enforceable human right.

The actions recommended above will help consolidate *opinio juris* and reinforce expectations of state compliance. The ICJ's restraint does not have to impede doctrinal progress. Advisory opinions from other international tribunals can further accelerate normative consolidation. Additionally, civil society, indigenous peoples and youth movements play a critical role in invoking the right through advocacy and litigation, keeping pressure on governments and shaping state practice.

As the climate crisis intensifies, incremental and piecemeal approaches are no longer sufficient. The time has come to recognise and uphold the right to a clean and healthy environment as a fundamental, standalone human right—one that is essential to justice, accountability, and the survival of present and future generations.

References

- Alsharqawi A, Ahmad Bani Hamdan AH, and Anzeh MA, 'The Role of General Assembly Resolutions to the Development of International Law' (2021) *Journal of Legal, Ethical and Regulatory Issues* 1.
- Andersen I, 'Making Good on the Right to a Healthy Environment' Speech delivered to the UN Human Rights Council High-Level Informal Presidential Discussion on the Link between Climate Change, Food Security and Health Security, and their Impact on the Enjoyment of Human Rights (20 June 2024) <<https://www.unep.org/news-and-stories/speech/making-good-right-healthy-environment#:~:text=Some%20161%20countries%20legally%20recognize,consider%20new%20environmental%20rights%20instruments>> accessed 1 October 2025.
- Bosch DS, 'The International Humanitarian Law Notion of Direct Participation in Hostilities – A Review of the ICRC Interpretive Guide and Subsequent Debate' (2017) *Potchefstroom Electronic Law Journal* 998 <https://doi.org/10.17159/1727-3781/2014/v17i3a2277>
- International Court of Justice, 'Advisory Jurisdiction' <<https://www.icj-cij.org/advisory-jurisdiction>> accessed 11 September 2025.
- International Law Commission, 'Draft Conclusions on Identification of Customary International Law, with Commentaries' (2018) *Yearbook of the International Law Commission* (UN Doc A/73/10) <<https://docs.un.org/en/A/RES/73/203>> accessed 19 February 2026.
- NDP-UNEP-UNHCHR, 'What is the Right to a Healthy Environment?' (2023) 9 <<https://www.undp.org/sites/g/files/zskgke326/files/2023-01/UNDP-UNEP-UNHCHR-What-is-the-Right-to-a-Healthy-Environment.pdf>> accessed 16 September 2025.

Okafor OC and Dzah GEK, 'The African Human Rights System as "Norm Leader": Three Case Studies' (2021) *African Human Rights Law Journal* 21669 <<https://dx.doi.org/10.17159/1996-2096/2021/v21n2a27>>

So W, 'Global Historical CO₂ Emissions from Fossil Fuels and Industry 1750-2023,' 20 January 2026 *Statista* <<https://www.statista.com/statistics/264699/worldwide-co2-emissions/>> accessed 21 February 2026.

South African Human Rights Council (SAHRC) *The Right to Environment, Climate Change, and Human Rights* (2022 – 2023).

Ubushieva B and Golay C, 'Research Brief the Human Right to a Clean, Healthy and Sustainable Environment: Understanding its Scope, States' Obligations and Links with other Human Rights' (Geneva Academy 2024).

UN Climate Action, 'What is Climate Change?' <<https://www.un.org/en/climatechange/what-is-climate-change>> accessed 20 February 2026.

United Nations, 'Upholding the Human Right to a Healthy Environment to Address the Triple Planetary Crisis Common Narrative' (2022) 4 <https://unemg.org/wp-content/uploads/2022/12/UN_CommonNarrative_Upholding-Human-Right-to-Healthy-Environment_2022.28.11.pdf> accessed 16 September 2025.

Advisory Opinions and Case Law

City of Bucaramanga and others v. Ministry of Environment and others 680012333000-2018-00196-00 (21 July 2025)

Corte IDH. Caso Habitantes de La Oroya vs. Perú. Excepciones Preliminares, Fondo, Reparaciones y Costas. Sentencia de 27 de Noviembre de 2023. Serie C No. 511 (Inter-American Court. Case of *Inhabitants of La Oroya v. Peru*. Preliminary Exceptions, Merits, Reparations and Costs. Judgment of November 27, 2023. Series C No.511) (translated with DeepL Translator).

Declaration of Judge Tladi <<https://www.icj-cij.org/sites/default/files/case-related/187/187-20250723-adv-01-12-en.pdf>> accessed 28 July 2025.

Inter-American Court of Human Rights Advisory Opinion on the Right to a Healthy Environment OC-23/17 of 15 November 2017.

Inter-American Court of Human Rights Advisory Opinion AO-32/25 of 29 May 2025. <https://www.corteidh.or.cr/docs/opiniones/seriea_32_en.pdf> accessed 7 August 2025.

International Court of Justice Advisory Opinion on Obligations of States in respect of Climate Change 23 July 2025. <<https://www.icj-cij.org/case/187>> accessed 30 August 2025.

Separate Opinion of Judge Aurescu <<https://www.icj-cij.org/sites/default/files/case-related/187/187-20250723-adv-01-11-en.pdf>> accessed 13 August 2025.

Separate Opinion of Judge Bhandari <<https://www.icj-cij.org/sites/default/files/case-related/187/187-20250723-adv-01-05-en.pdf>> accessed 13 August 2025.

Separate Opinion of Judge Charlesworth <<https://www.icj-cij.org/sites/default/files/case-related/187/187-20250723-adv-01-08-en.pdf>> accessed 13 August 2025.

International and Regional Instruments

General Comment No. 26 (2023) On Children's Rights and the Environment, with a Special Focus on Climate Change, CRC/C/GC/26, adopted by the Committee at its Ninety-third Session (8–26 May 2023).

The Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador), 17 November 1988, OAS Doc. OEA/Ser.A/44 (Treaty Series No. 69).

The African Charter on Human and Peoples' Rights, 27 June 1981 (African Charter) OAU Doc. CAB/LEG/67/3 rev. 5 21 I.L.M. 58 (1982).

The Arab Charter on Human Rights, 2004 ST/HR/CHR/NONE/2004/40/Rev.1.

The ASEAN Human Rights Declaration, adopted at the 21st ASEAN Summit in Phnom Penh, Cambodia, 18 November 2012.

The Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, 25 June 1998, 2161 U.N.T.S. 447 (Aarhus Convention).

The Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean (Escazú Agreement).

UN General Assembly Resolutions 2994/XXVII, 2995/UVII and 2996/XXII of 15 December 1972
<<https://wedocs.unep.org/bitstream/handle/20.500.11822/29567/ELGP1StockD.pdf?sequence=1&isAllowed=y>> accessed 16 September 2025.

United Nations General Assembly Resolution (Resolution 76/300) of 28 July 2022 A/RES/76/300.

United Nations Human Rights Council Resolution (Resolution 48/13) of 8 October 2021 UN HRC A/HRC/RES/48/13.

UN Sustainable Development Group UN Human Rights Treaty Bodies
<<https://unsdg.un.org/2030-agenda/>> accessed 19 February 2026.

Verbatim Records of the Ninety-seventh Plenary Meeting of the Seventy-sixth Session of the UN General Assembly, 28 July 2022 UN doc. A/76/PV.97
<<https://docs.un.org/en/A/76/PV.97>> accessed 13 September 2025

Written Reply of Germany to the Questions Put by Judges Tladi, Aurescu and Charlesworth at the End of the Hearing Held on 13 December 2024 (20 December 2024) <<https://www.icj-cij.org/sites/default/files/case-related/187/187-20241220-oth-25-00-en.pdf>> accessed 13 September 2025

Written Reply of People's Republic of China to the Questions Put by Judges Cleveland, Tladi and Aurescu at the End of the Hearing Held on 13 December 2024 (20 December 2024) <<https://www.icj-cij.org/sites/default/files/case-related/187/187-20241220-oth-13-00-en.pdf>> accessed 13 September 2025.

Written Reply of the Russian Federation to the Questions Put by Judges Cleveland and Aurescu at the End of the Hearing Held on 13 December 2024 (20 December 2024) <<https://www.icj-cij.org/sites/default/files/case-related/187/187-20241220-oth-51-00-en.pdf>> accessed 13 September 2025.

Written Reply of the United Kingdom to the Questions Put by Judges Cleveland, Tladi, Aurescu and Charlesworth at the End of the Hearing Held on 13 December 2024 (20 December 2024) <<https://www.icj-cij.org/sites/default/files/case-related/187/187-20241220-oth-64-00-en.pdf>> accessed 13 September 2025.

Written Reply of the United States of America to the Questions Put by Judges Cleveland, Tladi and Aurescu at the End of the Hearing Held on 13 December 2024 (20 December 2024) <<https://www.icj-cij.org/sites/default/files/case-related/187/187-20241220-oth-66-00-en.pdf>> accessed 13 September 2025.