

The world's highest court plugs for climate action

But will the world's powerful elite heed it?

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Deccan Development Society (India) farmers - climate transition needs to support agroecological alternatives like these @ Ashish Kothari

In May 2024 I had written about the potential of three recent court judgments on¹ climate in three different continents—one by the Montana First Judicial District Court in the USA, one by the European Court of Human Rights, and a third by the Supreme Court of India. I opined that while these had enormous potential for use by people mobilizing for climate justice, they all suffered from fundamental flaws that could severely limit this potential.

Now, the world's highest court, the International Court of Justice (ICJ), has delivered a landmark ruling on the climate crisis², adding to the recent spate of judicial pronouncements across the world. The ICJ's word carries weight, and climate justice movements have welcomed its ruling. But will it be sufficient to transform the current scenario in which the worst offenders—rich, industrialized states (countries) and the rich in poorer countries—continue to evade their responsibility?

Background

In a resolution adopted on 29 March 2023, the United Nations General Assembly requested the ICJ to provide an opinion, based on relevant international law, on:

- 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?
- 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:
 - 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?
 - Peoples and individuals of the present and future generations affected by the adverse effects of climate change?

This resolution was passed unanimously, based on a draft that 132 States co-sponsored. After the ICJ accepted the request, as many as 99 states made submissions to it. The widespread nature of the resolution and of responses to ICJ's proceedings suggests that there is some level of global seriousness about the issue. However, the fact that even after 29 Conferences of Parties of the Climate Convention, the world does not seem much closer to taking the urgent steps necessary suggests that there are serious stumbling blocks that could weaken the effect of ICJ's ruling. More on that later.

What is most inspiring is the story of how it even got to this stage, starting from an idea that some young people in the Pacific Islands³ had. From 2019 to 2023, dogged pursuit of this idea, with advocacy and meetings and media coverage and other actions, led to the UN resolution, and now, the ICJ ruling. There is a key lesson here, itself worth an article—to quote Margaret Mead, “Never doubt that a small group of thoughtful, committed citizens can change the world. Indeed, it is the only thing that ever has.” But here I go back to the ICJ.

ICJ's advisory opinion

Unanimously issued by its 15 judges as an advisory opinion to all countries, the ICJ document is long and complex. But in essence, it has:

- Accepted the dire scenarios of the climate crisis as portrayed by the Intergovernmental Panel on Climate Change (IPCC), noting that it is “an existential problem of planetary proportions that imperils all forms

of life and the very health of our planet”;

- Asserted that all states have an obligation to act to reduce the causes of climate change, including “deep, rapid, and sustained reduction in GHG emissions” and “taking mitigation and adaptation measures, with due account given to the protection of human rights, the adoption of standards and legislation, and the regulation of activities of private actors.”
- Stated that such obligations are not only under international treaties related directly to climate (United Nations Framework Convention on Climate Change and the Paris Agreement) but also under other environmental treaties (relating to biodiversity, seas, desertification, ozone, etc.), human rights treaties (notably the UN Declaration on Human Rights), customary international law (such as the duty to prevent significant harm to the environment), the UN Charter, and accepted principles (such as the precautionary principle, sustainable development, equity and intergenerational equity, and common but differentiated responsibility).

Some submissions made to the ICJ, such as that of the USA, argued that state obligations under climate treaties are flexible and subject to its domestic priorities. It seems the Court was not moved by these. While there is an accepted principle of ‘common but differentiated responsibilities’ in the climate treaties, the intent of this is to put less of a burden on poorer countries, not to enable rich ones, who have been historically responsible for the bulk of climate change emissions, to escape their responsibilities.

The ICJ ruling is clear: “Failure of a State to take appropriate action to protect the climate system from GHG emissions—including through fossil fuel production, fossil fuel consumption, the granting of fossil fuel exploration licenses, or the provision of fossil fuel subsidies—may constitute an internationally wrongful act which is attributable to that State.” And further, that “customary obligations are the same for all states and exist independently regardless of whether a state is a party to the climate change treaties.”

The ICJ ruling also places on states the responsibility to regulate the activities of ‘private actors’ that are under their jurisdiction or control. This is important, given the impunity with which multinational corporations act across the world, getting away with horrendous (and often blatantly illegal) crimes of ecocide and of killing or injuring people defending their territories.

Also significant is the clear connection the ICJ has drawn between environment and human rights (previously also stated in a resolution adopted by the General Assembly⁴ on 28 July 2022). The ICJ says, “The adverse effects of climate change ... impact on the health and livelihoods of individuals through events such as sea level rise, drought, desertification, and natural disasters may significantly impair the enjoyment of ... the right to life, the right to health, the right to an adequate

standard of living, which encompasses access to food, water, and housing, the right to privacy, family, and home, and the rights of women, children, and indigenous peoples ... The Court concludes that, under international law, the human right to a clean, healthy, and sustainable environment is essential for the enjoyment of other human rights .”

The ICJ also clarifies that a state is culpable if it fails to take action: “A state that does not exercise due diligence in the performance of its primary obligation to prevent significant harm to the environment, including to the climate system, commits an internationally wrongful act entailing its responsibility.” It is then subject to various legal consequences, notably the obligation to cease harmful actions and provide ‘full reparation’ that includes restitution measures (such as helping to restore damaged ecosystems) or compensation (where such restitution is not possible), and others.

The ICJ has pointed to State obligations to protect the rights of future generations, which, quite clearly, are violated by the climate (and other ecological) crisis. This will hopefully provide a push to develop this relatively new arena⁵ of international law and policy further.

Where the ICJ could have been stronger or clearer

As in the case of the three judgements I wrote about earlier, the ICJ’s ruling also has weaknesses. Some of these have been pointed out by individual judges in separate opinions, that are appended to the main document; others appear when one assesses the impact of judicial pronouncements on actual action, intended or unintended.

One of the biggest gaps, to my mind, is the lack of attention to the injustice being caused to non-human nature. There are some passing references to threats to species and ecosystems, but mostly from an anthropocentric point of view. The ICJ omits any mention of the rights of non-human nature, which are also now established in international instruments (e.g., in the UN’s events related to Harmony with Nature⁶, in its designation of April 22nd as International Mother Earth Day⁷, and as part of the Kunming-Montreal Global Biodiversity Framework under the Convention on Biological Diversity). It does not include how climate change violates such rights and what the obligations of states should be towards other species or towards nature in general.

The ICJ brings up the principle of equity several times, which is helpful. However, it could have been deepened with reference to how, for instance, major polluters need to take urgent action vis-à-vis small island states, or other badly affected communities, for whom global inequities are stark and already impactful. Hopefully, though, such affected people can use the ICJ ruling for advocacy in their own regions and in other international arenas.

As I mentioned in my previous article, one of the biggest problems with climate action, especially as pursued by many states and corporations, is the inequity involved. Across the world, in the name of 'energy transition' and climate action, many regions are becoming 'sacrifice zones', where resources are being extracted in the global push for minerals and materials. In its typically resilient manner, capitalism has converted the climate disaster into an opportunity for more plunder and profit. Neither the three judgements mentioned above nor the ICJ make it clear that climate action itself should not endanger human and environmental rights or the principle of equity—an observation that could have helped movements struggling to promote genuine, people- and earth-friendly solutions to the climate crisis.

From advice to action: how can the chasm be bridged?

The greatest area of concern is the huge chasm between international law or judicial pronouncements, however binding they may appear, and actual action on the ground. Ensuring compliance and action is, of course, not under the ICJ's jurisdiction, though if it had dealt with the weaknesses mentioned above, it could have been even more helpful in pushing action.

The most powerful of nation-states and private corporations, usually hand-in-glove, are repeatedly flouting global treaties and norms with impunity. Unsurprisingly, in a world run by and for capitalist profit and elite power, environmental and human rights treaties have much less clout than do trade and economic ones. The sorts of sanctions that can be imposed under the World Trade Organisation, for instance, are simply not available in biodiversity, climate, and other environmental treaties.

The hard-fought gains of the latter part of the 20th century, both in national and international policy-making, spurred by massive people's mobilisation, are being openly thrown out or ignored by Heads of State and corporate CEOs. So what recourse would one have if, for instance, the ICJ ruling is simply ignored by the likes of Trump, Putin, Modi, Li, Musk, Bezos, fossil fuel giants, and others who thrive on crises and disaster?

The greatest potential that lies in such judicial pronouncements, or in international treaties, is in their use by people's movements as tools. Not only to push governments and corporations in their own countries, but also as moral backing for ground-level actions of boycott, resistance, blockages, consumer action, and more. They could also be used to call out governments that target environmental and human rights activists, including those in domestic legal frameworks.

Climate justice mobilisation by or with farmers, fishers, Indigenous peoples, workers, youth, women, and others who are badly impacted by the crisis, and who have so far been marginalised in decision-making, is spreading across the world. Struggles for the recognition of the rights of future generations and of non-human nature have helped to save a number of threatened ecosystems and territories.

People's movements are confronting the capitalist, patriarchal and statist minority that is responsible for planetary ruin, not only between but also within countries, recognizing that even in the 'poor' nations there are elites that behave in climate-unfriendly ways, and even previously marginalized countries like China and India are behaving in an irresponsible manner vis-à-vis the earth. Demands for self-determination and autonomy, and the push for radical democracy⁸ where 'ordinary' people on the ground are decision-makers, are being heard across the globe (though still marginal in relation to authoritarianism and western liberal 'democracy' which only superficially gives people decision-making access).

Movements of resistance are being joined by those who are promoting ancient or new alternatives to meet human needs and aspirations while protecting nature and reducing inequities. These include the practice of food sovereignty by millions of farmers, decentralized renewable technologies as part of community energy sovereignty, paradigm shifts in urban and transportation planning, community-led conservation of ecosystems, and more. Some of these are coming together in the form of people-led just climate transition strategies, such as South Africa's Climate Justice Charter⁹ produced by trade unions, feminists, ecological groups, and youth.

The ICJ itself notes that, beyond the formal legal avenues of action, "a lasting and satisfactory solution requires human will and wisdom—at the individual, social, and political levels—to change our habits, comforts, and current way of life in order to secure a future for ourselves and those who are yet to come." Its ruling is by no stretch going to lead to radical transformations by itself, but it could provide an important complement, or boost, to people's movements seeking such change.

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