



World's Youth for Climate Justice

Handbook



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Introduction

Welcome to the World's Youth for Climate Justice! We are youth from all over the world who are taking action to put human rights at the heart of climate action. We do this by campaigning for an Advisory Opinion by the world court - the International Court of Justice. The challenge before us is significant, but we are motivated, stubborn optimists building on the work of giants who have come before us. In this handbook we provide you with an introduction to the interconnection between human rights and the climate crisis, we take you along some of the most influential ICJ Advisory Opinions, and we give an overview of the WY CJ.

Our approach to climate justice is new, but we are certainly not the first to walk the path to the ICJ, and we believe with your help, and the power of youth, our journey will lead us to the Peace Palace. We are excited for it, and hope you are too.

The core team of the World's Youth for Climate Justice





Climate Change and Human Rights

The link between the climate crisis and human rights is now well established¹. Climate impacts have been shown to exacerbate pre-existing inequalities and human rights challenges such as poverty, well-being, wealth inequality, gender relations, and many others,² and to affect vulnerable groups most acutely.³ Children, whose rights are set out in the Convention on the Rights of the Child,⁴ are a poignant example of a vulnerable group who have contributed least to historic greenhouse gas-emissions and yet are hit hard. The World Health Organisation found that annually 1.7 million children under the age of 5 die due to environmental damage,⁵ and the Human Rights Council affirmed that millions of children worldwide grow up deprived of parental care due to natural disasters caused by the climate crisis.⁶ These examples expose the horrifying range of children's rights that are affected by climate change, such as the right to life, family life, and health.

¹ See for example, International Council on Human Rights Policy 'Climate Change and Human Rights: A Rough Guide' (Geneva 2008) <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1551201> accessed 22 January 2021;

UNHCHR 'Report of the Office of the United Nations High Commissioner for Human Rights on the Relationship between Climate Change and Human Rights' (Geneva 2009); John H. Knox 'Climate Change and Human Rights Law' (2009) 50:1 Virginia Journal of International Law, 164; and Siobhan McLnerney-Lankford, Mac Darrow and Lavanya Rajamani 'Human Rights and Climate Change: A Review of the International Legal Dimensions' (17 March 2011) World Bank <<https://documents.worldbank.org/en/publication/documents-reports/documentdetail/903741468339577637/human-rights-and-climate-change-a-review-of-the-international-legal-dimensions>> accessed 18 January 2021.

² OHCHR 'Report of the Office of the United Nations High Commissioner for Human Rights on the Relationship Between Climate Change and Human Rights' (Geneva, 2009).

³ Inter American Court of Human Rights *The Environment and Human Rights (State Obligations in Relation to the Environment in the Context of the Protection and Guarantee of the Rights to Life and to Personal Integrity - Interpretation and Scope of Articles 4(1) and 5(1) of the American Convention on Human Rights)* (2017) Series A No 23.

⁴ UN Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3 (UNCRC).

⁵ WHO, 'Don't Pollute My Future! The Impact Of The Environment On Children's Health' (2017) <<https://apps.who.int/iris/bitstream/handle/10665/254678/WHO-FWC-IHE-17.01-eng.pdf?sequence=1>> accessed 18 January 2021.

⁶ UNHRC, 'Rights of the child: realizing the rights of the child through a healthy environment' (5 October 2020) UN Doc A/HRC/45/L.48/Rev.1.



The climate crisis is a threat to a range of substantive rights everywhere, such as the right to food and adequate housing.⁷ The Human Rights Council⁸ has frequently stated that massive violations of the right to food are already occurring today, particularly in developing countries, and that these violations are related in part to a changing climate and its related impacts.⁹ The Special Rapporteur on the Human Rights of Internally Displaced Persons has also identified five climate-related reasons that lead to mass-displacement, such as increased frequency of extreme weather events, slow onset events, sinking of small island states, and violence and armed conflict due to scarcity of resources.¹⁰

These facts and figures leave no doubt. The climate crisis threatens the effective enjoyment of human rights. Vulnerable groups are hit hardest, unfortunately those who have contributed least. Therefore, to find equitable solutions to solving the climate crisis we need to put our shared concern for humanity at the heart of the actions we take. Looking at the climate crisis through a human-rights lens allows us to do so. This is where the Advisory Opinion comes in.

How it all started...

Using international law to advance climate justice is an approach that continues to grow interest, and is increasingly used and considered by a variety of stakeholders internationally. The youth-led initiative to call on the United Nations to request an ICJ Advisory Opinion on human rights and the climate crisis builds on a decade-long research process of legal

⁷ International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR) art. 11.

⁸ The Human Rights Council is an intergovernmental body within the UN. It is responsible for the promotion and protection of all human rights around the globe.

⁹ UNHRC 'Report of the Special Rapporteur Ambeyi Ligabo on the promotion and protection of the right to freedom of opinion and expression' (28 Feb 2008) UN Doc A/HRC/7/14; UNHRC 'Report of the Special Rapporteur Margaret Sekaggya on the situation of human rights defenders' (12 Feb 2009) UN Doc A/HRC/10/12;

UNHRC 'Report of the United Nations High Commissioner for Human Rights on the situation of human rights and the activities of her Office in the Democratic Republic of the Congo' (10 January 2011) UN Doc A/HRC/16/27; See also OHCHR 'UN Special Procedures Facts and Figures 2011' (Geneva, 2012).

¹⁰ OHCHR 'Report of the United Nations High Commissioner for Human Rights: Analytical study on the relationship between human rights and the environment' (16 December 2011) UN Doc A/HRC/19/34, para 52.



scholars, students, experts and activists.¹¹ In 2011, after the failure of the UNFCCC COP in Copenhagen in 2009, the international community and especially the climate-vulnerable states were seeking any mechanism that would be able to achieve progress in international climate negotiations. The request for an Advisory Opinion was intended to do just that. Then President Johnson Toribiong of Palau told the UN General Assembly on September 22, 2011, that Palau was seeking an Advisory Opinion from the International Court of Justice on:

*"the responsibilities of States under international law to ensure that activities carried out under their jurisdiction or control that emit greenhouse gases do not damage other States. The case should be clear. [...] It is time we determine what the international rule of law means in the context of climate change. The International Court of Justice is mandated to do just that."*¹²

Palau's efforts never led to the UN General Assembly requesting an Advisory Opinion due to pressure from large states. The Paris Agreement was passed since, which allows states to continuously update their Nationally Determined Contributions (NDCs, which are national climate plans) in line with their individual capacities. The need for clarification on emission reduction obligations, which was the main aim of the Palau campaign for an AO, is therefore less pressing. Human Rights unfortunately have only continued to gain importance in the process of the implementation of the Paris Agreement, since it seems to be sidelined in international negotiations and considerations. The global context has changed since 2011 and therefore in 2019, when the *Pacific Island Students Fighting Climate Change*¹³ (PISFCC)

¹¹ For example, a course taught by Ambassador Stuart Beck of the Permanent Mission of Palau to the United Nations; Aaron Korman, Palau's Legal Adviser; and Douglas Kysar, Joseph M. Field '55 Professor of Law at Yale Law School at Yale Law School in 2012 produced a comprehensive report on the Palau-Initiative. 'Climate Change and the International Court of Justice' (12 September 2013) <<https://law.yale.edu/yls-today/news/climate-change-and-icj-seeking-advisory-opinion-transboundary-harm>> accessed 29 November 2020.

¹² President Johnson Toribiong, 66th irregular session of the United Nations General Assembly Debate, (New York, 22 September 2011) <https://gadebate.un.org/sites/default/files/gastatements/66/PW_en.pdf> accessed 28 December 2020. - reported in 'Palau Seeks UN World Court Opinion On Damage Caused By Greenhouse Gases' (*UN News*, 2011)

<<https://news.un.org/en/story/2011/09/388202#:~:text=The%20Pacific%20island%20nation%20of,do%20not%20harm%20other%20States.>> accessed 27 November 2020.

¹³ The PISFCC is a youth-led organization promoting climate change education and climate justice. Solomon Yeo, 'What We Do — Pacific Island Students Fighting Climate Change' (*Pacific Island*



launched their campaign to seek an Advisory Opinion (AO) from the ICJ, they put the focus on the interconnectedness of the climate crisis and human rights.

Quickly, they inspired youth from around the world to join the campaign and start their own national campaigns. World's Youth for Climate Justice is now the umbrella youth-network of national and regional campaigns for an Advisory Opinion from the International Court of Justice. The Government of Vanuatu is interested in pursuing the PISFCC-campaign and intends to address the United Nations General Assembly (UNGA) with a resolution to be put to the ICJ.¹⁴

The UN procedure

The WYCY asks the UN General Assembly (UNGA) to request an Advisory Opinion from the ICJ. In the UNGA each UN member state is represented, and each state has 1 vote. There is no right [of/to] veto, in contrast to the UN Security Council. Any UN organ can request an advisory opinion from the ICJ, although specialized organs (such as the World Health Organization) need to ask a legal question that is within their competency. The UNGA can ask a legal question about any topic, and holds the most political legitimacy due to its democratic representation, therefore we are campaigning for an Advisory Opinion through the UNGA.

Students Fighting Climate Change, 2019) <<https://www.pacificclimateresistance.org/what-we-do-1>> accessed 26 November 2020.

¹⁴ Tim Stephens, 'See You In Court? A Rising Tide Of International Climate Litigation' (2019) *Lowy Institute* <<https://www.lowyinstitute.org/the-interpretor/see-you-court-rising-tide-international-climate-litigation>> accessed 24 November 2020.

For the UNGA to request an Advisory Opinion from the ICJ, the UNGA needs to adopt such a resolution with a simple majority. Article 18 para. 3 UN Charter. United Nations, '*Charter of the United Nations*' (24 October 1945) 1 UNTS XVI <<https://www.refworld.org/docid/3ae6b3930.html>> [accessed 1 December 2020].



The ICJ and Advisory Opinions

In its history, the ICJ has delivered 28 advisory opinions, of which 18 have been requested by the UNGA.¹⁵ Although advisory opinions are non-binding, they nonetheless “carry great legal weight and moral authority.”¹⁶ Many past ICJ advisory opinions have contributed to shaping international law, as the following examples demonstrate.

The 1949 Advisory Opinion ‘Reparations for Injuries Suffered in the Service of the United Nations’¹⁷ paved the path for recognition of non-state actors as subjects of international law. The AO also paved the way for treaties for the protection of UN personnel.¹⁸

The 1951 Advisory Opinion on ‘Reservations to the Convention on Genocide’¹⁹ clarified the use and effect of reservations to treaties, and influenced the materiality of the clauses of the 1996 Vienna Convention on the Law of Treaties.²⁰

The 1975 Advisory Opinion on ‘Western Sahara’²¹ strengthened the principle of self-determination, which has contributed to its *jus cogens* status today.²² A *jus cogens* norm is a peremptory norm in international law that has been accepted by states, from which no derogation is allowed. It can be loosely translated as a fundamental or over-riding norm in international law. An example of this would be for example the prohibition of slavery.

¹⁵ <https://www.icj-cij.org/en/decisions/advisory-opinion/1946/2021/desc>

¹⁶ <https://www.icj-cij.org/en/advisory-jurisdiction>

¹⁷ *Reparations for injuries suffered in the service of the United Nations* (Advisory Opinion) [1949] ICJ Rep 1949, 174

¹⁸ *Inter alia*, the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, the Convention on the Safety of United Nations and Associated Personnel, and the Optional Protocol to the Convention on the Safety of United Nations and Associated Personnel.

d'Argent, P., 2006, *Reparation for Injuries Suffered in the Service of the United Nations* (Advisory Opinion), MPEPIL 200.

¹⁹ *Reservations to the Convention on the prevention and punishment of the crime of genocide* (Advisory Opinion) [1951] ICJ Rep 1951, 15

²⁰ Schabas, W. A., 2009, *Genocide Convention, Reservations* (Advisory Opinion), MPEPIL 136.

²¹ *Western Sahara* (Advisory Opinion) [1975] ICJ Rep 1975, 12

²² Sayman Bula-Bula, *Mise Hors-la-loi ou Mise en Quarantaine des Gouvernements Anticonstitutionnelles par l'Union Africaine?*, 11 *African YIL* (2003), 35.



The 1996 Advisory Opinion on the 'Legality of the Threat of Use of Nuclear Weapons'²³ has provided an authoritative basis and has led to the UN General Assembly regularly debate the matter and adopt a string of resolutions.²⁴

The 2004 Advisory Opinion 'Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory'²⁵ clarified the applicability of international human rights law in war times.²⁶

The most recent ICJ Advisory Opinion of 2017 on the 'Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965'²⁷ further elucidated the principle of self-determination, and found that self-determination also includes the right to territorial integrity.²⁸ This advisory opinion is particularly interesting for political reasons that show a small island state can stand up against a large political power.

The Nuclear Weapons case

In 1996, the ICJ gave an Advisory Opinion on the threat or use of nuclear weapons. A few years earlier, an AO on nuclear weapons was first requested by the World Health Organization. However, the ICJ used its discretion to decline to answer the question, The ICJ considered it to be too far removed from the competency of the WHO. Then, [2] years later, under pressure by a strong civil society coalition, the UNGA requested the AO and this time the Court did give an answer, which has massively contributed to the process of

²³ *Legality of the threat or use of nuclear weapons* (Advisory Opinion) [1996] ICJ Rep 1996, 226

²⁴ Bothe, M., 2016, Nuclear Weapons Advisory Opinions, MPEPIL 186.

²⁵ *Legal consequences of the construction of a wall in the occupied Palestinian territory* (Advisory Opinion) [2004] ICJ Rep 2004, 136

²⁶ Watts, A., & Jorritsma, R., 2019, Israeli Wall Advisory Opinion (Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory), MPEPIL 150.

²⁷ *Legal consequences of the separation of the Chagos archipelago from Mauritius in 1965* (Advisory Opinion) [2019] ICJ Rep 2019, 95

²⁸ Allen, S., 2020, Self determination, the Chagos advisory opinion and the Chagossians, British Institute of International and Comparative Law, 69, pp. 203-220.



nuclear disarmament and the conclusion of the UN Treaty prohibiting the use of nuclear weapons under international law, which came into force in January 2021. .

Why do we need the ICJ AO?

As earlier examples have shown, the climate crisis has a large impact on the enjoyment of human rights. There is a lot of work to be done to integrate human rights into the climate space and vice versa. We believe that an Advisory Opinion can be one piece of this puzzle, or several steps on a ladder to propel states to much-needed corresponding actions. An Advisory Opinion on human rights & the climate crisis has the potential to do following:

- Cementing consensus on the scientific evidence of the climate crisis
 - An ICJAO would provide an excellent forum to endorse the best scientific findings on anthropogenic climate change including the IPCC Special Report on Global Warming of 1.5°C following the court's recent willingness to engage with complex and competing scientific claims.
- Encourage more ambitious action under the Paris Agreement
 - The nature of the Paris Agreement supports voluntary commitments to emissions reduction. An ICJAO on a changing climate is one method through which parties to the Paris Agreement may be further encouraged to commit to a level of emissions reductions that are in line with global goals of preventing dangerous anthropogenic interference with the climate system.
- Provide impetus and guidance for courts at all levels
 - An ICJAO would have the potential to provide authoritative baselines for state action on reducing emissions in order to meet their current obligations to respect, protect, and fulfil human rights obligations under international law.
- Integrating the nexus between Climate law and Human Rights
 - The ICJAO on the climate crisis and human rights would clarify international law and enhance the effectiveness of the international legal system in tackling the climate crisis by bolstering the authority of human rights bodies to address the climate crisis under their respective mandates.



- Encourages cooperation and support in mitigation, adaptation, and loss and damage
 - Greater efficiency and ambition can come from the ICJAO regarding the need to deal with other very key thematic issues under the climate crisis such as mitigation, adaptation, and loss and damage.

Risks and Challenges: Counter-Arguments and how you can respond to them

There are several risks involved in requesting an Advisory Opinion on the climate crisis and human rights.

- Firstly, the legitimacy objection can be raised.²⁹ Is it legitimate for an undemocratic institution to make authoritative decisions on state obligations? Some people might also question the competency of judges, who have extensive legal background but in many cases but naturally only a basic understanding of climate science, to be deciding on questions of scientific consensus on climate questions.
 - This is less of an issue nowadays, than it was when Palau first announced their intention of wanting to request an Advisory Opinion through the UNGA on climate change. With the change in leadership and direction in the US, the development of the Paris Agreement and its rulebook, the advancement of attribution science, the 1.5 Degrees Report from the Intergovernmental Panel on Climate Change, authoritative court cases, such as the Urgenda-case, it is likely that the court will find overwhelming evidence on the existence and the seriousness of the changing climate.
- In addition, the ICJ does not allow for non-state parties to participate in the proceedings. With civil society, and in particular youth, accelerating climate action in recent years, non-participation of civil society could hamper the wide acceptance of non-state actors of the Advisory Opinion.
 - Nonetheless, in the past states have granted their submission and oral proceedings to affected victims.³⁰ During the hearings for the Chagos -

²⁹ L. Bergkamp & J. C. Hanekamp "criticiz[e] decisions by Dutch court to impose national limits on greenhouse gas emissions as contrary to a "court's role in a constitutional democracy". Bodansky (no 44) 701.

³⁰ *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965* (Advisory Opinion) [2019] ICJ Rep 2019; *Legality of the Threat or Use of Nuclear Weapons* (Advisory Opinion) I.C.J Reports [1996] 226.



Advisory Opinion first hand witnesses of the on-going colonial reality were allowed to testify in front of the court. Those people did not hold first-class degrees from the best law schools in the world, but rather provided a compelling account of their own-lived experience of the on-going injustice faced by Chagossians. We hope to be able to do the same with the climate crisis. But, "The role of courts in climate justice is evolving and the role of judges in particular is getting redefined. They are starting to play more active roles."³¹ and therefore we work towards convincing our governments that youth, as first-hand witnesses of the climate crisis, must be allowed and actively engaged with in the Advisory Proceedings.

- Secondly, some worry that an Advisory Opinion could infringe upon the space for states to agree to climate progress by consensus, and hence could undermine the climate negotiations.³² This might make it harder for states to welcome the delivery of the Advisory Opinion. Climate negotiations are an essential corner-stone of the international climate change sphere as they lead to wide acceptance of the outcome, allow for mechanisms such as the Green Climate Fund to develop, and for crucial conversations on loss and damage to be held.³³
 - In contrast, an Advisory opinion does not involve consensus and cannot be renegotiated.³⁴ Negotiations are often slow, expensive and "only slightly legalized".³⁵ We do not intend for the Advisory Opinion to undermine the negotiations and achievements under the Paris Agreement, but only act as an interpretation of existing obligations. We hope to be able to inspire more ambitious actions using the framework the Paris Agreement has set up. If someone challenges you on this, referring to the on-going negotiations and the PA, remind them that this is not a competition and that the AO will go hand-in-hand with existing human rights obligations of states and the Paris Agreement.

³¹ Rachel Jean-Baptiste e.a. 'Recent developments in climate justice' (2017) 47 *Envtl Law Rep News & Analysis* 2015

³² Anthony Aust, 'Advisory Opinions' (2010) 1 *Journal of International Dispute Settlement* 123

³³ Bodansky (no 44) 706.

³⁴ Philippe Sands, Public Lecture at the Supreme Court of the United Kingdom (17 September 2015).

³⁵ Bodansky, (no 44) 696.



Therefore, the challenge for the ICJ will be to strike the sweet spot between crystallizing human rights obligations of states in the face of a changing climate, without ignoring the entrenched positions of states in the climate realm. These questions, as well as an Advisory Opinion's reception and acceptance by the global community, and its impact on climate negotiations and governments, warrant further analysis.

Some might cynically say; what have we got to lose?

World's Youth for Climate Justice

The WY CJ is a global youth-movement campaigning for an Advisory Opinion on human rights and the climate crisis. We do this by building civil society pressure, educating our peers on the impact of the climate crisis and human rights, and reaching out to our governments to endorse the request for an Advisory Opinion.

For more information, check out our website www.wy4cj.org. You will find our vision and principles there too. There are so many ways for you to get involved, please visit the 'get involved'-section on our website for ideas and support with your regional initiative.

The WY CJ consists of regional fronts who work together in the campaign for an Advisory Opinion. World's Youth for Climate Justice is a decentralized movement. That has many benefits; it is much quicker and more democratic than a large bureaucratic organization with hierarchies and lengthy document approval systems. It also allows you to adapt some of the strategies and ideas that have worked in other places, to your local and national context. We all have a shared goal, and there are so many different ways of reaching them. This means that we encourage you to take initiative and collaborate and strategize with allies in your region. The WY CJ has a 'core team', which coordinates the global movement. We view this 'core team' as a source of support for members, a place where answers can (hopefully be found) to some of the more tricky legal/technical questions and as the communication channel with the more formal diplomatic campaign. Even though we are a decentralized movement, we encourage you to stay in contact with us via Slack, email or social media. This serves the purpose that we can communicate both ways about on-going developments, celebrate achievements, communicate weaknesses, ask for advice and



share lessons learned. This can help the 'core team' to keep an overview of where the global campaign is heading, and communicate this effectively (for example on the website and social media pages). We look forward to hearing from you. .

Timepath

The WYCJ campaign can be divided into three phases. (1) The road leading to the ICJ, which means campaigning for the UN General Assembly to request an Advisory Opinion from the ICJ. (2) The advisory proceedings at the ICJ, and (3) the time after the ICJ delivers its Advisory Opinion, which entails keeping accountability on states and the UN to follow up on the ICJ Advisory Opinion.

Now, we're in **phase 1: the road to the ICJ**. There are several important points:

- Leading up to the UN General Assembly → Coalition-building! This means building civil society pressure to encourage states to support the UN resolution. This resolution is a request for an Advisory Opinion from the ICJ. The request will contain a legal question for which the United Nations member states are seeking judicial guidance.
- September 2021 → the new year of the UN General Assembly is opened. In New York a state puts the request for an Advisory Opinion on the agenda of the UNGA.
- October (or later) 2021 → Negotiations for resolutions take place in different Committees at the UN Headquarters in New York. Negotiations for the Advisory Opinion will take place in the Sixth Committee on legal affairs. Even though Vanuatu's legal team will have prepared a draft version of the question, all Committee members can give their input and edit this question. The question we are campaigning for seeks for clarity on state obligations on the human rights of current and future generations with regards to climate change.
- December (or later) 2021 → the UNGA adopts the amended resolution (so the document that has been negotiated in the Committee by states before) and the resolution with the request for an Advisory Opinion is sent to the International Court of Justice.



Actions have been mapped out for during the time when the ICJ will be deliberating the question. The process in The Hague is expected to take at least 1.5 years, depending on whether the resolution requests the proceedings to be conducted with urgency. During this time, the civil-society network also plays an important role; we hope to be able to give evidence in court (this would require for example member states to allow youth to testify on the consequences of climate change on their human rights). We also hope to serve as constant reminders to the judges on the importance of their deliberation for the rights of current and future generations.

Once the ICJ has delivered the Advisory Group, there are various paths for youth- and other civil society-organizations groups to take to take action and hold states accountable in line with the findings of the ICJ judges. More information on this will follow once time is ripe.