

#ENDORSETHEAO: PACIFIC ISLANDS STUDENTS FIGHTING FOR CLIMATE CHANGE AND THE INTERNATIONAL COURT OF JUSTICE

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#EndorseTheAO is a campaign that originated in the Pacific and is led by the Pacific Islands Students Fighting for Climate Change. The campaign encourages state leaders to seek an Advisory Opinion from the International Court of Justice on climate change and human rights. An Advisory Opinion on the issue is important as it has the potential to be a catalyst for climate change action whilst clarifying international law on climate change. The government of Vanuatu will propose a resolution at the United Nations General Assembly in September 2022, requesting the Advisory Opinion.

#EndorseTheAO est une initiative conçue dans le Pacifique qui est pilotée par l'association 'Pacific Islands Students Fighting for Climate Change'. Elle a pour objectif de convaincre les chefs d'État de solliciter de la Cour Internationale de Justice, l'obtention d'un avis consultatif sur la question du changement climatique et des Droits Humains. L'obtention de cet avis consultatif pourrait ainsi servir d'élément structurant dans l'élaboration de mesures tendant à lutter contre les effets du changement climatique mais aussi de clarifier les règles du droit international applicables en la matière. Le gouvernement de Vanuatu soumettra à cet effet, une proposition de résolution à l'Assemblée Générale des Nations Unies en septembre 2022.

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I INTRODUCTION

#EndorseTheAO is a campaign that originated in the Pacific and is led by former Pacific islands students, including Solomon Yeo (Campaign Director), Vishal Prasad (Campaigner), and Romabeth Siri (Campaigner). The idea for the campaign emerged in 2019 after law students at the University of the South Pacific attended a presentation on the nexus of climate change and human rights. This presentation was a significant event as it inspired 27 law students from 8 Pacific island countries to establish the Pacific Islands Students Fighting Climate Change (PISFCC) organisation. PISFCC is a youth-led organisation whose members are students from the Pacific island countries. The key goal of PISFCC is to seek an Advisory Opinion from the International Court of Justice to encourage greater climate action.¹

The role of the International Court of Justice is to settle legal disputes submitted by states and to give advisory opinions on legal questions referred to it by authorised United Nations organs and specialised agencies. Individual countries cannot request an advisory opinion from the International Court of Justice directly.

The government of Vanuatu announced in 2021 that it would take the proposal for an Advisory Opinion on climate change and human rights to the United Nations General Assembly in September 2022, which will then vote on whether to refer the issue to the International Court of Justice. The resolution will be adopted if there is a majority vote in favour of the resolution. There are 193 states so if all states vote, there should be 97 states that vote in favour of the resolution. If this materialises, the General Assembly will request the International Court of Justice to render an Advisory Opinion on climate change and human rights.

An Advisory Opinion from the International Court of Justice is not binding. The United Nations General Assembly is free to decide what effect to give to the Advisory Opinion.² However, an Advisory Opinion from the International Court of Justice carries great moral and legal authority. For instance, an Advisory Opinion could lead towards the integration of human rights law and climate law, provide guidelines for courts at all levels (which is important for climate litigation cases), promote ambitious action under the Paris Agreement, and it would empower civil

1 Pacific Islands Students Fighting Climate Change (2022a) Who we are <<https://www.pisfcc.org/who-we-are>>.

2 International Court of Justice Advisory Jurisdiction <<https://www.icj-cij.org/en/advisory-jurisdiction>>.

society organisations and climate activists to combat environmental injustices worldwide.³

II #ENDORSETHEAO

One of the first steps taken by the PISFCC to get an Advisory Opinion from the International Court of Justice was to persuade the leaders of the Pacific Islands Forum to take the issue of climate change and human rights to the International Court of Justice. In 2019, the government of Vanuatu tabled the PISFCC proposal at the Pacific Islands Forum. This was successful as noted in the Leaders Communique⁴ the need for an Advisory Opinion from the International Court of Justice:

In recognising the need to formally secure the future of our people in the face of climate change and its impacts, Leaders noted the proposal for a UN General Assembly Resolution seeking an advisory opinion from the International Court of Justice on the obligations of States under international law to protect the rights of present and future generations against the adverse effects of climate change.

The next step for the Leaders of the Pacific island countries is to endorse the proposal. To that end, the PISFCC launched an online petition⁵ calling on Pacific Island Forum Leaders to endorse the Advisory Opinion proposal. The aim is to get the proposal endorsed during the next Pacific Islands Forum Leaders' meeting which is expected to take place in Fiji in July 2022.

In addition to this, the government of Vanuatu has proposed to take on the campaign and to "coordinate the efforts of Pacific Island Countries and other like-minded countries to seek clarification of the legal duties of large emitters of greenhouse gases with respect to present and future generations".⁶ Some of the immediate goals include building a coalition of Pacific island states following the endorsement of the campaign, and to establish key positions and a Special Envoy to further implement the strategy.

3 Interview with Solomon Yeo (Campaign Director) and Vishal Prasad (Campaigner) of the Pacific Islands Students Fighting Climate Change organisation, 11 May 2022, Suva (Fiji). See also S Yeo and V Prasad (2020) "Storian Blong Yumi": the world's highest court must face the world's biggest problem, Open Global Rights <<https://www.openglobalrights.org/the-worlds-highest-court-must-face-the-worlds-biggest-problem/>>; S Yeo and V Prasad (2021) Leaders must Endorse the AO <<https://www.pisfcc.org/news/leaders-must-endorse-the-ao>>.

4 Pacific Islands Forum (2019) Forum Communique, Fiftieth Pacific Islands Forum, Funafuti, Tuvalu, 13-16 August 2019, 4 <<https://www.forumsec.org/wp-content/uploads/2019/08/50th-Pacific-Islands-Forum-Communique.pdf>>.

5 See <<https://www.pisfcc.org/action>>.

6 Pacific Islands Students Fighting Climate Change (2021) Vanuatu Launches the ICJAO Campaign <<https://www.pisfcc.org/news/vanuatu-launches-the-icjao-campaign>>.

The #EndorseTheAO Campaign also includes media, awareness and outreach activities such as social media awareness through videos, animations, petitions and photo contests, alongside newspaper op-eds and advertisements which aim to help people to better understand and support the campaign.⁷ For instance, there is an alliance of civil society organisations which launched a campaign to seek an AO from the International Court of Justice on climate change and human rights. The launch took place in May 2022 in Suva, Fiji. The Alliance consists of 1,500 CSOs from 130 countries such as Pacific Islands Students Fighting Climate Change, Climate Action Network, Greenpeace Australia Pacific, Oxfam in the Pacific, 350 Pacific, Pacific Islands Climate Action Network, and Vanuatu Climate Action Network.⁸

The civil society alliance is calling on all countries to support the proposal with a vote in favour of the resolution in September – reflecting a global commitment to fight the climate crisis and protect human rights. The campaign has received growing support. For example, the 33rd inter-sessional meeting of CARICOM heads of government recognised the International Court of Justice Advisory Opinion campaign led by the government of Vanuatu and articulated their support.⁹

An Advisory Opinion can function as a legal catalyst because work on climate change is not progressing fast enough. There needs to be more ambitious action on the part of states as the climate crisis is getting worse – there are more cyclones, more changes in weather patterns and so on. States need to understand what their obligations are under international law, in terms of protecting the rights of current and future generations from the adverse effects of climate change. An Advisory Opinion can also provide a basis for more ambitious action under the Paris Agreement as there needs to be a constant encouragement of states to do more. Furthermore, the climate crisis is a human rights crisis as it impacts on basic human rights.

The Pacific Islands Students Fighting Climate Change are also the founding partners of the World's Youth for Climate Justice, which is a youth led global movement calling for an Advisory Opinion from the International Court of Justice.

7 M Membrere (2021) Student activists take global climate fight forward. <<https://www.samoaoobserver.ws/category/samoa/89680>>.

8 P Ligaiula (2022) Global and Pacific Civil Society comes together to back Vanuatu Government Climate campaign, Pacific News Service <<https://pina.com.fj/2022/05/05/global-and-pacific-civil-society-comes-together-to-back-vanuatu-government-climate-campaign/>>.

9 CARICOM (2022) Communiqué – Thirty-Third Inter-Sessional Meeting of CARICOM Heads of Government. Available at <<https://caricom.org/communique-thirty-third-inter-sessional-meeting-of-caricom-heads-of-government/>>.

The development of the World's Youth for Climate Justice means that the Advisory Opinion movement is spreading beyond the Pacific.¹⁰

III CONCLUSION

The #EndorseTheAO campaign encourages state leaders to seek an Advisory Opinion from the International Court of Justice on climate change and human rights. An Advisory Opinion on the issue is important as it has the potential to be a catalyst for climate change action whilst clarifying international law on climate change. An advisory opinion from the court carries great moral and legal authority. A vote in favour of the resolution in September 2022 will reflect a global commitment to fight the climate crisis and protect human rights. It will put the protection of human rights at the heart of the struggle for climate justice.

10 Pacific Islands Students Fighting Climate Change (2022b) ICJAO Campaign <<https://www.pisfcc.org/icjao-campaign>>.