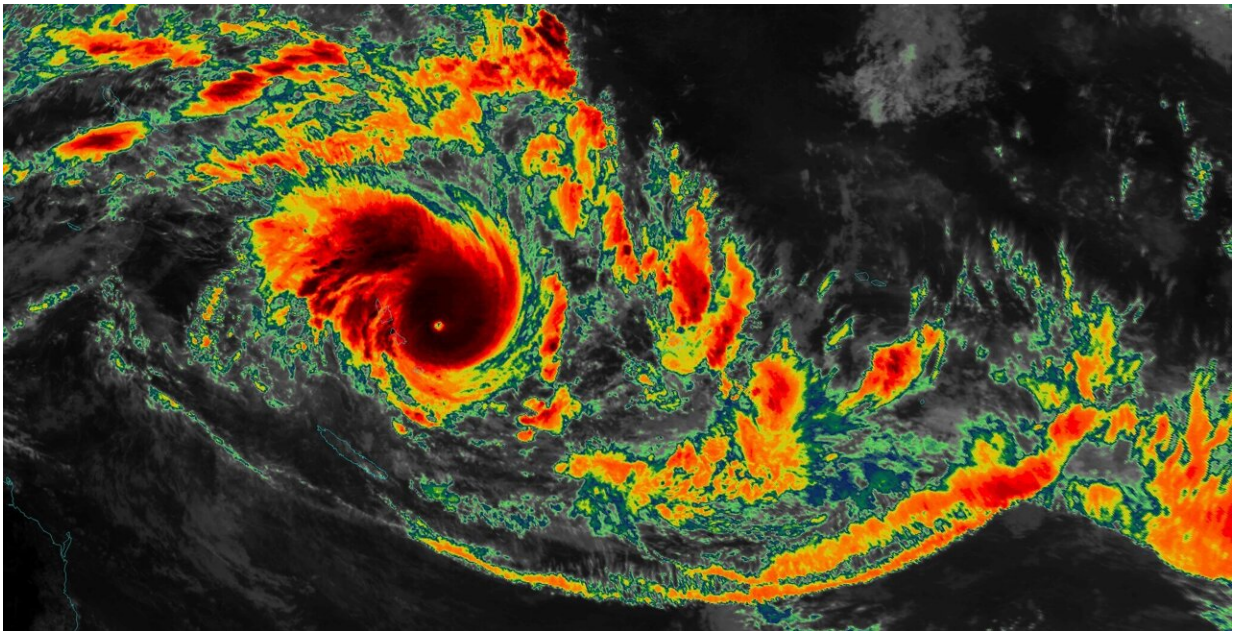


# Seeking climate justice at the 'world court' for Vanuatu

March 29 2023, by Fred Lewsey

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Satellite imagery of Cyclone Pam nearing Vanuatu. Credit: [Harrison Tan](#)

Just days after 105 countries backed Vanuatu's historic bid to take climate change before the International Court of Justice (ICJ), this small Pacific nation declared a state of emergency.

Within a single week, two cyclones had smashed into the republic of thirteen islands, cutting power to its capital, Port Vila, and forcing residents to evacuate.

Such devastation is increasingly common in the South Pacific: rising temperatures [create conditions](#) for ferocious tropical storms. Vanuatu is a frontline for humanity's war on nature.

Coastal erosion combined with extreme weather threatens lives and futures right across this low-lying archipelago. Settlements housing [more than a quarter of the population](#) are at risk of sinking into the ocean within decades as global heating causes sea levels to rise.

Earlier this month, Vanuatu's Prime Minister Ishmael Kalsakau said his country is "out of time," declaring that the effects of global warming "have become existential for Vanuatu."

Wealthy nations choke the atmosphere with carbon. Vanuatu emits almost nothing, yet this small developing country is on the brink of becoming a casualty of the climate crisis. Where is the justice?

"To emit vast amounts of greenhouse gases, with everything we know about the harm it will cause to so many around the world... it simply cannot be lawful," says Jorge Viñuales, the Harold Samuel Professor of Law and Environmental Policy at Cambridge.

"However, treaties such as the Paris Agreement are carefully drafted to stay legally ambiguous."

"But when considered from a wider international law perspective—whether it's human rights, the law of the sea, or even the UN charter—then nations contributing to climate change are clearly behaving unlawfully. This has never been legally stated."

Viñuales, an experienced practitioner from Cambridge's Department of Land Economy, has advised Vanuatu from the outset on strategic and legal aspects of its initiative to request an [ICJ "advisory opinion"](#) on

climate change through the United Nations General Assembly.

The ICJ, known as the "world court," is the judicial arm of the UN. It has issued opinions on everything from genocide to nuclear disarmament—but it has yet to opine on perhaps the defining issue of the 21st century.

Almost four years ago, Viñuales got an email from a group of 27 [law students](#) in their final year at the University of the South Pacific in Fiji. What had started as a class project was snowballing fast.

The students had managed to get buy-in from the Vanuatu government, and a small Pacific law firm based in Guam had taken up the case.

"As a law student I know I am in a privilege position to use my knowledge and skills to utilize the law to ensure our people can live a dignified life," says Solomon Yeo, the student campaign leader who is himself from the climate-threatened Solomon Islands.

"Any attempt to take climate change to the ICJ would only be successful if its roots were deep enough, so I was really encouraged," says Viñuales, who spent the 2019 Christmas holidays constructing a draft question.

"I remember cycling from my flat to the Lauterpacht Center in Cambridge, and feeling the basic elements of the text popping into my head."

Lawyers, academics and climate-threatened Pacific nations have been trying to put global warming to the ICJ for decades, including an effort by Tuvalu, Kiribati and the Maldives in 2002, and by Palau in 2012.

However, lack of resources and support—both grass roots and diplomatic—have scuppered previous efforts. It was time to try again,

and in the intervening years, things had changed.

"People are witnessing the effects of climate change," Viñuales says.

"Frustration among the public is mounting as COP follows COP, warnings become increasingly dire, yet the major polluting nations dither and delay. The president of COP28 will be an oil executive. How can the public be expected to buy that?"

"There has been a wave of climate litigation since around 2015 that has pushed for the courts to try and remedy some of the political inaction we are seeing."

The UN charter requires a simple majority of member states to vote for a resolution to go in front of the ICJ, famously based in The Hague.

As of this month, an extraordinary 116 countries have not just pledged a favorable vote, but are formally co-sponsoring the resolution. An unprecedented level of international support.

On 29 March, a formal vote will see the resolution sail through, and the ICJ will have some two years to come back with its advisory opinion.

While not legally binding, any opinion from ICJ judges on climate change will be transformative for climate justice, says Viñuales—setting legal precedents that can be used in courts the world over.

The U.K., France, Germany and Australia are among the co-sponsors, but there are several notable absences, including the planet's leading polluters: no China or India, and no United States.

There are indications that the Vanuatu resolution is already causing some diplomatic discomfort.

When asked about the resolution last month, the U.S. Envoy for Climate, an evasive John Kerry, [admitted](#) that his country has "concerns with the language and the way it's been written."

This in itself is a vindication of sorts for Viñuales, as "it shows our wording has teeth." Any [legal document](#) forming the basis of an ICJ resolution is a dogfight over language and meaning. On an issue this contentious, it was a battleground, but the legal team fought tooth-and-nail for two fundamental points.

One is on the "obligations" of nations to each other, and the future, when it comes to protecting the Earth's climate system. The other is about climate justice: the determination of "legal consequences" for states not fulfilling those obligations.

In doing so, Viñuales and colleagues hope to have created a basis for climate accountability in international law. "We defended the question of legal consequences day and night for months. Many countries wanted it removed altogether. But the stronger the criticism, the clearer it was to us that the question touched the right nerve."

Each round of negotiation and call for state support resulted in a flurry of proposals and counterproposals over the wording. One of the final stages was a round of "informals": meetings with representatives from dozens of states, leading to a deluge of rewording demands.

"It's a question of strategy, of tricks and loopholes, and of knowing when to lose a fight to win a war," says Viñuales.

"The text had to reflect an enormous level of expectation and face the most extreme pushback—all while ensuring sufficient political support, and making sense from the perspective of international law and dispute settlement."

Ultimately, however, the legal team held the line. The final question directly asks the ICJ what the obligations of States are to "ensure" protection of the environment from emissions.

More importantly, it demands to know the legal consequences for States that cause "significant harm to the climate system"—and, in doing so, have damaged developing countries geographically vulnerable to climate change, through no fault of their own.

Viñuales is realistic about the possible outcomes. It is unlikely that the majority of the Court will make any grand declaration on climate reparations, for example.

However, a majority decision from the ICJ on climate justice—or, if not, then dissenting opinions from individual judges—can "flesh out details of international law in ways that are directly actionable" according to Viñuales.

Essentially, aspects of any ICJ opinion will be deployable in the domestic courts of every nation—with the potential to revolutionize [climate](#) litigation.

"There is every chance this will prove to be the most globally significant case heard at the International Court of Justice and its predecessor since their establishment a century ago," says Viñuales.

"That is a testament to the tenacity and courage of a small nation fighting for its existence, and of the law students who helped them take that fight to the world court."

"As our resolution states, [climate change](#) is a challenge of civilizational proportions, and humankind depends on our immediate and urgent response to it.

"If the highest courts in each country, continent and the entire world are not dealing with this issue, then what are they for?"

Provided by University of Cambridge

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