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State Obligations in the Context of Climate Change

An Amicus Curiae Brief to the African Court
on Human and Peoples' Rights

African Court on Human and Peoples' Rights

Request No 001 of 2025 by PALU for an Advisory Opinion on the Obligations of States with Respect to the Climate Change Crisis

Amicus Curiae Brief submitted by
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Statement of Interest

As a clinical exercise at University College Cork, Ireland, five Master's students enrolled in the Environmental and Natural Resources Law programme have prepared this Amicus Curiae Brief in response to the request for an advisory opinion submitted by the Pan African Lawyers Union (PALU) to the African Court on Human and Peoples' Rights. The authors are Chishimba Yvette Mulenga from Zambia, Hope Jordan from Barbados, Macy Spence from the United States of America, Laura O'Malley from Ireland and Martin Etzelstorfer from Austria. Representing four regions of the world and the diversity of perspectives that characterizes the global dimensions of the climate crisis, the authors offer this brief as a contribution to the growing body of legal scholarship and advocacy directed at the Court's consideration of state obligations in the context of climate change in Africa.

Executive Summary

It must be emphasised at the outset that this brief is a legal document. While its analysis is informed and supported by scientific findings, the primary focus of each chapter is the legal framework governing state obligations under the African Charter on Human and Peoples' Rights (the Charter) and other relevant instruments. Science provides the factual foundation; law provides the framework for accountability. It is through that legal framework that the authors submit this brief is best able to serve the Court.

The present request by PALU respectfully places before this Honourable Court the following issues for determination (para 93):

a) Whether this Honourable Court can be seized with the question of the African States' human and peoples' rights obligations in the wake of the climate change in terms of the rights guaranteed by the African Charter on Human and Peoples' Rights and other relevant instruments?

b) Whether this Honourable Court can interpret and lay down applicable custom and treaty law regarding state parties' obligations and duties in the context of climate change?

If either or both of the questions above are resolved in the affirmative, this Honourable Court is invited to further dispose of the following questions (para 94):

a) What, if any, are the States' specific human and peoples' rights obligations to protect and safeguard the rights of individuals and peoples of the past (ancestral rights), present and future generations affected by the adverse and negative impacts of climate change, considering the relevant provisions of the African Charter?

b) Given the unique and significant implications of the responsibilities and duties to vulnerable individuals and populations, whether State parties to the African Charter on Human and Peoples' Rights (the Charter) have positive obligations to protect vulnerable populations including environmental human rights defenders, indigenous communities, women, children, youth, future generations, the current generation, past generations, the elderly and people with disabilities from the impact of climate change in line with the relevant treaties?

c) What, if any, are applicable human rights obligations of States to facilitate a just, transparent, equitable and accountable transition in the context of climate change in Africa?

d) What, if any, are the applicable obligations of African States in the implementation of adaptation, resilience and mitigation measures in response to climate change?

e) What, if any, are applicable human rights obligations of States to compensate for loss, damage and reparations?

f) What responsibilities, if any, do African States have in relation to third parties, including international monopolies, multinational corporations and non-state actors operating on the continent, to ensure that

international and regional treaties and laws on climate change are respected, protected, promoted and implemented?

g) What, if any, is the nature of the obligations on African States to cooperate in the framework of international cooperation with other states especially historical emitters to limit global warming to below the 1.5°C threshold, to avert an existential climate crisis for present and future generations on the continent?

The scale and urgency of the challenge that prompts these questions cannot be overstated. Climate change is no longer a projected or future threat; it is a present crisis advancing rapidly and with severe consequences, particularly across Africa. Despite contributing only two to three per cent of global greenhouse gas emissions, African states and their peoples bear a disproportionate share of climate change's most devastating impacts: rising temperatures, prolonged droughts, desertification, coastal flooding, the destruction of ecosystems upon which hundreds of millions depend for their livelihoods, food security, and cultural survival, and the accelerating erosion of the social and economic foundations of development, as documented throughout this brief (see Chapters 1 through 5). Africa is also home to approximately thirty per cent of the world's mineral reserves, eight per cent of its natural gas and twelve per cent of its oil reserves, yet pre-existing vulnerabilities rooted in colonial history, inadequate infrastructure, and limited adaptive capacity compound the region's susceptibility to climate-related harm (see Chapter 4, Section 4.1). These are not merely environmental phenomena. They are human rights crises.

A healthy and sustainable climate system is an intrinsic precondition for the enjoyment of virtually every right guaranteed under the Charter. The right to life, the right to a satisfactory environment, the right to development, the right to adequate food, the right to water, and the rights of the most vulnerable members of African societies, including women, children, indigenous peoples, the elderly, and future generations, are all directly and materially threatened by the adverse effects of climate change, as each chapter of this brief addresses in turn (see Chapter 1, Sections 1.10 to 1.12; Chapter 2, Section 2.2; Chapter 3, Sections 3.9 and 3.10; Chapter 4, Sections 4.4, 4.6, 4.8 and 4.10; Chapter 5, Section 5.3). Furthermore, because greenhouse gas emissions produced in one state cause harm in others far removed from their source, no African state, with its limited adaptive capacity, can mitigate these impacts independently (see Chapter 5, Section 5.2). The climate crisis is, by its very nature, a collective challenge requiring collective legal responses, and the duty of states to cooperate in good faith is recognised as part of customary international law and is central to the international climate regime (see Chapter 5, Sections 5.4 and 5.5).

Given the breadth of issues raised by PALU's request, and acknowledging the practical constraint of five authors, this brief addresses five thematic chapters selected to provide comprehensive yet focused coverage of the Charter's most directly engaged provisions. Having regard to recent developments in international law, as well as climate change, across the field of human rights, the issues addressed within

this brief were the most salient issues that emerged from the request. The selection reflects both the structure of the Charter and the particular urgency of each theme in the African context, and is designed to provide the Court with a coherent and mutually reinforcing body of legal analysis. The brief is also mindful that, as the Secretary-General of the United Nations has warned, without coordinated global action, the impacts of climate change risk becoming irreversible. This urgency informs the approach taken throughout.

Chapter I, authored by Martin Etzelstorfer, addresses Article 24 of the Charter, which guarantees to all peoples the right to a general satisfactory environment favourable to their development. As the Charter's primary environmental guarantee, Article 24 provides the foundational normative framework for this brief. Etzelstorfer's chapter establishes the Court's jurisdiction and competence to receive PALU's request, traces the deep African legal and intellectual traditions underlying Article 24, and demonstrates through an analysis of African Commission and Court jurisprudence, including the landmark *SERAC v Nigeria* and *African Commission on Human and Peoples' Rights v Kenya* (*Ogiek*), that the far-reaching impacts of climate change fall squarely within the protective scope of this provision (see Sections 1.2 to 1.5). The chapter further situates Article 24 within the convergent international jurisprudence on climate change and human rights, including the recent advisory opinions of the International Court of Justice, the Inter-American Court of Human Rights, and the International Tribunal for the Law of the Sea, affirming that this Court is well-positioned to make its own authoritative contribution to that emerging body of law (see Sections 1.13 to 1.16).

Chapter II, authored by Laura O'Malley, addresses Article 4 of the Charter, which provides that human beings are inviolable and that every human being shall be entitled to respect for his life and the integrity of his person. O'Malley's chapter examines the causal links connecting the adverse effects of climate change to the deprivation of the right to life, including threats to food security, water access, housing, and the physical integrity of persons exposed to extreme weather events (see Section 2.2). The chapter argues that climate change constitutes a form of arbitrary deprivation of life and that African states bear both negative and positive obligations under Article 4 to prevent, mitigate, and remedy these harms (see Section 2.4). The chapter also addresses the obligation of states to regulate third parties, including multinational corporations and non-state actors operating on the continent, and proposes concrete recommendations in relation to loss, damage, and reparation (see Sections 2.4 and 2.5).

Chapter III, authored by Macy Spence, addresses Article 22 of the Charter, which provides that all peoples shall have the right to their economic, social and cultural development with due regard to their freedom and identity and in the equal enjoyment of the common heritage of mankind, and that states shall have the duty, individually or collectively, to ensure the exercise of the right to development. Spence's chapter advances a novel normative framework for the advisory opinion, arguing that the concept of the Common Heritage of Mankind, which Article 22(1) expressly invokes, and the principle of Common Concern of Humankind, together provide a unified doctrinal foundation for the climate obligations of African states (see Sections 3.2 to 3.6). The chapter further examines the economic, social, cultural, and participatory dimensions of Article 22, and articulates the specific state obligations in mitigation, adaptation, procedural accountability, and just and equitable transition that flow from that analysis (see Sections 3.8 to 3.11).

Chapter IV, authored by Hope Jordan, addresses the obligations of African states to protect vulnerable groups from the impacts of climate change. Jordan's chapter focuses on four groups identified in climate change literature and scientific reports as disproportionately affected: children and future generations, women, indigenous peoples, and the elderly (see Sections 4.3 to 4.10). Drawing on the Charter, international human rights law, and a body of regional and international jurisprudence and reports from across the African continent, the chapter demonstrates that state parties bear positive obligations to adopt the measures necessary to safeguard the rights of these communities. The chapter employs doctrinal and socio-legal methodologies and offers concrete recommendations for the execution of those positive obligations, drawing on the 2025 advisory opinions as interpretive tools (see Sections 4.11 and 4.12).

Chapter V, authored by Chishimba Mulenga, addresses the duty of African states to cooperate with each other and with historical emitters to avert the existential climate crisis. Mulenga's chapter argues that the duty to cooperate, rooted in customary international law and the international climate treaty regime, must be understood not as a matter of discretion but as a legal necessity (see Section 5.4). The chapter examines the specific areas of cooperation required, including climate finance, technology transfer, and scientific data sharing (see Section 5.5), and situates the cooperation obligation within the Afrocentric philosophy of Ubuntu, emphasising the principle of shared humanity and collective responsibility deeply embedded in African legal and cultural traditions (see Section 5.6). The chapter concludes that a determination by this Court affirming the legally binding character of the duty to cooperate will be an essential contribution to the protection of human rights for present and future generations across the continent.

Together, these five chapters address a substantial portion of the questions placed before the Court by PALU and are designed to be read as a cohesive and mutually reinforcing body of legal analysis. The authors acknowledge that the issues raised by PALU's request extend beyond the five themes addressed here, including in particular the rights of environmental human rights defenders and the detailed treatment of loss and damage mechanisms, and note that a more comprehensive treatment would be warranted in a fuller brief. Although a comprehensive treatment of the rights and necessary protection of environmental defenders lies beyond the scope of this amicus brief, it is important to draw the Court's attention to the most authoritative guidance currently available. In particular, the work of the Special Rapporteur on Human Rights Defenders established by the African Commission on Human and Peoples' Rights, the analysis set out on pages 20-33 of the in September 2025 issued 'Report on Regional Consultations with Environmental Defenders prepared' by Michel Forst, UN Special Rapporteur on Environmental Defenders under the Aarhus Convention, and paragraphs 561-587 of Advisory Opinion OC-32/25 of the Inter-American Court of Human Rights from 29 May 2025 collectively provide a substantive framework that will assist the African Court in addressing this urgent issue. Despite, as noted, a few unavoidable *lacunae*, the authors submit that the present analysis provides the Court with a sound legal foundation for its advisory opinion, grounded in the Charter, in African and international jurisprudence, and in the evolving body of international climate law.

The African continent did not cause the climate crisis. Yet it is African peoples, among the most resource-rich, culturally diverse, and historically resilient on earth, who bear its heaviest burdens. This brief is submitted in the conviction that international law, properly interpreted and applied, can provide a measure of justice in that disparity, and that this Court has both the authority and the responsibility to say so.

Chapter I - Environmental Guarantees in the African Human Rights System

Reassessing Article 24 of the African Charter in the Context of Climate Change

Martin Etzelstorfer

1.1. Introduction

The present request by the Pan African Lawyers Union (PALU) for an Advisory Opinion on States' obligations in relation to the climate-change crisis places before the African Court on Human and Peoples' Rights (AfCHPR), in paragraphs 93 and 94(a), the preliminary and foundational issues of whether the Court is competent to determine African States' human rights obligations arising from climate change under the African Charter and related instruments, whether it may interpret and articulate the applicable rules of customary and treaty law governing State duties in this context,[1] and, building on that, which specific obligations States bear to protect and safeguard the human and peoples' rights of individuals and communities.[2] Addressing these questions requires, as a first step, a detailed and context-sensitive examination of the content and normative scope of the right to a general satisfactory environment enshrined in Article 24 of the African Charter on Human and Peoples' Rights (African Charter).[3] A thorough analysis of the development, interpretation, and doctrinal significance of this provision within the African human rights system provides the essential foundation for any subsequent assessment of State obligations.[4]

Building on this African-centred inquiry, the analysis then incorporates the emerging international human right to a clean, healthy, and sustainable environment as articulated by the United Nations and recognised in the jurisprudence of international courts and tribunals.[5] Engaging with this global normative evolution, further refined and applied to the climate context in recent advisory opinions,[6] is indispensable for assessing PALU's question concerning the existence, nature, and legal implications of such a right in light of the worsening climate crisis. Read together, the African Charter's environmental guarantee and the increasingly convergent international jurisprudence provide a coherent and comprehensive framework for articulating the obligations incumbent upon states, while taking full account of the complex human rights implications in Africa posed by climate-related threats.

Against this backdrop, this chapter proceeds by confirming the Court's authority to entertain the request and identifying the relevant body of African and international law (1.2.). It then turns to the deep

[1] PALU, 'Request for Advisory Opinion No.001 of 2025: In the matter of a request by the Pan African Lawyers Union (PALU) for an Advisory Opinion on the obligations of States with respect to the climate change crisis' para 93 https://www.african-court.org/cpmt/details-advisory/0012025 accessed 27 March 2026.
[2] Ibid para 94(a).
[3] African Charter on Human and Peoples' Rights (adopted 27 June 1981, entered into force 21 October 1986) 21 ILM 58, 1520 UNTS 217 (African Charter).
[4] See text to n 38-183.
[5] See text to n 119-122 and 184-213.
[6] See text to n 192-213.

normative foundations of Article 24 within African legal and intellectual traditions and the rich interpretive practice that has developed around it (1.3.). The analysis further highlights the continent-wide constitutional recognition of the right to live in a healthy, sustainable, and balanced environment (1.4.) and demonstrates that the far-reaching impacts of climate change in Africa fall squarely within the protective scope of this provision (1.5.). When read alongside global jurisprudence affirming heightened State duties in the climate context (1.5.3), Article 24 emerges as a robust and dynamic guarantee capable of guiding the Court in articulating the obligations incumbent upon States in responding to the climate crisis and protecting African individuals and peoples.

1.2. Jurisdiction, Admissibility and applicable Law

The present request forms part of a rapidly expanding body of international jurisprudence on climate change and human rights, reflected in recent decisions of the UN Human Rights Committee,[7] the UN Committee on the Rights of the Child,[8] the European Court of Human Rights (ECtHR),[9] the International Tribunal for the Law of the Sea (ITLOS),[10] the Inter-American Court of Human Rights (IACtHR),[11] and the International Court of Justice (ICJ).[12]

The African Court's authority to render advisory opinions derives from Article 4(1) of the Protocol to the African Charter on Human and Peoples' Rights,[13] and Rule 82 of its Rules of Court.[14] The questions submitted are plainly legal in character, and the Pan African Lawyers Union qualifies as an authorised applicant, having previously sought advisory opinions.[15] Accordingly, and in line with the Court's

[7] *Ioane Teitiota v New Zealand* (7 January 2020) Communication No 2728/2016, UN Doc CCPR/C/127/D/2728/2016; *Daniel Billy and others v Australia* (22 September 2022) Communication No 3624/2019, UN Doc CCPR/C/135/D/3624/2019.
[8] *Sacchi et al v Argentina* (2021) CRC/C/88/D/104/2019.
[9] *Carême v France* App no 7189/21 (ECtHR, 9 April 2024); *Duarte Agostinho and Others v Portugal and 32 Others* App no 39371/20 (ECtHR, 9 April 2024); *Verein KlimaSeniorinnen Schweiz and Others v Switzerland* App no 53600/20 (ECtHR, 9 April 2024).
[10] ITLOS, 'Request for an Advisory Opinion submitted by the Commission of Small Island States on Climate Change and international law – Advisory Opinion' (21 May 2024) (COSIS Advisory Opinion) https://www.itlos.org/fileadmin/itlos.pdf accessed 27 March 2026.
[11] IACtHR, 'Advisory Opinion AO-32/25 – requested by the Republic of Chile and the Republic of Colombia' (29 May 2025) (Advisory Opinion AO-32/25) https://www.corteidh.or.cr/docs/opiniones/seriea_32_en.pdf accessed 27 March 2026.
[12] ICJ, 'Advisory Opinion on the Obligations of States in Respect of Climate Change' (23 July 2025) (Climate Change Advisory Opinion) https://cdn.climatepolicyradar.org/navigator/XAA/2023/request-for-an-advisory-opinion-on-the-obligations-of-states-with-respect-to-climate-change_c552351dce95168dc30df84493f8722c.pdf accessed 27 March 2026.
[13] Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights (adopted 10 June 1998, entered into force 25 January 2004) (the Protocol) https://au.int/sites/default/files/treaties/36393-treaty-0019.pdf accessed 27 March 2026.
[14] AfCHPR, 'Rules of the Court' (adopted 25 September 2020) (the Rules) https://www.african-court.org/afchpr/documents-2/ accessed 27 March 2026.
[15] See AfCHPR, 'Advisory Opinion No. 001/2018 - Request by the Pan African Lawyers Union (PALU) on the Compatibility of Vagrancy Laws with the African Charter on Human and Peoples' Rights and Other Human Rights Instruments Applicable in Africa' (4 December 2020) paras 20-25 https://www.african-court.org/cpmt/storage/app/uploads/public/5fd/0c6/49b/5fd0c649b6658574074462.pdf accessed 27 March 2026;

settled admissibility jurisprudence, PALU's request should, without hesitation, be regarded as admissible before the Court.

A request of this nature is unsurprising in light of Africa's acute vulnerability to climate impacts and the African Charter's distinctive acknowledgment, in Article 24, of an autonomous environmental right.[16] Despite the absence of any express mention of greenhouse gas emissions or climate change in Article 24, it will be recommended that the Court read the provision as encompassing such threats,[17] consistent with the interpretive developments advanced by the African Commission on Human and Peoples' Rights (ACHPR),[18] ITLOS,[19] the ECtHR,[20] the IACtHR,[21] and the ICJ.[22] Beyond the African Charter, the Court, in exercising its advisory jurisdiction,[23] is invited to engage with a broader constellation of normative sources, encompassing not only other African human rights instruments but also, particularly in the context of climate change, pertinent sources of international law that collectively illuminate the evolving contours of state obligations and the protective scope of fundamental rights.[24] Against this background, the UNFCCC,[25] the Kyoto Protocol,[26] the Paris Agreement,[27] the UN Convention to Combat Desertification,[28] and the Convention on Biological Diversity,[29] as well as the Constitutive Act of the African Union,[30] the Kampala Convention on internally displaced persons,[31] the Maputo Protocol on the

also AfCHPR, 'Advisory Opinion No. 001/2020 - Request by the Pan African Lawyers Union (PALU) on the right to participate in the government of one's country in the context of an election held during a public health emergency or a pandemic, such as the Covid-19 crisis' (16 July 2021) paras 19-26 https://www.african-court.org/cpmt/storage/app/uploads/public/60f/574/3a6/60f5743a61e75369142990.pdf accessed 27 March 2026.

[16] See text to n 49 and 150-152.

[17] See text to n 148-183.

[18] ACHPR, 'Resolution on Climate Change and Human Rights in Africa - ACHPR/Res. 342 (LVIII) 2016' https://achpr.au.int/en/adopted-resolutions/342 accessed 27 March 2026.

[19] See ITLOS, 'COSIS Advisory Opinion' (n 10) paras 157-179.

[20] See for example *KlimaSeniorinnen* (n 9) paras 608-640.

[21] IACtHR, 'Advisory Opinion AO-32/25' (n 11) paras 152-159.

[22] ICJ, 'Climate Change Advisory Opinion' (n 12) paras 369-404.

[23] See Art 4 of the Protocol (n 13); for a detailed account, see Anne P Van der Mei, 'The Advisory Jurisdiction of the African Court on Human and Peoples' Rights' (2005) 5 African Human Rights Law Journal 27; see also Chidi Anselm Odinkalu, 'Advice without Consent?: Assessing the Advisory Jurisdiction of the African Court on Human and Peoples' Rights' (2023) 45 Human Rights Quarterly 365.

[24] See PALU, 'Request for Climate Change Advisory Opinion' (n 1) paras 90-92.

[25] United Nations Framework Convention on Climate Change (adopted 9 May 1992, entered into force 21 March 1994) 1771 UNTS 107, 31 ILM 849 (UNFCCC).

[26] Kyoto Protocol to the United Nations Framework Convention on Climate Change (adopted 11 December 1997, entered into force 16 February 2005) 2303 UNTS 162.

[27] Paris Agreement to the United Nations Framework Convention on Climate Change (adopted 12 December 2015, entered into force 4 November 2016) TIAS No 16-1104.

[28] Convention to Combat Desertification in Those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa (adopted 17 June 1994, entered into force 26 December 1996) 1954 UNTS 3.

[29] Convention on Biological Diversity (adopted 5 June 1992, entered into force 29 December 1993) 1760 UNTS 79 (CBD).

[30] Constitutive Act of the African Union (adopted 11 July 2000, entered into force 26 May 2001), 2158 UNTS 3, UN Reg No I-37733, OAU Doc CAB/LEG/23.15.

[31] African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention) (adopted 23 October 2009, entered into force 6 December 2012) 3014 UNTS I-52375.

Rights of Women in Africa,[32] the African Charter on the Rights and Welfare of the Child,[33] and the Revised African Convention on the Conservation of Nature[34] should in any case be considered applicable law. Furthermore, relevant guidelines and resolutions of the African Commission on Human and Peoples' Rights,[35] together with decisions and advisory opinions from other judicial bodies addressing the human rights implications of climate change,[36] as well as all other pertinent sources of international law, should be considered as valuable interpretative tools capable of guiding the Court toward a principled and context-sensitive understanding of the issues before it.

Recommendation: This amicus invites the Court to consider PALU's request on its merits and to assess the raised questions against the broader framework of relevant African and international human rights law that informs the scope and content of states' obligations in the context of climate change.

1.3. Article 24 as the Charter's Environmental Guarantee

'All peoples shall have the right to a general satisfactory environment favourable to their development.'[37]

The request identifies Article 24 of the African Charter, namely the right of peoples to a satisfactory environment conducive to their development, as the central normative basis for articulating states' obligations in responding to climate change.[38]

1.3.1. Historical, Cultural and Normative Context

Before turning to the normative content and doctrinal significance of Article 24, it is essential to recognise that any interpretation of this provision must be situated within the broader African intellectual and cultural traditions that conceive of the environment as inseparable from religious practice, cultural

[32] Protocol to the African Charter on human and people's rights on the rights of women in Africa (adopted 11 July 2003, entered into force 25 November 2005) 3268 UNTS A-26363.
[33] African Charter on the Rights and Welfare of the Child (adopted 11 July 1990, entered into force 29 November 1999) OAU Doc CAB/LEG/24.9/49.
[34] Revised African Convention on the Conservation of Nature and Natural Resources (adopted 11 July 2003, entered into force 23 July 2016) 1001 UNTS I-14689.
[35] *Inter alia* ACHPR, 'State Reporting Guidelines and Principles on Articles 21 And 24 of the African Charter relating to Extractive Industries, Human Rights and the Environment' (entered into force 30 October 2021) https://achpr.au.int/en/node/845 accessed 27 March 2026; ACHPR, 'Resolution on Climate Change and Human Rights and the Need to Study its Impact in Africa - ACHPR/Res. 153 (XLVI) 09' https://africanlii.org/en/akn/aa-au/statement/resolution/achpr/2009/153/eng@2009-11-25 accessed 27 March 2026; ACHPR, 'Resolution on Climate Change and Human Rights in Africa - ACHPR/Res. 342 (LVIII) 2016' https://achpr.au.int/en/adopted-resolutions/342-resolution-climate-change-and-human-rights-africa-achprres342lviii2 accessed 27 March 2026; ACHPR, 'Resolution on the Human Rights Impacts of Extreme Weather in Eastern and Southern Africa due to Climate Change - ACHPR/Res. 417 (LXIV) 2019' https://achpr.au.int/en/adopted-resolutions/417 accessed 27 March 2026; ACHPR, 'Resolution on Climate Change and Forced Displacement in Africa - ACHPR/Res. 491 (LXIX) 2021' https://achpr.au.int/en/adopted-resolutions/491 accessed 27 March 2026.
[36] See n 7-12.
[37] Art 24 of the African Charter (n 3).
[38] PALU, 'Request for Climate Change Advisory Opinion' (n 1) para 104.

identity, and communal life.[39] This perspective is echoed in the initiatives of the former Organisation of African Unity (OAU), the African (AU), and sub-regional bodies.[40] A range of treaties, such as the Convention on the Conservation of Nature and Natural Resources,[41] and the Bamako Convention on hazardous waste,[42] together with resolutions and political decisions adopted over several decades,[43] although not always making explicit reference to Article 24, demonstrate a consistent continental awareness of the environment as a core concern and its intrinsic connection to human and peoples' rights.[44] The African Convention on Nature and Natural Resources, for example, incorporates the language of Article 24 among its guiding principles,[45] affirms the concept of sustainable development,[46] and sets out procedural environmental rights, including public access to information, participation in environmental decision-making, and access to justice.[47] It further recognises the traditional rights of local communities and Indigenous peoples, including access to knowledge, prior informed consent, and participation in natural resource governance.[48]

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[39] See Emeka P Amechi, 'Enhancing Environmental Protection and Socio-Economic Development in Africa: A Fresh Look at the Right to a General Satisfactory Environment under the African Charter on Human and Peoples' Rights', (2009) 5 Law, Environment and Development Journal 58, 62.

[40] See for example Art 21of the Consolidated Text of the Treaty of the Southern African Development Community (SADC Treaty) (signed 17 August 1992, amended 2009), which states that 'Member States agree to co- operate in the areas of … natural resources and the environment'.

[41] Revised African Convention on the Conservation of Nature and Natural Resources (adopted 11 July 2003, entered into force 23 July 2016) 1001 UNTS I-14689.

[42] Bamako Convention on the Ban of the Import into Africa and the Control of Transboundary Movement and Management of Hazardous Wastes within Africa (adopted 30 January 1991, entered into force 22 April 1998) 2101 UNTS 177.

[43] For example OAU, 'Lagos Plan of Action for the Economic Development of Africa, 1980–2000' (Geneva: International Institute for Labour Studies, 1981) paras 266-270 https://www.resakss.org/sites/default/files/OAU%201980%20Lagos.pdf accessed 27 March 2026; UN Economic Commission for Africa Conference of Ministers, 'African Charter for Popular Participation in Development and Transformation' (adopted 19 May 1990) UN Doc E/ECA/CM.16/11; OAU Council of Ministers, 'Resolution on Africa's Preparation for the United Nations Conference on Environment and Development (UNCED)' (1 June 1991) OAU Doc CM/Res.1361 (LIV); OAU Assembly of Heads of State and Government, 'Relaunching Africa's Economic and Social Development: The Cairo Agenda for Action' (26 June 1995) AHG/Res 236 (XXXI) https://au.int/sites/default/files/decisions/9540-1995_ahg_res_234-246_xxxi_e.pdf accessed 27 March 2026; OAU, 'Sirte Declaration' (adopted 9 September 1999) para 3 https://www.tralac.org/documents/resources/african-union/4434.html accessed 27 March 2026; AU Assembly, 'Decision on Climate Change and Development in Africa' (adopted 30 January 2007) Assembly/AU/Dec.134 (VIII); AU Assembly, 'Decision on the African Common Position on Climate Change' (adopted 3 February 2009) Assembly/AU/Dec.236(XII); Assembly, 'Decision on the Report of the Peace and Security Council on Its Activities and the State of Peace and Security in Africa' (adopted 30 January 2012) Assembly/AU/Dec.408(XVIII); African Union Commission, 'Agenda 2063: The Africa We Want – Framework Document' (April 2015) https://au.int/en/agenda2063/goals accessed 27 March 2026; African Leaders Nairobi Declaration on Climate Change and Call to Action (adopted 6 September 2023) https://www.afdb.org/sites/default/files/2023/09/08/.pdf accessed 27 March 2026.

[44] See also Rachel Murray, *Human Rights in Africa: From the OAU to the African Union* (Cambridge University Press 2004) 256-259.

[45] See Art III(1) of the African Convention on the Conservation of Nature and Natural Resources (n 41).

[46] Ibid Art XIV; see also Morné van der Linde, 'A review of the African Convention on Nature and Natural Resources' (2002) 2 African Human Rights Law Journal 33.

[47] Ibid Article XVI.

[48] Ibid Article XVII.

1.3.2. First standalone Human Right to a satisfactory Environment

Long before the articulation of the human right to a clean, healthy, and sustainable environment has gained global affirmation, the African Charter on Human and Peoples' Rights, adopted in 1981, stood as the first international human rights instrument to expressly enshrine such a right, thereby positioning the African human rights system at the forefront of environmental rights protection.[49] It is noteworthy in this regard that, unlike the regional human rights instruments of Europe[50] and the Americas,[51] the African Charter expressly guarantees an autonomous right to a healthy environment. Article 24 of the African Charter guarantees to all peoples the right to an environment that is generally satisfactory and conducive to their development. Yet Article 24 is not the Charter's only provision with environmental implications, as Articles 4, 16, 20, 21 and 22 likewise protect rights that intersect with environmental concerns, including the rights to life, health, self-determination, the free disposal of natural resources and the right to development.

1.3.3. Distinctiveness of Article 24

The formulation of Article 24 is distinctive in that it frames the right to a healthy environment primarily through the lens of development, rather than through public health, as in the European context, or an adequate standard of living, as reflected in the Arab Charter and the Association of Southeast Asian Nations (ASEAN) Declaration.[52] Concerns initially surrounded Article 24 of the African Charter, particularly the novelty of codifying an environmental right in a binding human rights treaty, the provision's 'vague and ambiguous' formulation,[53] and doubts as to whether it would operate as more than an aspirational norm.[54] Although Article 24 refers to a **'**general satisfactory' environment, the African Commission and other bodies have used a range of descriptors like 'healthy',[55] 'clean and safe'[56]

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[49] See Estifanos B Liyew, 'The right to a healthy environment in African human rights law' (2026) The International Journal of Human Rights 2.
[50] Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) [1950] ETS No 005, as amended by Protocols Nos 11 and 14-15, 213 UNTS 221; The ECHR does not contain an explicit right to a healthy environment. Nevertheless, this omission has not prevented the European Court of Human Rights from affording indirect environmental protection through established rights, most notably the right to life under Art 2, the right to respect for private and family life under Art 8, and the freedom of expression guaranteed by Art 10.
[51] American Convention on Human Rights (adopted 22 November 1969, entered into force 18 July 1978) OASTS No 36, 1144 UNTS 123; for a detailed account see Welena Da Silva, 'Climate Litigation in the African Human Rights System – Possibilities, Limits, and Constraints' in Carla A Gomes, Heloísa Oliveira, Armando Rocha and Matteo Fermeglia (eds), *Climate Change before International* Courts (Routledge 2025) 224, 227.
[52] See Mulesa Lumina, 'The Right to a Clean, Safe and Healthy Environment Under the African Human Rights System' in Michael Addaney and Ademola Oluborode Jegede (eds), *Human Rights and the Environment under African Union Law* (Palgrave Macmillan 2020) 25, 36.
[53] Morné Van der Linde and Lirette Louw, 'Considering the interpretation and implementation of article 24 of the African Charter on Human and Peoples' Rights in light of the SERAC Communication' (2003) 3 African Human Rights Law Journal 167, 174.
[54] Rachel Murray, *The African Charter on Human and Peoples' Rights: A Commentary* (Oxford University Press 2019) 547.
[55] See *Social and Economic Rights Action Center (SERAC) and Center for Economic and Social Rights (CESR) v Nigeria* (26 October 2001) ACHPR Communication 155/96 (2001) AHRLR 60 (*SERAC*), para 52.
[56] Ibid para 51.

or 'safe satisfactory',[57] reflecting both the drafting history of the Charter and the evolving understanding of environmental quality.[58]

1.3.4. Interpretation of Article 24 by the African Commission

Over time, the African Commission on Human and Peoples' Rights has been seized of numerous communications alleging breaches of the human right to a clean, healthy and sustainable environment, and this body of complaints has played a significant role in shaping an emerging jurisprudence recognising environmental degradation itself as a violation of human rights.[59]

1.3.4.1. *SERAC v Nigeria*

In 2001, the ACHPR provided important interpretive guidance on the obligations arising under Article 24, although it did not definitively articulate the full normative content of the right.[60] In its landmark findings in *Social and Economic Rights Action Centre (SERAC) and Centre for Economic and Social Rights v Nigeria*, the Commission held that Nigeria had breached Articles 16 and 24 of the Charter as a result of severe soil, water and air pollution that had caused significant harm to the health and well-being of the Ogoni people.[61] While the Commission accepted that states may legitimately engage in industrial activity to advance socio-economic development, it stressed that such pursuits must be carefully balanced against the obligation to protect the rights of affected communities, meaning that respect for the right to a healthy environment requires the state to refrain from adopting, endorsing or tolerating any legal, policy or practical measures that cause environmental harm.[62] Drawing on the four general human rights obligations to respect, protect, promote and fulfil, the Commission identified a range of substantive and procedural duties flowing from Article 24.[63] Substantively, states must conserve and protect the environment, prevent and mitigate environmental degradation and pollution, ensure the sustainable use of natural resources, and regulate private actors whose conduct may infringe environmental rights.[64] These duties also entail conducting or permitting environmental impact assessments, as well as ongoing scientific monitoring.[65] As Van der Linde and Louw observed, these obligations reflect the socio-economic character of environmental rights and their associated resource implications.[66] Procedurally, the Commission underscored the importance of access to remedies and

[57] ACHPR, 'Resolution on Climate Change and Human Rights and the Need to Study its Impact in Africa - ACHPR/Res. 153 (XLVI) 09' (n 35).
[58] See Murray, *The African Charter: A Commentary* (n 54) 548.
[59] Liyew, 'The right to a healthy environment' (n 49) 3.
[60] See Dinah Shelton, 'Decision Regarding Communication 155/96 (*Social and Economic Rights Action Center/Center for Economic and Social Rights v. Nigeria*) Case No ACHPR/COMM/A044/1' (2002) 96 The American Journal of International Law 937.
[61] *SERAC* (n 55).
[62] Ibid para 53.
[63] Ibid para 44.
[64] Ibid paras 52-53; see also, Van der Linde and Louw, 'Considering the interpretation and implementation of article 24' (n 53) 179.
[65] Ibid.
[66] Van der Linde and Louw, 'Considering the interpretation and implementation of article 24' (n 53).

access to information concerning environmental impacts.[67] Yet, the persistent non-enforcement of the Commission's recommendations reveals a structural weakness within the African human rights system, namely the non-binding character of the Commission's findings.[68] Although the Commission's findings and recommendations constitute authoritative interpretations of the African Charter, they do not possess binding legal effect unless and until they are transformed into decisions of the AU, which become enforceable as under Article 23(2) of the AU Constitutive Act.[69] Despite this limitation, *SERAC* remains a foundational moment in African environmental rights jurisprudence, affirming the intrinsic connection between human rights and environmental protection and underscoring states' obligations to prevent environmental harm, safeguard public health, and promote inclusive and sustainable development.

1.3.4.2. Soft Law

Building on the findings in *SERAC*, a series of AU soft-law instruments and ACHPR resolutions have repeatedly affirmed the now-settled understanding that human rights and environmental protection are intrinsically linked.[70] In its General Comment No 3, the Commission further clarified that the right to life must be interpreted expansively, and that the state's duty to safeguard life necessarily encompasses preventive measures to preserve and protect the natural environment, as well as humanitarian responses to natural disasters, famine, disease outbreaks and other emergencies.[71] Moreover, the Principles and Guidelines on the Implementation of Economic, Social and Cultural Rights under the African Charter make clear that national development policies, such as those governing the management of land and water resources, must be conceived with the overarching objective of fostering environmental conditions that enable the effective enjoyment of the right to health.[72] They further impose on states an obligation to ensure that both public authorities and private entities respect the right to a satisfactory environment.[73] In 2017, the Commission advanced the interpretive framework of Article 24 by issuing dedicated reporting guidelines addressing its application in the context of extractive industries, thereby offering more detailed direction on the scope and content of states' environmental obligations.[74]

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[67] *SERAC* (n 55) paras 52-53.
[68] See Chairman Okoloise, 'Circumventing obstacles to the implementation of recommendations by the African Commission on Human and Peoples' Rights' (2018) 18 African Human Rights Law Journal 27, 29ff https://doi.org/10.17159/1996-2096/2018/v18n1a2 accessed 27 March 2026.
[69] Ibid 47.
[70] See for example ACHPR, 'Resolution on the Right to Food and Nutrition in Africa - ACHPR/Res. ACHPR, 'Resolution on the Right to Food and Nutrition in Africa - ACHPR/Res. 431 (LXV) 2019' https://achpr.au.int/en/adopted-resolutions/431 accessed 27 March 2026; see also the ACHPR resolutions referenced in n 35 and the AU documents cited in n 43.
[71] ACHPR, 'General Comment No. 3 on the African Charter on Human and Peoples' Rights: The Right to Life' (12 December 2015) paras 3 and 41 https://achpr.au.int/en/node/851 accessed 27 March 2026.
[72] ACHPR, 'Principles and Guidelines on the Implementation of Economic, Social and Cultural Rights in the African Charter on Human and Peoples' Rights' (2011) para 67 https://archives.au.int/handle/123456789/2063 accessed 27 March 2026.
[73] Ibid para 44.
[74] ACHPR, 'State Reporting Guidelines on Articles 21 and 24 of the African Charter on Human and Peoples' Rights Relating to the Operations of Extractive Industries; Resolution on Developing Reporting Guidelines with Respect to the Extractive Industries - ACHPR/Res. 364(LIX) 2016' (22 May 2017) https://www.legal-tools.org/doc/1vbxbl/pdf accessed 27 March 2026.

1.3.4.3. *Endorois*

At times, the ACHPR has invoked the environment rhetorically in relation to other Charter rights, without directly engaging Article 24.[75] Notably, even where Article 24 has not been expressly invoked, environmental considerations have been treated as integral to the protection of other Charter rights.[76] A prominent example is the *Endorois* case, where the African Commission examined the impact of conservation policies on Indigenous land rights.[77] Although Article 24 was not pleaded, the Commission drew on UN Special Rapporteur reports to highlight the loss of land, forests, and natural resources suffered by indigenous peoples in Kenya, demonstrating that environmental harm can undermine a constellation of rights protected under the Charter.[78]

1.3.5. Interpretation of Article 24 at the sub-regional Level

At the sub-regional level, two significant decisions of the Economic Community of West African States (ECOWAS) Court of Justice and the East African Court of Justice (EACJ) have further clarified the contours of the right to a healthy environment in Africa.[79]

1.3.5.1. ECOWAS Court Jurisprudence

In *SERAP v Nigeria*, which concerned extensive oil pollution in the Niger Delta attributed to private oil operators, the ECOWAS Court of Justice examined whether Nigeria had breached Article 24 of the African Charter by failing to adopt adequate environmental safeguards.[80] Reading Articles 1 and 24 together, the Court held that Nigeria had indeed violated its obligations, characterising the duty under Article 24 as both attitudinal and result-oriented, and underscoring that human health, dignity and life depend fundamentally on the quality of the natural environment.[81] It concluded that states must adopt comprehensive legislative, administrative and other measures to preserve environmental integrity as an integrated whole and to secure sustainable development, obligations Nigeria had not fulfilled in respect of affected communities in the Niger Delta.[82]

1.3.5.2. East African Court of Justice Jurisprudence

Similarly, in *ANAW v Attorney General of Tanzania*, the East African Court of Justice, although not directly addressing the right to a healthy environment, offered important reflections on state duties relating to environmental stewardship.[83] In finding violations of several provisions of the EAC Treaty,

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[75] Murray, *The African Charter: A Commentary* (n 54) 549.
[76] Ibid.
[77] *Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v Kenya* (2009) ACHPR Comm No 276/2003 (*Endorois*).
[78] Ibid, paras 245 and 293 in particular.
[79] *Socio-Economic Rights and Accountability Project (SERAP) v Federal Republic of Nigeria* (14 December 2012) ECW/CCJ/JUD/18/12 (*SERAP v Nigeria*); *African Network for Animal Welfare (ANAW) v Attorney General of the United Republic of Tanzania* (20 June 2014) Reference No 9 of 2010, EACJ 50 (*ANAW*).
[80] *SERAP v Nigeria* (n 79) paras 91 and 120.
[81] Ibid para 100.
[82] Ibid para 101.
[83] See Lumina, 'The Right to a Clean, Safe and Healthy Environment' (n 52) 40.

the Court emphasised the need to balance its interpretative mandate with partner states' developmental objectives, while also recognising that environmental protection, sustainable development, the environmental rule of law and the state's policymaking role must be assessed through the imperative of safeguarding the Serengeti ecosystem for future generations.[84]

1.3.6. Interlinked Right with an individual Dimension

The Charter frames the right to a healthy environment as a 'right of peoples', a formulation that appears to confine it to a collective entitlement and raises questions about enforceability.[85] This expression embodies a normative stance found in certain African jurisprudential and philosophical traditions, one that conceives human existence as fundamentally communal and situates individuals within an intricate web of relationships that extends to the natural environment.[86] However, academic analysis, interpretations by the Commission and the jurisprudence of African courts increasingly affirm that the guarantee enshrined in Article 24 also carries an individual dimension capable of grounding personal claims.[87] Evidence of the right's individual dimension emerges, for example, from the African Commission's recognition that environmental conditions have a direct bearing on the quality of life and the personal safety of every human being.[88] Further, the High Court of Kenya, relying on Article 24, held in a case concerning sewage contamination of a public water source that life and environment are inseparable, and that the right to life encompasses far more than mere physical survival.[89] Similarly, the ECOWAS Court of Justice, applying Article 24 in its 2012 *SERAP v Nigeria* judgment on environmental degradation in the Niger Delta, affirmed that the environment is essential to every human being and that the quality of human life is contingent upon the quality of the environment.[90]

The text of Article 24 explicitly weaves together environmental protection and development, a linkage already emphasised by Léopold Senghor, President of the Republic of Senegal, during the Dakar drafting session in Autumn 1979, where he observed that 'the notion of environment alluded to meets the concern of Africans since the environment involved is a global environment favourable to development'.[91] Although this relationship has not been free from controversy,[92] the practice surrounding Article 22

[84] *ANAW* (n 79) para 85.
[85] Lumina, 'The Right to a Clean, Safe and Healthy Environment' (n 52) 26; see also Armando Rocha and Heloísa Oliveira, 'Human Rights and Fundamental Rights' in Carla A Gomes, Heloísa Oliveira and Madalena P de Oliveira (eds), *A Treatise on Environmental Law Volume III – Environmental Law and other legal fields* (Lisbon Public Law Editions 2024) 24, 32ff https://ciencia.ucp.pt/ws/.pdf accessed 27 March 2026.
[86] Nouwagnon O Afogo, Maria A Tigre, Armando Rocha and Miriam Cohen, 'Defining Climate Justice in the African Human Rights System: On the Climate Advisory Opinion Request to the African Court on Human and Peoples' Rights' (VerfBlog, 2 July 2025) https://verfassungsblog.de/climate-advisory-opinion-request-to-the-african-court-on-human-and-peoples-rights/ accessed 27 March 2026.
[87] Da Silva, 'Climate Litigation in the African Human Rights System' (n 51) 227.
[88] *SERAC* (n 55) para 51.
[89] *Waweru v Republic of Kenya* (2 March 2006) (2007) AHRLR 149 (KeHC 2006) para 40 (*Waweru*).
[90] *SERAP v Nigeria* (n 79), para 100.
[91] Issa G Shivji, *The Concept of Human Rights in Africa* (Codesria 1989) 121.
[92] See Tiyanjana Maluwa, *International Law in Post-Colonial Africa* (Martinus Nijhoff Publishers 1999), 267ff; also Van der Linde and Louw, 'Considering the interpretation and implementation of article 24' (n 53) 167.

demonstrates that both provisions have been interpreted in a manner that reflects the deep interdependence of environmental rights and development, rather than any inherent tension between them, particularly in cases concerning the rights of Indigenous peoples.[93] To appreciate the mutually reinforcing relationship between the right to development (Article 22) and the right to a satisfactory environment (Article 24), it is essential to recall that the African human rights system distinguishes itself from other regional regimes by expressly recognising the right to a healthy environment as an autonomous entitlement.[94] This accentuation affirms not only that environmental quality is indispensable to maintaining high standards of human health, but also that it constitutes a vital foundation for socio-economic development.[95] Article 24 thus operates to ensure that development initiatives across the continent, particularly those involving significant land use, advance sustainability, respect human rights, and generate tangible benefits for affected populations, with particular attention to vulnerable groups such as Indigenous peoples, minorities, women, and children.[96]

1.3.7. Interpretation of Article 24 by the African Court

A further transformative development emerged in *African Commission on Human and Peoples' Rights v Kenya* (*Ogiek case*) before the African Court on Human and Peoples' Rights.[97]

1.3.7.1. *Ogiek case*

The Ogiek, an Indigenous minority community traditionally inhabiting Kenya's Mau Forest Complex, challenged their eviction from one of the country's most vital water catchment areas.[98] The Court's judgment was transformative, not only in its interpretation of Article 22 of the Charter but also in its approach to Article 24, which it construed as encompassing collective environmental rights.[99] In doing so, the Court affirmed that indigenous and other distinct communities may assert development, security, and environmental rights in their own name, and that these guarantees are capable of acquiring enforceable and context-specific content.[100] The Court underscored this point by observing that nothing in the Charter precludes the recognition, where appropriate, of peoples' rights, such as the right to development (Article 22), the right to peace and security (Article 23), or the right to a healthy environment (Article 24), for the specific ethnic groups and communities that comprise the population of a state.[101] In recognising this, the Court underscored that the human rights enshrined by the charter

[93] See ACHPR, 'Resolution on a Human Rights-Based Approach to Natural Resources Governance - ACHPR/Res. 224 (LI) 2012' https://achpr.au.int/en/adopted-resolutions/224-resolution-human-rights-based-approach-natural-resources-governance-ac accessed 27 March 2026; also Republic of Botswana, 'Second and Third Report to the African Commission no Human and Peoples' Rights (ACHPR) - Implementation of the African Charter on Human and Peoples' Rights' (2015) 69 https://achpr.au.int/sites/default/files/files/2022-08/botswanastatereport2nd3rdeng.pdf accessed 27 March 2026; see also text to n 97-106 (*Ogiek case*).
[94] See text to n 50 and 51.
[95] Lumina, 'The Right to a Clean, Safe and Healthy Environment' (n 52) 51.
[96] Ibid.
[97] *African Commission on Human and Peoples' Rights v Kenya* (2017) 2 AfCLR 9 (*Ogiek*); AfCHPR, 'Application 006/2012' https://www.african-court.org/cpmt/details-case/0062012 accessed 27 March 2026.
[98] See AfCHPR, 'Application 006/2012 - case summary' https://www.african-court.org/cpmt/storage/app/uploads/public/5f5/5fd/c42/5f55fdc428bee979396886.pdf accessed 27 March 2026.
[99] See Liyew, 'The right to a healthy environment in African human rights law' (n 49) 7.
[100] *Ogiek* (n 97) paras 199-211.
[101] Ibid para 199.

are not abstract or aspirational ideals, but conditions fundamental to the lived experience, dignity, and survival of vulnerable groups.[102] Importantly, the Court held that these rights are fully justiciable and impose concrete, positive obligations on states and furthermore rejected the proposition that financial constraints could excuse governmental inaction.[103]

Despite the judgment's significance, its implementation has faced considerable challenges, as the Kenyan government has not yet taken substantial steps to give full effect to the Court's orders, notwithstanding its expressed willingness to engage with the Ogiek community.[104] This difficulty reflects a broader pattern of limited compliance with decisions of African regional courts, shaped by political, institutional, and legal constraints.[105] The *Ogiek case* thus demonstrates both the potential and the limits of strategic litigation, for while such judgments can be profoundly empowering, they do not necessarily translate into immediate or tangible material change. Ensuring that judicial outcomes lead to concrete improvements on the ground requires sustained advocacy, community mobilisation, and continued international support.[106]

1.3.7.2. *LIDHO v Côte d'Ivoire*

On 5 September 2023, the African Court on Human and Peoples' Rights delivered its judgment in *Ligue Ivorienne des Droits de l'Homme (LIDHO) and Others v Côte d'Ivoire*, a case arising from the dumping of highly toxic waste at several sites in Abidjan by a vessel.[107] The incident resulted in more than a dozen deaths, widespread illness, and severe environmental damage.[108] After domestic proceedings in Côte d'Ivoire failed to provide an effective remedy, the applicants brought the matter before the African Court.[109] The African Court found that Côte d'Ivoire had, among four other violations, breached the right to a general satisfactory environment as guaranteed by Article 24 of the Charter.[110] In assessing the scope of state obligations under Article 24 of the African Charter, the Court drew on several authoritative sources, including the African Commission's reasoning in *SERAC*,[111] which characterised the right to a satisfactory environment as imposing concrete duties on states to prevent pollution, curb ecological

[102] See Ibid paras 183-187 and 199.
[103] Ibid paras 178ff.
[104] See AfCHPR, 'African Court on Human and Peoples' Rights issues new orders to Kenya over non-compliance in the Ogiek case' (4 December 2025) https://www.african-court.org/afchpr/african-court-on-human-and-peoples-rights-issues-new-orders-to-kenya-over-non-compliance-in-the-ogiek-case/ accessed 27 March 2026.
[105] See Liyew, 'The right to a healthy environment in African human rights law' (n 49) 8.
[106] Lucy Claridge, 'Litigation as a tool for community empowerment: The case of Kenya's Ogiek' (2018) 11 Erasmus Law Review 57, 66 https://repub.eur.nl/pub/112648/ELR_2018_011_001_006.pdf accessed 27 March 2026.
[107] *Ligue Ivoirienne des Droits de l'Homme (LIDHO) and Others v Republic of Côte d'Ivoire* App No 041/2016 (2023) ACtHPR 041/2016 (*LIDHO*).
[108] UN News, 'Toxic wastes caused deaths, illnesses in Côte d'Ivoire – UN expert' (16 September 2009) https://news.un.org/en/story/2009/09/312652 accessed 27 March 2026.
[109] See Yusra Suedi and Marie Fall 'Ligue Ivorienne Des Droits de L'Homme and Others v. Cote D'Ivoire. App. No. 041/2016' (2024) 118 American Journal of International Law 710.
[110] *LIDHO* (n 107) para 186.
[111] *SERAC* (n 55).

degradation, promote conservation and ensure the sustainable use of natural resources.[112] The Court also relied on General Comment No 14 of the UN Committee on Economic, Social and Cultural Rights,[113] which links the right to a healthy environment to the reduction of exposure to hazardous substances,[114] and on Article 2 of the Algiers Convention,[115] which requires states to adopt scientifically grounded measures for the conservation and responsible use of natural resources.[116] Taken together, these instruments led the Court to emphasise that Côte d'Ivoire was obliged not only to prevent the unlawful dumping of toxic waste but also to ensure full and effective decontamination once the dumping had occurred.[117] Because the state failed to adopt adequate legal and administrative safeguards against the importation of dangerous waste and did not promptly remediate the contaminated sites, it was found to have breached Article 24 of the Charter.[118]

1.3.8. Article 24 as a legally enforceable Standard

These African developments resonate globally, particularly in light of the United Nations Human Rights Council's (UNHRC) 2021 resolution[119] and the United Nations General Assembly's (UNGA) 2022 recognition of the right to a clean, healthy, and sustainable environment as a universal human right.[120] The Human Rights Council resolution, which for the first time formally recognised the human right to a clean, healthy and sustainable environment, represents a development that builds on earlier UN declarations and is presented as an essential response to the accelerating global environmental crisis as well as a foundational step toward embedding a rights-based approach within international environmental governance.[121] One year later, on 28 July 2022, the UN General Assembly echoed this development by adopting a resolution that affirmed the same recognition.[122] Article 24 of the African Charter, which guarantees a satisfactory environment conducive to development, thus stands as a legally enforceable standard against which state conduct may be assessed.[123] States bear affirmative duties, through legislation, policy and administrative action, to prevent environmental harm and to ensure that environmental rights are justiciable and accessible to vulnerable communities.[124]

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[112] Ibid paras 52-52; see *LIDHO* (n 107) para 179.
[113] UN Committee on Economic, Social and Cultural Rights, 'General Comment No 14: The Right to the Highest Attainable Standard of Health (Art 12)' (11 August 2000) UN Doc E/C.12/2000/4 https://digitallibrary.un.org/record/425041?v=pdf accessed 27 March 2026.
[114] *LIDHO* (n 107) para 180.
[115] African Convention on the Conservation of Nature and Natural Resources (n 34).
[116] See *LIDHO* (n 107) para 181.
[117] Ibid paras 183-186.
[118] Ibid paras 184-186.
[119] UNHRC, 'Resolution 48/13 – The human right to a clean, healthy and sustainable environment' (8 October 2021) UN Doc A/HRC/RES/48/13 https://docs.un.org/en/a/hrc/res/48/13 accessed 27 March 2026.
[120] UNGA, 'Resolution 76/300 – The human right to a clean, healthy and sustainable environment' (28 July 2022) UN Doc A/RES/76/300 https://docs.un.org/en/a/res/76/300 accessed 27 March 2026.
[121] See UN, '"The journey to defend human rights never ends," says Michelle Bachelet' (31 August 2022) https://www.ohchr.org/en/stories/2022/08/journey-defend-human-rights-never-ends-says-michelle-bachelet accessed 27 March 2026.
[122] UNGA Resolution 76/300 (n 120).
[123] See Liyew, 'The right to a healthy environment in African human rights law' (n 49) 9.
[124] Ibid.

Recommendation: The Court is invited to reaffirm that environmental protection is integral to the enjoyment of multiple Charter rights, as reflected in the Commission's observation in *SERAC* that 'the environment affects the quality of life and safety of the individual',[125] thereby requiring an interpretation of Article 24 that is holistic and rights-enhancing.

Recommendation: This amicus invites the Court to underscore that Article 24 of the Charter imposes concrete, enforceable obligations on states to prevent, mitigate and remedy environmental harm, consistent with its finding in *LIDHO v Côte d'Ivoire*.[126]

1.4. Entrenchment of Environmental Rights and Obligations in African Constitutions

The growing entrenchment of environmental rights in the constitutions of numerous African states underscores a broader normative shift, for constitutional recognition anchors environmental protection within an authoritative legal framework, affirms a state commitment to sustainable development, and elevates environmental rights to a status commensurate with other fundamental rights.[127] The following examples illustrate the variety and the extent to which African states have articulated and entrenched environmental rights within their constitutional frameworks.

1.4.1. South Africa

Section 24 of the South African Constitution, for instance, enshrines a substantive right to an environment that does not endanger health or wellbeing, and simultaneously imposes a duty on the state to protect the environment for both current and future generations by adopting reasonable measures to prevent pollution, limit ecological degradation, promote conservation, and ensure that natural resources are used in a way that is environmentally sustainable and aligned with legitimate social and economic development.[128]

1.4.2. Kenya

Likewise, several chapters of the Kenyan Constitution of 27 August 2010 embody a marked 'paradigm shift', signalling a constitutional order that accords significantly greater weight to environmental

[125] *SERAC* (n 55) para 51.
[126] *LIDHO* (n 107) paras 179-186.
[127] Tumai Murombo, 'The utility of environmental rights to sustainable development in Zimbabwe: A contribution to the constitutional reform debate' (2011) 11 African Human Rights Law Journal 120, 125; see also Collins Odote, 'Human Rights-based Approach to Environmental Protection: Kenyan, South African and Nigerian Constitutional Architecture and Experience' in Michael Addaney and Ademola O Jegede (eds), *Human Rights and the Environment under African Union Law* (Palgrave Macmillan 2020) 381, 395.
[128] Constitution of the Republic of South Africa, Act 108 of 1996 (adopted on 8 May 1996 and amended on 11 October 1996); see Erika de Wet and Anél du Plessis, 'The meaning of certain substantive obligations distilled from international human rights instruments for constitutional environmental rights in South Africa' (2010) 10 AHRLJ 345.

rights.[129] In contrast to its predecessor, which confined itself largely to civil and political rights, the Kenyan Constitution's Bill of Rights embraces the full spectrum of human rights, a breadth that has earned it recognition as one of the most progressive and transformative constitutional texts globally.[130] Environmental governance is woven throughout the Constitution,[131] appearing in the Preamble and in provisions guaranteeing the right to a clean and healthy environment,[132] articulating socio-economic rights,[133] imposing explicit state obligations concerning environmental protection,[134] securing access to environmental justice,[135] and embedding the principle of sustainable development,[136] among other commitments. This comprehensive constitutional treatment represents a decisive break from the former constitutional order, which lacked any dedicated environmental clause and relied instead on the right to life as the primary basis for environmental enforcement.[137]

1.4.3. Nigeria

Nigeria occupies a distinctive position in the African discourse on the relationship between human rights and environmental protection, not least because the first case in which the African Commission interpreted Article 24 of the African Charter, the landmark *SERAC* communication,[138] arose from Nigeria. The matter reached the Commission precisely because the Nigerian state failed to remedy the violations alleged, notwithstanding the fact that environmental protection is constitutionally recognised.[139] Section 20 of the Nigerian Constitution obliges the state to 'protect and improve the environment and safeguard the water, air and land, forest and wildlife of Nigeria', yet this provision is located within the chapter on Fundamental Objectives and Directive Principles of State Policy, rendering it, as scholars note, non-justiciable and therefore unenforceable.[140] Although the 1999 Constitution, like its predecessors, does not expressly articulate a right to a clean and healthy environment, the inclusion of section 20 nonetheless reflects a measure of constitutional environmental consciousness, even if the Constitution itself stipulates that the provision cannot be invoked before the courts.[141] Despite this

[129] Joel K Bosek, 'Implementing environmental rights in Kenya's new constitutional order: Prospects and potential challenges', 14 AHRLJ (2014) 489, at 507.
[130] Odote, 'Human Rights-based Approach to Environmental Protection' (n 127) 396.
[131] For a detailed account see Collins Odote, 'Kenya: Constitutional Provisions on the Environment' (2012) 1 IUCN Academy of Environmental Journal, E-journal 136.
[132] Constitution of Kenya (2010) Art 42.
[133] Ibid Art 43.
[134] Ibid Art 69.
[135] Ibid Art 70.
[136] Ibid Art 10.
[137] See the mentioned High Court case *Waweru* (n 89).
[138] *SERAC* (n 55).
[139] See ibid paras 58ff; see also Constitution of the Federal Republic of Nigeria (1999, as amended), Section 20.
[140] See Theodore Okonkwo, 'Environmental Constitutionalism in the United States and Nigeria: Recognizing Environmental Rights' (2017) 5(7) International Journal of Social Science Studies 66, 69; also Odote 'Human Rights-based Approach to Environmental Protection' (n 127) 406.
[141] Constitution of the Federal Republic of Nigeria (1999, as amended), Section 6(6); see also Edwin Egede, 'Human Rights and the Environment: Is There a legally Enforceable Right of a Clean and Healthy Environment for the "Peoples" of the Niger Delta under the Framework of the 1999 Constitution of the Federal Republic of Nigeria' (2007) 19 Sri Lanka Journal of International Law 51, 52.

limitation, Nigerian courts have inferred environmental rights from other entrenched human rights, most notably the constitutional right to life, and have relied on this interpretive approach to afford protection to environmental interests.[142] A seminal illustration of this jurisprudential development is the decision in *Jonah Gbemre v Shell Petroleum Development Corporation and Others*,[143] which stands as a leading authority recognising environmental protection as integral to the enjoyment of fundamental human rights. In that case, brought by Jonah Gbemre on behalf of himself and the Iwherekan community in Delta State, the applicants challenged the continuous gas flaring associated with oil extraction, arguing that it infringed their constitutional rights, including the right to a healthy and clean environment.[144] The court agreed, holding that the constitutional guarantees of life and human dignity necessarily encompass a 'right to a clean, poison-free, pollution-free and healthy environment', thereby grounding environmental protection within the core of Nigeria's human rights framework.[145]

1.4.4. Other African Constitutional Models

Moreover, a wide array of other African constitutions likewise entrench similarly environmental rights and related provisions, albeit in varying forms and degrees of comprehensiveness, including those of Algeria, Bénin, Ethiopia, Ghana, Mozambique, Namibia, Rwanda, Tanzania, Uganda, Zambia and Zimbabwe.[146] An analysis of this considerable number of constitutions clearly shows that protection of the environment and the right to live in a healthy, sustainable and balanced environment have been firmly enshrined in African constitutions for decades,[147] resulting in fundamental rights for the population and fundamental obligations for the states concerned.

Recommendation: This amicus respectfully suggests that the Court interpret Article 24 in harmony with the widespread constitutional entrenchment of environmental rights across the continent, recognising that this regional constitutional practice affirms a clear normative consensus that the right to a healthy, sustainable and balanced environment imposes concrete and enforceable obligations on African states.

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[142] *Gani Fawehinmi v Abacha* (1996) 9 N.W.L.R. (Part 475) 710 (Court of Appeal); *Oronto Douglas v Shell Petroleum Development Company Ltd* (1999) 2 N.W.L.R. (Part 591); *Jonah Gbemre v Shell Petroleum Development Company Nigeria Ltd and Others*, Federal High Court of Nigeria (14 November 2005) Suit No FHC/B/CS/53/05, (2005) AHRLR 151 (NgHC 2005).
[143] Suit No FHC/B/CS/153/05, (2005) AHRLR 151 (NgHC 2005).
[144] Ibid.
[145] Ibid judgment para 3.
[146] See Constitution of the People's Democratic Republic of Algeria (1996, as amended), Preamble, Arts 21 and 68; Constitution de la République du Bénin (1990, revised 2019), Art 27; Constitution of the Federal Democratic Republic of Ethiopia (Proclamation No 1/1995), Arts 44 and 92; Constitution of the Republic of Ghana (1992), Arts 36(9) and 41(k); Constitution of the Republic of Mozambique (2004, as amended in 2018), Arts 90 and 117; Constitution of the Republic of Namibia (1990), Art 95(l); Constitution of the Republic of Rwanda (2003, revised 2015), Arts 22 and 53; Constitution of the United Republic of Tanzania (1977, as amended to 2005), Arts 9(1)(c) and 27; Constitution of the Republic of Uganda (1995), Art 39; Constitution of Zambia (1991, as amended by Act No 2 of 2016), Arts 255–257; Constitution of Zimbabwe (2013), Sections 13, 72 and 73.
[147] Ibid.

1.5. Right to a satisfactory Environment in the Context of Climate Change

Today, the link between climate change and human rights is indisputable, as its growing adverse impacts on the enjoyment of human rights have become increasingly evident, prompting the United Nations Human Rights Council to acknowledge this relationship in several resolutions.[148] In the African context, ACHPR Resolutions No 153 and 342 urge the Assembly of Heads of State and Government of the African Union to ensure that any climate-related legal instrument incorporates robust human rights safeguards, most notably the requirement of free, prior, and informed consent, as well as protections against forced displacement, arbitrary loss of land or livelihoods, and comparable violations.[149] Despite the continent's comparatively minimal contribution to the global climate crisis,[150] Africa remains among the regions most acutely exposed to the impacts of climate change.[151] The 2022 climate change report of the Intergovernmental Panel on Climate Change (IPCC) unequivocally reaffirms Africa's acute vulnerability to climate impacts, emphasising that the continent will continue to face severe and disproportionate adverse effects, and underscoring the pressing imperative for decisive and immediate remedial action.[152]

1.5.1. Regional and Sub-Regional Recognition of Climate Change Impacts on Human Rights

The African Commission has expressly acknowledged the implications of climate change for the environment and for the enjoyment of the right protected under Article 24, prompting it to undertake a dedicated study on the subject.[153] In this draft *Study on the Impact of Climate Change on Human and Peoples' Rights in Africa*, prepared pursuant to ACHPR Resolutions No 153 and 271, the Commission identifies a wide range of sectors across the continent as particularly susceptible to current and

[148] For example UNHRC, 'Resolution 59/25' (16 July 2025) UN Doc A/HRC/RES/59/25; UNHRC, 'Resolution 56/8' (10 July 2024) UN Doc A/HRC/RES/56/8; UNHRC, 'Resolution 53/6' (12 July 2023) UN Doc A/HRC/RES/53/6; UNHRC, 'Resolution 50/9' (7 July 2022) UN Doc A/HRC/RES/50/9; UNHRC, 'Resolution 47/24' (13 July 2021) UN Doc A/HRC/RES/47/24; UNHRC, 'Resolution 32/33' (1 July 2016) UN Doc A/HRC/RES/32/33; UNHRC, 'Resolution 26/27' (15 July 2014) UN Doc A/HRC/RES/26/27; UNHRC, 'Resolution 18/22' (30 September 2011) UN Doc A/HRC/RES/18/22; UNHRC, 'Resolution 10/4' (25 March 2009) A/HRC/RES/10/4 and UNHRC, 'Resolution 7/23' (28 March 2008) A/HRC/RES/7/23; see also text to n 119.

[149] ACHPR, 'Resolution on Climate Change and Human Rights and the Need to Study its Impact in Africa - ACHPR/Res. 153 (XLVI) 09' (n 35); ACHPR, 'Resolution on Climate Change and Human Rights in Africa - ACHPR/Res. 342 (LVIII) 2016' (n 35) also see Ademola O Jegede, 'State Duty to "Protect" Rights and Legal Obstacles to Climate Litigation' in Kim Bouwer, Uzuazo Etemire, Tracy-Lynn Field and Ademola O Jegede (eds), *Climate Litigation and Justice in Africa* (Bristol University Press 2024) 43.

[150] See IPCC, 'AR6 Synthesis Report – Climate Change 2023' (2023) 45 https://www.ipcc.ch/report/ar6/syr/downloads/report/IPCC_AR6_SYR_LongerReport.pdf accessed 27 March 2026.

[151] IPCC, 'AR6 Synthesis Report – Summary for Policymakers (SPM)' (2023) paras A.2.2. and A.2.5. https://www.ipcc.ch/report/ar6/syr/downloads/report/IPCC_AR6_SYR_SPM.pdf accessed 27 March 2026.

[152] IPCC, 'AR6 Full Report - Climate Change 2022: Impacts, Adaptation and Vulnerability' (2022) 1289ff https://www.ipcc.ch/report/ar6/wg2/downloads/report/IPCC_AR6_WGII_FullReport.pdf accessed 27 March 2026.

[153] ACHPR, 'Resolution on Climate Change and Human Rights and the Need to Study its Impact in Africa - ACHPR/Res. 153 (XLVI) 09' (n 35); ACHPR, 'Resolution on Climate Change in Africa - ACHPR/Res. 271(LV)2014' https://achpr.au.int/en/adopted-resolutions/271-resolution-climate-change-africa-achprres271lv2014 accessed 27 March 2026.

anticipated climate impacts, including water resources, food and nutritional security, natural resource and biodiversity governance, public health, human settlements, infrastructure, and the progression of desertification.[154] Owing to already elevated baseline temperatures in many regions, significant intensification of drought conditions is projected for northern and southern Africa, while other areas, such as East Africa, are expected to experience increased humidity, with correspondingly distinct implications for agricultural productivity and public health.[155] Against this background, climate-induced losses and damages intensify the pre-existing vulnerabilities of African communities, particularly women, children, Indigenous peoples and rural populations, while structural constraints such as limited resources, inadequate infrastructure, pervasive poverty and fragile governance systems further heighten their exposure.[156] As a result, these groups face heightened threats to their livelihoods, health, food security, and overall well-being.[157]

Besides the initiatives just mentioned, the Commission urged the AU Assembly of Heads of State and Government to assume a leadership role in ensuring that emerging continental standards, particularly those requiring 'special measures of protection' for vulnerable groups, are effectively incorporated into relevant policy instruments.[158] This call to 'regionalise' the issue, by entrusting African States collectively with responsibility for shaping the response, has been presented as the most appropriate way forward.[159] In this spirit, a wide array of regional, sub-regional and national instruments has emerged across the African continent to confront the escalating challenge of climate change.[160]

At the regional level, notable examples include the Nairobi Declaration on the African Process for Combating Climate Change adopted at the inaugural African Climate Summit in 2009, which recognises climate change as one of the gravest threats to humanity and calls for urgent, coordinated action to curb greenhouse-gas emissions,[161] Aspiration 1 of Agenda 2063, which envisions a prosperous and

[154] See ACHPR, 'Call for Comments to the 'Study on the Impact of Climate Change on Human and Peoples' Rights in Africa' (28 October 2023) https://achpr.au.int/en/news/press-releases/2023-10-28/call-comments-study-impact-climate-change-human-and-peo accessed 27 March 2026; also see the keynote address of Solomon Ayele Dersso, Chairperson of the Working Group on Extractive Industries, Environment and Human Rights, African Commission on Human and Peoples' Rights: ACHPR, 'Human and peoples' rights implications of climate change: Implications for vulnerable groups and corporate accountability' (8 November 2024) https://achpr.au.int/en/news/press-releases/2024-11-08/implications-climate-change-implications-vulnerable-groups-and accessed 27 March 2026.
[155] See IPCC, 'AR6 Full Report - Climate Change 2022' (n 152) 1318ff.
[156] See Charlotte Kabaseke, Chidinma T Odaghara, Jean-Claude N Ashukem, 'The Interface between Loss and Damage, Vulnerability and Human Rights in Africa' (2024) 1 African Journal of Climate Law and Justice 75, 90.
[157] Ibid.
[158] ACHPR, 'Resolution on Climate Change and Human Rights and the Need to Study its Impact in Africa - ACHPR/Res. 153 (XLVI) 09' (n 35).
[159] See Werner Scholtz, 'The promotion of regional environmental security and Africa's common position on climate change' (2010) 10 AHRLJ 1, 7ff.
[160] See text to n 161ff.
[161] African Ministerial Conference on the Environment, 'Nairobi Declaration on the African Process for Combating Climate Change' (adopted 29 May 2009) https://allafrica.com/download/resource/main/main/idatcs/00011975:7fea6da7d6826946f975c392f881c116.pdf accessed 27 March 2026.

sustainably developed Africa,[162] the Africa Adaptation Initiative (AAI) initiated in 2015 under the auspices of the African Ministerial Conference on the Environment,[163] and the African Union climate change and resilient development strategy and action plan.[164] Further, Sub-regional organisations have likewise developed targeted policy frameworks and action plans. For example, in West Africa, ECOWAS adopted the Lomé Declaration in 2009, advocating a human-rights-based approach to climate governance,[165] and has since elaborated a Regional Strategy and a Climate Action Plan (2022–2030).[166] The Southern African Development Community's (SADC) Climate Change Strategy and Action Plan underscores the need for harmonised systems of monitoring, evaluation and reporting,[167] while the East African Community's (EAC) Climate Change Policy Framework prioritises research, monitoring and climate projections.[168] At the domestic level, African states have not only enacted political and legislative measures to address climate change, including Uganda's National Climate Change Act of 2021,[169] Nigeria's Climate Change Act 2021,[170] Kenya's revised Climate Change Act,[171] and South Africa's Climate Change Act 2024,[172] but have also undertaken binding international commitments through the ratification of key multilateral instruments, including the UNFCCC and the Paris Agreement.[173]

[162] AU, 'Agenda 2063: The Africa We Want (Popular Version, 2015)' https://au.int/en/agenda2063/aspirations accessed 27 March 2026.
[163] AAI, 'Africa Adaptation Initiative' https://www.africaadaptationinitiative.org/ accessed 27 March 2026.
[164] AU, 'African Union Climate Change and Resilient Development Strategy and Action Plan (2022-2032)' https://digitallibrary.un.org/record/4047085?v=pdf accessed 27 March 2026.
[165] ECOWAS, 'Lomé Declaration on Climate Change and Protection of Civilians in West Africa' (Regional Conference on Protection Challenges to Climate Change in West Africa, Lomé, 16 September 2009); see SDG Knowledge Hub, 'ECOWAS Conference Calls for Human Rights Approach to Climate Change' https://sdg.iisd.org/news/ecowas-conference-calls-for-human-rights-approach-to-climate-change/ accessed 27 March 2026.
[166] ECOWAS, 'Regional Climate Strategy and Action Plan (2022-2030)' (adopted 29 April 2022) https://www.climatestrategy.ecowas.int/images/documentation/2022_Action_Plan__-_ECOWAS_Regional_Climate_Strategy_2022-2030_EN.pdf accessed 27 March 2026.
[167] SADC, 'SADC Climate Change Strategy and Action Plan' (24 July 2015) https://www.sadc.int/document/sadc-climate-change-strategy-and-action-plan-english accessed 27 March 2026.
[168] UN Network on Migration, 'East African Community (EAC) Climate Change Master-Plan' https://migrationnetwork.un.org/policy-repository/east-african-community-eac-climate-change-master-plan accessed 27 March 2026.
[169] National Climate Change Act 2021 (Uganda) https://disasterlaw.ifrc.org/sites/default/files/media/disaster_law/2022-05/National%20Climate%20Change%20Act%2C%202021.pdf accessed 27 March 2026.
[170] Climate Change Act 2021 (Nigeria) https://ngfrepository.org.ng:8443/handle/123456789/6359 accessed 27 March 2026.
[171] Climate Change Act 2016 (Kenya) (No 11 of 2016), as amended by Climate Change (Amendment) Act 2023 (No 9 of 2023) https://new.kenyalaw.org/akn/ke/act/2016/11/eng@2023-09-15 accessed 27 March 2026.
[172] Climate Change Act 22 of 2024 (South Africa) https://www.gov.za/sites/default/files/gcis_document/202407/50966climatechangeact222024.pdf accessed 27 March 2026.
[173] UNFCCC (n 25); Paris Agreement (n 27).

1.5.2. Violations of Article 24 arising from GHG Emissions and Climate Change

The binding force of the right to a healthy environment under the African Charter derives not only from the obligations imposed on States to promote and protect the environment, but also from the fact that it constitutes a subjective right that is inseparable from, and mutually reinforcing with, other rights guaranteed by the Charter.[174] Although the instrument does not expressly articulate a right to a stable climate system, such a guarantee can be seen as inherent in the substance of Article 24, as climate change directly undermines the effective enjoyment of human rights and profoundly disrupts natural ecosystems and the services they provide, thereby threatening the conditions necessary for a dignified human life.[175] In this context, States are therefore required not only to regulate and constrain activities that contribute to global warming, but also to adopt proportionate preventive and adaptive measures to address its impacts.[176]

A further feature of the African Charter that may shape the Court's approach is the absence of any explicit derogation clause, an omission that sets it apart from many other international human rights instruments.[177] The question of whether, and under what conditions, a State may lawfully suspend certain human rights obligations in situations of emergency is apparently of particular relevance in the context of climate governance in Africa. It should be noted at this point, that the African Commission has repeatedly interpreted the Charter's silence on derogation as signalling a general prohibition on the suspension of protected rights.[178]

In light of the above, it becomes evident that Article 24 must be read as extending to climate-change-related threats. The systemic and far-reaching nature of climate change squarely implicates the very environmental conditions that Article 24 seeks to safeguard.[179] By degrading air, water, soil, biodiversity, and ecosystem services, climate disruption strikes at the core of what the Charter terms a 'general satisfactory environment', rendering its inclusion within the provision's protective scope not merely plausible but unavoidable. Moreover, the interpretive trajectories of the African Commission and the African Court, particularly their emphasis on preventive duties, sustainable resource management, and

[174] See text to n 49ff, 85ff and 107ff.
[175] Da Silva, 'Climate Litigation in the African Human Rights System' (n 51) 228; see also Ademola O Jegede, 'Should a Human Right to a Safe Climate Be Recognized Under the AU Human Rights System?' in Michael Addaney and Ademola O Jegede (eds), *Human Rights and the Environment under African Union Law* (Palgrave Macmillan 2020) 55, 62ff, who further argues for a 'human right to a safe climate'; also Yusra Suedi and Marie Fall, 'Climate Change Litigation before the African Human Rights System: Prospects and Pitfalls' (2024) 16 Journal of Human Rights Practice 146, 147.
[176] See John Mativo, 'Climate Change Displacement Litigation in Africa: A Human Rights and Refugee Law-Based Approach' in Kim Bouwer, Uzuazo Etemire, Tracy-Lynn Field and Ademola O Jegede (Eds), *Climate Litigation and Justice in Africa* (Bristol University Press 2024) 153, 155–158.
[177] Brenda K Kombo, 'A missed opportunity? Derogation and the African Court case of *APDF and IHRDA v Mali*' (2020) 20 African Human Rights Law Journal 756, 758.
[178] *Inter alia* in *Commission Nationale des Droits de l'Homme et des Libertés v Chad* (2000) AHRLR 66 (ACHPR 1995); *Media Rights Agenda v Nigeria* (2000) AHRLR 262 (ACHPR 2000); *Amnesty International & Others v Sudan* (2000) AHRLR 297 (ACHPR 1999); for a detailed account see Kombo, 'A missed opportunity?' (n 177) 762-765.
[179] See text to n 60-118 and 150-152.

the indivisibility of environmental and human rights, logically encompass climate-change-related threats.[180] Finally, the Commission's jurisprudence,[181] together with its resolutions and interpretative instruments,[182] demonstrates that Article 24 is designed to address structural and cumulative forms of environmental degradation, and climate change represents the most acute and transboundary manifestation of such degradation on the continent.[183]

1.5.3. International Judicial Convergence on Climate Change

1.5.3.1. Global Climate Jurisprudence and Its Emerging Trajectory

A growing body of legal authority recognises both the present and impending severity of the climate crisis.[184] The ICJ, for instance, has described climate change as an 'urgent and existential threat' with already 'severe and far-reaching impacts' on ecosystems and human societies.[185] Consistent with this approach, judicial bodies increasingly recognise that the harms arising from climate change possess the requisite immediacy and specificity to amount to legally cognisable injuries within the framework of human rights law.[186] They have likewise recognised that anticipated climate-related harms may themselves trigger state responsibility, a principle exemplified in *KlimaSeniorinnen Schweiz and Others v Switzerland*, where the ECtHR held that states bear a primary obligation to adopt and effectively implement measures capable of mitigating both existing and potentially irreversible future climate impacts.[187] In a comparable vein, the Supreme Court of the Netherlands in *Urgenda v Netherlands* determined that the state was bound by protective obligations arising from the serious and foreseeable risks associated with future climate impacts, including the threat of sea-level rise.[188]

The UN Human Rights Committee adopted a comparable stance in *Billy et al v Australia*, dismissing assertions that projected climate impacts were too speculative and concluding that Australia had infringed the rights of Torres Strait Islanders by failing to implement adequate adaptation measures.[189] This decision is particularly instructive for present purposes, as it squarely addresses the contours of state obligations to safeguard individuals from climate-related harm through effective adaptation measures. In this light, the Committee's conclusion that the Torres Strait Islanders had demonstrated concrete, personally experienced harms arising from both sudden-onset climate events and slow-moving processes such as flooding and erosion, harms already eroding their livelihoods, subsistence, and cultural

[180] See text to n 60-118 and 148-176.
[181] See text to n 59-78.
[182] See n 35 and text to n 70-74.
[183] See IPCC, 'AR6 Full Report - Climate Change 2022' (n 152) 9ff and 1289ff; see also text to n 150-152.
[184] See n 7-12.
[185] ICJ, 'Climate Change Advisory Opinion' (n 12) para 73.
[186] See, for example *KlimaSeniorinnen* (n 9) paras 511-513; *Urgenda Foundation v The State of The Netherlands* (Supreme Court of the Netherlands, 20 December 2019) ECLI:NL:HR:2019:2007 para 5.2.2 (*Urgenda*).
[187] *KlimaSeniorinnen* (n 9) para 545.
[188] *Urgenda* (n 186) para 5.6.2.
[189] *Billy v Australia* (n 7).

continuity,[190] assumes particular significance and resonance when set against the acute climate vulnerability confronting many African communities.[191] Furthermore, the recent advisory opinions issued by the International Tribunal for the Law of the Sea (ITLOS), the Inter-American Court of Human Rights (IACtHR), and the International Court of Justice (ICJ) provide a particularly compelling framework for interpreting Article 24 in light of climate-change-related threats and the corresponding obligations borne by states.[192] Taken together, these opinions, examined in greater detail below, offer valuable insights into the evolving human rights dimensions of state duties in the face of accelerating climate change.

1.5.3.2. ITLOS Advisory Opinion on Climate Change and International Law

The International Tribunal for the Law of the Sea's Advisory Opinion of 21 May 2024 marks a significant development for international human rights law by affirming that climate change constitutes an 'existential threat' with direct implications for the protection of fundamental rights.[193] By articulating detailed due-diligence obligations,[194] ranging from prevention and regulation of private actors to environmental impact assessment, scientific monitoring and even restoring degraded marine habitats and ecosystems,[195] ITLOS provides a normative framework that human rights bodies can integrate into their own jurisprudence. Academic commentary underscores that the Opinion strengthens the convergence between the law of the sea, international environmental law and human rights law, and reinforces the emerging consensus that States must adopt rights-consistent climate action grounded in principles of due-diligence, cooperation and the protection of vulnerable communities.[196]

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[190] Ibid para 7.10.
[191] See text to n 150-157.
[192] ITLOS, 'COSIS Advisory Opinion' (n 10) https://www.itlos.org/fileadmin.pdf accessed 27 March 2026; IACtHR, 'Advisory Opinion AO-32/25' (n 11) https://www.corteidh.or.cr/docs.pdf accessed 27 March 2026; ICJ, 'Climate Change Advisory Opinion' (n 12) https://cdn.climatepolicy.org/.pdf accessed 27 March 2026.
[193] ITLOS, 'COSIS Advisory Opinion' (n 10) para 66.
[194] Ibid paras 234-400.
[195] See ibid paras 193ff on the general due-diligence obligation to protect and preserve the marine environment; paras 244ff on the prevention and control of transboundary pollution, including from private actors; paras 312ff, in which ITLOS underscores that due diligence also requires continuous scientific monitoring, data-gathering, and review of environmental risks, particularly those arising from greenhouse gas emissions and their marine impacts; paras 352ff on EIAs as a mandatory element of due diligence where there is a risk of significant transboundary harm; and paras 400-406 on the duty to restore degraded habitats and ecosystems.
[196] See, for example Diane Desierto, '"Stringent Due Diligence", Duties of Cooperation and Assistance to Climate Vulnerable States, and the Selective Integration of External Rules in the ITLOS Advisory Opinion on Climate Change and International Law' (*EJIL:Talk!*, 23 June 2024) https://www.ejiltalk.org accessed 27 March 2026; Andrea Longo, 'Beyond Climate Change Obligations: Which Lessons from the ITLOS Advisory Opinion on Climate Change and Ocean Acidification for the Progressive Development of the Law of the Sea?' (2025) 27 International Community Law Review 112; Korey Silverman-Roati and Maxim Bönnemann, 'The ITLOS Advisory Opinion on Climate Change' (*VerfBlog*, 22 May 2024) https://verfassungsblog.de/the-itlos-advisory-opinion-on-climate-change/ accessed 27 March 2026; Margaretha Wewerinke-Singh and Jorge E Viñuales, 'More than a Sink: The ITLOS Advisory Opinion on Climate Change and State Responsibility' (*Sabin Center climate law blog*, 7 June 2024) https://blogs.law.columbia.edu/ accessed 27 March 2026; Dimitrios Dimitrakos, 'The ITLOS Advisory Opinion on Climate Change: A Brief Review' (*ASIL Insights*, 11 April 2025) https://www.asil.org/insights/volume/29/issue/5 accessed 27 March 2026.

1.5.3.3. Inter-American Court's Advisory Opinion on the climate emergency and human rights

Issued almost exactly a year later, the IACtHR Advisory Opinion of 29 May 2025 constitutes a transformative contribution to the architecture of international human rights law, positioning the climate emergency as a juridical phenomenon that reshapes the scope and content of States' human rights obligations.[197] For the first time, the IACtHR held that the conditions necessary for a stable and safe climate system fall within the protective scope of the Inter-American human rights regime.[198] Drawing on its earlier recognition of an autonomous right to a healthy environment in AO-23/17,[199] the Court held that a stable climate is an essential precondition for the meaningful enjoyment of numerous fundamental rights, including those to life, health, water, food, housing, and a dignified existence.[200] Further, the Court explained that the right to a healthy climate forms a substantive facet of the broader right to a healthy environment, carrying both an individual and a collective character, and extending its protective reach to people living today as well as to generations yet to come.[201]

The IACtHR emphasized that States bear a compelling obligation to avert irreversible damage to the climate system, grounding this duty in the understanding that safeguarding the planet's ecological balance is indispensable to the protection of fundamental human rights.[202] On this basis, it characterised the obligation to protect the shared ecological system as a *jus cogens* norm, an overriding rule of international law from which no derogation is permitted.[203] At the heart of this obligation lies an enhanced standard of due diligence, which the Court characterised as an evolving, context-sensitive duty that intensifies in the face of the climate crisis.[204] Given the predictable, severe, and potentially irreversible nature of climate-related harms, States are required to act with heightened care, foresight, and ambition to prevent infringements of human rights.[205] Through this Opinion, the Court stressed that a State's inaction, regression, or failure to regulate private conduct capable of generating climate-related harm may itself amount to a human-rights violation, and that the corresponding obligations must be carried out in accordance with the principles of precaution, non-regression, and progressivity, with particular regard for persons and groups in situations of heightened vulnerability.[206] As the subsequent developments illustrate, the IACtHR's reasoning particularly strengthened the convergence between

[197] See Maria A Tigre and Maxim Bönnemann, 'A Blueprint for Rights-Based Climate Action – The Inter-American Court of Human Rights' Advisory Opinion on the Climate Emergency' (*VerfBlog*, 9 July 2025) https://verfassungsblog.de/inter-american-court-of-human-rights-advisory-opinion-climate/ accessed 14 March 2026; also Yenny Vega Cardenas, 'Analytical Summary of Advisory Opinion OC-32/25 by the Inter-American Court of Human Rights Climate emergency, human rights and the rights of Nature' (*OIDN Blog*, 10 July 2025) https://observatoirenature.org/observatorio accessed 27 March 2026;
[198] IACtHR, 'Advisory Opinion AO-32/25 (n 11) paras 295ff.
[199] IACtHR, 'Advisory Opinion OC-23/17 – requested by the Republic Colombia' (15 November 2017), https://www.corteidh.or.cr/docs/opiniones/seriea_23_ing.pdf accessed 27 March 2026.
[200] IACtHR, 'Advisory Opinion AO-32/25 (n 11) paras 295ff.
[201] Ibid para 315.
[202] Ibid paras 290ff.
[203] Ibid para 293f.
[204] Ibid paras 231ff.
[205] Ibid para 233.
[206] Ibid paras 221–223, 228–230 and 235.

regional human rights systems, international environmental law and the emerging jurisprudence of bodies such as the UN Human Rights Committee and ITLOS, thereby accelerating the crystallisation of a coherent body of climate-related human rights obligations.[207]

1.5.3.4. ICJ Advisory Opinion on the Obligations of States in Respect of Climate Change

The ICJ's Advisory Opinion of 23 July 2025 likewise marks a decisive step in the consolidation of a climate-responsive body of international human rights law.[208] On climate change and human rights law the ICJ concluded that international human rights law requires States to adopt robust mitigation and adaptation measures,[209] rejecting arguments that the UNFCCC and Paris Agreement displace human-rights obligations.[210] Instead, it held that international human rights law must guide, and be guided by, States' obligations under both the climate treaties and customary international law, ensuring a coherent and mutually reinforcing interpretation of the overlapping duties involved.[211] Drawing on the indivisibility and interdependence of human rights, as well as the widespread recognition of the right to a clean, healthy, and sustainable environment across international, regional, and domestic instruments, the Court concluded that numerous human rights cannot be meaningfully realised without such an environment.[212] Accordingly, it characterised this right as a foundational condition inherent in, and essential to, the enjoyment of other human rights.[213]

As the foregoing analysis shows, the ITLOS, IACtHR and ICJ advisory opinions collectively provide the African Court with a robust, coherent and globally endorsed legal foundation for recognising that Article 24 of the African Charter imposes substantive climate-related obligations on States. They confirm that climate change is a human rights crisis, that States owe heightened duties of prevention, regulation and adaptation, and that vulnerable populations must be at the centre of climate governance. These findings should guide the Court's forthcoming Advisory Opinion and anchor Africa firmly within the emerging global jurisprudence on climate and human rights.

Recommendation: The Court may wish to recognise that Article 24 extends to climate-related threats, as the systemic and far-reaching impacts of climate change erode the air, water, soil, biodiversity and ecosystem services that form the foundations of a 'general satisfactory environment', making its

[207] See ICJ, 'Climate Change Advisory Opinion' (n 12) paras 143-146 and 385; see also Jorge A Carrillo Bañuelos and Susan Ann Samuel, 'Judicial Convergence on Climate Change – The Advisory Opinions of the ICJ, the IACtHR, and the ITLOS' (*VerfBlog*, 16 September 2025) https://verfassungsblog.de/judicial-convergence-on-climate-change/ accessed 27 March 2026.
[208] See Jacqueline Peel, 'Situating the ICJ's advisory opinion in the wider ecosystem of international climate litigation' (2026) RECIEL 1-8 https://onlinelibrary.wiley.com/doi/10.1111/reel.70037 accessed 27 March 2026; also Corina Heri, 'Human Rights in the ICJ's Climate Opinion – A Comparative Evaluation' (*VerfBlog*, 1 August 2025) https://verfassungsblog.de/human-rights-in-the-icjs-climate-opinion/ accessed 27 March 2026.
[209] ICJ, 'Climate Change Advisory Opinion' (n 12) para 403.
[210] Ibid para 404.
[211] Ibid.
[212] Ibid para 388.
[213] Ibid para 389.

inclusion within the provision's protective scope fully consistent with the Charter's preventive and integrated approach to human rights.

Recommendation: The Court may also consider the strong global consensus, reflected in the jurisprudence of *inter alia* the ICJ, the IACtHR, the ECtHR and ITLOS, that climate change constitutes an actual and imminent human rights threat requiring heightened diligence from States, and to align Article 24 with this emerging standard so as to ensure effective mitigation and meaningful protection for communities and individuals in Africa.

1.6. Conclusion

Taken together, the analysis presented in this Chapter of the Amicus demonstrates that the African Court is not only competent to address the human-rights dimensions of the climate crisis, but uniquely positioned to articulate a principled, African-centred framework for State obligations under Article 24 of the African Charter. The request squarely falls within the Court's advisory jurisdiction, as the questions posed are legal in nature, the applicant is duly authorised, and the Court's jurisprudence confirms that advisory opinions may draw upon the full spectrum of relevant African and international human rights law.[214] Article 24 has firstly to be seen through the lens of Africa's intellectual, cultural, and legal traditions, which show that environmental stewardship has long been understood as inseparable from communal life, spiritual identity, and collective development.[215] The development of interpretation was demonstrated on the basis of the instruments of the OAU and AU, the Revised African Convention on Nature and Natural Resources, and a wide range of regional initiatives.[216] These sources reveal a consistent continental commitment to environmental protection as a matter of justice, dignity, and self-determination, an interpretive context that must inform the Court's reading of Article 24.

The analysis demonstrates that the African Charter already contains a sophisticated and forward-looking environmental guarantee, one that has been progressively clarified through the interpretation by the African Commission,[217] further developed by sub-regional institutions[218] and the Jurisprudence of the African Court,[219] and enriched by a dense network of progressive instruments across the continent.[220] Article 24 thereby emerges not as an isolated or aspirational clause, but as a substantive right that anchors a comprehensive framework of State duties, to prevent environmental harm, to regulate both public and private conduct, to ensure meaningful participation and access to information, and to secure

[214] See text to n 13-36.
[215] See text to n 39ff.
[216] See text to n 40-58.
[217] See text to n 59-78.
[218] See text to n 79-84.
[219] See text to n 97-118.
[220] See text to n 40-48 and 127-147.

remedies for affected communities.[221] These obligations are inseparable from the Charter's broader protections of life, health, development, equality, and the rights of peoples over their natural resources.[222] Although Article 24 does not expressly articulate a right to a stable climate system, such a guarantee is inherent in its substance, for climate change directly undermines the effective enjoyment of human rights and profoundly disrupts natural ecosystems and the services they provide, thereby threatening the conditions necessary for a dignified human life.[223] Article 24 must therefore be understood as extending to climate-related threats, since the systemic and far-reaching nature of climate change implicates precisely the environmental conditions that the provision seeks to safeguard.

International courts and treaty bodies now converge on the view that climate change constitutes a profound human-rights crisis, one that demands heightened duties of prevention, regulation, mitigation, and adaptation.[224] They affirm that environmental protection is indispensable to the enjoyment of a wide spectrum of rights, that vulnerable populations must be prioritised, that climate treaties do not displace human-rights obligations, and that States' duties may extend beyond their borders where their conduct contributes to transboundary harm.[225] Finally, it bears emphasising that this global alignment does not supplant the African Charter but rather amplifies its animating logic, affirms its enduring relevance, and positions Article 24 at the centre of an emerging architecture of climate-responsive human-rights law.

[221] See text to n 60-118.
[222] Ibid.
[223] See text to n 148-183.
[224] See text to n 184-213.
[225] Ibid.

Chapter II - Right to Life in the Context of Climate Change

Framing State Obligations through the Lens of Article 4

Laura O'Malley

2.1. Introduction

A healthy and sustainable environment and climate system is an intrinsic precondition to the right to life. The right to life is established under Article 4 of the African Charter on Human and Peoples' Rights, (hereafter the African Charter), guaranteeing that *'Human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right.*'[226]

The threats posed by climate change constitute a threat to the right to life, amounting to an arbitrary deprivation of life. There is a causal link between the adverse effects of climate change and the pressures preventing the beneficiaries of the African Charter from realizing their fundamental rights. The adverse effects of climate change are both direct and indirect, with the effects of global warming impacting the wide enjoyment of fundamental human rights such as the right to life, the right to adequate food, the right to the highest attainable standard of physical and mental health, the right to adequate housing, the right to self-determination, the right to safe drinking water and sanitation, and the right to development.[227] It is unacceptable for a people to be deprived of their means of subsistence, and there is a duty of care on the part of States of the African Union to guarantee the right to life through a blend of negative and positive obligations.[228] The adverse effects of climate change are wide ranging, impacting food security, resource allocation, internal displacement, famine, access to basic services and infrastructure, and the unpredictable consequences of extreme weather.[229]

This chapter will examine the causal links connecting climate change to the deprivation of the right to life under the African Charter and other relevant human rights instruments. As African States are particularly affected by climate change, the advisory opinion being prepared by the African Court on Human and Peoples' Rights, (hereafter the Court), is a critical opportunity to steer the normative development of State obligations in relation to climate change in a more progressive direction that benefits vulnerable populations.[230] This is an opportunity for the Court to clarify the scope of the law at

[226] African Charter on Human and Peoples' Rights (adopted 27 June 1981, entered into force 21 October 1986) 21 ILM 58, 1520 UNTS 217 (African Charter) Art 4.
[227] UNHRC, 'Human Rights and Climate Change – Resolution 41/21' (23 July 2019) UN Doc A/HRC/RES/41/21.
[228] Ibid.
[229] World Meteorological Organization (WMO), 'State of the Climate in Africa 2024' (WMO-No. 1370) https://library.wmo.int/viewer/69495/download?file=WMO-1370-2025_en.pdf&type=pdf&navigator=1 accessed 27 March 2026.
[230] Muyiwa Adigun, 'Climate Change Litigation before International Human Rights Tribunals in Africa' (2025) 27 International Community Law Review 136.

hand, and impose positive obligations on States and private actors to reinforce the right to life, the right to adequate food, the right to the highest attainable standard of physical and mental health, the right to adequate housing, the right to self-determination, the right to safe drinking water and sanitation, and the right to development in the context of climate change.[231]

Section 2.2. will explore the problem context and evaluate the adverse effects of climate change and how they constitute a threat to the wide enjoyment of the right to life. Section 2.3. will address the relevant law to be applied by the African Court on Human and Peoples' Rights in regard to the obligations of States in relation to climate change. This will consist primarily of an examination of the African Charter on Human and Peoples' Rights, other relevant regional human rights instruments, international law, and soft law. Section 2.4. will apply the relevant law to the issue of the adverse effects of climate change threatening the wide enjoyment of the right to life. This will lead to the identification of the positive obligations of States vindicating the right to life in relation to climate change. Section 2.5. will propose recommendations to the African Court to consider in the preparation of the advisory opinion on the obligations of States in relation to climate change. Finally, Section 2.6. will conclude that the right to life must be interpreted within the context of the threats posed by climate change. International climate obligations regarding climate action and anthropogenic greenhouse gas emissions must inform the obligations of States to respect, protect, promote, and fulfil the rights set out in the African Charter.[232] As parties to these human rights regimes, States have both negative and positive obligations to protect and safeguard the rights of individuals and peoples of the past (ancestral rights), present and future generations under the African Charter, as well as vulnerable populations.[233]

Any violation of a right under the African Charter must be corrected with a remedy proposed by the Court. Where the adverse effects of climate change threaten the wide enjoyment of the right to life, there must be a robust and reliable system of remediation addressing loss, damages, and reparation.[234]

2.2. The Problem Context

The definition provided by the United Nations Framework Convention on Climate Change (UNFCCC) characterizes climate change as '*a change of climate which is attributed directly or indirectly to human activity that alters the composition of the global atmosphere and which is in addition to natural climate variability observed over comparable time periods.*'[235]

[231] UNHRC, 'Resolution 41/21' (n 227).
[232] *Social and Economic Rights Action Center (SERAC) and Center for Economic and Social Rights (CESR) v Nigeria* (26 October 2001) ACHPR Communication 155/96 (2001) AHRLR 60 (*SERAC*)
[233] Ibid.
[234] Ibid.
[235] United Nations Framework Convention on Climate Change (adopted 9 May 1992, entered into force 21 March 1994) 1771 UNTS 107, 31 ILM 849 (UNFCCC).

Scientific evidence shows overwhelmingly that climate change is a human health crisis and a threat to life.[236] Climate action and mitigation efforts undertaken by States constitute lifesaving actions for their citizens and vulnerable populations. This chapter will examine the causal link between climate change and the deprivation of the right to life under the African Charter. African States have contributed very little to the carbon emissions that are driving climate change, making up roughly 2 – 3% of global emissions.[237] Though their contributions to anthropogenic greenhouse gas emissions are low, their vulnerabilities to the adverse effects of climate change are disproportionately high.[238] According to the UNFCCC, the adverse effects of climate change can be characterized as *'changes in the physical environment or biota resulting from climate change which have significant deleterious effects on the composition, resilience or productivity of natural and managed ecosystems, or on the operation of socio-economic systems, or on human health or welfare.'*[239]

These changes to the physical environment in Africa pose significant threats in the forms of global warming, sea-level rise, extreme weather, violent conflict, and a breakdown of government mitigation efforts to the extent that the adverse impacts of climate change represent a barrier to the wide enjoyment of the right to life, as dictated by Article 4 of the African Charter.[240] Climate change is projected to raise the rate of mortality in Africa by between 60 and 80% in 2030, which is higher than the rates projected for any other region.[241] Malaria and diarrhoea are projected to be the biggest threats to human health in this context.[242] A study conducted in 2023 found that in 2022 alone, extreme weather events had adverse effects on 19 million people and killed at least 4,000 people in Africa.[243] The most severe weather events can result in *'cyclones, floods, heatwaves, wildfires, droughts, and famine.'*[244] Disastrous weather events *'may compromise access to clean water, sanitation systems, and healthcare facilities'* which increases the inherent vulnerabilities of communities at risk.[245] The practical challenges faced by African citizens in their daily lives are reflected in the scientific data provided by the World Meteorological Organization (WMO) in their latest report, State of the Climate in Africa 2024.[246]

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[236] Zakari Ali et al., 'Lancet Countdown on health and climate change in Africa: an international collaboration for locally led research and action' (2026) 407 The Lancet 10524, 185.
[237] UNEP, 'Responding to Climate Change' https://www.unep.org/regions/africa/regional-initiatives/responding-climate-change accessed 27 March 2026.
[238] UN Office of the High Commissioner for Human Rights (OHCHR), 'The Impacts of Climate Change on the Effective Enjoyment of Human Rights' https://www.ohchr.org/en/climate-change/impacts-climate-change-effective-enjoyment-human-rights accessed 27 March 2026.
[239] UNFCCC (n 237) Art 1.
[240] African Charter (n 226) Art 4.
[241] Enos Moyo et al, 'Health effects of climate change in Africa: A call for an improved implementation of prevention measures' (2023) 2 Eco-Environment and Health 2, 74.
[242] Ibid.
[243] Ibid.
[244] Ibid.
[245] WMO, 'State of the Climate in Africa 2024'(n 229).
[246] Ibid.

North Africa is under severe pressure due to water scarcity, intensifying the adverse effects of climate change on African citizens. North African countries have suffered from droughts and a reduction in precipitation in recent years, as documented by the Inter-governmental Panel on Climate Change (IPCC).[247] However, in 2024 the WMO reported uncharacteristic precipitation and flooding in North Africa, as well as a heat dome that caused extremely high temperatures.[248] When ecosystems are impacted by such extreme weather events, crops fail and the high proportions of the population relying on agriculture as their primary source of food face food insecurity and the health risks that accompany malnutrition.[249] The pressures of unpredictable extreme weather cycles such as droughts and flooding, combined with heat stress put African citizens at severe risk of fatality through the direct and indirect pressures of climate change.[250] These climate events present significant barriers in accessing safe drinking water and sanitation, further undermining the widespread reliance on agricultural work for food and economic stability. The lasting impacts this has on human life, food security, health, housing, water and sanitation, economic development, and the physical environment cannot be disregarded by States in their fulfilment of human rights obligations domestically and internationally.[251]

Heavy precipitation has caused uncontrollable flooding in West Africa, which presents a threat to infrastructure, housing, and human health and wellbeing with displacement and human health risks amounting to a threat to human life.[252] This is accompanied by a rise in temperature amounting to extreme heat, emphasizing the increasing vulnerabilities in African communities by magnifying the effects of any pre-existing health difficulties or disabilities.[253] The rising temperatures impact marine conditions, with marine temperatures soaring and causing sea-level rise, coastal erosion, flooding, and a rise in unpredictable storm conditions.[254] Heat related deaths are unfortunately soaring as the effects of global warming and climate change are not tempered by adequate mitigation by States, severely undermining the right to life.[255] The rise in temperatures seen across Africa has led to the conditions of inadequate heat management, unpredictable cycles of drought, and flooding that disrupts agricultural production.[256] This exacerbates food insecurity, malnutrition, and hunger. Extreme weather events also

[247] Christopher H Trisos et al., 'Africa – Climate Change 2022: Impacts, Adaptation and Vulnerability. Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change' (2022), 1322 https://www.ipcc.ch/report/ar6/wg2/downloads/report/IPCC_AR6_WGII_Chapter09.pdf 28 February 2026.
[248] WMO, 'State of the Climate in Africa 2024'(n 229).
[249] Moyo et al, 'Health effects of climate change in Africa' (n 241) 74.
[250] World Health Organization (WHO), 'Climate Change is impacting health in Africa' (2024) https://files.aho.afro.who.int/afahobckpcontainer/production/files/iAHO_Climate_change_in_health_Fact_Sheet-April_2024.pdf accessed 27 March 2026.
[251] Michael Addaney et al., 'The Climate Change and Human Rights Nexus in Africa' (2017) 3 Amsterdam Law Forum 9.
[252] Trisos et al, 'Africa – Climate Change 2022' (n 247) 1325.
[253] Moyo et al, 'Health effects of climate change in Africa' (n 241) 74.
[254] WMO, 'State of the Climate in Africa 2024'(n 229).
[255] Ali et al, 'Lancet Countdown on health and climate change in Africa' (n 236) 185.
[256] WMO, 'State of the Climate in Africa 2024'(n 229).

cause damage to infrastructure and raise the rates of fatalities among vulnerable populations, increasing displacement, and presenting a risk to life, livelihoods and health.[257]

Heightened precipitation in East Africa has had detrimental effects by causing landslides that place citizens at immediate risk, requiring humanitarian aid and resulting in widespread displacement.[258] The associated loss of property caused widespread economic loss and security, as well as the intangible costs associated with losing one's home and safety network.[259] East Africa has been placed in a situation that has millions on the brink of famine due to these conditions, as food insecurity and chronic droughts follow the natural disasters suffered by the region.

Central Africa has suffered severe flooding that has impacts on public health, individual, and economic loss due to increased rates of precipitation.[260] The impacts of chronic flooding exacerbate regional instability, threatening the wide enjoyment of the right to life, health, self-determination, and economic development. The resulting displacement places vulnerable populations at further risk as they experience violent conflict and resource and land conflict.[261]

The social conditions of poverty, geography, and structural inequality influence peoples' exposure to and experience of the adverse effects of climate change.[262] The most significant harm will be suffered by the most vulnerable members of society who have contributed the least to anthropogenic greenhouse gas emissions.[263] This will be examined in further detail in Chapter IV. The historical emissions leading to the temperature increase from pre-industrial levels are inextricably linked with exploitative economic practices steeped in colonialism and racism.[264] This means that many issues faced by African citizens are a modern expression of environmental colonialism, with irresponsible development and greenhouse gas emissions representing the Western legacy of exploitation and colonialism. The resulting patterns of inequity seen across Africa today present an added layer of vulnerability that threatens the wide enjoyment of fundamental human rights.[265] In summation, the adverse effects of climate change consist of direct and indirect effects that threaten the wide enjoyment of the right to life. Global warming causes harmful effects to agriculture, which a large proportion of the population rely upon for survival.[266] The resulting cycles of drought, flooding, famine, disease, and displacement represent a threat to the right to life, the right to adequate food, the right to the highest attainable standard of physical and mental health,

[257] Ibid.
[258] Ibid.
[259] United Nations Secretary General (UNSG), 'Analytical study on the impact of loss and damage from the adverse effects of climate change on the full enjoyment of human rights, exploring equity-based approaches and solutions to addressing the same' (28 August 2024) UN Doc A/HRC/57/30.
[260] WMO, 'State of the Climate in Africa 2024'(n 229).
[261] Ibid.
[262] UNSG, 'Analytical study on the impact of loss and damage from the adverse effects of climate change' (n 259).
[263] OHCHR, 'The Impacts of Climate Change on the Effective Enjoyment of Human Rights' (n 238).
[264] Ibid.
[265] Ibid.
[266] Moyo et al., 'Health effects of climate change in Africa' (n 241) 74.

the right to adequate housing, the right to self-determination, the right to safe drinking water and sanitation, and the right to development in the context of climate change.[267] The instability caused by climate change causes a rise in conflict, displacement, and sexual and gender-based violence.[268] This is a humanitarian crisis, with most refugees and internally displaced persons coming from 48 conflict-affected States, that are regarded as the most vulnerable to the adverse effects of climate change and the least ready to adapt or engage in just transition.[269]

African citizens are suffering widespread loss and damages as a result of climate change, with resource and land conflict, the destabilization of family and power structures, and political instability giving rise to the conditions for the arbitrary deprivation of life. The breakdown of government climate mitigation efforts and access to basic services such as health infrastructure is a growing issue.[270] Climate change is a human health crisis linked to an increase in disease, adverse impacts on physical and mental health, social welfare, and mortality.[271] There is a further deprivation of economic, social, and cultural rights occurring due to the resulting impacts on health care, education, social welfare, and debt distress. This will be elaborated upon in Chapter 3, examining the application of Article 22 of the African Charter.[272] The adverse effects of climate change amount to a humanitarian crisis in many cases and emphasize the causal link of climate change as a threat to the right to life. The lack of adequate State climate mitigation measures to highly foreseeable threats to human life is unacceptable as the scientific evidence presented by the IPCC is abundantly clear about the rates of mortality of African citizens, with vulnerable populations such as environmental defenders, indigenous communities, women, children, and the elderly at particular risk.[273]

Thus, the beneficiaries of the human rights regimes in Africa face growing pressures on the proper realisation of their right to life. This is primarily due to the adverse effects of climate change, exacerbated by the acts or omissions of African States. Inadequate climate mitigation measures could be interpreted as a violation of fundamental human rights. As stated in the UN General Comment on the right to life, climate change represents one of the most pressing and serious threats to the ability of past, present, and future generations to enjoy the right to life.[274]

[267] UNHRC, 'Resolution 41/21' (n 227).
[268] UNSG, 'Analytical study on the impact of loss and damage from the adverse effects of climate change' (n 259).
[269] Ibid.
[270] Moyo et al., 'Health effects of climate change in Africa' (n 241) 74.
[271] Ibid.
[272] African Charter (n 226) Art 22.
[273] Michael Addaney, 'Addressing the impacts of climate change on human rights through adaptation-focused litigation: Cases before the African Union's human rights bodies' (2025) 24 Journal of Human Rights 3, 353.
[274] UN Human Rights Committee, 'General Comment No 36 (2018) on Article 6 of the International Covenant on Civil and Political Rights, on the Right to Life' (3 September 2019) UN Doc CCPR/C/GC/36.

2.3. Relevant Law

This section will examine the relevant law raised by the Pan African Lawyers Union (PALU) to interpret the obligations of States in the face of climate change through the lens of the right to life.

2.3.1. African Charter on Human and Peoples' Rights

The core competence of the Court is the African Charter on Human and Peoples Rights.[275] Therefore, this section will focus on the application of the Charter, with a subsidiary examination of relevant regional human rights law, international law, and soft law. The right to life as set out in Article 4 of the African Charter on Human and Peoples Rights is the touch point for every other right in the charter.[276] It is the foundation of customary international law, without the right to life all other rights lose meaning.[277]

As established in section 2.2, the adverse effects of climate change constitute a threat to the enjoyment and integrity of life for present and future generations as a matter of scientific certainty. This has been corroborated by the UN and the IPCC.[278] The right to life is absolute, and there are no permissible derogations to the protection of the right to life.[279] There is a negative duty to not arbitrarily deprive anyone of their right to life. However, the obligations of States go further than that. The African Commission requires a broad interpretation to the right to life that does not just impose a negative obligation on States to stop arbitrary killings, but a positive obligation to take such action that the conditions for arbitrary deprivation of the right to life do not come to fruition.[280] All rights in the African Charter are interconnected, and all are actionable.[281] All human rights are indivisible, interdependent, and inter-related, and therefore the interconnection and relationship to other human rights must be taken into account when fulfilling State obligations in relation to climate change.[282]

Case law has shown that there are a number of rights that can be litigated successfully in connection to the right to life, such as Article 5 concerning human dignity.[283] *'Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited.'*[284] Human dignity is an intrinsic element to

[275] African Charter (n 226).
[276] Ibid Art 4.
[277] Rachel Murray, *The African Charter on Human and Peoples' Rights: A Commentary* (Oxford University Press 2019) Chapter 5.
[278] OHCHR, 'The Impacts of Climate Change on the Effective Enjoyment of Human Rights' (n 238).
[279] ACHPR, 'General Comment No. 3 on the African Charter on Human and Peoples' Rights: The Right to Life' (12 December 2015) https://achpr.au.int/en/node/851 accessed 27 March 2026.
[280] Ibid.
[281] See *SERAC* (n 232).
[282] Addaney et al, 'The Climate Change and Human Rights Nexus in Africa' (251).
[283] African Charter (n 226) Art 5.
[284] Ibid.

the right to life, showing that the legal definition of life goes beyond mere survival. The inclusion of human dignity represents the need for a basic level of State protection for all, to promote the realisation of the right to life. The elimination of exploitation and degradation is particularly important in reinforcing post-colonial protections afforded to African citizens to support their right to a life with dignity.

Article 16 concerns the duty of care of States in providing the best attainable state of physical and mental health.[285]

1. *'Every individual shall have the right to enjoy the best attainable state of physical and mental health.*
2. *States parties to the present Charter shall take the necessary measures to protect the health of their people and to ensure that they receive medical attention when they are sick.'*[286]

The obligations of States to take the necessary measures to protect the health of their people, is highly significant as physical and mental health has been shown to be greatly impacted by the adverse effects of climate change. Everything from the provision of food and clean water to reliable access to healthcare systems will be challenged by climate change. States must engage in good faith with climate adaptation initiatives in order to combat these issues. This will involve the development of action plans detailing climate mitigation and just transition strategies.[287]

Article 18 regarding the protection of the family is also important in this context, as it includes expressly the duties of the State to protect this most basic unit of society, taking care of their physical health and providing special measures of protection to vulnerable populations.[288] This is significant in the development of the duty of care principles on behalf of States in relation to climate change.

1. *'The family shall be the natural unit and basis of society. It shall be protected by the State which shall take care of its physical health and moral.*
2. *The State shall have the duty to assist the family which is the custodian of morals and traditional values recognized by the community.*
3. *The State shall ensure the elimination of every discrimination against women and also ensure the protection of the rights of the woman and the child as stipulated in international declarations and conventions.*
4. *The aged and the disabled shall also have the right to special measures of protection in keeping with their physical or moral needs.'*[289]

The duty to assist the family is a strong obligation in the context of climate change, as extreme weather events exacerbate existing vulnerabilities and put pressure on families to take care of each other and lead a life of human dignity. Discrimination is often exacerbated by times of civil and political unrest, which will be felt most keenly by those suffering the adverse effects of climate change. The special

[285] Ibid Art 16.
[286] Ibid.
[287] UN Human Rights Committee, 'General Comment No 36' (n 274).
[288] African Charter (n 226) Art 18.
[289] Ibid.

measures of protection guaranteed by the State should be encompassed by the guarantee of the right to life for beneficiaries of the African Charter.

Article 20 centres the right of self-determination, which is fundamental to the right to life, and to the practice of living in accordance with human dignity.[290] Part 3 of Article 20 is significant in granting the right of State assistance to all peoples who are struggling in their liberation against foreign domination, whether that be political, economic, or cultural.[291] In a sense, the effects of climate change are a modern form of environmental colonialism, and the obligation for States to support their people in the fight for climate action is crucial.[292] African citizens are still suffering the effects of colonialism today, as systemic inequity undermines States capacity for climate resilience, with the most vulnerable populations suffering the worst impacts of climate change.

The positive obligations of both States and private actors in guaranteeing the right to life must be interpreted in line with Article 20.3, as the right to assistance in liberation from economic domination is relevant to the exploitative and polluting practices of many corporate actors today.[293]

1. *'All peoples shall have right to existence. They shall have the unquestionable and inalienable right to self-determination. They shall freely determine their political status and shall pursue their economic and social development according to the policy they have freely chosen.*
2. *Colonized or oppressed peoples shall have the right to free themselves from the bonds of domination by resorting to any means recognized by the international community.*
3. *All peoples shall have the right to the assistance of the States parties to the present Charter in their liberation struggle against foreign domination, be it political, economic, or cultural.'*[294]

Finally, as discussed in Chapter I, article 24 regarding the right to a general satisfactory environment is the most important link within the African Charter to the right to life.[295] *'All peoples shall have the right to a general satisfactory environment favourable to their development.'*[296] These rights are inextricably linked as there can be no life with dignity without a healthy environment and climate system to support human health and development. The interconnective capacity of all rights within the African Charter is evident, as each one relies upon the other to guarantee a life of dignity. The right to life is considered so fundamental, that it is described as the fountain through which all other rights flow.[297] The positive obligations of States in guaranteeing the right to life in the context of climate change ripple across the African Charter, impacting the right to a healthy environment, the right to adequate food, the right to the

[290] Ibid Art 20.
[291] Ibid.
[292] UNSG, 'Analytical study on the impact of loss and damage from the adverse effects of climate change' (n 259).
[293] *SERAC* (232).
[294] African Charter (n 226) Art20.
[295] Ibid Art 24.
[296] Ibid.
[297] Murray, *The African Charter: A Commentary* (n 277) Chapter 5.

highest attainable standard of physical and mental health, the right to adequate housing, the right to self-determination, the right to safe drinking water and sanitation, and the right to development.[298]

2.3.2. Other Relevant African Human Rights Law

Constitutive Act of the African Union: Other relevant sources of the right to life in the African Union can be seen in the Constitutive Act of the African Union.[299] Article 4 containing principles that the Union must function in accordance with, requires in particular '*(i) peaceful co-existence of Member States and their right to live in peace and serenity', (m) respect for democratic principles, human rights, the rule of law and good governance, and (o) respect for the sanctity of human life, condemnation and rejection of impunity and political assassination, acts of terrorism and subversive activities.'*[300] The actions of States in creating conditions for the peace and prosperity of its citizens and peoples is significant here, reinforcing human rights and the rule of law. The adverse effects of climate change have an effect on all civil and political rights, from access and participation in justice, health, and a dignified life. The mortality rates of natural disasters and the associated humanitarian crises bring this into sharp perspective. Respect for the sanctity of human life in this context requires decisive climate mitigation efforts from States of the African Union.

Kampala Convention: In the preamble to the Kampala convention, it is stated that States are determined to adopt measures preventing the root causes of internal displacement, which due to the adverse effects of climate change has become increasingly widespread.[301] The instrument aims to address the roots of displacement including recurring conflict and natural disasters. The effects of internal displacement produce the conditions for the threat to the integrity of life, as well as threats to peace, security, and development. States are thus obligated to refrain from, prohibit, and prevent the conditions for arbitrary displacement of populations to arise. Due respect should be given to the principles of human dignity and international law in the treatment of internally displaced persons.[302] Climate change is one of the leading causes of internal displacement, with extreme weather causing on average 21.5 million new displacements every year.[303] The inherent vulnerabilities of refugees, internally displaced persons, and stateless persons are enhanced by the climate emergency.[304]

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[298] UNHRC, 'Resolution 41/21' (n 227).
[299]Constitutive Act of the African Union (adopted 11 July 2000, entered into force 26 May 2001), 2158 UNTS 3, UN Reg No I-37733, OAU Doc CAB/LEG/23.15.
[300] Ibid Art 4.
[301] African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention) (adopted 23 October 2009, entered into force 6 December 2012) 3014 UNTS I-52375.
[302] Olivia Lwabukuna, 'The Responsibility to Protect Internally Displaced Persons in Africa' (2021) 65 Journal of African Law S1, 73.
[303] ACHPR, 'Resolution on Climate Change and Forced Displacement in Africa' ACHPR/Res. 491 (LXIX) 2021 https://achpr.au.int/en/adopted-resolutions/491-resolution-climate-change-and-forced-displacement-africa-achprres-491 accessed 27 March 2026.
[304] Ibid.

Addressing the obligations to reduce the impacts of climate change would fall in line with the protection of human rights and right to life in the context of internal displacement under the Kampala Convention. The integration of climate mitigation and just transition with the positive obligations of the right to life is necessary to secure a long-term solution to displacement.

The Maputo Protocol: The Maputo Protocol relates to the rights of women in Africa, with Article IV supporting the right to life, integrity, and security of the person.[305] *'Every woman shall be entitled to respect for her life and the integrity and security of her person. All forms of exploitation, cruel, inhuman, or degrading punishment and treatment shall be prohibited.'*[306]
Article XIX states that the right to sustainable development for women underpins the right to life.[307] Article XVIII supports the right to a healthy and sustainable environment for women.[308] The sections regarding the proper management of toxic waste and dumping are of particular interest here as it is usually vulnerable populations such as women and girls who suffer higher rates of exposure to toxic environmental substances, which in turn undermines their right to life.[309] Article XIX deals with the right to sustainable development, requiring the proper consideration of women as a vulnerable population in the policies regarding environmental and planning issues of sustainable development so they do not suffer adverse effects due to exclusion from planning and coordination processes.[310] Women and girls often suffer enhanced harm in times of conflict, and it is the duty of the State to engage in climate adaptation and mitigation preparation to safeguard women and girls from the adverse effects of climate change, including internal displacement, violent conflict, and sexual and gender-based violence.[311]

This supports the broad right for women to live a life of dignity with consideration to their economic, social, and cultural rights which are crucial in supporting the right to life generally.

African Charter on the Rights and Welfare of the Child: Finally, the African Charter on the Rights and Welfare of the Child reiterates in Article 5 that

1. *'Every child has an inherent right to life. This right shall be protected by law.*

[305] Protocol to the African Charter on human and people's rights on the rights of women in Africa (Maputo Protocol) (adopted 11 July 2003, entered into force 25 November 2005) 3268 UNTS A-26363, Art IV.
[306] Ibid.
[307] Ibid Art XIX.
[308] Ibid Art XVIII.
[309] UNSG, 'Analytical study on the impact of loss and damage from the adverse effects of climate change' (n 259).
[310] Maputo Protocol (n 305) Art XIX.
[311] ACHPR, 'Resolution on the human rights impacts of extreme weather in Eastern and Southern Africa due to climate change' ACHPR/Res 417 (LXIV) 2019 https://achpr.au.int/en/adopted-resolutions/417-resolution-human-rights-impacts-extreme-weather-eastern-and-souther accessed 27 March 2026.

2. *States Parties to the present Charter shall ensure, to the maximum extent possible, the survival, protection, and development of the child.'*[312]

Ensuring the right to life to the maximum extent possible is a remarkably high due diligence requirement, and given the urgency of the climate crisis, it seems an apt approach to protecting present and future generations from the impacts of climate change. Children represent a particularly vulnerable population as they are the future generation who will have to deal with the increasingly adverse effects of climate change. Their quality of life will continue to deteriorate as a result of global warming if the limits set by the Paris Agreement are exceeded.[313] Without the maximum level of State action, children who are protected under the Charter will very foreseeably suffer harm.

Having dealt with the most significant manifestations of the right to life in African human rights treaties, it is only proper to turn to international law. The right to life is so foundational to the concept of human rights that it has become a part of customary international law. Article 60 of the African Charter refers to the obligations on the African Commission to draw inspiration from international law on human and peoples' rights.[314] Art 61 requires the consideration of principles of law, international conventions, as a subsidiary measure to keep African law and policy in line with international developments in legal principles, precedent, and doctrine.[315] Thus, this chapter must consider the development of the right to life through international law and its attendant principles and norms for the benefit of African Charter jurisprudence.

2.3.3. Relevant International Human Rights Law

Universal Declaration of Human Rights: The Universal Declaration of Human Rights has been integral in creating the customary status of the right to life. Article 3 states that *'Everyone has the right to life, liberty and security of person.'*[316] The widespread recognition of this instrument has helped solidify the status of the right to life in customary international law. This is significant as States who may be non-signatories to human rights treaties are still bound by the application of customary international law.

UN Convention on the Rights of the Child: Article 6 of the UN Convention on the rights of the child recognizes the inherent right to life of every child.[317] Again, strong language is used to impose a due

[312] African Charter on the Rights and Welfare of the Child (adopted 11 July 1990, entered into force 29 November 1999) OAU Doc CAB/LEG/24.9/49, Art 5.
[313] Paris Agreement to the United Nations Framework Convention on Climate Change (adopted 12 December 2015, entered into force 4 November 2016) TIAS No 16-1104, Art 2.
[314] African Charter (n 226) Art 60.
[315] Ibid Art 61.
[316] Universal Declaration of Human Rights (adopted 10 December 1948, UNGA Res 217 A (III)) (UDHR) Art 3.
[317] Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3 (UNCRC) Art 6.

diligence obligation that States will ensure *'to the maximum extent possible'* the survival and development of the child.[318]

International Covenant on Civil and Political Rights: The International Covenant on Civil and Political Rights states in Article 6: *'Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.'*[319] The significance of civil and political rights in accessing justice and generating State obligations solidifies the importance of the right to life. The UN general comment on the right to life stems from this foundational human rights instrument, underscoring the importance of the right to life in civil and political processes.[320] This has heavily influenced the interpretation of State obligations in guaranteeing the right to life internationally.

International Covenant on Economic, Social and Cultural Rights: Article 10.3 contains an interesting component wherein children and young people are provided with additional protection from economic and social exploitation.[321] '*Their employment in work harmful to their morals or health or dangerous to life or likely to hamper their normal development should be punishable by law.'*[322] Children and young people face foreseeable harm from the adverse impacts of climate change through both direct and indirect economic and social pressures which would be harmful to their development. Many families who live in poverty and rely primarily on agriculture for survival are at substantial risk due to the conditions under which they work. Young girls in particular face foreseeable harm when extreme weather events occur, as destabilization of the family's access to resources often means young girls are taken out of school and forced to take on dangerous work that hampers their normal development.[323]

2.3.4. International Climate Law

International climate law underpins the vindication of the right to life by human rights treaties. In order to treat the root of the issue of climate change, States must engage in climate mitigation in line with their commitments to international climate law treaties. International obligations regarding climate mitigation and anthropogenic greenhouse gas emissions must be factored into law and policy decisions regarding just transition, adaptation, and climate action. In accordance with the vindication of the right to life, international climate obligations must inform the general obligations of States to the beneficiaries of its human rights regimes in relation to climate change. In particular, the United Nations Framework Convention on Climate Change and the subsequent Kyoto protocol provide an excellent base of

[318] Ibid.
[319] International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR) Art 6.
[320] UN Human Rights Committee, 'General Comment No 36' (n 274).
[321] International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3 (ICESCR) Article 10.
[322] Ibid.
[323] UNSG, 'Analytical study on the impact of loss and damage from the adverse effects of climate change' (n 259).

knowledge for States to consider when developing climate law and policy.[324] The principles contained in these instruments are integral to developing climate law and policy, with consideration of the precautionary principle, inter-generational equity, and common but differentiated responsibilities. It is important to include the Paris Agreement in the consideration of relevant international law, as the temperature increase of 1.5 degrees Celsius is critical for the African Union in preventing further loss and damage.[325] As discussed, though Africa is one of the least responsible for anthropogenic carbon emissions, its people and peoples are some of the most vulnerable to the impacts of climate change.[326] For this reason, due consideration of the international climate law instruments the African Union is party to is an important part of the vindication of the right to life and thus should inform State obligations.

2.3.5. Soft Law

UN Sustainable Development Goals: The harmonizing effects of soft law are important in achieving the ambitious targets of climate and human rights law. They have a function of bridging the gap between climate change and human rights before that was an established method of practice. Many of the sustainable development goals have particular regard to vulnerable populations in the fight for climate action and sustainable development to create a better, more peaceful world.[327] This is crucial in order to create an environment where it is possible to pursue a life of human dignity. The power of soft law to guide the implementation of positive measures of climate mitigation and action cannot be underestimated. It can have a harmonizing effect that shape State obligations in relation to climate change. All seventeen of the UN SDGs seem relevant in combatting the adverse effects of climate change and the threat to the wide enjoyment of the right to life. These various regional African human rights treaties and international human rights and climate instruments all work to further the goal of a sustainable climate in support of a life with human dignity, globally. The SDGs have a local to global action element, wherein the actions taken on a regional level resonate with commitments taken on a global level, which is significant to consider in enforcing State obligations in relation to climate change.[328]

Agenda 2063: Agenda 2063 on the behalf of the African Union incorporates many of these ideals, and in order to reach the seven aspirations of *'A prosperous Africa based on inclusive growth and sustainable development; An integrated continent politically united and based on the ideals of Pan Africanism and the vision of African renaissance; an Africa of good governance, democracy, respect for human rights, justice and the rule of law; a peaceful and secure Africa; Africa with a strong cultural identity, common heritage, values and ethics; An Africa whose development is people driven, relying on the potential*

[324] UNFCCC (n 235).
[325] Paris Agreement (n 313) Art 2.
[326] OHCHR, 'The Impacts of Climate Change on the Effective Enjoyment of Human Rights' (n 238).
[327] UNGA, 'Transforming our world: the 2030 Agenda for Sustainable Development' (25 September 2015) UN Doc A/RES/70/1.
[328] Ibid.

offered by African People, especially its women and youth, and caring for children; and An Africa as a strong, united, resilient, and influential global player and partner.'[329]

Thus, the engagement of States with the relevant regional, international, and soft law mechanisms to promote climate action is essential to reduce the inherent vulnerabilities faced by the population. The proper application and enforcement of the law is crucial in containing the limit of global warming to 1.5 degrees Celsius above pre-industrial levels to prevent further anthropogenic emissions worsening the adverse effects of climate change for all sectors of African society, causing both economic and personal loss and damages. The adverse effects of climate change constitute a threat to the right to life, and there exists a positive obligation for States to prevent any foreseeable threats to the dignity of human life for past, present, and future generations with reference to the relevant law discussed. Section 4. will now examine the application of this law by States and what these obligations entail.

2.4. Obligations of States in Relation to Climate Change

2.4.1. Interpreting the Right to Life

It has been established that the adverse effects of climate change present a threat to the right to life in the narrow sense of arbitrary deprivation, but also in the wider sense of a dignified life. General Comment No.3 of the African Commission offers interpretive guidance to the application of the right to life under the Charter, clarifying the nature of the right to life, and the obligations imposed on States.[330]

The purpose of Article 4 of the African Charter is to impose a range of obligations on States in order to guarantee the wide enjoyment of the right to a dignified life. This includes a responsibility to prevent arbitrary deprivations of life caused by the State or its agents, a responsibility to investigate any killings that take place, and a responsibility to impose accountability on the perpetrators of such harm, including the provision of remediation / reparations.[331] These considerations should take place in line with international law to ensure a robust State response to threats to the right to life. The broad interpretation associated with the protection of the right to life centres around the concept of human dignity, and what it means to live a dignified life. The State responsibilities are broadened from a negative obligation not to arbitrarily deprive citizens of their lives, but to actively protect them from a wide range of circumstances that threaten their right to a life with human dignity. This includes *'preventive steps to preserve and protect the natural environment and humanitarian responses to natural disasters, famines, outbreaks of infectious diseases, or other emergencies.'*[332] *'The State also has a responsibility to address*

[329] African Union, 'Agenda 2063: The Africa We Want (Popular Version, 2015)' https://au.int/en/agenda2063/aspirations accessed 27 March 2026.
[330] ACHPR, 'General Comment No. 3 on the African Charter on Human and Peoples' Rights: The Right to Life' (n 279).
[331] Ibid.
[332] Ibid.

more chronic yet pervasive threats to life, for example with respect to preventable maternal mortality, by establishing functioning health systems.'[333]

The work of the State in addressing chronic social and economic conditions that present threats to the right to life by endangering the health systems is a reflection of the ambitions of the African Charter in working towards a better life for all of the people and peoples of Africa, providing an equitable system for past, present and future generations.[334] This recognition of a '*right to dignity, economic, social and cultural rights, and peoples' rights such as the right to existence and the right to peace'* shows the commitment of the African Union to the ideological roots of the Charter, but this commitment must be realised in the form of robust State action in the protection of human and peoples' rights.[335] Therefore, the Charter imposes positive obligations on all African States of the Charter to protect vulnerable populations. The specific obligations include a broad protection of human and peoples' rights, combatting issues caused by the effects of climate change by taking tangible action such as establishing functioning health systems, and other mitigation measures. Any breach of the right to life must be thoroughly investigated by the State, with accountability mechanisms to provide remediation of loss and damages, and reparation.

Similarly, the General Comment on the right to life by the UN emphasizes the positive obligations on States to vindicate the right to life. States must take appropriate measures to support the right to life systemically, addressing the general conditions of society.[336] The attitude to the deprivation of life by private actors is very similar to the African approach, with States required to provide adequate protection through supervision, prevention, investigation, punishment and remediation.[337] A positive obligation is imposed on States so that the conditions for arbitrary deprivation of the right to life do not come to fruition thanks to the positive action of the State. The portrayal of environmental degradation and climate change as one *'of the most serious threats to the ability of present and future generations to enjoy the right to life.'*[338] This underlines the sense of gravity that States ought to associate with the issue of climate change. Thus, the obligations of States under international environmental law instruments must dictate the law and policy of the State in order to vindicate the right to life.[339] Implementation of State obligations would look like measures taken to protect the natural environment from harm, pollution, and climate change so as to prevent foreseeable harm to vulnerable populations perpetrated by the State or private actors.[340] Corporate entities also owe legal obligations to the beneficiaries of human rights

[333] Ibid.
[334] Ibid.
[335] Ibid.
[336] UN Human Rights Committee, 'General Comment No 36' (n 274).
[337] Ibid.
[338] Ibid.
[339] Ibid.
[340] Ibid.

regimes, to fulfil their duty of care by respecting the right to life.[341] The directly enforceable duty of care of corporate entities is significant as Africa historically has suffered greatly from the effects of corporate exploitation.[342]

The right to life does not require a death to occur in order to rely on the right, as that would be inactionable.[343] Instead, wherever there is a threat to the right to life, the right may be relied upon. The burden of proof rests on the State to prove that an arbitrary deprivation of life is not taking place.[344] Where there is an alleged deprivation of life, the State has a duty to conduct an investigation and provide remediation and reparation.[345] This applies to the acts / omissions of the State and agents of the State, but the State is also liable for foreseeable harm conducted by private actors such as corporations.[346] Victims of environmental damage are entitled to full, adequate, and effective compensation.[347] This includes material loss, livelihood disruptions such as opportunity cost, and impacts on physical and mental health.[348] The State should provide access to affordable health care and sustainable support for the rehabilitation of those who have suffered a threat to their right to life.[349] Here, the positive obligations of the State must guarantee the right to life not only through legislation and regulation, but the adequate resourcing of mechanisms and institutions supervising and enforcing the fiscal, environmental, and human rights protections afforded to the beneficiaries of the African Charter.[350] There is a heightened level of responsibility on the part of the State to ensure there is no violation of the right to life of a person held in custody.[351] This is relevant to the penalisation of vulnerable populations, and specifically environmental defenders who are being routinely detained for speaking out against exploitative practices.

Thus, under the right to life States have a broad duty of protection, resulting in a positive obligation to take action so that the conditions for arbitrary deprivations of life do not materialize.

2.4.2. Application of the Right to Life

[341] Elinor Buys and Bridget Lewis, 'Environmental protection through European and African human rights frameworks' (2022) 26 The International Journal of Human Rights 6, 949.
[342] Valerio Sinaj, 'The AfCHPR's Opportunity to Define Corporate Duties in the Climate Crisis' (2025) Worlds Youth for Climate Justice the-afchprs-opportunity-to-define-corporate-duties-in-the-climate-crisis (accessed 03 March 2026).
[343] ACHPR, 'General Comment No. 3 on the African Charter on Human and Peoples' Rights: The Right to Life' (n 279).
[344] Murray, *The African Charter: A Commentary* (n 277) Chapter 5.
[345] Ibid.
[346] Ibid.
[347] ACHPR, 'State Reporting Guidelines on Articles 21 and 24 of the African Charter on Human and Peoples' Rights Relating to the Operations of Extractive Industries; Resolution on Developing Reporting Guidelines with Respect to the Extractive Industries - ACHPR/Res. 364(LIX) 2016' (22 May 2017) https://www.legal-tools.org/doc/1vbxbl/pdf accessed 27 March 2026.
[348] Ibid.
[349] Ibid.
[350] Ibid.
[351] ACHPR, 'General Comment No. 3 on the African Charter on Human and Peoples' Rights: The Right to Life' (n 279).

The ACHPR case *SERAC v Nigeria* is fundamental in determining the application of the obligations of States under the African Charter by examining the general expectations for the minimum level of State protection.[352] The obligations to '*respect, protect, promote, and fulfil rights'* under the African Charter require a blend of negative and positive obligations.[353] States are required to respect the Charter rights by not interfering in the enjoyment of fundamental rights by act or omission. States are required to protect their citizens by providing legislation that is fit for purpose and accessible and effective remedies. This entails State protection of Charter rights from political, economic, and social interference.[354] This is generally done by creating and maintaining an effective framework of law and policy that allows beneficiaries to realize their rights and freedoms in accordance customary international law.[355] The promotion of Charter rights requires beneficiaries of the human rights regime to be empowered to access justice by raising awareness and building infrastructure as the fulfilment of Charter rights requires the positive action of States to move its machinery towards the realization of such rights.[356] States thus have a duty of care that obliges them to protect the beneficiaries of their human rights regimes, through the provision of appropriate legislation and effective enforcement.[357] They are required to protect citizens from harm perpetrated by the State or agents of the State, but also from private actors.[358] The positive obligation to protect their citizens under the African Charter, relevant regional human rights regimes, and international law is essential to the realization of the right to life.

In *LIDHO v Republic of Cote D'Ivoire*, the AfCHPR held that States have a due diligence obligation to fulfil in the protection of human life from reasonably foreseeable harm by persons or entities that are not connected to the State.[359] The existence of the right to life is established through the examination of the African Charter, other relevant African human rights treaties, international human rights law, and customary international law. It imposes a mix of negative and positive obligations on States to view the right to life in a broad manner and protect them from any foreseeable harm. Such integral rights require an effective process of remediation in the event of violation. Though there is no explicit provision of the Charter expressing the right to remediation, it is held that there is an implied right, as there can be no right without a remedy upon violation.[360] In the protocol to the African Charter on Human and Peoples Rights on the establishment of an African Court on Human and Peoples Rights, Article 27 states that *'If the Court finds that there has been a violation of a human or peoples' right, it shall make appropriate*

[352] *SERAC* (n 232).
[353] Ibid.
[354] Ibid.
[355] Ibid.
[356] Ibid.
[357] Ibid.
[358] ACHPR, *Commission Nationale des Droits de l'Homme et des Libertés v Chad* (2000) AHRLR 66 (ACHPR 1995).
[359] African Court on Human and Peoples' Rights, *Ligue Ivoirienne des Droits de l'Homme (LIDHO) and Others v Republic of Côte d'Ivoire* App No 041/2016 (2023) ACtHPR 041/2016 (*LIDHO*).
[360] Godfrey M Musila, 'The right to an effective remedy under the African Charter on Human and Peoples' Rights' (2006) 6 African Human Rights Law Journal 2, 441.

orders to remedy the violation, including the payment of fair compensation or reparation.'[361] The phrase *'appropriate order'* means that the remedy is not limited to compensation, much like their counterparts in other regional human rights courts, this phrase confers a sense of flexibility, where the remedies are not solely compensatory, and can take other forms.[362] States that are found liable for the violation of the right to life are required under international law to make full reparation for the harm caused to the victim of loss or damage.[363] This reparation must insofar as possible erase the consequences of the harmful act and restore the victim to their former position.[364] There must be an established causal link between the violation of rights and the harm caused for the victim in order for reparation to be considered.[365]
The measures that a State must take to remedy a violation of human rights include restitution, compensation, rehabilitation of the victim, satisfaction measures, and non-repetition of violations of fundamental rights.[366]

The African Court on Human and Peoples Rights has jurisdiction to monitor compliance, and to order immediate implementation of unpaid reparations.[367] This is significant as non-compliance undermines the authority of the Court, and the power of the Charter in guaranteeing fundamental human rights. The consideration of international human rights and climate law as a subsidiary measure clarifies the legal principles at hand.[368] The Court must give due consideration to the progression of international law in its preparation of this advisory opinion, to progress the normative development of State obligations in relation to climate change in line with international legal precedent.[369] The international human rights regimes exist to guarantee the dignified life of past, present and future generations with a sense of equity. The international climate obligations influence our interpretation of these human rights instruments, as a healthy environment and climate system is an intrinsic precondition to the realization of the right to life. All UN human rights treaty bodies therefore recognize the link between the protection and conservation of the environment and the vindication of human rights.[370] States are required under both domestic and international law to guarantee the effective enjoyment of the right to life, which cannot be fulfilled without the protection and promotion of a clean, healthy and sustainable environment.[371]

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[361] African Union Protocol to the African Charter on Human and Peoples' Rights on the establishment of an African Court on Human and Peoples Rights (adopted 10 June 1998, entered into force 25 January 2004) Article 27.
[362] Musila, 'The right to an effective remedy' (n 360), 441.
[363] *LIDHO* (n 359).
[364] Ibid.
[365] Ibid.
[366] Ibid.
[367] *African Commission on Human and Peoples' Rights v Kenya* (2017) 2 AfCLR 9 (*Ogiek*); AfCHPR, 'Application 006/2012' https://www.african-court.org/cpmt/details-case/0062012 accessed 27 March 2026.
[368] African Charter (n 226) Art 61.
[369] Adigun, 'Climate Change Litigation before International Human Rights Tribunals in Africa' (n 230) 136.
[370] Jacqueline Peel and Hari M Osofsky, 'A Rights Turn in Climate Change Litigation?' (2017) 7 Transnational Environmental Law 1, 37.
[371] ICJ, 'Advisory Opinion on the Obligations of States in Respect of Climate Change' (23 July 2025) (ICJ Climate Change Advisory Opinion) https://cdn.climatepolicyradar.org/navigator/XAA/2023/request-for-an-advisory-opinion-on-the-obligations-of-states-with-respect-to-climate-change_c552351dce95168dc30df84493f8722c.pdf accessed 27 March 2026.

2.5. Recommendations

Through the application of Article 4 of the African Charter on Human and Peoples' Rights, States hold specific human and peoples' rights obligations to guarantee the wide enjoyment of the right to life in line with principles of human dignity. The positive obligations associated with the duty to respect, protect, promote, and fulfil the right to life safeguards the rights of individuals and peoples of the past, present, and future generations who suffer the adverse effects of climate change.

Climate mitigation measures on behalf of States are necessary to combat the pervasive nature of climate change, and the positive obligation to safeguard vulnerable populations must direct the development of the obligations of States in relation to climate change. Climate mitigation in line with the 1.5 degrees Celsius limit set by the Paris Agreement is needed globally in order to defend the rights of those most vulnerable to the adverse effects of climate change.[372]

The application of relevant case law shows that there exists an obligation on the part of States to compensate for loss, damages, and reparations through pecuniary and non-pecuniary measures.[373] The violation of a human right has an adverse effect on all beneficiaries of human rights regimes, and so the remediation of foreseeable harm on the part of the State or private actors is essential in upholding the African Charter.

African States have significant responsibilities to monitor not only the acts or omissions of the State or agents of the State, but also private actors such as international monopolies, multinational corporations, and non-State actors operating on the continent to ensure that they are fulfilling their duty of care under domestic and international law. The extension of the duty of care to corporations would hold great significance in international law, as they are some of the biggest emitters of anthropogenic greenhouse gas emissions, actively worsening the climate conditions worldwide. States can and will be held liable for foreseeable harm caused by private actors in violation of the African Charter. Proper implementation of the right to life necessitates State protection from the harm, pollution, and climate change perpetrated by private actors.[374]

2.6. Conclusion

In conclusion, the vindication of the right to life under the African Charter and other relevant law requires a mix of negative and positive State obligations to respect, protect, promote, and fulfil the rights

[372] Paris Agreement (n 313) Article 2.
[373] *LIDHO* (n 359).
[374] UN Human Rights Committee, 'General Comment No 36' (n 274).

of the beneficiaries.[375] This is an integral element of the duty of care held by States, reinforcing the inviolable nature of the right to life and human dignity.

The right to life must be interpreted within the context of the threats posed by climate change. International obligations regarding climate action and anthropogenic greenhouse gas emissions must inform the obligations of States in relation to climate change.[376] As parties to these human rights regimes, States have both negative and positive obligations to protect and safeguard the rights of individuals and peoples of the past, present and future generations under the African Charter, as well as vulnerable populations.[377] The interconnected nature of human rights means that the vindication of the right to life supports all other fundamental Charter rights, such as the right to adequate food, the right to the highest attainable standard of physical and mental health, the right to adequate housing, the right to self-determination, the right to safe drinking water and sanitation, and the right to development in the context of climate change.[378] Where the adverse effects of climate change threaten the wide enjoyment of the right to life, there must be a robust and reliable system of remediation addressing loss, damages, and reparation for States and private actors to engage in.[379]

Thus, the direct and indirect adverse effects of climate change represent a threat to the wide enjoyment of the right to life, which States and private actors have both positive and negative obligations to protect and safeguard the rights of individuals and peoples' of past, present, and future generations and vulnerable populations under the African Charter and other relevant domestic and international law.

[375] *SERAC* (n 232).
[376] Ibid.
[377] Ibid.
[378] UNHRC, 'Resolution 41/21' (n 227).
[379] *SERAC* (n 232).

Chapter III - The Right to Development and the Obligations of African States

Article 22 of the African Charter in the Context of Climate Change

Macy Spence

3.1. Introduction

The continent of Africa currently faces a climate crisis of profound and accelerating consequences. Despite marginally contributing to the global greenhouse gas emissions on the planet, African states and their peoples bear a disproportionate share of climate change's most devastating impacts, such as rising temperatures, prolonged droughts, desertification, coastal flooding, and the progressive destruction of ecosystems, which millions of people are dependent upon for not only their livelihoods and food security, but also their cultural survival.[380] However, these are not mere environmental phenomena. They are also human rights crises, which are threatening the capacity of African peoples to determine, pursue, and benefit from their own development, which is a right solemnly guaranteed under Article 22 of the African Charter on Human and Peoples' Rights.[381]

It is on this notion that the Pan African Lawyers Union (PALU) has placed before this Honourable Court a request for an advisory opinion concerning the human and peoples' rights obligations of African States in the context of climate change.[382] PALU respectfully places before this Honourable Court the following issues for determination: whether this Court can be seized with the question of African States' human and peoples' rights obligations in the context of climate change; whether this Court can interpret and lay down applicable custom and treaty law regarding state parties' obligations in the context of climate change; what, if any, are the applicable human rights obligations of states to facilitate a just, transparent, equitable and accountable transition in the context of climate change in Africa; and what, if any, are the applicable obligations of African states in the implementation of adaptation, resilience and mitigation measures in response to climate change.[383] This essay analyses Article 22 of the African Charter on Human and Peoples' Rights, which provides a vital and underexplored legal basis for answering each of these questions.

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[380] IPCC, 'AR6 Full Report - Climate Change 2022: Impacts, Adaptation and Vulnerability' (2022) 1289ff https://www.ipcc.ch/report/ar6/wg2/downloads/report/IPCC_AR6_WGII_FullReport.pdf accessed 27 March 2026.

[381] Dina Lupin, 'Looking for an African Perspective on the ICJ's Climate Advisory Opinion' in Maria A Tigre, Maxim Bönnemann and Antoine De Spiegeleir (eds), *The ICJ's Advisory Opinion on Climate Change* (Verfassungsbooks 2025) 319, 321; African Charter on Human and Peoples' Rights (adopted 27 June 1981, entered into force 21 October 1986) 21 ILM 58, 1520 UNTS 217 (African Charter) Art 22.

[382] PALU, 'Request for Advisory Opinion No.001 of 2025: In the matter of a request by the Pan African Lawyers Union (PALU) for an Advisory Opinion on the obligations of States with respect to the climate change crisis' (hereinafter PALU, 'Request for Climate Change Advisory Opinion') https://www.african-court.org/cpmt/details-advisory/0012025 accessed 27 March 2026.

[383] Ibid paras 93 and 94.

Article 22 provides in full:

> *'1. All peoples shall have the right to their economic, social and cultural development with due regard to their freedom and identity and in the equal enjoyment of the common heritage of mankind.*
>
> *2. States shall have the duty, individually or collectively, to ensure the exercise of the right to development.'*[384]

This Court possesses advisory jurisdiction under Rules 29(1)(b) and 82 of its Rules of Court, [385,] and the Sabin Center for Climate Change Law has affirmed in submissions directly before this Court that scientific evidence clearly establishes that human-induced climate change poses an actual, critical, and imminent threat to human rights across the continent of Africa.[386]

This essay demonstrates that climate change poses a fundamental threat to the right to development as guaranteed under Article 22, and that a coherent interpretation of that provision imposes concrete, immediately applicable obligations on African states to prevent, mitigate, and adapt to climate-related harm, whilst also ensuring that any transition to a low-carbon economy is pursued equitably, along with meaningful participation of the affected peoples.[387] Central to this argument is a normative framework rooted in two foundational principles within international law, which are the concepts of the 'Common Heritage of Mankind' and the principle of 'Common Concern of Humankind.' Article 22(1) expressly links the right to development to 'the equal enjoyment of the common heritage of mankind',[388] yet that phrase has never been authoritatively defined by the African Commission or Court.[389] This paper proposes that the climate system falls within the proper scope of that phrase and that the common concern of humankind implements the corresponding collective duty of protection. A unified framework that is vast in the context of African human rights thus provides this Court with a principled doctrinal basis for its advisory opinion. The essay proceeds through analyzing the normative framework in Section 3.2., the legal content of Article 22 in Section 3.3., the concrete impacts of climate change on development rights in Sections 3.4., state obligations in Section 3.5., and implications for the advisory opinion in Section 3.6.

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[384] African Charter (n 381) Art 22.
[385] AfCHPR, 'Rules of the Court' (adopted 25 September 2020) (the Rules) Rules 29(1)(b) and 82 https://www.african-court.org/afchpr/documents-2/ accessed 27 March 2026.
[386] Sabin Center for Climate Change Law, 'Amicus Curiae Brief' submitted to the African Court on Human and Peoples' Rights in Request for Advisory Opinion on the Obligations of States with Respect to the Climate Change Crisis (9 February 2026).
[387] Obiora C Okafor, 'A Regional Perspective: Article 22 of the African Charter on Human and Peoples' Rights' in UN Office of the High Commissioner for Human Rights (ed), *Realizing the Right to Development* (United Nations 2013) 373, 374.
[388] African Charter (n 381) Art 22(1).
[389] Rachel Murray, *The African Charter on Human and Peoples' Rights: A Commentary* (Oxford University Press 2019) 530.

3.2. Normative Framework: Bridging Common Heritage and Common Concern

3.2.1. The Common Heritage of Mankind: Origins and Core Principles

The concept of the common heritage of mankind is among the most philosophically ambitious in international law. It emerged in the mid-twentieth century in response to answering the following fundamental challenges: how should the international community regulate the access and exploitation of spaces and resources that lie beyond the territorial sovereignty of any single state, and what risks permanent damage or exclusive appropriation if left ungoverned? The answer the international community developed as a result was that spaces and resources such as these do not belong to any state, but to humanity, or rather to man or humankind, and must be managed collectively, to the benefit of all, especially including future generations.

In its most authoritative legal expression, the common heritage of mankind appears in Article 136 of UNCLOS, which declares that the deep seabed and ocean floor and its resources beyond any national jurisdiction, referred to as the Area, 'are the common heritage of mankind'.[390] The legal consequences that no state may claim sovereignty over the Area, exploitation must be conducted for the benefit of mankind as a whole, and the Area must be managed to prevent damage and ensure equitable benefit-sharing are significant.[391] The core principle is one of collective trusteeship. The international community holds these resources in trust for all humanity, including generations yet to come, as previously mentioned. The same principle appears in the law of outer space, where the Outer Space Treaty declares that exploration and use 'shall be carried out for the benefit and in the interests of all countries',[392] and the Moon Agreement expressly designates the Moon and its natural resources as 'the common heritage of mankind'.[393] Thus, the consistent characteristics of non-appropriation, collective management, equitable sharing, and intergenerational responsibility emerge.

These characteristics reflect a normative judgement that certain global commons are too fundamental to human civilisation to be left to the exclusive control of those states powerful enough to exploit them. The principle was shaped, in significant part, by the concerns of decolonizing states seeking to ensure that the end of formal colonial domination would not be replaced by economic domination through the exclusive exploitation of shared global resources. The common heritage of mankind was, from its inception, a principle with a dimension of decolonialization.
It is within this context that Article 22(1) of the African Charter assumes particular significance. The text provides that all peoples shall have the right to development 'in the equal enjoyment of the common

[390] United Nations Convention on the Law of the Sea (adopted 10 December 1982, entered into force 16 November 1994) 1833 UNTS 397 (UNCLOS), Art 136.
[391] Ibid.
[392] Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies (adopted 27 January 1967, entered into force 10 October 1967) 610 UNTS 205 (Outer Space Treaty), Art 1.
[393] Agreement Governing the Activities of States on the Moon and Other Celestial Bodies (adopted 5 December 1979, entered into force 11 July 1984) 1363 UNTS 3 (Moon Agreement), Art 11.

heritage of mankind'. As Rachel Murray has observed in the leading commentary on the African Charter, this concept 'has a long history, emerging in the 1950s', and encapsulates the idea that natural resources 'are at risk of depletion through uncontrolled exploitation and that the legal regime of the spaces in which they are found needs to be redefined so that they benefit both countries currently lacking the material means to gain access to them and future generations too'.[394] Crucially, however, neither the African Commission nor the African Court has ever authoritatively defined what 'common heritage of mankind' means within the specific context of Article 22.[395] This definitional gap is an invitation to this Court to give the concept contemporary legal content, informed by the full body of international law from which the Charter explicitly draws under Articles 60 and 61.

3.2.2. Climate Change as a Common Concern of Humankind

Alongside the doctrine of common heritage, international environmental law has developed the parallel but distinct concept that the principle of certain global environmental challenges constitutes a 'common concern of humankind'. Rather than asserting collective ownership of a shared resource, this principle establishes collective responsibility for addressing a shared threat. It does not displace state sovereignty; however, it does discipline its exercise.

The earliest formal invocation of this principle in the climate context is within the United Nations General Assembly (UNGA) Resolution 43/53 of 1988, which declared the protection of the global climate for present and future generations 'a common concern of mankind'.[396] The principle was subsequently codified in the preamble to the United Nations Framework Convention on Climate Change (UNFCCC), which affirms that 'change in the Earth's climate and its adverse effects are a common concern of humankind'.[397] Similarly, the Convention on Biological Diversity (CBD) declares that the conservation of biological diversity is 'a common concern of humankind'.[398] The International Law Commission (ILC) has further elaborated on this principle in its Draft Guidelines on the Protection of the Atmosphere, affirming that atmospheric protection 'is a pressing concern of the international community as a whole' and creates obligations of collective responsibility and due diligence.[399] The Paris Agreement reinforces this position, establishing in Article 2 the collective obligation of all parties to limit global average temperature increases.[400]

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[394] Murray, *The African Charter: A Commentary* (n 389) 530, citing F Ouguergouz, *The African Charter on Human and Peoples' Rights: A Comprehensive Agenda for Human Dignity and Sustainable Democracy in Africa* (Martinus Nijhoff 2003) 321.
[395] Ibid 530.
[396] UNGA, 'Resolution 43/53' (6 December 1988) UN Doc A/RES/43/53.
[397] United Nations Framework Convention on Climate Change (adopted 9 May 1992, entered into force 21 March 1994) 1771 UNTS 107 (UNFCCC), preamble.
[398] Convention on Biological Diversity (adopted 5 June 1992, entered into force 29 December 1993) 1760 UNTS 79 (CBD), preamble.
[399] ILC, 'Draft Guidelines on Protection of the Atmosphere with Commentaries' (2021) UN Doc A/76/10, guideline 3 and commentary para 2.
[400] Paris Agreement to the United Nations Framework Convention on Climate Change (adopted 12 December 2015, entered into force 4 November 2016) TIAS No 16-1104, Art 2.

3.2.3. Bridging the Two Concepts: A Unified Framework

This essay proposes that the ideas of common heritage and common concern, while distinct in their origins, are best understood as complementary components of a unified normative framework directly relevant to Article 22. No court or tribunal has yet formally unified these two doctrines. This advisory opinion presents a significant opportunity to do so. The common heritage of mankind identifies what the climate system *is*, which is a shared global resource belonging to all peoples that cannot be appropriated or destroyed by any single state for its exclusive benefit. The common concern of humankind then identifies what states *must do*, which is to collectively assume responsibility for its protection, cooperate to prevent its degradation, and ensure that their domestic conduct does not undermine the shared interest. The two doctrines are, respectively, the ontological and deontological dimensions of a single normative framework.

This unified proposition is supported by the drafting history of Article 22. As Murray records, Leopold Sedar Senghor, President of Senegal, articulated in his 1979 Dakar address: '*We wanted to lay emphasis on the right to development and the other rights which need the solidarity of our states to be fully met: the right to peace and security, the right to a healthy environment, the right to participate in the equitable share of the common heritage of mankind, the right to enjoy a fair international economic order and, finally, the right to natural wealth and resources.*'[401] This address places common heritage explicitly within a framework of collective solidarity and equitable participation, based on an active principle of equitable sharing and premised on the idea that all peoples have a right to benefit from, and a duty to protect, the shared endowments of humanity.

There is no doubt that the climate system belongs within this framework. No people or state can develop without a stable climate. It is a resource that lies substantially beyond national jurisdiction, that cannot be claimed or owned by any state, and that is being degraded by conduct of states acting in their short-term individual interests at the expense of humanity as a whole, and of the peoples of Africa in particular, who have contributed least to the problem, yet stand to suffer most from its consequences. The decolonial dimension of this analysis deserves emphasis. The doctrine of the common heritage was shaped significantly in part by newly independent African and developing states seeking to prevent the deep seabed's resources from being claimed by technologically advanced states. The same logic now applies with renewed force. The historical accidents of industrialization have concentrated responsibility for climate change in a small number of wealthy states, while concentrating its consequences in African and other developing states. The principle of common heritage, read in conjunction with common concern, provides the legal basis for insisting that this inequity be addressed as a matter of right.

[401] Murray, *The African Charter: A Commentary* (n 389) 522–523, citing Address of Leopold Sédar Senghor at the Meeting of African Experts, Dakar, 28 November - 8 December 1979, reprinted in Issa G Shivji*, The Concept of Human Rights in Africa* (Codesria 1989) 121.

3.2.4. Relevance to Article 22 and the Right to Development

The unified framework is directly relevant to Article 22 for three interconnected reasons. Firstly, Article 22(1) expressly incorporates the common heritage of mankind as a constitutive element of the right to development. If the climate system falls within the scope of common heritage, as this paper submits that it does, then its degradation directly engages Article 22. States that contribute to climate change are not merely causing environmental harm; they are undermining the conditions under which African peoples are entitled, as a matter of right, to pursue their development.

Secondly, Articles 60 and 61 of the Charter require the Commission and Court to draw from international law and other international instruments in interpreting Charter rights.[402] The doctrines of common heritage and common concern, as developed across UNCLOS, the Outer Space Treaty, the Moon Agreement, the UNFCCC, the CBD, and the ILC's atmospheric guidelines, are precisely the international norms that must inform the Charter's interpretation. This Court is not being asked to create new law, but rather it is being asked to give Article 22 the interpretation it already demands.

Thirdly, the unified framework provides this Court with a principled basis upon which to articulate the climate obligations of African states and to contribute to the growing body of international climate jurisprudence alongside the ICJ, the Inter-American Court, and the International Tribunal of the Law of the Sea (ITLOS). The African Commission on Human and Peoples' Rights (ACHPR) has already affirmed in Resolution 417 of 2019 that Articles 22 and 24 directly engage state obligations in the context of climate change, calling upon states to fully integrate climate considerations and human rights consequences into their development plans.[403]

3.3. The Right to Development Under Article 22 of the African Charter

3.3.1. Legal Content, Collective Nature, and Jurisprudence

Article 22 of the African Charter provides that 'all peoples shall have the right to their economic, social and cultural development with due regard to their freedom and identity and in the equal enjoyment of the common heritage of mankind' and that 'states shall have the duty, individually or collectively, to ensure the exercise of the right to development'.[404] It is, as Okafor has observed, one of the few hard laws that guarantees a right to development in international human rights law.[405]

[402] African Charter (n 381) Arts 60-61.
[403] ACHPR, 'Resolution on the human rights impacts of extreme weather in Eastern and Southern Africa due to climate change' ACHPR/Res 417 (LXIV) 2019 https://achpr.au.int/en/adopted-resolutions/417-resolution-human-rights-impacts-extreme-weather-eastern-and-souther accessed 27 March 2026.
[404] African Charter (n 381) art 22.
[405] Okafor, 'A Regional Perspective' (n 387) 373.

The African origins of the right to development are directly relevant to its interpretation. The concept was first articulated as a legal right by Keba M'Baye, Chief Justice of the Supreme Court of Senegal, who argued that every human being and every people collectively has an inalienable right 'to live and to live better'.[406] Mohammed Bedjaoui further described the right to development as the alpha and omega of human rights.[407] These African jurists were the intellectual architects of the right that found expression in Article 22 and subsequently in the 1986 UN Declaration on the Right to Development. The right to development is, in a profound sense, an African contribution to international human rights law.

The most legally distinctive feature of Article 22 is that it is a *people's* right, though collective in nature, held by peoples rather than individuals or states acting in their own interest. As Murray notes, the African Commission has confirmed that Article 22 cannot be interpreted as 'solely and exclusively collective',[408] but the collective dimension is primary. The African Commission in Resolution 586 of 2024 formally recognised the need to develop a General Comment on the right to development, acknowledging that its content requires further authoritative elaboration considering contemporary challenges.[409] That resolution confirms the timeliness and necessity of the present advisory opinion. As to the nature of the obligation, the African Charter does not attach the language of progressive realisation to Article 22. The obligations are immediately applicable.[410] States must do all that is within their available resources to advance the right to development and must refrain from conduct that actively undermines it. Climate inaction, and, more precisely, conduct that accelerates climate change, constitutes such conduct.

The most authoritative jurisprudence on Article 22 is the *Endorois* case, in which the African Commission found its first violation of the provision.[411] The Commission held that Kenya bore the burden of 'creating conditions favourable to a people's development',[412] and developed a two-part test stating that the right is both constitutive and instrumental. A violation of either the procedural or substantive element constitutes a violation of Article 22. The Commission identified the following five criteria that development must satisfy: it must be equitable, non-discriminatory, participatory, accountable, and transparent.[413] This five-part test is directly applicable to climate governance. Climate

[406] Murray, *The African Charter: A Commentary* (n 389) 522, citing Kéba M'Baye, 'Le droit au développement comme un droit de l'homme' (1972) 5 Revue internationale des droits de l'homme 505.
[407] Mohammed Bedjaoui, 'The Right to Development' in Mohammed Bedjaoui (ed), *International Law: Achievements and Prospects* (Martinus Nijhoff and UNESCO 1991) 1178.
[408] Murray, *The African Charter: A Commentary* (n 389) 523, citing *Open Society Justice Initiative v Côte d'Ivoire* ACHPR Comm No 318/06 (27 May 2016) para 183.
[409] ACHPR, 'Resolution on the Preparation of a General Comment on the Right to Development in Africa' ACHPR/Res.586(LXXIX)2024 (10 June 2024).
[410] Okafor, 'A Regional Perspective' (n 387) 381-382.
[411] *Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v Kenya* (2009) ACHPR Comm No 276/2003 (*Endorois*).
[412] Ibid para 298.
[413] Ibid para 277.

policy that excludes affected people, places disproportionate burdens on vulnerable people and their communities, or lacks transparency and accountability violates Article 22.

The *SERAC v Nigeria* case, while decided primarily under Articles 16 and 24, affirmed that development activities, such as those involving natural resource exploitation, must be conducted in a manner that is compatible with the rights of affected peoples, and that states bear responsibility for ensuring that private actors do not violate those rights.[414] The *Ogiek* case before the African Court further confirmed the collective dimension of peoples' rights and the protection of cultural continuity, land rights, and participation in development decisions under the Charter's peoples' rights framework.[415]

3.3.2. Economic, Social, Cultural, and Participatory Dimensions

Article 22 expressly disaggregates development into economic, social, and cultural components, each of which is directly threatened by climate change. The economic dimension encompasses the ability of people to pursue economic advancement, benefit from their natural and productive resources, and achieve material improvements in living standards, thus including the agricultural and livelihood systems upon which many African populations depend. As Okafor has observed, the United Nations Development Programme's (UNDP) conception of human development as 'the creation of an environment in which people can develop their full potential and lead productive, creative lives' captures the breadth of what Article 22 protects.[416]

The social dimension encompasses access to services, community stability, and the social structures through which development is experienced and sustained. The cultural dimension encompasses the protection of cultural identity, traditional practices, and intangible cultural heritage. Article 22 requires development to occur 'with due regard to' the freedom and identity of peoples, which is a phrase that places cultural integrity at the heart of the right. The UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage defines intangible cultural heritage to include oral traditions, social practices, rituals, knowledge about nature, and traditional craftsmanship,[417] all of which are threatened by climate change in the African context.

Participation is not merely a desirable feature of development, but rather it is a legal requirement under Article 22. The African Commission in *Endorois* held that states must consult affected peoples before embarking on development activities that affect their lives and lands.[418] Climate policy decisions, such

[414] *Social and Economic Rights Action Center (SERAC) and Center for Economic and Social Rights (CESR) v Nigeria* (26 October 2001) ACHPR Communication 155/96 (2001) AHRLR 60 (*SERAC*), paras 54–55.
[415] *African Commission on Human and Peoples' Rights v Kenya* (2017) 2 AfCLR 9 (*Ogiek*); AfCHPR, 'Application 006/2012' https://www.african-court.org/cpmt/details-case/0062012 accessed 27 March 2026.
[416] Okafor, 'A Regional Perspective' (n 387) 375.
[417] Convention for the Safeguarding of the Intangible Cultural Heritage (adopted 17 October 2003, entered into force 20 April 2006) 2368 UNTS 1, Art 2.
[418] *Endorois* (n 411) para 277.

as mitigation targets, adaptation plans, energy transition strategies, and the allocation of climate finance, are development decisions of the most fundamental kind. Article 22 requires that the peoples most affected by these decisions participate meaningfully in making them. Read together with the International Covenant on Economic, Social, and Cultural Rights (ICESCR) framework of obligations to respect, protect, and fulfil,[419] and the African Commission's Working Group on Economic, Social and Cultural Rights,[420] Article 22 emerges as an immediately applicable, justiciable right with rich procedural as well as substantive content.

3.3.3. Climate Change and the Economic Dimension of Development

While this essay focuses on the following three most structurally significant economic impacts of climate change: agricultural vulnerability, food insecurity, and infrastructure loss, it acknowledges a broader range of economic threats, including disruption to trade, energy systems, water resources, and labour productivity. Each of the following subsections demonstrates the direct connection between climate impacts and the economic dimension of Article 22.[421]

3.3.4. Agricultural Vulnerability and Rural Livelihoods

Agriculture is the foundation of economic development across much of Africa, employing approximately 60 per cent of the continent's workforce and accounting for a significant proportion of GDP in many states. It is also the sector most acutely exposed to climate change. The Intergovernmental Panel on Climate Change's (IPCC) Sixth Assessment Report documents that rising temperatures, increasingly erratic rainfall, prolonged droughts, and shifting growing seasons are already reducing agricultural productivity across sub-Saharan Africa.[422] Projections indicate that crop yields for staple crops, such as maize, sorghum, and millet, may decline by up to 20 per cent by mid-century under moderate warming scenarios,[423] with the most severe impacts concentrated in the most agriculturally dependent economies.

The implications for Article 22 are direct. Rural livelihoods are among the most important means through which African peoples exercise their right to economic development. Where climate change destroys the agricultural basis of those livelihoods, including through drought, flooding, or the degradation of soil and water resources, it directly undermines the economic dimension of development

[419] International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3 (ICESCR).
[420] ACHPR, 'Resolution on Economic, Social and Cultural Rights in Africa' ACHPR/Res.73(XXXVI)04 (7 December 2004).
[421] IPCC, 'AR6 Full Report' (n 380) Summary for Policymakers, B.4.
[422] Ibid Chapter 13 (Africa), 13.5.1; Sabin Center, 'Amicus Brief' (n 386) Part I.
[423] IPCC, 'AR6 Full Report' (n 380) Chapter 13, 13.5.2 and Chapter 5 (Food, Fibre and Other Ecosystem Products).

that Article 22 protects. The Sabin Center has affirmed before this Court that climate change already constitutes an actual threat to livelihoods and subsistence across the African continent.[424]

3.3.5. Food Security and Economic Stability

The agricultural vulnerability described above translates directly into food insecurity, which itself undermines economic development at every level. The IPCC has found that climate change is increasing the frequency and severity of food crises across Africa, with droughts, floods, and extreme heat events disrupting food production, supply chains, and access to markets.[425] Food insecurity diverts household and government resources from productive investment in development, perpetuates intergenerational poverty, and creates economic instability that undermines the long-term development trajectory of affected states. The connection between food security and the economic dimension of Article 22 is not merely theoretical, but rather it is the lived reality of hundreds of millions of Africans whose right to development depends upon agricultural systems that climate change is systematically threatening.

3.3.6. Infrastructure and Economic Loss

Beyond agriculture, climate change imposes substantial economic losses through the destruction of infrastructure and the disruption of economic activity. The IPCC documents that extreme weather events, including cyclones, floods, and storm surges, continuously cause billions of dollars in infrastructure damage across Africa annually.[426] As documented by the African Commission in Resolution 417, events such as Cyclone Idai resulted in thousands of deaths, hundreds of thousands of displacements, and the destruction of critical infrastructure across Mozambique, Malawi, and Zimbabwe.[427] Infrastructure damage to roads, ports, energy systems, and water supply networks disrupts economic activity, deters investment, and undermines the productive capacity upon which long-term development depends. These are not merely isolated events, but rather they are illustrating an accelerating pattern that will intensify with every increment of warming, making the protection of the economic dimension of Article 22 an increasingly urgent legal imperative.

3.4. Social and Cultural Impacts of Climate Change on Development

In addition to its economic impacts, climate change poses severe threats to the social and cultural dimensions of the right to development under Article 22. This section addresses the three following interconnected dimensions: community displacement, cultural heritage loss, and social cohesion. As with Section III, a broader range of social and cultural impacts exists, also including effects on health

[424] Sabin Center, 'Amicus Brief' (n 386) Part II.
[425] IPCC, 'AR6 Full Report' (n 380) Chapter 5; Sabin Center, 'Amicus Brief' (n 386) Part II.
[426] IPCC, 'AR6 Full Report' (n 380) Chapter 13, 13.6.1.
[427] ACHPR, 'Resolution 417' (n 403), preamble and operative para 1.

systems, education, and gender equality; however, those are addressed by fellow colleagues in the present advisory opinion. This section focuses on the structural, social, and cultural impacts most directly engaged by Article 22.[428]

3.4.1. Community Displacement and Climate Migration

Climate change is already a significant driver of internal displacement across Africa. The Africa Climate Mobility Report, produced by a collaboration between the African Union Commission, UNDP, UNFCCC, IOM, and the World Bank, projects that climate impacts could force between 113 and 216 million people to move within their own countries across the continent by 2050, driven primarily by the degradation of rain-fed agricultural land, water scarcity, and sea-level rise.[429] This displacement is not merely an environmental phenomenon. Instead, it is a development crisis. When communities are forced to abandon their lands, livelihoods, and social structures, the social dimension of development is directly undermined.

The Kampala Convention obliges states parties to take measures to protect and assist internally displaced persons, including those displaced by climate-related disasters.[430] The African Commission in Resolution 417 explicitly invoked the Kampala Convention in the context of climate-induced displacement, confirming that the Charter framework already engages state obligations in relation to climate mobility. Displacement disrupts livelihoods, undermines access to services, erodes social capital, and severs the connection between peoples and the lands upon which their economic and cultural development depends, each of which constitutes an interference with the social dimension of Article 22.

3.4.2. Cultural Heritage and Traditional Livelihoods

Climate change threatens the cultural dimension of Article 22 by destroying the environmental conditions upon which traditional practices, knowledge systems, and cultural identities depend. Many African cultural practices, including pastoralism, traditional farming, fishing, and ritual observances tied to seasonal cycles and specific landscapes, are directly dependent on climatic and ecological conditions that are being rapidly and irreversibly altered.[431] As aforementioned, the Convention for the Safeguarding of the Intangible Cultural Heritage recognises that intangible cultural heritage is

[428] Africa Climate Mobility Initiative, 'African Shifts – The Africa Climate Mobility Report – Addressing Climate-Forced Migration and Displacement' (2023) Executive Summary https://environmentalmigration.iom.int/sites/g/files/tmzbdl1411/files/documents/2023-03/African%20Shifts%20Report.pdf accessed 27 March 2026.
[429] Ibid.
[430] African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention) (adopted 23 October 2009, entered into force 6 December 2012) 3014 UNTS I-52375, Art 5(4).
[431] Africa Climate Mobility Initiative, 'African Shifts' (n 428) 54–62.

inseparable from its natural and social environment,[432] and its degradation therefore constitutes a threat to the cultural dimension of development.

The sea-level rise presents an acute cultural threat to coastal communities across the continent. The Africa Climate Mobility Report projects that sea-level rise and increased coastal flooding will force the abandonment of low-lying coastal areas, displacing communities that have inhabited and developed their cultures in those spaces for generations.[433] The loss of ancestral lands is not merely an economic loss, but rather it is a cultural one. Article 22's requirement that development occur "with due regard to" the freedom and identity of peoples imposes on states a duty to protect the cultural conditions of development, including the environmental foundations upon which cultural identity rests.[434]

3.4.3. Social Cohesion and Community Stability

Climate change also threatens the social cohesion and community stability upon which development depends. As livelihoods become increasingly precarious with competition over land, water, and other natural resources intensifying, social structures that are essential to sustainable development are destabilized. The IPCC documents the relationship between climate stress and increased resource competition across Africa,[435] and the Africa Climate Mobility Report confirms that climate-induced mobility increases contact and potential for conflict in border areas due to urban areas accepting, integrating, and providing resources for climate migrants.[436]

Stable communities are necessary for development, specifically for the accumulation of social capital, the maintenance of institutions, the transmission of knowledge, and the exercise of participation rights under Article 22. However, climate change systematically erodes that stability. The UN Committee on Economic, Social and Cultural Rights (CESCR) has recognised that environmental degradation threatens the social foundations of ESC rights more broadly,[437] and these social impacts, taken together with the economic and cultural impacts described in this and the preceding section, make the case that climate change is not a peripheral concern for Article 22, but rather it is a direct and systemic threat to the right in its entirety.

[432] Convention for the Safeguarding of the Intangible Cultural Heritage (n 417) Art 2.
[433] Africa Climate Mobility Initiative, 'African Shifts' (n 428) 116.
[434] ACHPR, 'Resolution 417' (n 403) preamble; African Charter (n 381) Art 22(1).
[435] IPCC (n 1) Chapter 13, 13.7.
[436] Africa Climate Mobility Initiative, 'African Shifts' (n 428) 98–116.
[437] CESCR, 'General Comment No 15: The Right to Water' (20 January 2003) UN Doc E/C.12/2002/11, para 1.

3.5. Human Rights Obligations of African States in Addressing Climate Change

Having established the normative framework in Section II, the legal content of Article 22 in Section III, and the concrete impacts of climate change on development rights in Section IV, this essay now articulates the specific human rights obligations of African states that follow from this analysis. These obligations arise from Article 22, considering the Charter as a whole, the instruments discussed in Section II, and the jurisprudence of the African Commission and Court.[438]

3.5.1. Obligation to Prevent Environmental Harm and Pursue Mitigation

States bear an obligation under Article 22, read in conjunction with the principle of common concern of humankind and the ILC's Draft Guidelines on the Protection of the Atmosphere, to take measures to prevent significant harm to the climate system. This obligation of due diligence requires states to regulate both their own emissions and the conduct of private actors operating within their jurisdiction.[439] The Paris Agreement operationalises this obligation by requiring all states to submit and progressively strengthen nationally determined contributions aimed at limiting global warming to 1.5 degrees Celsius above pre-industrial levels.[440]

As Boshoff and Damtew have argued, the ICJ's 2025 advisory opinion on climate change established that failure to take appropriate action to protect the climate system, including through fossil fuel production, consumption, and the granting of exploration licenses, may constitute an internationally wrongful act.[441] African states, while bearing a disproportionately small share of responsibility for historic emissions, are not exempt from this obligation. The principle of common but differentiated responsibilities and respective capabilities, recognised in the UNFCCC and Paris Agreement, means that African states must contribute to the collective mitigation effort in accordance with their capabilities and national circumstances. The right to development under Article 22 cannot be invoked to excuse climate inaction, since it is precisely that right which is threatened by continued warming.

3.5.2. Obligations of Adaptation and Resilience

Even with ambitious mitigation, African states will need to make substantial investments in adaptation to protect development rights from the impacts of climate change that are already locked in. The Sabin Center has affirmed before this Court that even under optimistic emissions scenarios, significant adaptation investment is necessary to protect human rights.[442] The African Commission in Resolution

[438] African Charter (n 381) Art 22(2); *SERAC* (n 414) para 57.
[439] ILC Draft Guidelines on Protection of the ILC, 'Draft Guidelines on Protection of the Atmosphere' (n 399) Guideline 3; UNFCCC (n 397) Arts 3(1) and 4(2).
[440] Paris Agreement (n 400) Art 4(2).
[441] Elsabé Boshoff and Samrawit G Damtew, 'Can Africa Still Drill? What the ICJ Climate Opinion Means for Oil and Gas Exploration in Africa' in Maria A Tigre, Maxim Bönnemann and Antoine De Spiegeleir (eds), *The ICJ's Advisory Opinion on Climate Change* (Verfassungsbooks 2025) 235, 237-238.
[442] Sabin Center, 'Amicus Brief' (n 386) Part III; Paris Agreement (n 400) Arts 7 and 9.

417 has called upon states to ensure that contingency plans and emergency measures are in place to increase preparedness for extreme weather events, and to integrate climate and human rights considerations fully into development plans.[443]

Adaptation measures that serve Article 22 include investment in climate-resilient agriculture, water security infrastructure, early warning systems for extreme weather events, and social protection programmes for climate-vulnerable communities. Adaptation is not merely a policy preference; it is a human rights obligation. The failure to take reasonably available adaptation measures that would have protected people from foreseeable climate harm constitutes a violation of the state's duty under Article 22(2) to ensure the exercise of the right to development.

3.5.3. Procedural Obligations: Participation, Transparency, and Access to Remedy

The five-part test from *Endorois* imposes procedural as well as substantive obligations in the climate context. States must ensure that the peoples most affected by climate change, as well as by the policies designed to address it, participate meaningfully in the design and implementation of those policies.[444] This requires, at minimum, that states establish accessible mechanisms for public participation in climate planning, ensure transparency in emissions data and climate finance flows, and provide access to effective remedies for those whose development rights have been violated by climate inaction or by climate policies that impose disproportionate burdens.

The advisory opinion function of this Court is itself a form of procedural accountability, as its Rules require that opinions be delivered publicly and delivered to all Member States and the Commission,[445] thus reinforcing the obligation of states to treat climate governance as a matter of public accountability and not merely as administrative discretion.

3.5.4. Obligations for a Just and Equitable Transition

The transition to a low-carbon economy creates its own human rights challenges that Article 22 requires states to address. A just and equitable transition, as explicitly requested in PALU's advisory opinion questions, must ensure that the burdens of the transition are not disproportionately borne by those who have contributed least to the climate crisis and who are most economically vulnerable.[446] This includes workers in fossil fuel industries, rural communities dependent on land-based livelihoods, and indigenous peoples whose lands may be affected by renewable energy projects.

[443] ACHPR, 'Resolution 417' (n 403) paras 8 and 9.
[444] *Endorois* (n 411) para 277; ACHPR, 'Resolution 417' (n 403) para 10.
[445] African Court Rules of Court (n 385) Rule 86.
[446] Working Group Supporting the African Application for an Advisory Opinion, 'An African Advisory Opinion on State Obligations in the Context of Climate Change: What Can We Hope For?' (2024) Part 2, Section 5.

Boshoff and Damtew have argued that while African states face legitimate development imperatives, including energy poverty affecting half a billion Africans, the obligation to transition away from fossil fuel dependence applies to all states, and that Common But Differentiated Responsibilities and Respective Capabilities (CBDR-RC) does not exempt any state from taking measures necessary to fulfil climate obligations consistent with their capabilities.[447] The just transition obligation under Article 22 requires states to pursue low-carbon development pathways that expand access to clean energy, protect affected workers and communities, ensure equitable benefit-sharing from renewable energy projects, and maintain transparency and accountability throughout the transition process.[448]

3.5.5. Collective Obligations and International Cooperation

Article 22(2) provides not only that states have duties individually but also *collectively* to ensure the exercise of the right to development. This collective dimension is of particular importance in the climate context. Climate change is, by its nature, a collective problem requiring collective solutions. No state can address it alone. Article 22(2), read in conjunction with the principle of common concern of humankind, imposes obligations of international cooperation, specifically regarding climate finance, technology transfer, capacity building, and the provision of loss and damage compensation, that are essential to the realisation of development rights in Africa.

The African Commission in Resolution 586 of 2024 recognised the need to elaborate on the content of the right to development, and the preparation of a General Comment on Article 22 is underway.[449] This advisory opinion will form an essential part of the normative landscape within which that General Comment is developed. Together, they represent the African human rights system's most significant engagement with the right to development in the climate era.

3.6. Implications for the Advisory Opinion

The analysis in this paper supports the following conclusions for the advisory opinion this Court is invited to issue.[450]

Firstly, this Court may interpret Article 22 as imposing obligations on African states regarding climate change. The right to development, as a justiciable, immediately applicable peoples' right under the African Charter, is directly threatened by climate change and directly engaged by climate governance. The normative framework of the common heritage and the common concern provides the doctrinal

[447] Boshoff and Damtew, 'Can Africa Still Drill?' (n 441) 239-240.
[448] ACHPR, 'Resolution 417' (n 403) para 10; Paris Agreement (n 400) preamble.
[449] ACHPR, 'Resolution 586' (n 409).
[450] ACHPR, 'Resolution 417' (n 403) para 12; Sabin Center, 'Amicus Brief' (n 386) Part III.

foundation for this interpretation, anchored in the Charter's own text and in the body of international law from which Articles 60 and 61 require the Court to draw.

Secondly, this Court may articulate that the obligations of African states include the following: the obligation to take measures of due diligence in relation to greenhouse gas mitigation, consistent with common but differentiated responsibilities; the obligation to adopt and implement adaptation measures proportionate to foreseeable climate risks; the obligation to ensure meaningful participation of affected peoples in climate governance; and the obligation to pursue a just and equitable transition that does not impose disproportionate burdens on vulnerable communities.

Thirdly, by grounding its advisory opinion in the common heritage dimension of Article 22, a dimension of the provision that has never been authoritatively interpreted, this Court can make a uniquely African contribution to the growing body of international climate jurisprudence. The unified framework of the common heritage and the common concern proposed in Section II positions Article 22 not merely as a regional human rights provision but as a bridge between international environmental law and the human rights of peoples, thus creating a bridge that is urgently needed as the international community grapples with the legal consequences of the climate crisis.[451]

The African Commission's commitment to prepare a study on climate change and human rights in Africa confirms that the African human rights system is ready and willing to engage with these obligations.[452] This advisory opinion is the opportunity to translate that willingness into an authoritative legal guidance that will shape the obligations of African states, the expectations of their peoples, and the contribution of Africa to the global climate justice project.

3.7. Conclusion

The climate crisis poses an existential threat to the right to development of African peoples as guaranteed under Article 22 of the African Charter. This paper has argued that a principled interpretation of Article 22, as depicted through the unified normative framework of the common heritage of mankind and the common concern of humankind, establishes that the climate system is a shared global resource whose protection is a collective obligation of all states, and that its degradation directly violates the right to development of the peoples who depend upon it.

The legal context of Article 22, as elaborated through African Commission jurisprudence in *Endorois*, *SERAC*, and *Ogiek*, confirms that the right is immediately applicable, collectively held, and encompasses economic, social, and cultural dimensions, each of which is systematically threatened by climate change. The state obligations that flow from this analysis, such as in mitigation, adaptation,

[451] Okafor, 'A Regional Perspective' (n 387) 381-382; Murray, *The African Charter: A Commentary* (n 389) 530.
[452] ACHPR, 'Resolution 417' (n 403) para 12.

procedural accountability, just transition, and international cooperation, are legally grounded, practically achievable, and urgently necessary.

The novel contribution of this essay, utilizing the unification of common heritage and common concern as a main framework for interpreting Article 22 in the climate context, provides this Court with the doctrinal basis for an advisory opinion that is both legally authoritative and historically significant. Africa, as the continent that contributed most to the intellectual foundations of the right to development and yet that suffers the most from the climate crisis, is uniquely positioned to lead the world in articulating what those rights demand in the era of climate change.[453]

This advisory opinion represents an opportunity for this Court to give the common heritage of mankind its contemporary and urgently required meaning as the foundation of a collective duty to protect the global climate system upon which the right to development of all African peoples depends.

[453] Lupin, 'Looking for an African Perspective' (n 381) 324-325; Boshoff and Damtew, 'Can Africa Still Drill?' (n 441) 238-239.

Chapter IV - Obligations regarding vulnerable Groups

A focus on children, present and future generations, women, indigenous communities and the elderly

Hope Jordan

4.1. Introduction

Africa 'is home to some 30 percent of the world's mineral reserves, eight per cent of the world's natural gas and 12 per cent of the world's oil reserves'.[454] As such, Africa's natural wealth resource parallels to the 'pre-existing vulnerabilities, such as widespread poverty, inadequate infrastructure etc., which exacerbates the region's susceptibility to climate shocks.'[455] These socio-economic challenges stem from colonisation but were compounded by poor fiscal and political management, corruption, exploitation, armed conflicts and climate change. Climate change is an environmental phenomenon which causes devastating weather events and environmental degradation. Africa 'contributes only 2% to 3% of the global greenhouse gas emissions yet suffers disproportionately due to the economic, social, and environmental factors associated with low mitigative and adaptive climate change action plans.'[456] It is known that 'climate change deepens injustices among and within societies, [and thus] [l]ow-income and vulnerable communities are more susceptible to its effects, [with] limited access to resources.'[457] There is therefore a clear intersection with these pre-existing issues and vulnerable people, which increases because of climate change. Consequently, African nations must harness their resource wealth more assiduously, to promote and protect vulnerable people.

This Chapter addresses States parties' obligations under the African Human and People's Rights Charter[458] (African Charter) to protect vulnerable communities from the impact of climate change. There will be a focus on children, present and future generations, women, indigenous communities and the elderly because they are often referred to in climate change literature as the groups most impacted. Further, preliminary research showed that there are more data and law pertaining to these specific groups in Africa in relation to climate change. This allows for a comprehensive analysis and discussion surrounding the legal parameters regionally and internationally, in response to Pan-African Lawyers Union's (PALU) request. As shown by scientific reports and cases, climate change and its adverse effects

[454] United Nations Environment Programme, 'Our Work in Africa' (Last updated: 12 February, 2024) https://www.unep.org/regions/africa/our-work-africa accessed 27 March 2026.
[455] Pan-African Lawyers Union, 'Request for Advisory Opinion No.001 of 2025: In the matter of a request by the Pan African Lawyers Union (PALU) for an Advisory Opinion on the obligations of States with respect to the climate change crisis' https://www.african-court.org/cpmt/details-advisory/0012025 accessed 27 March 2026.
[456] Ogechi Adeola, Olaniyi Evans and Innocent Ngare, 'Gender equality, climate action, and technological innovation for sustainable development in Africa: A Background' in *Gender Equality, Climate Action, and Technological Innovation for Sustainable Development in Africa*, Sustainable Development Goals Series, (Palgrave Macmillan, 2024) 7 https://doi.org/10.1007/978-3-031-40124-4 accessed 27 March 2026.
[457] Süleyman Dal, 'Africa Climate Summit 2023: Climate Change and The Social Dimension' (2024) 4 Africania 44 https://dergipark.org.tr/en/pub/africania/article/1374553 accessed 27 March 2026.
[458] African Charter on Human and Peoples' Rights (adopted 27 June 1981, entered into force 21 October 1986) 21 ILM 58, 1520 UNTS 217 (African Charter); every State has ratified except Morocco.

not only impact the right to a healthy environment, but the realization of other human rights as well. It disproportionately affects vulnerable people as will be discussed below. Quite ahead of its time, the Charter explicitly provides for the right to a 'general satisfactory environment',[459] which is a right of all peoples including the vulnerable populations. Thus, there is no need for this author to recount the literature on this right as it was extensively covered in the previous Chapter.

The aim of this Chapter is to provide critical analysis of the law to show that African State parties to the Charter have positive obligations to protect children, present and future generations women, indigenous peoples and the elderly from the deleterious effects of climate change. Positive legal obligations require States to take or adopt necessary measures to safeguard the rights of individuals, which arise from law. The methodological approaches which will be used herein are doctrinal and socio-legal. The Charter and the climate change treaties will be primary sources used to pinpoint the obligations, but other relevant local, regional and international agreements, reports, general comments and case law will be applied to illustrate harmony and for interpretive purposes. It should be emphasised that this *amicus curiae* brief aims to illustrate the African perspective through law and credible data.

The Chapter first provides a brief overview regarding the nexus between climate change and human rights, as it touches and concerns each vulnerable group. It is divided into 6 sections, but 4 core sections examine the legal rights granted to vulnerable groups and the resulting obligations imposed on State parties. Each section will have a corresponding subsection which covers the effects of climate change on each group and their rights, with reference to reports and case law from east, west, south and north Africa. In addressing the impacts, the intersectional challenges are common threads seen running through the discussion, in addition to internal displacement and migration.[460] In the last section the author uses the historic 2025 advisory opinions as interpretive tools to frame the positive measures which should be adopted by African State parties, as developing nations, in fulfilment of their Charter and treaty obligations. The Chapter concludes in confirming that States have positive legal obligations to children, present and future generations, women, indigenous people and the elderly. It notes that these obligations are rooted not only in the Charter but international law as well. Consequently, State party governments are responsible for adopting the measures required to protect vulnerable people and to preserve the environment for future generations.

[459] African Charter (n 458) Art 24.
[460] Displacement and migration because of climate disasters is a mammoth topic, and so for the purpose of this Chapter, there will be a focus on the immediate issues and dangers surrounding displacement for vulnerable people.

4.2. A Summary of the Effects of Climate Change on Human Rights

The United Nations Framework Convention on Climate Change (UNFCCC), [461] the Kyoto Protocol[462] and the Paris Agreement[463] are the principal legal instruments regulating climate change. They are intrinsically linked and impose binding legal obligations on States to protect the climate system from GHG emissions. The Paris Agreement, expressly states in its preamble that '[…] Parties should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights […] the rights of indigenous people, […] children, […] people in vulnerable situations […] empowerment of women and intergenerational equity.' African nations, as will be seen, have explicit rights provisions for vulnerable people. However, this preambular paragraph makes it clear that vulnerable groups and human rights obligations cannot be divorced from climate change.

There is also growing legal jurisprudence which supports this as well particularly within Europe with the volume of cases that submitted annually. It is the successful cases like *Urgenda Foundation v The State of the Netherlands*[464] and *Verein Klimaseniorinnen Schweiz v Switzerland*[465] ('Klimaseniorinnen') which confirm that there is a causal link between States' actions and omissions and a violation of their rights to life and respect for private and family life. Further, the studies conducted and reports compiled by the UN and their committees illustrate the impacts these disasters have on the rights of vulnerable groups. The recent 2025 Inter-American Court on Human Rights[466] ('IACtHR') and the International Court of Justice[467] ('ICJ') Advisory Opinions affirmed that climate change interferes with the enjoyment of human rights through the science and the overwhelming evidence provided by the Intergovernmental Panel on Climate Change ('IPCC'). The ICJ noted that 'the protection of the environment is a precondition for the enjoyment of human rights'[468] and it was asserted by the IACtHR that the global climate system is an essential part of the environment.[469] Thus, the IACtHR through a human rights lens, illustrated the intersection between to the right to a healthy climate and other substantive human rights such as the rights to health, life, personal integrity, water and food etc.[470] As such, they noted that

[461] United Nations Framework Convention on Climate Change (adopted 9 May 1992, entered into force 21 March 1994) 1771 UNTS 107 (UNFCCC).
[462] Kyoto Protocol to the United Nations Framework Convention on Climate Change (adopted 11 December 1997, entered into force 16 February 2005) 2303 UNTS 162.
[463] Paris Agreement to the United Nations Framework Convention on Climate Change (adopted 12 December 2015, entered into force 4 November 2016) TIAS No 16-1104.
[464] *Urgenda Foundation v The State of The Netherlands* (Supreme Court of the Netherlands, 20 December 2019) ECLI:NL:HR:2019:2007.
[465] *Verein KlimaSeniorinnen Schweiz and Others v Switzerland* App no 53600/20 (ECtHR, 9 April 2024).
[466] IACtHR, 'Advisory Opinion AO-32/25 – requested by the Republic of Chile and the Republic of Colombia' (29 May 2025) (Advisory Opinion AO-32/25) https://www.corteidh.or.cr/docs/opiniones/seriea_32_en.pdf accessed 27 March 2026.
[467] ICJ, 'Advisory Opinion on the Obligations of States in Respect of Climate Change' (23 July 2025) (Climate Change Advisory Opinion) https://cdn.climatepolicyradar.org/navigator/XAA/2023/request-for-an-advisory-opinion-on-the-obligations-of-states-with-respect-to-climate-change_c552351dce95168dc30df84493f8722c.pdf accessed 27 March 2026.
[468] Ibid para 373.
[469] IACtHR, 'Advisory Opinion AO-32/25' (n 466) para 295.
[470] Ibid paras 393-457.

differentiated measures of protection for vulnerable groups being discussed herein, are 'necessary to guarantee real equality in the enjoyment of rights in the context of the climate emergency.'[471] Whereas the ICJ recognised in particular that the rights of women, children and indigenous peoples may be impaired, but it also referred to the preamble of the Paris Agreement to capture all other vulnerable people.[472]

4.3. Rights of Children, Present and Future Generations

4.3.1. Legal Framework

A child is defined by the Convention on the Rights of a Child[473] ('CRC') and the African Charter on the Rights and Welfare of the Child[474] ('ACRWC'), as a human below the age of 18 years old. According to Article 18(3) of the Charter, States are obligated to *ensure the protection of the rights of children as stipulated in international declarations and conventions* (my emphasis). Incorporation by reference of the international conventions signifies the drafters' intention to be guided by the best available standards. Subsequently, in addition to the Charter,[475] the CRC, the Universal Declaration of Human Rights[476] ('UDHR') and the International Covenant on Civil and Political Rights[477] ('ICCPR') are international treaties which affirm right of the child to the enjoyment of the highest attainable standard of health.[478]

It is necessary to highlight that the African Commission thought it important to establish a regional framework, the ACRWC, to meet the needs and concerns of African children, particularly in relation to the socio-economic challenges and African heritage and values.[479] Most of the State obligations which arise from the ACRWC mirror that of the CRC, and in so giving effect to Article 18(3), the best interests of a child must be the primary consideration.[480] This is crucial especially because the best interests of a child will vary in regions and countries, which is especially so for African nations which are culturally diverse and developmentally at different stages. The CRC implicitly recognises the right to a healthy

[471] IACtHR, 'Advisory Opinion AO-32/25' (n 466) para 596.
[472] ICJ, 'Climate Change Advisory Opinion' (n 467) para 382.
[473] Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3 (CRC) Art. 12; It is the most widely ratified human rights treaty in history.
[474] African Charter on the Rights and Welfare of the Child (adopted 11 July 1990, entered into force 29 November 1999) OAU Doc CAB/LEG/24.9/49 (ACRWC); 51 African countries have ratified with only four exceptions, Morocco, Somalia, South Sudan, and Tunisia.
[475] African Charter (n 458) Art 16.
[476] Universal Declaration of Human Rights (adopted 10 December 1948, UNGA Res 217 A (III)) (UDHR) Art 25.
[477] International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR) Art 24(1).
[478] ICJ, 'Climate Change Advisory Opinion' (n 467) para 379.
[479] *See*, ACRWC's preamble which mentions issues such as armed conflict, hunger, natural disaster and exploitation.
[480] ACRWC (n 474) Art 4(1); CRC (n 473), Art 3.

environment[481] but explicitly recognises the right to highest attainable standard of health.[482] Whereas in the ACRWC, there is no explicit reference of either, but these are afforded to children nevertheless as they are provided for in Articles 24 and 16 of the Charter respectively. However, the ACRWC affords children, a right to survival protection and development,[483] and a general right to health and health services.[484] Further, the ACRWC expressly mentions the environment in the context of education: 'Article 11(2)(g) indicates that [t]he education of the child shall be directed to… the development of respect for the environment and natural resources.' It is observed that both frameworks show the legal commitments accepted by African states, to holistically promote and protect the welfare of children. Africa has reaffirmed the rights through adoption of the ACRWC which are consistent with the text of the CRC. As such, it is submitted that States have obligations individually and collectively, to create and strengthen, *inter alia*, the institutional frameworks, policies, accessibility and financial mechanisms that realise these rights for children considering climate change.

Intergenerational equity is recognised as a general principle of international law[485] and a cornerstone of environmental law. Its origins can be found in the 1972 Stockholm Declaration[486] which expressly proclaims that it is our responsibility protect the environment and safeguard natural resources for present and future generations.[487] That same year, the United Nations Environment Programme was founded as the UNs' first institution for the global environment. In its founding document, the UN General Assembly ('UNGA') similarly stressed the need to safeguard the environment for future generations. It was once again included in the 1992 Rio Declaration as principle 3, which shaped and promoted the concept of sustainable development. Intergenerational equity was solidified as a legal responsibility when it was drafted into UNFCCC. Article 3(1) of the UNFCCC explicitly refers to future generations by stating as a main principle that '[t]he Parties should protect the climate system for the benefit of *present and future generations* (my emphasis) of humankind on the basis of equity and in accordance with their common but differentiated responsibilities and respective capabilities.' Thereafter, the Paris Agreement also referred to intergenerational equity in its preamble as a right States should consider when addressing climate change. Thus, not only is this an international general principle but it is captured in the climate change treaties, to which the African nations are parties to, making present and future generations their responsibility, as it is legally binding.

[481] CRC (n 473) Art 24(2)(c).
[482] Ibid Art 24(1).
[483] ACRWC (n 474) Art 5.
[484] Ibid art 14.
[485]Statute of the International Court of Justice (adopted 20 June 1945, entered into force 24 October 1945) 33 UNTS 993, Art 38(1)(c).
[486] Declaration of the United Nations Conference on the Human Environment (adopted 16 June 1972) UN Doc A/CONF.48/14/Rev.1 (Stockholm Declaration).
[487] Ibid principles 1, 2.

Although the normative role of international equity has been established in international law; there are some diverging views on the definition of 'future generations'.[488] It is always mentioned after children in syntax, and has been understood to mean either a generation of people not yet born or to the 'present generation'.[489] For example, the Maastricht Principles on the Human Rights of Future Generations, defines it as 'those generations that do not yet exist but will exist and who will inherit the Earth'.[490] In alignment with that take, Brown Weiss, credited for elaborating on this concept, contexualises it as 'a generation [that] would want to receive the planet in at least as good condition as every other generation receives it and to be able to use it for its own benefit.'[491] Moreover, Daly accurately notes that '[o]ne reason for the difficulties in defining future generations is that present and future generations are not neatly divided, but rather inherently intersecting and interdependent.'[492]

The points raised by each academic hold merit but as pointed out by Slobodian, there is an increasing tendency 'to include living as well as the unborn in the definition.'[493] This may explain why the statement has been revised to 'present and future generations' as seen in the UNFCCC; to make it pellucidly clear that children of today must be included. This is further supported in the context of climate change because children will face worsening environmental conditions which will affect their mental and physiological development,[494] as will be discussed in the next section. More importantly, the principle was recognized recently in General Comment No. 26, and they also affirmed that there are two separate groups. The Committee explained that 'the rights of children who are present on Earth require immediate urgent attention, and the children constantly arriving are also entitled to the realization of their human rights to the maximum extent.'[495] Moreover, it was noted that the interests of future generations have been invoked to frame and inform state obligations in cases related to climate change and environmental protection.[496]

The African perspective on this principle is still developing through case law like most jurisdictions, but it is submitted that this is group that is catered for throughout the region based on their way of life for

[488] Aoife Daly, 'Intergenerational rights are children's rights: Upholding the right to a healthy environment through the UNCRC' (2023) 41(3) Netherlands Quarterly of Human Rights 136 https://journals.sagepub.com/doi/10.1177/09240519231195753 accessed 27 March 2026.
[489] 'In the *Neubauer* case the German Supreme Constitutional Court suggested protecting 'future generations' involved those alive ten years from the year the case was decided (2021)', ibid 137.
[490] Maastricht Principles on the Human Rights of Future Generations (2023) principle 7 https://www.rightsoffuturegenerations.org/the-principles/english accessed 27 March 2026.
[491] Edith Brown Weiss, 'Climate Change, Intergenerational Equity, and International Law' (2008) 9 Vt J Env L 622.
[492] Daly, 'Intergenerational rights are children's rights' (n 488) 137.
[493] Ibid; Lydia Slobodian, 'Defending the Future: Intergenerational Equity in Climate Litigation' (2020) 32 The Georgetown Environmental Law Review 569 https://www.law.georgetown.edu/environmental-law-review/wp-content/uploads/sites/18/2020/08/GT-GELR200020.pdf accessed 27 March 2026.
[494] Committee on the Rights of the Child, 'General Comment No 26 (2023) on children's rights and the environment with a special focus on climate change' (22 August 2023) UN Doc CRC/C/GC/26, para 24 (General Comment 26).
[495] Ibid para 11.
[496] The ICJ recognized that 'the environment is not an abstraction but represents the living space, the quality of life and the very health of human beings, *including generations unborn.*' (my emphasis): ICJ, 'Legality of the Threat or Use of Nuclear Weapons – Advisory Opinion' (1996) ICJ Reports 226, para 29.

African people. As Africa is rich in biodiversity and culture, this is a principle which has been stressed in order to preserve those for the next generation. The Court expressed that this is one way that indigenous people are able to protect and transmit their cultural identity, heritage and lands.[497] In further support this position, 'the 2003 Revised African Convention for the Conservation of Nature and Natural Resources obligates State Parties, under Article IV, to implement all measures necessary to achieve the objectives of the Convention in the interest of *present and future generations*.'[498] The African Committee of Experts on the Rights and Welfare of the Child ('ACERWC') notes that, they have not yet adopted a definition for future generations but asserts that a 'relationship could exist in respect of provisions such as Articles 4, 5, 9, 12 and 14'[499] of the Charter. They also highlighted that 'there are examples of domestic laws that make reference to future generations, for example South Sudan's law on oil and gas.'[500] It was shown that 'the High Court of Kenya applied the principle of intergenerational equity to water pollution in *Waweru v. Republic of Kenya*,[501] emphasizing the importance of preserving natural resources for future generations.'[502] Also, 'the High Court of South Africa[503] has noted that intergenerational justice in the context of climate change necessitates the 'rejection of short-termism' and requires the state to consider the long-term impact of pollution on future generations.'[504] These cases are just a few examples within the region of the African courts setting the precedent of promoting the protection of the environment for 'future generations'. Also, it can be argued that in the Global North, the sense of community is lost as is demonstrated by children leaving the home as early as 18. Whereas in Africa, many tribes and communities still exist where they actively engage in communal living and will depend on the current and future generations to pass on their knowledge and practices for their livelihood and survival.

4.3.2. Effects of Climate Change on Children, Present and Future Generations

[497] IACtHR, 'Advisory Opinion AO-32/25' (n 466) para 306.
[498] Emmaqulate K Morang'a, 'Intergenerational Equity for Climate Justice in Africa: The Role of Activism and Climate Litigation' (22 May 2025) https://www.biicl.org/blog/109/intergenerational-equity-for-climate-justice-in-africa-the-role-of-activism-and-climate-litigation accessed 27 March 2026.
[499] African Committee of Experts on the Rights and Welfare of the Child, 'Study on Climate Change & Children's Rights: In Africa, A Continental Overview' (ACERWC 2024) 13 https://www.acerwc.africa/sites/default/files/2025-in%20Africa.pdf accessed 27 March 2026.
[500] *See,* South Sudan Petroleum Act (Act No 11 of 2012), s 7(5).
[501] *Waweru v Republic of Kenya* (2 March 2006) (2007) AHRLR 149 (KeHC 2006) para 31, where the Court made it a point to stress that the present generation is legally obliged to maintain and enhance 'the health, diversity, and productivity of natural resources … for the benefit of future generations'.
[502] Margaretha Wewerinke-Singh, Ayan Garg and Shubhangi Agarwalla, 'In Defence of Future Generations: A Reply to Stephen Humphreys' (2023) 34 European Journal of International Law 661 https://academic.oup.com/ejil/article/34/3/651/723658 accessed 27 March 2026.
[503] *GroundWork Trust & Vukani Environmental Justice Alliance Movement in Action v. Minister of Environmental Affairs & Others*, Case no. 39724/2019, [2022] ZAGPPHC 208, para 41.
[504] Wewerinke-Singh, Garg and Agarwalla, 'In Defence of Future Generations (n 502) 662.

In Africa, climate change impacts children's rights to life, health,[505] education, food, housing, water and play.[506] It also increases the frequency of natural disasters which destroy infrastructure like schools, hospitals, houses and causes food and water insecurity.[507] Reports show that 'droughts and floods are the two main climate change related disasters that affect the rights of the child in Africa the most.'[508] In 2024, UNICEF reported that "over 1 billion children live in countries that are at extremely high risk of the impacts of climate change." Their Children's Climate Risk Index (CCRI) data shows that "in Africa 39 out of 49 countries (for which data is available), fall under 'extremely high' or 'high' risk categories."[509] The data shows that:[C]hildren and communities in the northern part of Africa tend to be exposed to higher risks related to water scarcity and air pollution, those living in the west and eastern parts of the continent, particularly in the tropical areas – are more heavily affected by the risks posed by vector borne diseases, heatwaves and riverine flooding.[510]

For instance, 'in Mozambique, malaria cases have surged following severe flooding events.'[511] As a result of these adverse effects, 'displacement in Africa is increasing (high confidence) as people search for stability.'[512] Climate change is also a key driver of biodiversity loss and degradation of ecosystems.[513] Children in this situation are severely affected because their 'physiology and immune systems are less developed, [and consequently they] experience the effects of climate-related stresses more intensely.'[514] This is buttressed by the Committee on the Rights of a Child ('CRC Committee') which has observed that environmental degradation from climate change affects children's rights to life, survival and

[505] 'The spread of malaria, dengue fever, and respiratory ailments is exacerbated by climate change': ACERWC, 'Study on Climate Change and Children's Rights in Africa: A Continental Overview. Summary of Key Findings and Recommendations' (November 2023) para 2 (ACERWC Summary 2023) https://www.acerwc.africa/sites/default/files/2025-04/S.pdf accessed 24 March 2026.
[506] All these rights are enshrined collectively in the Charter, the ACRWC and the CRC which most African nations are parties through signature and ratification.
[507] *See*, s 9.7-9.9 of the Intergovernmental Panel on Climate Change (IPCC) report which dissects the observed impacts, projected risks and vulnerability and offers adaptation options for water, food systems and human settlements and infrastructure.
[508] 'During 2022, the Republic of Congo, Chad, Liberia, Nigeria, and Niger were some of the most affected countries in the world due to floods. Out of the total of 19.7 million child displacements due to floods throughout the world between the years 2016 and 2021, Somalia, Ethiopia, South Sudan, Nigeria and Sudan feature in the top 10 countries in absolute numbers', ACERWC Summary 2023 (n 505) [1].
[509] UNICEF, 'Putting children at the heart of climate action and supporting Africa's development' (9 September 2024) https://www.unicef.org/executiveboard/stories/putting-children-heart-climate-action-and-supporting-africas-development-srs-2024 accessed 27 March 2026.
[510] UNICEF, 'Time to Act: African Children in the Climate Change Spotlight'(September 2023) 3 https://www.unicef.org/esa/media/12946/file/UNICEF-Time-to-Act-Advocacy-Brief-2023.pdf accessed 27 March 2026; see also, UNICEF, 'The climate-changed child: A children's climate risk index and supplement' (November 2023) https://www.unicef.org/media/147931/file/Theclimage-changedchild-ReportinEnglish.pdf accessed 27 March 2026.
[511] ACERWC Summary 2023 (n 505) para 2.
[512] IPCC, 'Climate Change 2023 Synthesis Report: Summary for Policymakers' para A.2.5 https://www.ipcc.ch/report/ar6/syr/downloads/report/IPCC_AR6_SYR_SPM.pdf accessed 27 March 2026.
[513] CRC Committee, 'General Comment 26' (n 494) para 39.
[514] Report of the UN Secretary General, 'The impacts of climate change on the human rights of people in vulnerable situations' (6 May 2022) UN Doc A/HRC/50/57, para 23 (Report HRC/50/57) https://docs.un.org/en/A/HRC/50/57 accessed 27 March 2026.

development due to their physiology, unique patterns and behaviour.[515] It thus 'jeopardizes children's ability to achieve their full developmental potential'. In expanding on that point they noted that 'exposure to toxic pollutants […] can easily disrupt the maturational processes of the brain, organs and the immune system and cause disease and impairments during and beyond childhood.'[516] Here, the CRC Committee has shown the interconnectedness between present and future generations[517] as the long-term effects of some environmental contaminants may only show up in the future (e.g. cognitive disabilities), when the damage is irreversible. This signifies that children will bear the brunt of the harms longer than adults.[518]

There is also the mental toll that the climate crisis places on children which is often not discussed. The CRC Committee observes that there is a 'clear emerging link between environmental harm and children's mental health, such as depression and eco-anxiety […]'. Children and youth living in the reality of environmental degradation, especially in developing countries, are aware of what their future will look and feel like, if States do not comply with the treaty obligations set forth. Others are connected through social media and feel a sense of hopelessness, as they would be inundated with world news showing images and videos of floods, droughts and hurricanes devastating towns and villages and displacing thousands.[519] They understand the transboundary effects fossil fuel production and polluted rivers have on present and future generations, which is demonstrated in their advocacy. It is beyond the scope of this submission to provide an in-depth overview of the emergence of youth climate litigation, as the case law is substantial,[520] but the youth must be credited as the catalyst[521] for the ICJ Opinion.

It is well established that courts draw inspiration from other cases, especially on the matters related to human rights and the environment, as seen in the ICJ and IACtHR Opinions. The author would therefore like to highlight two prominent cases which sought climate justice for children and future generations. In the *Sacchi* case,[522] the CRC Committee held that the complaint was inadmissible for a failure to exhaust local remedies but made significant pronouncements in its judgment. The Committee accepted

[515] CRC Committee, 'General Comment 26' (n 494) paras 20-25.
[516] Ibid paras 23, 24.
[517] Ibid para 24.
[518] See OHCHR Communication *Chiara Sacchi et al v. Germany* (CRC/C/88/DR/107/2019) paras 2.1-2.6.
[519] 'In relation to droughts, a total of 1.3 million child displacements took place due to droughts between 2017-2021 with Somalia, Ethiopia, Angola, Burundi, Madagascar and South Sudan featuring on the top 10 in absolute terms.' ACERWC Summary 2023 (n 505) [2].
[520] See Youth Climate Justice Project lead by Professor Aoife Daly for more information on the emergence of youth climate litigation as the project explores whether we are experiencing 'post-paternalism' in children's rights. The Youth Climate Justice project is hosted by the UCC School of Law and the Environmental Research Institute (ERI) at UCC and is funded by the ERC Consolidator Grant 2022 https://www.ucc.ie/en/youthclimatejustice/ accessed 27 March 2026.
[521] It was requested by the United Nations General Assembly following a campaign initiated by law students at the University of South Pacific.
[522] Decision adopted by the Committee on the Rights of the Child under the Optional Protocol to the Convention on the Rights of the Child on a communications procedure in respect of *Communication No. 104/2019 (Argentina), Communication No. 105/2019 (Brazil), Communication No. 106/2019 (France), Communication No. 107/2019 (Germany), Communication No. 108/2019 (Turkey)* ('CRC/C/88/D/104/2019').

the claimant's arguments that States are legally responsible for the harmful effects of emissions originating in their territory on children outside their borders[523] and found that the children are victims of foreseeable threats to their rights to life, health, and culture.[524] Moving to the shores of Africa, in the case of *African Climate Alliance & Others v. Minister of Mineral Resources and Energy & Others,*[525] the High Court ruled that the procurement of a new coal fired power was unconstitutional, unlaw and invalid. The applicants contended that the rights of children and future generations was not considered.[526] The court found that the government had failed to consider the harmful impacts of coal on health, the environment, and children's rights. It highlighted that the best interests of children were not given paramount importance, in breach of sections 24 and 28(2) of the Constitution.[527] In these cases, it shows that children and youth are leading the charge through representation by grass roots organisations. Through their affidavits and submissions, they articulate how the various projects affect their rights and future generations. Even when the cases are deemed inadmissible or overturned due to a procedural error, the judgments make it clear often times the applicants' arguments are sound and agreeable, which also bears significant weight.[528]

Having set out the precarious position of children in the context of climate change, it is important to underscore the intersectional nature of the challenges which the OCHR does by noting that '[there is] a disproportionate impact on children with disabilities, children on the move, poor children, children separated from their families, and indigenous children. And girls may face heightened risks due to climate change.'[529] Children and future generations are integral to the circle of life, without them, the human species will cease to exist.[530] As such, it is incumbent on Parties to the Charter to fulfill their legally binding obligations as set out within the regional and international frameworks.

4.3. Rights of Women Pursuant to the Charter, and Regional and International Law

Women are the primary caretakers of most households. This work multiplies for women in rural areas as 'they are responsible for water collection, food production, and household energy, tasks that become

[523] Ibid para 10.5.
[524] Ibid para 10.6.
[525] *African Climate Alliance & others v. Minister of Mineral Resources & others* High Court South Africa (Gauteng Division) Case number 56907/2021[2024] ZAGPPHC 1271.
[526] Ibid para 23.
[527] Ibid paras 25-27.
[528] See *Minister for the Environment v. Sharma* [2022] FCAFC 35.
[529] UN Human Rights Council, 'Report of the Office of the High Commissioner for Human Rights (OHCHR) Climate change and the full and effective enjoyment of the rights of the child - A/HRC/35/13' (4 May 2017) para 24 https://docs.un.org/en/A/HRC/35/13 accessed 27 March 2026.
[530] 'The Court underscores that the purpose of the obligations arising from the right to a healthy climate is to protect the global climate system for the benefit of humanity as a whole, and both present and future generations are part of this.' IACtHR, 'Advisory Opinion AO-32/25' (n 466) para 311.

increasingly difficult as resources dwindle.'[531] As such, they are exposed to climate-change related risks due to the pre-existing gender discrimination, inequality and inhibiting gender roles.[532]

4.3.1. Legal Framework

The AU in drafting the Charter in 1981 recognised the importance protecting women's rights. Article 18(3) performing a dual function in relation to children and women, provides that, *the State shall ensure the elimination of every discrimination against women and also ensure the protection of the rights of the woman […] as stipulated in international declarations and conventions* (my emphasis).[533] There are a number of UN declarations and resolutions that declare the rights of women must be considered in all sectors and industries, and they often stress the intersectionality of socio-economic and gender inequalities.[534] In aiming to focus on the African context, there shall be an exploration of their text tailored to promoting women's rights and facilitating equality. An inward look at local and regional frameworks allows the court to find the gaps and use the data to analyse and provide recommendations.

In 2003, the AU Assembly of Heads of State and Government adopted the Protocol to the ACHPR on the Rights of Women in Africa (Maputo Protocol).[535] The Convention on the Elimination of All forms of Discrimination against Women (CEDAW) [536] called for countries to adopt legislation to prohibit the discrimination against women,[537] which explains one motivating force for the adoption of the Protocol. However, the preamble of the Maputo Protocol provides us with further insight as to Africa's status and treatment of women. It states, 'concerned that despite the ratification of the Charter and other international human rights instruments by majority of the State Parties, […] women in Africa continue to be victims of discrimination and harmful practices.'[538] The Protocol incorporates the rights enshrined

[531] Africa Climate Insights, 'How African Women Are Redefining Climate Action' (12 March 2025) https://africaclimateinsights.org/how-african-women-are-redefining-climate-action accessed 27 March 2026.
[532] UN Human Rights Council, 'Report of the Office of the United Nations High Commissioner for Human Rights on the relationship between climate change and human rights - A/HRC/10/61' (15 January 2009) para 45 (Report HRC/10/61).https://docs.un.org/en/A/HRC/10/61 accessed 27 March 2026.
[533] The preamble of the Charter also calls for the dismantling of discrimination against, inter alia, sex.
[534] See UN, 'Joint Statement on "Human Rights and Climate Change" - Committee on the Elimination of All Forms of Discrimination against Women, Committee on Economic, Social and Cultural Rights, Committee on the Protection of the Rights of All Migrant Workers and Members of their Families, Committee on the Rights of the Child and Committee on the Rights of Persons with Disabilities' (16 September 2019) para 4 https://docs.un.org/en/HRI/2019/1 accessed 27 March 2026.
[535] African Charter on human and people's rights on the rights of women in Africa (Maputo Protocol) (adopted 11 July 2003, entered into force 25 November 2005) 3268 UNTS A-26363; The AU states that have neither signed nor ratified the Protocol as of this date are Egypt and Morocco. The states that have signed but not yet ratified are Burundi, Chad, Eritrea, Madagascar, Niger, Somalia, and Sudan.
[536] Countries that have not ratified: Sudan and Somalia.
[537] Convention on the Elimination of All Forms of Discrimination against Women, 1249 UNT.S 13 (adopted 18 December 1979, entered into force 3 September 1981), Art 2(a) (CEDAW).
[538] Maputo Protocol (n 535) preambular para 12 and Art 2.

in CEDAW but goes further to tailor it to the African context with , for example, its inclusion of protection of women in armed conflicts.

What is fascinating is that the drafters included a right to a healthy and sustainable environment for women[539] and a special undertaking to protect of women in distress.[540] Additionally, the Protocol has recognized the right to food security which also includes providing women with access to clean drinking water.[541] States are therefore required to adopt measures for the realization of those rights and ensure protection of women, making these legally binding obligations for those who have ratified. Moreover, they have recognised that poor and marginalized women require environments that are suitable to their condition and their special physical, economic and social needs, which State Parties must endeavour to provide. While more African States have ratified CEDAW, this author propounds that in the context of climate change, the Protocol is the most instrumental in corroborating the obligations of majority of the African States, 45 to be exact. Therefore, this Protocol supports Article 18(3) of the Charter in every aspect through its expansion and protection of women's rights in different categories and contexts.

Those countries that have not ratified the Protocol must still fulfill their obligation to protect women through the combined interrelated obligations from CEDAW and other relevant international treaties which they have ratified. To reiterate, there is also literature which guides State parties on the policies, systems and technologies that States must have in place for in their climate solution strategies. For instance, CEDAW's General Recommendation No. 37 focuses on the heightened risk of gender-based violence during and following disasters. It 'recognises the important contributions of women in the areas of disaster risk and reduction, post-disaster management and climate change mitigation and adaptation strategies.'[542] It is therefore the duty of African State parties to promote and protect women's rights pursuant to the Charter and the Protocol.[543]

4.3.2. Effects of Climate Change on Women

The effects to women are numerous because of their role in society; they wear many hats, and the situation is even more dire for women in low and middle-income countries. This is because they are 'heavily reliant on agriculture, one of the most impacted sectors by the climate crisis.' According to the World Development Bank, all but 5 African countries out of the 55 for which data was available, are classified as either lower middle income or low income.[544]

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[539] Ibid Art 18(1).
[540] Ibid Art 24.
[541] Ibid Art 15.
[542] CEDAW Committee, 'General Recommendation No 37 on the Gender-Related Dimensions of Disaster Risk Reduction in the Context of Climate Change' (13 March 2018) CEDAW/C/GC/37 para 7 https://www.ohchr.org/en/documents/general-comments-and-recommendations/general-recommendation-no37-2018-gender-related accessed 27 March 2026.
[543] African Charter (n 458) Art 1; the Maputo Protocol (n 535) Art 26.
[544] World Development Bank, 'World by Income 2024' https://datatopics.worldbank.org/world-development-indicators/the-world-by-income-and-region.html accessed 27 March 2026.

In Africa, 'about 62% of women are involved in agriculture (inclusive of all aspects of its value chain).'[545] In 2019, '[c]yclones "Idai and Kennet" brought massive devastation to Mozambique, Malawi and Zimbabwe. Cyclone Idai destroyed[546] 700,000 hectares of crops, with an estimated agricultural loss of at least USD 141 million.'[547] Destruction of this magnitude affects the livelihood of women as higher percentage of earners from agricultural production. Their livelihoods once impacted by climate disasters leads to an inability to provide for themselves, their children and the elderly. That is then compounded by food insecurity,[548] poverty and lack of access to natural and financial resources.

For all human beings and living organisms, water is an essential resource. However, women are highly dependent on water for inter alia, self and family care responsibilities.[549] For example, women living in rural areas are tasked with retrieving potable water for the household, and this journey may be extended after disaster events.[550] This increases the likelihood of sexual violence which can traumatize them and lead to illnesses.[551] Moreover, lack of water directly affects girls and women that are menstruating, as this prevents them from exercising the standard of hygiene care required. Also, pregnant women are at higher risk to be impaired by water scarcity and thus susceptible to dehydration, and malnutrition due to hunger. [552] It also contributes to the disruption of critical services including services such as sexual and reproductive healthcare, which are necessary for all women.[553]

The climate fuelled disasters or the resulting conditions can result in displacement or death for women. It was found that '[t]he death rate of women is markedly higher than that of men during natural disasters due as they are less likely to be able to swim and are more likely to be looking for children.' This is particularly the case in disaster-affected societies in which the socio-economic status of women is low.[554]

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[545] Adeola et al, 'Gender equality, climate action, and technological innovation' (n 456) 6.
[546] 'It also destroyed homes, schools, and healthcare facilities; ruined crops; interrupted potable water supply; heightened risk of water-borne and communicable diseases and eliminated other sources of livelihood' Adeola et al, 'Gender equality, climate action, and technological innovation' (n 456) 8-9.
[547] CARE, 'Evicted by Climate Change: Confronting the Gendered Impacts of Climate-Induced Displacement' (2020) 9 https://careclimatechange.org/wp-content/uploads/2020/07/CARE-Climate-Migration-Report-v0.4.pdf accessed 27 March 2026.
[548] 'Of the world's 36 countries dealing with food insecurity globally, 21 are in Africa', Adeola et al, 'Gender equality, climate action, and technological innovation' (n 456) 6.
[549] CARE, 'Evicted by Climate Change' (n 547) 8.
[550] 'In Kenya's arid regions, prolonged droughts have forced women to walk longer distances to fetch water, often exposing them to violence and health risks [and] in Malawi, erratic rainfall patterns have devastated maize crops, the staple food. Women, who make up 70% of Malawi's agricultural labor force, are struggling to feed their families.', Africa Climate Insights, 'How African Women Are Redefining Climate Action'(n 531).
[551] CARE, 'Evicted by Climate Change' (n 547) 9.
[552]The UN Refugee Agency, 'Gender, Displacement and Climate Change' (November 2022) 1 https://www.unhcr.org/sites/default/files/legacy-pdf/5f21565b4.pdf accessed 27 March 2026; See also IPCC, 'Climate Change 2023 Synthesis Report: Summary for Policymakers'(n 512).
[553] UNRA, 'Gender, Displacement and Climate Change' (n 552) 2.
[554] Eric Neumayer and Thomas Plümper, 'The Gendered Nature of Natural Disasters: The Impact of Catastrophic Events on the Gender Gap in Life Expectancy, 1981-2002' (2007) 97 Annals of the Association of American Geographers 552 https://www.tandfonline.com/doi/epdf/10.1111/j.1467-8306.2007.00563.x?needAccess=true accessed 27 March 2026.

Survivors are often displaced,[555] and the poor seek refuge in makeshift shelters [or internally displaced camps].[556] For women in these shelters or camps, there is an increased possibility of gender-based violence,[557] especially if they find themselves in areas of armed conflict. For example, 'the crisis in the Lake Chad Basin resulted in widespread sexual violence as well as exposure to trafficking and other forms of gender-based violence is rampant because of the armed conflict.'[558] Survival sex which is already occurring, will also become more prevalent in the aftermath of climate disasters, for instance, 'declining fish stocks and increasing droughts in Zambia have led to increases in sex-for-fish practices because women cannot afford to buy the fish they need to sell and earn income.'[559]

Climate change is considered a 'threat multiplier' because it worsens gender equality which is supported by real cases in different parts of Africa;[560] it is therefore indisputable that women are disproportionately affected by climate change. It is understood that climate change is a global problem, but women are more at risk for several reasons.[561] The '[s]tructural barriers and discriminatory social norms continue to constrain women's decision-making power and political participation in rural households and communities.'[562] Women everywhere are still fighting gender disparities and trying to close the wage gap but women in rural areas must overcome challenges regarding access to land, credit, markets and techonlogies.[563] In the Food and Agricultural Organisation's report, they found that: Women in sub-Saharan Africa continue to have fewer secure rights than men to land, water and forests. Complex tenure systems involving overlapping customary and statutory systems often limit women's resource rights while also contributing to increasing land degradation. These rights are further shaped by marital status and age. Women's under-representation in governance leads to policies that overlook their needs.

[555] 'Climate-induced displacement is generally regarded as an unplanned, mostly involuntary movement or relocation of humans due to a climate change induced crisis or disaster from weather events; it includes both temporary as well as permanent displacement whereas climate-induced migration is when individuals make a premeditated decision to migrate because of climate change-related factors.' CARE, 'Evicted by Climate Change' (n 547) 7.
[556] 'Over one year after Cyclone Idai, nearly 100,000 people continue to live in makeshift shelters and are alarmingly vulnerable to future climate shocks.', ibid 9.
[557] 'The UN reports of 2015 on the conditions in IDP camps in Malawi established multiple cases of sexual assault and rape within the campgrounds.', Adeola et al, 'Gender equality, climate action, and technological innovation' (n 456) 10.
[558] CARE, 'Evicted by Climate Change' (n 547) 10.
[559] Food and Agricultural Organisation of the United Nations et al., 'The Status of Women in Agrifood Systems in Sub-Saharan Africa Overview' (2025) https://openknowledge.fao.org/items/961d39cb-e67a-4cca-9e0d-db9c72b6b848 accessed 27 March 2026.
[560] See Adeola et al, 'Gender equality, climate action, and technological innovation' (n 456), for a comprehensive overview of climate and gender challenges in East, West, North and South Africa.
[561] These risks are reinforced by that paragraph and the Court goes further and recalls that it is a State's obligation to 'prevent, investigate and punish any act or practice of violence against women, including those that may occur in the context of climate disasters.' IACtHR, 'Advisory Opinion AO-32/25' (n 466) para 614.
[562] United Nations, 'Rural Women Rising – shaping resilient futures with Beijeing +30' https://www.un.org/en/observances/rural-women-day accessed 27 March 2026.
[563] Ibid.

In all of these situations described women's rights to life, integrity and security, food security, protection and health will be impacted by climate change.[564] Consequently, it is arguable that women bear the brunt of the climate emergency, and they will continue to be disadvantaged and severely affected unless they are granted access to the same opportunities as men. The gap in Africa's the climate emergency response is evident, as both women and men are woefully ill-prepared disasters. To close the gap, women must be involved in the mitigation policy planning and implementation processes. Africa has some of the most comprehensive and progressive human rights instruments as their foundation, it is therefore left up to each jurisdiction to make the necessary changes.

4.4. Rights of Indigenous People Pursuant to the Charter, and Regional International Law

There is no strict definition of indigenous people. It differs in meaning from country to country, and this has been said to be 'neither necessary nor desirable' by the international community. This surely gives room for wide interpretations, but it also makes the exercise difficult. To dive into the concept of "indigenous people or communities" in African jurisprudence is like trying to solve a Rubik's cube, given Africa's history.[565] The word "indigenous" is not referenced in the Charter, the omission of the word was purposeful according to the Commission, but protections for groups/communities can arguably be found through interpretation of the Charter, which will be discussed below.

4.4.1. Legal Framework

In the early 2000's the "indigenous communities" in Africa found that protection was lacking given (i) the absence of a substantive provision in the Charter, (ii) no African nation had ratified the ILO Indigenous and Tribal Peoples Convention No. 169[566] and (iii) the communities were facing human rights violations.[567] This led the Commission 'to set up a 'Working Group on the Rights of Indigenous Populations/Communities[568] with the participation of members of the Commission as well as expert representatives of indigenous communities and an independent expert'. Thereafter, the Working Group

[564] Maputo Protocol (n 535) Arts 4, 15, 18 and 24 African Charter (n 458) Art 16.
[565] 'Africa is the continent with the longest history of human occupation, and it contains the greatest range of human genetic and cultural diversity. In many cases, it is difficult to determine antecedence since a variety of populations have moved into and out of local areas over time.' Robert Hitchcock and Diana Vinding, 'Introduction' in Robert Hitchcock and Diana Vinding (eds), *Indigenous peoples' rights in Southern Africa* (International Working Group for Indigenous Affairs 2004) 8 https://iwgia.org/images/publications/EN110_INDIGENOUS_PEOPLES_RIGHTS_IN_SOUTHERN_AFRICA.pdf accessed 27 March 2026.
[566] ILO Indigenous and Tribal Peoples Convention No 169 (adopted 27 June 1989, and entered into force 5 September, 1991) 1650 UNTS. 383; Central African Republic signed and ratified the treaty in 2013.
[567] African Commission on Human and Peoples' Rights and International Work Group for Indigenous Affairs, 'Report of the African Commission's Working Group of Experts on Indigenous Populations Communities' (2005) https://iwgia.org/images/publications/African_Commission_book.pdf accessed 27 March 2026.
[568] Report of the African Commission's Working Group of Experts on Indigenous Populations/ Communities, adopted, 28th Ordinary Session, Benin, November 2000.

drafted a report ('the Report') which was adopted by the Commission in November 2003.[569] The Report and its recommendations aim to advance the rights of indigenous populations in Africa.

The Report lists different groups within Africa who identify or who the Commission believes meets the criteria of "indigenous people". It should be noted that they are categorised under three main categories which is related to their activity: hunter-gatherers, pastoralists and angro-pastoralists and farmers. For example, the *Hadzabe*, *Ogiek* and *Batwa* are hunter-gatherers and can be found in Tanzania, Kenya and Rwanda respectively.[570] Similarly, the *Pokot*, *Amazigh* and *Fulani* occupy Uganda, Mali and Niger respectively. These groups all share similar characteristics and 'seek recognition as peoples, and protection of their cultures and particular ways of life'.[571] The Commission recognised the value of traditional land and natural resources which their way of life depends. The establishment of conservation parks and development of infrastructure projects like mining, logging and oil exploration[572] 'displaced and impoverished many indigenous communities.'[573]

One can point to Articles 19, 20, 21 and 22 of the Charter as joint rights of indigenous people. These articles are special in that they all use the term 'peoples', which has been interpreted as an expressed recognition of collective rights.[574] The Commission's Report references the guiding principle of the preliminary draft[575] and references the inclusion of 'peoples' in the title of the Charter, in support of its contention that the instrument's aim is to protect collective rights which encompasses indigenous communities. It has also been stated that 'the concept of a people and the reason peoples' rights were included to the extent that they were, comes from the post-colonial context.'[576] The reasoning provided is reflected in the preamble of the Charter, which shows the intention of the drafters. Preambular paragraph 5 reads, '[c]onscious of their duty to achieve the total liberation of Africa, the *peoples* of which are still struggling for their dignity and genuine independence and undertaking to *eliminate colonialism*' (my emphasis). That paragraph continues to speak to dismantling discrimination, and "ethnic group" was inserted alongside race, sex, religion etc. The reference to ethnic group is unique in a human rights instrument as it was not included in the other international treaties prior to the Charter. As such, given the diversity of groups within Africa, in combination with their goal of eradicating colonialism (which left visible and invisible scars), this author posits that the inclusion of "ethnic group" and "peoples" was deliberate, to recognise all groups and people existing in Africa. This is further

[569] ACHPR, 'Resolution on the Adoption of the "Report of the African Commission's Working Group on Indigenous Populations/Communities"' (34th Ordinary Session, Banjul, 6-20 November 2003) ACHPR/Res.65(XXXIV)03.
[570] Batwa people can also be found in DRC, Burundi and Uganda.
[571] ACHPR, 'Report on Indigenous Populations Communities' (n 567) 97.
[572] Ibid 22-29; See also page 26 of the Commission foreshadowing the current situation in the DRC because of the mining permits granted in the early 2000's.
[573] Ibid 26.
[574] Ibid 72.
[575] 'The Charter must reflect the African concept of human rights.'
[576] Rachel Murray, *The African Charter on Human and Peoples' Rights: A Commentary* (Oxford University Press 2019) 485.

supported by the fact that some constitutions provide for the representation of "ethnic minority groups" and several protect the specific rights of minorities.[577] This also aligns with the fact that some African groups started using the term "indigenous" in the early 2000's to fit within the contemporary international legal framework and to push for the same standard of treatment and protection.[578] The African Court confirmed their understanding of 'peoples' and illustrated the connection to ethnic group by stating: […] "people" covers not only the population as the constituent elements of the State, but also the ethnic groups or communities identified as forming part of the said population within a constituted State . . . provided such groups or communities do not call into question the sovereignty and territorial integrity of the State without the latter's consent.[579]

It has been established that the Charter provides protection for different groups, which includes "indigenous people", but how is this group characterised in an African context? The Charter 'gives the African Commission, when dealing with issues brought before it, the mandate to have recourse to international law principles on Human and Peoples' Rights.'[580] Inspiration must therefore be drawn from the relevant international instruments like the United Nations Declaration on the Rights of Indigenous People ('UNDRIP'), ILO Convention No. 169, the ICCPR and the International Covenant on Economic, Social, and Cultural Rights[581] ('ICESCR'). UNDRIP is described by many as the most comprehensive international instrument on the rights of indigenous peoples, but it is not legally binding. According to a UN press release 'it establishes an important standard for eliminating human rights violations against indigenous peoples worldwide and for combating discrimination and marginalization.'[582] The Declaration was adopted by the African Commission via resolution, and therein it was noted that 'not one single African country voted against this groundbreaking international human rights instrument.'[583] Its purpose is to provide a normative framework permitting State parties to harmonise their legislation and national policies.

Each international instrument mentioned above, grants indigenous peoples the right to self-determination, meaning that various groups in Africa should be able to label themselves as "indigenous".

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[577] Working Group on Indigenous Populations/Communities in Africa, 'Intersession Report of the Working Group on Indigenous Populations/Communities in Africa, 52nd Ordinary Session, Yamoussoukro, October 2012', para 50.
[578] 'It is today a term and a global movement fighting for rights and justice for those particular groups who have been left on the margins of development and who are perceived negatively by dominating mainstream development paradigms, whose cultures and ways of life are subject to discrimination and contempt and whose very existence is under threat of extinction.' ACHPR, 'Report on Indigenous Populations Communities' (n 567) 87.
[579] *African Commission on Human and Peoples' Rights v Kenya* (2017) 2 AfCLR 9 (*Ogiek*) para 198.
[580] ACHPR, 'Report on Indigenous Populations Communities' (n 567) 77; African Charter (n 458) Art 60.
[581] International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3 (ICESCR).
[582] UN Press Release, 'Historic Milestone for Indigenous Peoples Worldwide as UN adopts Rights Declaration' (13 September 2007) https://www.un.org/esa/socdev/unpfii/documents/Declaration_ip_pressrelease.pdf accessed 27 March 2026.
[583] UNGA, 'Resolution on the Adoption of the United Nations Declaration on the Rights of Indigenous Peoples - Res 61/295' (2 October 2007) UN Doc A/RES/61/295.

While that is recognised as the most important, this is not the only criterion. The Commission has identified criteria which is based off the four criteria set by Erica-Irene Daes, the former chairperson of the United Nations Working Group on Indigenous Populations. Other criteria noted by the African Commission's Working Group are: '(i) the special attachment to and use of their traditional land whereby their ancestral land and territory has a fundamental importance for their collective physical and cultural survival as peoples, (ii) an experience of subjugation, marginalization, dispossession, exclusion or discrimination because these peoples have different cultures, ways of life or modes of production than the national hegemonic and dominant model and (iii) voluntary perpetuation of cultural distinctiveness, which may include the aspects of language, social organisation, religion and spiritual values, modes of production, laws and institutions.'[584] Moreover, the Commission affirmed that 'all these elements need not be present in any given situation,'[585] which signifies that there will be a case-by-case assessment by the Commission or Court. An example of the approach can be found in the *African Commission on Human and Peoples' Rights v Republic of Kenya*.[586] The Court had to determine whether the Ogieks are indigenous and in doing so used the 4 criteria in its assessment and even drew inspiration from the United Nations Special Rapporteur on Minorities.[587] With the evidence before it, the Court concluded that 'the Ogieks are an indigenous population that is part of the Kenyan people having a particular status and deserving special protection deriving from their vulnerability.'[588] Further, the Court held that Kenya had indeed violated several provisions of the Charter, including Article 14, 17, 21 and 24.[589] This is significant as it shows the recognition of indigenous people being able to claim rights under all parts of the Charter, whether collective or individual rights.

It is clear through the adoption of the UNDRIP and the acceptance of criteria for assessing indigenous groups and the establishment of an active Working Group, that African nations have positive obligations to groups characterised as indigenous people. These obligations formed primarily through the pressure from the international community and out of necessity, as there was a regional[590] legal vacuum to protect indigenous groups in Africa. Last, it is submitted that though not expressly mentioned in the Charter, indigenous rights can be inferred through the rights to culture, property, disposal of wealth and with the reference to 'peoples'.

4.4.2. Effects of Climate Change on Indigenous Peoples

[584] ACHPR, 'Report on Indigenous Populations Communities' (n 567) 93.
[585] Ibid.
[586] *Ogiek* (n 579).
[587] Ibid paras 105-107.
[588] Ibid para 112.
[589] Ibid, the Court also found violations of arts. 1, 2 and 8 of the Charter.
[590] The author observes that some African States thereafter gradually developed laws to protect indigenous people. For example, Congo's Act No. 5-2011 and The Kenya's Constitution (2010) recognises indigenous peoples as part of the marginalised communities which the State has a duty to protect pursuant to s 56.

Indigenous peoples all over the world are ostracised for their way of life and face 'social and economic disadvantages related to historic and ongoing marginalization and discrimination.'[591] For example, '[i]n Rwanda and Burundi, the Batwa suffer from marginalisation, discrimination and extreme poverty, and they are neglected in all areas of development.'[592] Climate change is the cause of extreme weather events and environmental degradation such as sea level rise, ocean warming and acidification, hurricanes etc.[593] Different regions in Africa as mentioned previously, will experience different effects as a result of climate change but, the most common experiences are 'droughts, floods, extreme rainfalls, strong winds, disruption of seasons, drying up of rivers, rising temperatures and frost'.[594] These weather events destroy lands and consequently, biodiversity and ecosystems, which causes food insecurity for indigenous people. This is felt tenfold by this community as their livelihoods, cultural practices and self-determination are connected to the environment.[595] Indigenous people rely on the flora and fauna in their environments for subsistence and shelter, and land to engage in their ancestral practices.[596]

The spiritual connection to the land is vital to indigenous people, Professor S. James Anaya in explaining the shared unique histories of the indigenous people globally notes that '[t]hey are indigenous because their ancestral roots are embedded in the lands on which they live […] much more deeply than the roots of more powerful sectors of society living on the same lands or in close proximity.'[597] It is common knowledge that they have spiritual relationships with their ancestors and they prefer to be in close proximity to their burial grounds. This was illustrated in the case of *Daniel Billy et. al. v. Australia*[598] where the applicants argued that: […] maintaining ancestral graveyards and visiting and communicating with deceased relatives are at the heart of their cultures. In addition, the most important ceremonies, such as coming-of-age and initiation ceremonies, are only culturally meaningful if performed in the community's native lands.[599] The Committee[600] found that Australia's failure to take timely and adequate

[591] UNHRC, 'Report HRC/10/61' (n 532) para 19.
[592] ACHPR, 'Report on Indigenous Populations Communities' (n 567) 35.
[593] UNSG, 'Report HRC/50/57' (n 514) para 19.
[594] Charapa Consult, 'Indigenous Peoples and Climate Change in Africa: Traditional Knowledge and Adaptation Strategies' (2012) 6 https://www.charapa.dk/wp-content/uploads/Indigenous-Peoples-and-Climate-Change-in-Africa-final-draft.pdf accessed 27 March 2026.
[595] UNSG, 'Report HRC/50/57' (n 514) para 19.
[596] 'These hazards threaten their economic, social and cultural survival when, for example, livestock die, wild plants that form core elements of their diets rot or dry, or medicinal plants are no longer found in the forest.', Charapa Consult, 'Indigenous Peoples and Climate Change in Africa (n 594) 6.
[597] Stephen J Anaya, *International Human Rights and Indigenous Peoples* (Aspen Publishers/Wolters Kluwer Law & Business 2009) 1.
[598] *Daniel Billy and others v Australia* (22 September 2022) Communication No 3624/2019, UN Doc CCPR/C/135/D/3624/2019.
[599] Vanessa Tunsmeyer, 'Indigenous Peoples, Climate Change and Human Rights: a Brief Look at Two Landmark Advisory Opinions in International Law' (*humanrightshere*, 9 October 2025) https://www.humanrightshere.com/post/indigenous-peoples-climate-change-and-human-rights-a-brief-look-at-two-landmark-advisory-opinions-in-international-law accessed 27 March 2026); 2019 Daniel Billy et al. Complaint [42.4], [82.1].
[600] *Daniel Billy et al. v Australia,* (n 598), views adopted by the Committee under article 5(4) of the Optional Protocol, concerning communication No. 3624/2019.

measures to protect against adverse climate change impacts led to the violation of their culture under IPCCR.[601]

After catastrophic weather events, migration is inevitable for these indigenous people and will be extremely difficult on them because of their lack of access to people, servicers and the language barriers. Those who survive migration may ordinarily fail to assimilate which may lead to the death of many and the erasure of a community. This Chapter separates the vulnerable groups, but indigenous people comprise of men, women, children and the elderly. While they will have different survival strengths to non-indigenous people, their immune systems may be easily compromised from the spread of diseases brought on after a climate disaster because of being non-vaccinated[602] and being unable to build immunity from germs generally. Another consequence of climate change which is not often discussed, is how the loss of biodiversity affects, accessibility to medicines. The continent is botanically rich with diverse crops and animals necessary for sustenance, but plants are critical for their healing and medicinal properties. It is predicted that climate change will 'significantly reshape the distribution and habitat of important medicinal plants, with many species projected to lose suitable environments or shift to higher altitudes and latitudes'.[603] Plant and herbal medicine are critical for all groups, but probably more so for indigenous people and persons living in rural areas who do not use western medicine or access to it is difficult or impossible.

Another point which should be underscored is that the perception of climate change is different to indigenous people. Modern society uses scientific evidence to predict climate change impacts, whereas '[i]ndigenous peoples' notions of climate phenomena are shaped and perceived through their cultural experience and interaction with the local physical and socio-political environment, and often inseparable from the social impact of these phenomena.'[604] For example, '[p]astoralists study the intestines of livestock that is slaughtered and are able to predict the coming of rains or drought.'[605] Therefore, '[n]ot being able to predict the timing of rain and drought or the quantity and severity undermines the capacity of indigenous peoples to plan their production and other activities, leaving them literally at the mercy of the elements.'[606] On the other hand, because they noticed the changes in the weather patterns, they

[601] ICCPR (n 477) Art 27.
[602] See, for example, Samuel Afari-Asiedu et al, 'Factors influencing vaccination up-take among nomadic population in four regions of Ghana: a qualitative study' (2024) 24 BMC Public Health: 2921 https://pubmed.ncbi.nlm.nih.gov/39438846/ accessed 27 March 2026; These factors show for example some of the reasons health care workers are hesitant to visit the 'pastoralist nomads' in Ghana and why the settlers miss vaccinations.
[603] Marce I Takubessi 'The impact of climate change on medicinal plants and natural products: A scoping review' (2025) Front. Pharmacol 7 https://www.frontiersin.org/journals/pharmacology/articles/10.3389/fphar.2025.1697581/full accessed 27 March 2026.
[604] Charapa Consult, 'Indigenous Peoples and Climate Change in Africa' (n 594) 6, also page 7, there is a table which comprehensively shows the scientific predictions compared to Baka and Babongo' physical, social and environmental perceptions of climate change impacts.
[605] Ibid 6.
[606] Ibid.

learned to adapt quickly, but are unaware that the changes are linked to the 'climate change phenomena'.[607] Case studies have revealed that '[By] applying their intimate knowledge of the natural environment, indigenous peoples combine traditional knowledge and practices with new knowledge, practices and technology. As such, they demonstrate a flexibility, which is central to their survival as distinct peoples […].'[608] Further, institutions recognise that indigenous people have local and indigenous knowledge which is valuable for climate change adaptation. These knowledge systems related to the environment are passed down to young people so that they can optimise growth of plants and preserve the environment for future generations.[609] Traditional and indigenous knowledge systems will be further expanded on in section 5.1, but the author thought it important to highlight that there is an increasing demand for their knowledge but there are hardly any protections for indigenous people.

While they may be able to sense that a weather event may be forthcoming from signs within the environment, they cannot predict the suddenness or extremity, which modern society is able to do through meteorology and technology. This leaves them vulnerable as they will not have enough time to leave their homes to seek refuge in those circumstances. For a group that does not contribute to GHG emissions and adapts quickly and sustainably, they are disproportionately affected by through the poor choices and slow actions of States.

4.5. Rights of the Elderly Pursuant to the Charter, and Regional and International Law

In the category of vulnerable people, it is fair to submit that the elderly receive the least attention internationally, but there has been a shift particularly because of the landmark but controversial case of *Klimaseniorinnen*. However, in pre-colonial Africa elders were the backbone of society, as they were accorded respect as custodians of traditions and spiritual intermediaries; 'tying communities to ancestors and the divine.'[610] They embodied the philosophy of Ubuntu[611] when providing blessings, and as the moral compasses of their villages when resolving issues.[612] Western socialization filtered through Africa from colonialization and diminished the influence of elders.[613] The influence still persists in various parts of Africa but particularly in rural communities. Wasosa notes that '[e]lders are still revered as

[607] 'The Hai||om and Baka/Babongo have not been informed about the phenomena of global climate change, which are beyond their influence and thus difficult to remedy or cope with culturally and socially. Yet, all of the communities experience the consequences of climate change.' Charapa Consult, 'Indigenous Peoples and Climate Change in Africa' (n 594) 9.
[608] Ibid.
[609] Zainab M Olaitan, 'The Relevance of African Indigenous Knowledge Systems for Development in Africa' (19 November 2024) Africa Indigenous Knowledge Research Network https://africaindigenousresearch.com/download/the-relevance-of-african-indigenous-knowledge-systems-for-development-in-africa-by-zainab-monisola-olaitan/ accessed 27 March 2026.
[610] Henry Wasosa, 'The Forgotten Psychology of African Elders and the Spiritual World' (2025) 12 e14296 Open Access Library Journal 4 https://doi.org/10.4236/oalib.1114296 accessed 27 March 2026.
[611] 'Ubuntu emphasizes that "a person is a person through other people," meaning one's identity is embedded in community relationships.', ibid 10.
[612] Ibid 10.
[613] Ibid 2.

custodians of knowledge, responsible for interpreting traditions, guiding rituals, and ensuring moral conduct within the community.'[614] It is submitted that Africa's intent was to ensure that honour and care for elders remained a priority in post-colonial society, which is reflected in the Charter.

4.5.1. Legal Framework

Article 18(4) states that *the aged […] shall also have the right to special measures of protection in keeping with their physical or moral needs* (my emphasis). This sentence is constructed differently to the one relating to children and women, which started with 'the State shall'. The use of that word 'shall' make the following actions, a direct obligation upon the State. This is seen in the reasoning in the ICJ Opinion in determining whether obligations from climate change treaties were binding but it is also accepted worldwide in legal interpretation. In Article 18(4), the elderly have a right, much like the other individual rights listed in the Charter, which the State must recognise and realise. By virtue of Article 1 of the Charter '[AU parties] to the present Charter shall recognize the rights, duties and freedoms enshrined in this Charter and shall undertake and adopt legislative or other measures to give effect to them.' As such, the State has a positive obligation to protect the elderly in keeping with their needs.

To realise those rights, the AU formed the African Union Policy Framework and Plan of Action on Ageing (2002) ('PFPAA).[615] It aimed to address the challenges facing the ageing population within Africa, and to be used as a guide for AU members as they design and implement appropriate integrated national policies and programmes to meet their needs. It should be highlighted than within that framework, paragraph 4.10 addresses "Crises, Emergencies and Epidemics". Climate change is considered an ongoing crisis, and therefore Member States had detailed guidance through the recommended actions for more than 20 years. The right to life and health which will be directly affected can be found in Articles 4 and 16 off the Charter respectively.

In that same month, the Madrid International Action Plan on Ageing[616] (April 2002) was implemented to set the standard for the care of older persons worldwide. They did this, similarly to the AU, by addressing various issues affecting the elderly, and providing recommendations and plans for implementation. The plan speaks to numerous issues under three broad categories, but what is relevant for the purpose of this discussion is that they highlighted the effects of environmental pollution on older persons under the category of "advancing health and well-being into old age".[617] This shows an early

[614] Ibid 13.
[615] African Union, 'Policy Framework and Plan of Action on Ageing' (2002) https://www.un.org/esa/socdev/ageing/documents/implementation/AUFrameworkBook.pdf accessed 27 March 2026; The policy was approved in April 2002 but adopted by the African Union Heads of State and Government in July 2002.
[616] UN, 'Political Declaration and Madrid International Plan of Action on Ageing' (Adopted by the Second World Assembly on Ageing, Madrid, 8-12 April 2002) (Madrid Plan) https://unece.org/DAM/pau/MIPAA.pdf accessed 27 March 2026.
[617] Ibid para 65.

recognition of environmental issues and their detrimental health effects, and thus the inclusion of pollution may have been intentional as a result of all the environmental and sustainability discourse in the 90's.

The AU was unwavering in its attention to the promotion of the rights and needs of older persons as the PFPAA called for the adoption of a protocol to the Charter relating to the rights of older persons, and this was then again reiterated in paragraph 20 of the Kigali Declaration in 2003. The protection of rights for the elderly (specifically women in this case) continued to be underscored and this is supported by their inclusion of Article 22 of the Maputo Protocol (2003). The Protocol to the Charter on the Rights of Older Persons in Africa ('Older Persons Protocol/OPP') was officially adopted in 2016.[618] It builds upon the provision 18(4) in the Charter by carving out special rights to protect older persons. Further, it can be inferred that Articles 7, 9 and 10 of the OPP, expand on the physical needs in particular, as they address the need for social, care and protection of the elderly. Though the OPP does not refer to a healthy environment like the Maputo Protocol, Article 14 requires State parties to ensure the protection of older persons in conflict and disaster situations. Climate change creates disastrous weather events as mentioned throughout this Chapter, and so this creates an obligation upon State parties to evaluate the existing plans to determine whether they require modification or overhauling. There may even be gaps in the legislation which may need filling to guarantee the protection and care to the elderly in these situations.

Africa has remained steadfast in its approach to bettering the lives and well-being of the elderly. Recently, 'in 2021, Member States adopted a regional framework[619] for implementing the priority actions of the Global plan of action of the Decade of Healthy Ageing 2021–2030.'[620] One of the milestones relates to development of national policies for healthy ageing using a primary health care approach. While this does not speak to an environmental approach to health, there can be no tackling of overall health for the elderly without considering the deleterious effects of climate change on the environment and its intersection with the ageing population. It was reported that '[b]y the end of 2023, thirty Member States developed policies, frameworks, and strategies to promote healthy ageing.'[621]

[618] Protocol to the African Charter on Human and Peoples' Rights on the Rights of Older Persons in Africa (adopted 30 January 2016, entered into force 4 November 2024) (OPP); As of 16 April 2025, the Protocol has been ratified by seventeen (17) States.
[619] Regional Committee for Africa, 'Framework for implementing the priority actions of the global plan of action of the decade of healthy ageing 2021-2030 in the African Region: report of the Secretariat' (12 July 2021) AFR/RC71/PSC/9 https://www.afro.who.int/sites/default/files/2021-08/AFR-RC71.pdf accessed 27 March 2026.
[620] Regional Committee for Africa, 'Progress Report on The Framework for Implementing the Priority Actions of the Global Plan of Action of the Decade of Healthy Ageing 2021-2030 In the African Region' (22 July 2024) AFR/RC74/INF.DOC/5 para 2 https://iris.who.int/handle/10665/378725 accessed 27 March 2026.
[621] Ibid para 6; The countries are Benin, Botswana, Burkina Faso, Burundi, Cameroon, Cabo Verde, Central African Republic, Chad, Comoros, Congo, Eritrea, Gabon, Ghana, Guinea, Kenya, Lesotho, Madagascar, Malawi, Mali, Mauritius, Namibia, Niger, Nigeria, Senegal, Sierra Leone, United Republic of Tanzania, Togo, Uganda, Zambia, and Zimbabwe.

Having outlined the regional legal frameworks in place for the elderly, it is submitted that the AU envisions State parties to take an integrative approach when promoting and recognizing the rights of elders. This means that all the agreements mentioned should be used when formulating national policies and frameworks.[622] The jurisprudence for the elderly is well established and robust in the African context, which translates to clear and definitive obligations for State Parties.

4.5.2. Effects of Climate Change on the Elderly

Older people as a part of ageing develop several health challenges and complications naturally or as a result of their lifestyle choices. Therefore, '[o]lder persons experience higher rates of cardiovascular illness and diabetes, which are linked to heat-related morbidity and mortality.'[623] There is also an intersection between older age and disability, wherein '[t]he incidence of disability rises with age: almost half of older persons worldwide are living with some form of disability, a proportion that increases as people age within the "older" age group […].'[624] One need just to look at the data from the COVID-19 pandemic to be reminded of how older people were gravely affected, but those more so with comorbidities.[625] Accordingly, the elderly are highly vulnerable to the impacts of climate change and are likely to face some of the worse effects. Climate change as mentioned for the other groups affects the right to life, health and safety, food, water and sanitation. While the effects will be slightly different on the elderly,[626] to avoid repetition, in this section, there will be a focus on the effects to the rights to life health and safety and the right to social protection care and support. These were chosen because life and health look different for older people as described in the previous paragraph. Consequently, older people rely heavily on care and support from family, doctors, social workers and the government.

In relation to the right to life and health, the rise in temperature is a feature of climate change which has debilitating effects on the elderly, and it also causes death. Research shows that '[a]dults aged 65 and older are the most likely to die from heat exposure or during heatwaves […].'[627] The landmark Swiss case, *Klimaseniorinnen*, is further relevant and captures how the increase in temperature affects the right to life and health. *KlimaSeniorinnen* argued that Switzerland had failed to act to cut emissions in line

[622] OPP (n 618) Art 22.
[623] Human Rights Council, 'Report of the OHCHR - Analytical study on the promotion and protection of the rights of older persons in the context of climate change' (20 April 2021) A/HRC/47/46, para 9, 'A study in Finland found a 14 per cent increase in mortality for persons over the age of 65 as a result of heatwaves, and in France during the 2003 European heatwave, 80 per cent of additional deaths occurred in persons aged over 75.' https://www.ohchr.org/en/documents/reports/ahrc4746-analytical-study-promotion-and-protection-rights-older-persons-context accessed 27 March 2026.
[624] UNGA, 'Report of the OHCHR' (n 623) para 37; See also, UNHRC, 'Report of the Special Rapporteur on Rights of Persons with Disabilities' (17 July 2019) UN Doc A/74/186 para 4 https://docs.un.org/en/A/74/186 accessed 27 March 2026.
[625] See UN Secretary-General, 'Policy Brief: The Impact of COVID-19 on older persons' (May 2020) https://unsdg.un.org/resources/policy-brief-impact-covid-19-older-persons accessed 27 March 2026.
[626] See Human Rights Council, 'Report of the OHCHR' (n 623) for an in-depth overview on how climate change impacts rights to food, water, sanitation, adequate housing, work and livelihood and culture, for the elderly.
[627] G Adriana Perez, 'The impacts of climate change take a heavier toll on older women' (2018) 39(2) Aging Today 7 (March-April 2018).

with its carbon emissions reduction target. The women explained that they experienced fatigue and suffered from respiratory diseases due to the heat waves related to global warming. The European Court held that the Swiss Government was legally obligated to meet its climate targets under human rights law. As such, they were in violation of Article 8 of the European Convention on Human Rights. This case while widely celebrated amongst the international community sparked intense political and academic debate,[628] one commentator notes that Court's own approach is ultimately proceduralist and modest.[629] Nevertheless, this is a judgment which put European States on notice regarding their climate change obligations and set the tone for the rest of the world.

Africa as a continent that is mostly sunny, 'is predicted to suffer disproportionately from higher temperature-related all-cause mortality from global warming, compared to temperate northern hemisphere countries'.[630] Regarding the temperature-related impacts, the IPCC reports that 'the elderly […] are most vulnerable to heat exposure'.[631] Moreover, the use of fossil fuels for power generation (transport, electricity and mining), causes high CO_2 emissions which reduces the air quality. For developing countries (i.e. all African nations), the position as at the international level for them to sustainably develop their economies. The IPCC reports that 'continued dependence on fossil-fuelled power plants will result in tens of thousands of avoidable deaths due to air pollution by 2030 and accelerate climate change.'[632] This will disproportionately affect the elderly who are already naturally weaker, dependent on medications and have underlying conditions. Further, it has been found that '[a]ir pollution […] change, is a potential cause of dementia[633] and has disproportionate health effects for older persons.'[634] For the elderly, there is a top to bottom impact on their health from air pollution. This ranges from respiratory infections to damage to brain cells and even death.

Another right which is affected is the right to social care and protection. Elderly people depend on support from their families, doctors and government assisted facilities to care for them daily. The type of care depends on the needs of each elderly person; some may need live in nurses to assist with all tasks and others may require financial assistance and partial household help. When a climate disaster strikes, they are disconnected from critical social and medical care immediately, and any live-in help ceases.[635]

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[628] See Charlotte Blattner, 'Separation of Powers and *KlimaSeniorinnen*' (*VerfBlog*, 30 April 2024) 10.59704/3f49776eda0e8e72 accessed 27 March 2026, for a breakdown of the major objections to the judgement.
[629] Marko Milanovic, 'A Quick Take on the European Court's Climate Change Judgments' (*EJIL:Talk!*, 9 April 2024) https://www.ejiltalk.org/a-quick-take-on-the-european-courts-climate-change-judgments/ accessed 27 March 2026.
[630] IPCC, 'AR6 Full Report - Climate Change 2022: Impacts, Adaptation and Vulnerability' (2022) 1377 https://www.ipcc.ch/report/ar6/wg2/downloads/report/IPCC_AR6_WGII_FullReport.pdf accessed 27 March 2026; see also, section 9.5 of the Report for a technical breakdown and assessment of the observed and projected climate change for each region within Africa.
[631] Ibid 1377.
[632] Ibid 1380.
[633] Ruth Peters et al., 'Air pollution and dementia: a systematic review' (2019) 70 Journal of Alzheimer' s Disease 145 https://pubmed.ncbi.nlm.nih.gov/30775976 accessed 27 March 2026.
[634] Human Rights Council, 'Report of the OHCHR' (n 623) para 10.
[635] Ibid para 26.

Those who are dependent on their pension via cheque, and those who rely on their family members to assist with ATM and other technological services will suffer.[636] Lack of immediate attention and care in the aftermath of an event, could expose them to life threatening diseases. It is also more difficult for family members to migrate with elderly persons who are immobile and if they are alone, this difficulty increases.[637] This can lead to them becoming displaced in emergencies, 'or stateless which can have enormous implications for their well-being.'[638]

To be compliant with Article 18(4) of the Charter, and the Article 22 of the Protocol which refers to implementation, the measures should not only include disaster relief mechanisms and programmes but target the root of the problem, climate change. Therefore, in addition to adoption of policies, facilities and technology must be upgraded and adapted to ensure the continued safety and protection of the elderly, but there must also be an urgency to integrate mitigation and adaptation for all systems.

4.6. State Parties' Obligations Arising from International Treaties

The legal obligations of African States emanating from the climate change treaties must be presented to sufficiently answer the question posed by PALU. These obligations are at the centre of States achieving a healthy climate/environment which enables them to realise the rights of vulnerable people. Under the treaties, States are categorized under two groups; developed and developing. The UNFCCC originally provided a list of developed countries via annexes, which the Paris Agreement failed to update in 2015. Due to their disproportionate contribution to GHG emissions, and because of the importance of economic development for developing countries, they traditionally had minimal obligations.[639]African countries pursuant to the World Bank Development would fall under the developing category.

The ICJ Opinion clarified States' legal obligations under international law to protect the climate system. They reaffirmed that mitigation, adaptation and cooperation obligations under the UNFCCC, Kyoto Protocol and the Paris Agreement are legally binding. They pronounced that mitigation obligations could be obligations of conduct or result,[640] which are centered around the adoption of national inventories to limit GHG emissions the formulation of nationally determined contributions (NDCs). Definitively, the ICJ concluded that the discretion of the parties in preparing their NDCs is limited, to achieve the global warming limit of 1.5C.[641] The author observes that developing nations do not have additional responsibility as the ICJ re-emphasised that developed nations should take charge in reduction efforts.

[636] Ibid paras 18 and 27.
[637] Ibid paras 15 and 19.
[638] Ibid para 17; See also, ibid paras 14-20 for a systematic overview of the mobility challenges and the cascading effects on the elderly.
[639] Mitigation policies and measures fall mostly on developed nations based on the principle of common but differentiate responsibilities and capabilities; Paris Agreement (n 463) Art 4(3).
[640] ICJ, 'Climate Change Advisory Opinion' (n 467) paras 204 and 235.
[641] Ibid para 245.

However, all States must ensure that their NDCs are more demanding over time,[642] conveying that developing nations must be more intentional in their mitigation strategies. The ICJ recognised that adaptation planning and cooperation are obligations for all States.[643] They noted that the principal forms of co-operation prescribed by the Paris Agreement are financial assistance, technology transfers and capacity-building, and developed countries must provide support in that form to developing countries in their mitigation and adaptation efforts. Another critical obligation for African nations, who share not only the climate system with the rest of the world, but also lakes and rivers amongst them, is the customary duty not to cause transboundary harm. This is the reason the Court recognised the standard of due diligence as stringent, to prevent significant harm, and it must be considered with the obligation to pursue domestic mitigation measures. This involves States taking precautionary measures, relevant rules and international standards, undertaking risk assessments and consulting with other States.[644]
The IACtHR Opinion provides more guidance for this Chapter regarding the measures of protections. The reason being that the Court was asked to determine the obligations to protect substantive rights without discrimination towards vulnerable groups. The Court's response was thorough in addressing the mitigation and adaptation obligations, noting that under the obligation to regulate, a human rights strategy must be adopted.[645] Further, the Court called on States to apply differentiated measures of protection reflective of the distinct vulnerability certain groups face to climate-related risk and disasters.[646] The groups they examined include, children, present and future generations, women, indigenous people and the elderly. Some of the measures allow for a blanket application and others are distinctive to a particular group.

These Opinions state in no uncertain terms what is expected of State parties in fulfilment of their climate and human rights obligations. The first step in protecting vulnerable communities is understanding the obligations fully, which will dictate how African governments contract with corporations and third parties, invest in projects, procure equipment and build infrastructure etc.

4.7. Recommendations for State Parties' Execution of Positive Obligations

This author will now draw to the Court's attention to the measures which the research above revealed to be lacking, and which may apply to Africa from the discussion. In order to execute the obligations sufficiently, 'States are obliged to compile all the information concerning such risks, their scale, the characteristics of the population groups that may be affected, and the most appropriate measures to guarantee the full enjoyment of their rights.'[647] Moreover, the author wishes to reiterate that Article 1 of

[642] Ibid para 241.
[643] Ibid paras 256, 261 and 262.
[644] Ibid para 136.
[645] See IACtHR, 'Advisory Opinion AO-32/25' (n 466) paras 321-332.
[646] Ibid para 596.
[647] Ibid para 595.

the Charter affirms that the rights within are positive by noting that State parties shall undertake to adopt legislative or other measures to give effect to them. The following procedural and substantive measures were collated from the literature and cases, which the author agrees will work in protecting the rights of vulnerable communities in Africa.

Procedural Measures

- State parties must provide:

(i) access to information on climate change and the environment which includes statistical data, impacted sectors, human rights, groups and mitigation and adaptation strategies.[648]

(ii) the opportunity to participate in the discussions, drafting of laws and policies regarding the environment, climate and their rights;[649] and

(iii) develop pathways to access to justice[650] which includes the provisions of adequate administrative and legal resources.[651]

Substantive Measures

- State parties must implement:
  - (i) Legal and health national policies and plans;
  - (ii) Accessible medical and health systems infrastructure and technical systems which includes warning systems, 'appropriate safe housing, non-perishable food, potable water and other supplies that are adapted to the specific needs and conditions'[652] of the elderly, disabled, women and children;
  - (iii) Separate shelters for women and children to avoid sexual violence and other abuses;
  - (iv) Design and implement strategies for the safe evacuation during climate-related disasters for the elderly;[653]
  - (i) Strategic funding allocation when provided with climate finance grants which includes investments in renewable energy and technology, building infrastructure and purchasing necessary equipment and supplies.

In addition to the above, it was noted from the research that women, the indigenous and the elderly have traditional knowledge that can assist with effective adaptation to climate change. This author recalls that

[648] Ibid paras 519-523.
[649] Ibid paras 530-539
[650] Article 8 of the Maputo Protocol provides for Access to Justice and Equal Protection before the Law.
[651] Ibid paras 540-542; 'The AU developed a model law on access to information (2013) which should assist states in developing their domestic laws. Countries in Africa with a constitutional right of access to information include Burkina Faso, Cabo Verde, Ghana, Madagascar, Central African Republic, DRC, Egypt, Eritrea, Guinea-Bissau, Malawi, Morocco, Republic of Congo, Seychelles, Somalia, and Zambia. Countries with other legal provisions for access to information include Côte d'Ivoire, Liberia, Nigeria, Sierra Leone, Sudan, and Togo.', ACEWRC 2024 (n 46) 29.
[652] IACtHR, 'Advisory Opinion AO-32/25' (n 466) (n 13) paras 615-616.
[653] See Human Rights Council, 'Report of the OHCHR' (n 623) for other recommendations for the protection of older persons.

this will require dismantling gender, ethnic and age discrimination and inequalities as provided for in the Charter.[654] For women this requires States' breaking down the structural barriers and societal norms by inviting women into rooms to share their sustainable farming techniques. The author observes from the literature that the transfer of knowledge from women is not championed as vigorously as that of indigenous peoples, when the data showed that women make up a larger percentage of agricultural labour force. While, the author acknowledges that the knowledge may be different, it is generally indicative of the gender disparities in force. As such, one of the States obligations should be development of a gender transformative adaptation approach for women to access natural resources and provide valuable insights.[655]

Institutions,[656] academics, treaties[657] and the courts[658] have highlighted the importance of indigenous knowledge in addressing the complexities of climate change. For instance, the UN has observed that 'the traditional knowledge and practices of indigenous people is extremely effective at conserving biodiversity and ecosystems and developing resilience against climate change.'[659] Thus, to obtain their ecological knowledge, States are exhorted to establish interpretation and translation services.[660] The Court must also remind States that all rights and protections should be afforded to indigenous people and safeguarded, they should not be used like a tool for their farming knowledge. Therefore, translation services should extend to participation in discussions and drafting of laws and policies which will affect them. It is imperative that their ancestral and cultural knowledge and properties should be respected, preserved and protected pursuant to the Charter. As such, they should also be provided with free legal representation to be able to access justice expeditiously.

The ACEWRC from its 2023 study,[661] has provided a detailed list of the institutional and legal gaps which affects the integration of children's rights in climate policies and adaptation plans. The recurring problems mentioned in case law and the literature are related to procedural rights for children. They observe that there are weak child participation mechanisms in climate decision-making, insufficient legal frameworks for access to environmental information,[662] and limited access to justice. These mechanisms and frameworks must be established or strengthened as it is 'critical for climate change action and upholding children's rights in the context of climate change.'[663]

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[654] African Charter (n 458) Art 2.; See also IACtHR, 'Advisory Opinion AO-32/25' (n 466) para 614.
[655] UNFAO et al, 'The Status of Women in Agrifood Systems' (n 559) 21.
[656] See IPCC, 'Special report (2019) on climate change, desertification, land degradation, sustainable land management, food security, and greenhouse gas fluxes in terrestrial ecosystems' Chapter 5, para 1.7.4.1 https://doi.org/10.1017/9781009157988.007 accessed 27 March 2026.
[657] Paris Agreement (n 463) Art 7(5).
[658] IACtHR, 'Advisory Opinion AO-32/25' (n 466) paras 476-480.
[659] UNSG, 'Report HRC/50/57' (n 514) para 36.
[660] IACtHR, 'Advisory Opinion AO-32/25' (n 466) para 613.
[661] ACERWC Summary 2023 (n 505) para 5.
[662] This information can be distilled in the form of colourful pictures which is done by the UN when they publish 'child friendly' versions of documents.
[663] ACERWC 2024 (n 499) 22-23.

The author acknowledges that implementation will look different for each State, as countries are at different levels of development. It must be stressed that fulfillment of these measures depends heavily on State cooperation and the political will of governments.[664] There must be a change in their attitudes which will lead them to make smart climate actions and financial decisions, which include for example, setting out climate action plans and carbon budgets.

4.8. Conclusion

The research unearthed the African Commission is a trailblazer in the legal realm as evidenced by their adoption of critical legislation and frameworks which aim to protect the rights of vulnerable groups. Additionally, the African Union demonstrates its commitment to climate change through their vast studies, working groups, reports, and adoption of resolutions. Further, of note is that their legislation is in harmony with that of most international treaties as shown, which they contoured to their African needs, making it specialised to the African context. Through their intentional drafting which includes the Charter, its Protocols and other regional laws, they have affirmed, much like the advisory opinions, that rights of human beings cannot be protected without a healthy environment. It is the foundation on which all other rights are built. The obligations of State parties are therefore interwoven, and it is submitted that State parties unequivocally have substantive obligations to vulnerable groups, which naturally extend in the context of climate change.

As previously mentioned, the obligations are deemed positive because they require States to take action to prevent harms and recognise the rights of children, present and future generations, women, indigenous people and the elderly. These rights can be explicitly found in the Charter, except indigenous rights which as opined can be inferred. The Court should factor in the case studies and data which showed that every human being, no matter the group, will have their most basic rights (life, health, food, water and shelter) impacted by climate change. Each group then faces different disproportionate effects as discussed, which is intersected with the pre-existing issues of *inter alia*, gender inequality, discrimination and poverty, and exacerbated by climate change. This leads thousands to migrate or be internally displaced and left to an international system that is already pressured, and that does not, recognise 'climate refugees'. Thus, States cannot adequately prepare climate measures without protecting the rights of vulnerable groups which includes not only the substantive rights, but they must simultaneously fight to promote equality and non-discrimination.

[664] Governments must keep in mind the agreed upon 2030 Sustainable Development Goals which include climate action and gender equality https://www.refworld.org/legal/resolution/unga/2015/111816 accessed 27 March 2026; and Africa's Agenda 2063 and its 6 aspirations (asp) which include: asp (1) A prosperous Africa based on inclusive growth and sustainable development; asp (3) An Africa of good governance, democracy, respect for human rights, justice and the rule of law and asp (6) An Africa whose development is people-driven, relying on the potential of African people, especially its women and youth, and caring for children https://au.int/Agenda2063/popular_version accessed 27 March 2026.

The laws are in place regionally and even locally, but implementation is the hurdle for States, the reports highlight this. Therefore, the Court must not only address it, but they should go further to warn States of the peril, which is imminent, should they fail to act on their positive obligations. The IPCC's observations and projections, backed by science, paint a very vivid and grim picture of the future and the realities of the vulnerable population during and in the aftermath of these disasters. It should be made clear by the Court that governments' political focus must be bigger than re-election; they are responsible for making critical financial, developmental, legal and policy decisions which are a significant part of their obligations.

Africa is made up of developing countries, and so it was relevant to draw the Court's attention to role of developing states in light of the recent advisory opinions. Read together, the opinions describe what type of measures should be implemented, always keeping in mind the vulnerable groups. Thus, as developing nations prone to climate disasters, it is imperative that they not only develop sustainably but with the vulnerable communities in mind. This should be tackled individually and collectively, but it should be a transparent, participatory, gender responsive approach guided by the best available science and traditional knowledge.[665]

[665] Paris Agreement (n 463) Art 7(5).

Chapter V - The Obligation to Cooperate

Cooperation of African States as a legal necessity in the Climate Crisis

Chishimba Yvette Mulenga

5.1. Introduction

Climate change is no longer a projected or future threat. It is a present crisis that is advancing rapidly and has very severe impacts and implications, especially in Africa. The reason for this is largely because, as compared with more industrialized societies, Africa shows greater dependence on climatic resources such as forestry, agriculture, fisheries and tourism.[666] The effects of climate change in Africa are worsened by the continent's low adaptive capacity at present.[667] Climate change is now considered one of the most significant impediments to the enjoyment of human rights and undermines the conditions necessary for the dignity, development and survival of people. This reality highlights the importance of enhanced state cooperation in addressing climate change and its effects. Cooperation among states is necessary because it is now not in dispute that environmental damage caused in one country can have adverse impacts in another. For instance, greenhouse gas emissions (GHGs) emitted in one country can be attributed to damage in another, often far from the source. As a result, no country in Africa, with its limited adaptive capacity, can mitigate the impacts of climate change independently.

In addition, there is a very clear and well established relationship between the enjoyment of human rights and having a healthy environment in place, as reflected by article 24 of the African Charter on Human and Peoples' Rights (the Charter).[668] The preservation and strengthening of this relationship requires meaningful cooperation among states. This duty of states to cooperate in good faith, though quite ubiquitous, is also recognized as part of customary international law. It is on this basis that the African Court on Human and Peoples' Rights (the Court) has been requested to deem 'what, if any, the nature of obligations on African states to cooperate in the framework of international cooperation with other states especially historical emitters to limit global warming to below 1.5°C threshold, to avert an existential climate crisis for present and future generations on the continent' is.[669] Combating the negative effects of climate change and how they impact on the realization of human rights requires concerted collective action from all states that are party to the Charter. Failure to establish areas of cooperation among states may trigger irreversible violations of fundamental human rights. Noting the

[666] Temesgen Kifle, 'Africa Hit Hardest by Global Warming Despite its Low Greenhouse Gas Emissions' in Andreas Knorr, Alfons Lemper, Axel Sell und Karl Wohlmuth (eds) *Reports from the World Economy Colloquium, No. 108* (Universität Bremen 2008) 5

[667] Thomas E Downing, Lasse Ringius, Mike Hulme and Dominic Waughray, 'Adapting to Climate Change in Africa' (1997) 2 Mitigation and Adaptation Strategies 19, 20.

[668] African Charter on Human and Peoples' Rights (adopted 27 June 1981, entered into force 21 October 1986) 21 ILM 58, 1520 UNTS 217 (African Charter).

[669] PALU, 'Request for Advisory Opinion No.001 of 2025: In the matter of a request by the Pan African Lawyers Union (PALU) for an Advisory Opinion on the obligations of States with respect to the climate change crisis' https://www.african-court.org/cpmt/details-advisory/0012025 accessed 27 March 2026 37.

seriousness and alarming pace of climate change, the Secretary General of the United Nations, Antonio Guterres, whose term concludes at the end of 2026, warned that without coordinated global action, the impacts of climate change risk becoming irreversible.[670]

While recognizing that varying interests exist among states and indeed that the climate emergency has affected sub- regions on the continent in different ways, it is important to note that the duty of cooperation constitutes an overarching and universal principle.[671] This standard has informed the development of numerous practices, agreements and conventions which will be explored and relied on to render assistance to the Court in determining that all state parties to the Charter are under an obligation to cooperate in mitigating and adapting to the impacts of climate change so as to ensure the protection and enjoyment of human rights of present and future generations. A determination of this nature by the Court will transform the notion of cooperation from a mere discretionary issue to a legal necessity.

This chapter of the brief begins by outlining the problem context, which will provide concrete examples on how different sub- regions of Africa are vulnerable to the effects of climate change. The second part will then identify the specific human rights affected by climate change on the continent and how environmental degradation and climate change ultimately result in the violation of these rights. After this, the chapter will show the legal basis upon which a duty for state cooperation is established, paying particular attention to the need to join forces with historical emitters and how they can contribute to achieving the 1.5°C threshold. A conclusion will then be drawn, emphasizing the urgency with which states must cooperate to avert the existential climate and human rights crisis for present and future generations.

5.2. The Problem Context

Africa is responsible for only a small share of global GHGs but experiences repercussions of climate change in epic proportions. In fact, some researchers have indicated that 'African emissions could account for only between 5% and 20% of global emissions.'[672] The drastic disparity, between the continent's contribution to the global GHG emission volume and impacts experienced, brings into focus the relevance of equity-based principles such as common but differentiated responsibilities. The Inter American Court of Human Rights (IACtHR) had occasion to underscore this concept when it pointed out that due regard must be given to the Rio Declaration when dealing with the effects of climate

[670] BBC News, 'Climate Change Moving Faster Than We Are, Says UN Secretary General' (10 September 2018) https://www.bbc.com/news/science-environment-45471410 accessed 27 March 2026.
[671] Nkechinyelu P Oranye and Abimbola W Aremu, 'The Duty to Cooperate in State Interactions for the Sustainable Use of International Watercourses' (2021) 2:45 Discover Sustainability https://link.springer.com/article/10.1007/s43621-021-00055-6#citeas accessed 27 March 2026.
[672] Katherine Calvin, Shonali Pachauri, Enrica De Cian and Ioanna Mouratiadou, 'The effect of African growth on future global energy, emissions and regional development' (2016) 136 Climate Change 109.

change.[673] The IACtHR recognized that the principle of common but differentiated responsibilities (CBDR-RC) requires developed states, in particular, to acknowledge the responsibility they bear in the general pursuit of sustainable development, bearing in mind the disproportionate pressure their societies exert on the global environment. In doing this, developed states are enjoined to use the technological and financial resources at their disposal.[674] By taking this position, the Court essentially provided a framework through which historical emitters may be held to a higher standard of conduct while presenting climate responsibility as a shared task among states.

Climatic events such as prolonged droughts, desertification, floods, extreme heat, sea level rise and intensified storms have become increasingly acute in Africa and are disruptive to not only the normal livelihood of its people but also to the enjoyment of guaranteed human rights. In other words, climate change multiplies the continent's already existing challenges such as poverty, weak health systems, food insecurity and political instability, *inter alia.* Instead of rendering African communities vulnerable to new challenges, climate change worsens pre-existing ones and pushes people beyond their capacity to cope. A few examples of how climate change has affected the African people in the last few decades are highlighted below for the Court's review.

The first region under discussion has West and Central African countries, collectively known as the Sahel. Scientific research and analyses demonstrate that the Sahel region is experiencing an increasingly recurring and prolonged drought. This has led to desertification and shrinking water sources. As one scholar aptly put it, 'the drought has had a devastating impact on the ecologically vulnerable region and was a major impetus in the establishment of the United Nations Convention on Combating Desertification and Drought.'[675] This drought is driven in part by global warming, changed rain patterns and temperatures that exceed the global average. Not only is the Sahel already one of the most climate-vulnerable regions in the world, its temperatures are projected to rise faster than the global average, which will only intensify climate hazards. Particularly, the World Bank observes that:

> Not only is the Sahel region expected to experience temperature increases 1.5 times greater than the world average, it is also particularly susceptible to land degradation and desertification. Indeed, the region has been identified as being one of the world's tipping points if the global average temperature rises by 3°C above pre-industrial levels.[676]

This evidence demonstrates that climate- related degradation in Sahel has already reached a level of severity. The prolonged drought and fast advancing desertification in the region have led to changes that

[673] Principle 7 of the Rio de Janeiro Declaration on Environment and Development, 1992.
[674] IACtHR, 'Advisory Opinion AO-32/25 – requested by the Republic of Chile and the Republic of Colombia' (29 May 2025) (Advisory Opinion AO-32/25) https://www.corteidh.or.cr/docs/opiniones/seriea_32_en.pdf accessed 27 March 2026.
[675] Ning Zeng, 'Drought in the Sahel' (2003) 302(5647) Science 999.
[676] World Bank Group, 'G5 Sahel Region Country Climate and Development Report' (2022) https://hdl.handle.net/10986/37620 14 March 2026.

have serious ramifications on the agricultural productivity and availability of water sources essential for both human consumption and livestock. Professor Laremont notes in his commentary on the situation in Sahel that as the problem deepens, competition for arable land and water among communities also becomes rampant and this in turn results in physical conflict between pastoralists and farmers who have historically shared the resources for millennia. This quest for resources has often resulted in armed confrontation.[677] In this region, the consequences of climate- induced harm extend beyond economic hardship. Food insecurity has also reached alarming levels. Displacement caused by this drought and changing rain patterns has also overwhelmed the states of the Sahel, leaving large populations without adequate shelter or healthcare.

The emergence of terrorist groups and the Sahel conflicts like the incident in Tigray, coupled with longstanding issues such as the war in Darfur and the fight for access to Lake Chad among pastoralist communities highlight a very strong link between climate change and armed conflict.[678] These conditions directly obstruct the enjoyment of rights guaranteed under the Charter and other international human rights instruments and experts have added that '[t]he disruption of provision of basic social services has affected especially vulnerable groups of the population such as children, women and internally displaces persons (IDPs).'[679] The foregoing underscores the necessity for states to cooperate in enhancing resilience to climate induced disasters in order to protect human rights.

In East Africa, a region commonly referred to as the Horn of Africa, the impacts of climate change have been evidenced through increasingly severe cycles of droughts followed by intense rainfall and flooding. These less predictable weather patterns attributable to climate change have posed significant challenges for the communities in East Africa. Countries such as Ethiopia, Somalia and Kenya often experience prolonged droughts that are sometimes immediately followed by cyclones and flash floods. These drastic changes make traditional coping mechanisms ineffective, undermine long-term planning and in many instances lead to death from heat shock or drowning, destruction of property, forced migration of entire communities along with exacerbated health inequalities and social conflicts. In addition, drought induced crop failure leads to malnutrition, especially among children, while flooding increases the incidence of diseases such as Malaria and dengue fever. In more specific terms, scientists indicate that 'different climate conditions could result in temporal and spatial changes in temperature, precipitation and humidity in ways that affect the biology and ecology of disease vectors.'[680]

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[677] Ricardo R Laremont, 'Climate Change and Conflict in Western Sahel' (2021) 64 African Studies Review 748.
[678] Stanford University, 'Stanford-led Study Investigates how Much Climate Change Affects the Risk of Armed Conflict' (*Stanford News*, 12 June 2019) https://news.stanford.edu/2019/06/12/climate-change-cause-armed-conflict/ accessed 27 March 2026.
[679] Nicolò Sartori and Daniele Fattibene, 'Human Security and Climate Change: Vulnerabilities in the Sahel' (1 March 2019) EuroMeSCo Policy Brief No 94 https://www.iemed.org/wp-content/uploads/2020/11/Euromesco-Policy-Brief94_Human-Security-and-Climate-Change_Vulnerabilities-in-the-Sahel.pdf accessed 27 March 2026.
[680] Marycelin Baba, Jandouwe Villinger and Daniel K Masiga, 'Repetitive Dengue Outbreaks in East Africa: A Proposed Phased Mitigation Approach May Reduce its Impact' (2016) 26 Reviews in Medical Virology 183, 186.

To explain the extent of climate change induced destruction and how human rights are affected in the region, the ideal example to recall is the period between 2019 and 2020 when a desert locust called *Schistocerca gregaria* invaded the Horn of Africa. This was due to insufficient resilience and preparedness in the Horn of Africa to effectively manage the impacts of a cyclone (*Mekunu)* experienced in the preceding year, following a prolonged drought. The soil became warm and wet, serving as the perfect environment for the locusts to hatch from eggs, develop and breed.[681] Researchers report that 'by the end of 2019, the winds of yet another tropical cyclone, *Pawan*, facilitated the migration of desert locusts back to East Africa.'[682] By implication and as a result of the severity of this invasion, it meant that people were left with no option but to seek for shelter and food elsewhere, exacerbating tensions between migrant and host communities in these new places.

Coastal regions, and even landlocked countries across Africa have equally not been spared from the climate induced challenges that lead to serious infringement of human rights. These coastal regions face the growing threat of sea-level rise and coastal erosion. Countries such as Madagascar and Mozambique are especially vulnerable to tropical cyclones because of their location.[683] They have been identified among the world's top seven countries most exposed to climate hazards including flooding and cyclones.[684] These hazards expose Africa's people to loss of life, displacement and prolonged socioeconomic insecurities, *inter alia.* Cyclone *Idai* of 2019 provides a convincing example. The cyclone caused much damage in Mozambique and an estimated 1.5 million people were affected, with over 400,000 of them being displaced while over 750,000 were reported as having been in need of urgent assistance. Severe damage was also occasioned to the Port of Beira and other key transport corridors linking landlocked countries such as Zambia, Zimbabwe and Malawi to international trade routes.[685] Such disruption demonstrates that the human rights consequences of climate events extend beyond the immediate disaster areas and that is why state cooperation in mitigating and devising ways of adapting to them is imperative. Damage to infrastructure in one country can trigger regional shortages of essential commodities, drugs and constrain the enjoyment of human rights in another.

All the foregoing examples suggest that climate change related events such as prolonged droughts and floods are materially undermining the conditions necessary for the enjoyment of human rights across Africa. These events have disrupted food systems, strained water resources, displaced communities, increased the prevalence of disease, exacerbated pre-existing and new conflicts and deepened socio-

[681] Abubakr A M Salih, Marta Baraibar, Kenneth K Mwangi and Guleid Artan, 'Climate Change and Locust Outbreak in East Africa' (2020) 10 Nature Climate Change 584.
[682] Ibid.
[683] Caridad Ballesteros and Luciana S Esteves, 'Integrated Assessment of Coastal Exposure and Social Vulnerability to Coastal Hazards in East Africa' (2021) 44 Eustaries and Coasts 2056 https://link.springer.com/article/10.1007/s12237-021-00930-5#citeas accessed 27 March 2026.
[684] Ibid.
[685] Government of Mozambique, 'Mozambique Cyclone Idai Post Disaster Needs Assessment – Conference Version (May 2019) 27 https://reliefweb.int/report/mozambique/mozambique-cyclone-idai-post-disaster-needs-assessment-conference-version-may-2019 14 March 2026.

economic inequalities through loss of employment and income.[686] This places heightened pressure on the proper protection of human rights across the continent and underscores the necessity for all states to cooperate in enhancing resilience to climate induced disasters.

Beyond the obvious harms highlighted above, climate change poses an existential threat to future generations in Africa. Any current degradation to the environment might compromise the ability of generations in the future to meet their basic needs and enjoy fundamental rights. Article 24 of the Charter guarantees a satisfactory environment as a fundamental right for all people. It does not explicitly state, however, that the right also extends to future generations. While this omission is likely not intentional, nor is it an admission that only present generations can be granted this right, the current request presents the Court with the perfect opportunity to interpret article 24 and pronounce itself on the duty, if any, of states to cooperate now for the sake of future populations. Such pronouncement will provide authoritative guidance on African states' obligations to prevent long- term environmental damage and ensure that collective action contributes to the protection and realization of not only the right to a satisfactory environment, but all human rights for all people across the continent and over time.

5.3. Specific Human and Peoples' Rights Affected

It has been agreed by a large body of scholars that accelerating climate change is a systemic driver of human rights violations. In fact, some commentators have gone as far as expressing that 'climate change is the greatest threat of our time to the well-being of both humans and nature.'[687] This understanding proceeds from the premise that climate change is not only an environmental or scientific concern but one with direct, foreseeable and disproportionate impacts on the enjoyment of human rights. Climate change increases the gap in existing inequalities and to a great extent, restricts access to essential conditions for human dignity.

The impacts of climate change interfere directly with the enjoyment or realization of a wide range of rights protected under the Charter and other international human rights instruments. Human rights are quite interconnected and infringement of a single right may also undermine the enjoyment of others. While the Charter provides for a broad range of human rights, this chapter examines only a few examples in order to generally highlight the extent of the climate-driven impacts on their realization and the areas of cooperation that the Court may urge among African states. In order to adequately address the climate crisis, it is important to identify the scope of human rights affected by it. Some of these rights are addressed more extensively in other parts of this brief but also repeated here to reiterate that the determination and application of a duty to cooperate is necessary for all African states, notwithstanding their level of development or how differently their people are affected by climate change.

[686] Ibid.
[687] Leena Hansen, 'Sami Rights in Finland's Climate Act' (2025) 17 Journal of Northern Studies 59, 60.

5.3.1. The Right to Life

The right to life is recognized under article 4 of the Charter as non-derogable and applies to all persons at all times. Particularly, the said article 4 provides that 'human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right.'[688] Given its very central and foundational character, the right to life is accorded the highest level of protection within legal systems. To this end and as a guide to all African states on what article 4 of the Charter envisages, the African Commission on Human and Peoples' Rights (ACHPR) refers to this right as 'the fulcrum of all other rights.'[689]

It has already been shown in earlier chapters of the brief that extreme weather events such as droughts, floods, cyclones and heat waves increasingly result in the loss of life. Researchers have also repeatedly indicated that climate change affects vulnerable groups including women, children and persons with disabilities more, resulting in their premature death. Whereas the initial responsibility of states regarding the right to life was to prevent its arbitrary deprivation, as evidenced in the wording of article 4, international human rights bodies have increasingly recognized that states also have positive obligations to protect life from foreseeable environmental risks. In the introductory paragraph 3 of General Comment 3, the African Commission guided that:

> The General Comment proceeds from an understanding that the Charter envisages the protection not only of life in a narrow sense, but dignified life. This requires a broad interpretation of **states' responsibilities to protect life**. **Such actions extend to preventive steps to preserve and protect the natural environment** and humanitarian responses to natural disasters, famines, outbreaks of infectious diseases, or other emergencies.[690] (Emphasis supplied).

Put simply, the Commission identified a fundamental shift in how the right to life is appreciated. This helps us understand that the obligation of states is no longer limited to preventing the arbitrary taking of live. Rather, states are now enjoined to actively safeguard life by averting large scale threats such as climate change and mitigating their harmful effects, as well as making conditions favourable for adaptation when prevention is absolutely not possible.

In order to reflect the above mentioned shift and align with the customary international standards already recognized in other regions of the world, the Court should hold that states have a duty to adopt measures that take into account the diversity of present generations, the differentiated geographical impacts of climate change and the rights of future generations as well. When thoroughly interpreted, article 4 of the Charter is not limited to the present generation alone. This entails that it is imperative for all states to

[688] African Charter (n 668).
[689] General Comment No. 3 on the African Charter on Human and People's Rights: The Right to Life (Article 4), adopted during the 57th Ordinary Session of the African Commission on Human and Peoples' Rights held from 4th to 18th November, 2015 in Banjul, The Gambia.
[690] Ibid 4.

cooperate in framing the standards that enhance the realization of the right to life even for people yet to be born. Based on a similar request of the Republic of Colombia to the IACtHR in 2017, the Inter American Court issued an advisory opinion on the relationship between the environment and human rights wherein it was stated that for international human rights law, the protection of life is an essential yardstick.[691] This is relevant to this discourse because it is practically impossible to ensure the protection of the right to life without state cooperation.

5.3.2. The Right to Health

While the Charter and other regional instruments recognize the right to the highest attainable standard of health, which entails not only healthcare services but also other determinants such as food, water and a healthy environment, climate change has reshaped health risks across Africa. Article 16 of the Charter[692] provides for every individual to enjoy the best attainable state of physical and mental health. It goes further and mandates all States Parties to ensure that their people receive medical attention when they fall sick. Further, under article 12 of the International Convention on Economic, Social and Cultural Rights (ICESCR), states are under an obligation to reduce the mortality rate by ensuring environmental hygiene and protecting access to food, water and healthcare.[693] In order for states to adhere to these provisions, there must be functioning systems in place.

From the occurrences observed in the problem context above, climate change has created foreseeable and severe threats to health. For instance, extreme heat may lead to complications like dehydration. Droughts lead to crop failure and affect access to clean water, leading to conditions like malnutrition while floods and cyclones usually result in increased water-borne diseases such as Cholera. In addition, furious cyclones and floods not only destroy people's homes but also medical facilities and infrastructure.[694] Climate change also affects people's mental health. Scientists have indicated that repeated exposure to disasters can contribute to psychological distress, anxiety and trauma. The United Nations Environment Programme (UNEP) has noted that:

> [A] recent Intergovernmental Panel on Climate Change (IPCC) pointed to the expected rise in mental health impacts due to exposure to high temperatures, extreme weather events and climate related economic and social losses, as well as anxiety and distress associated with concerns about the climate crisis.[695]

[691] IACtHR, 'Advisory Opinion AO-32/25' (n 674) paras 109 and 114.
[692] African Charter (n 668).
[693] International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3, Art 12.
[694] Government of Mozambique, 'Cyclone Idai Report' (n 685).
[695] United Nations Environmental Programme, 'Four Ways the Planetary Crisis is Impacting Mental Health' (2022) Nature Action https://www.unep.org/news-and-stories/story/four-ways-planetary-crisis-impacting-mental-health accessed 27 March 2026.

The cumulative effect is undermining the right to health, especially among vulnerable groupings like women, children and indigenous people. Given that climate change effects cross borders and impair shared ecosystems, shape disease patterns and weather, no single African state can address these problems alone. Regional and international cooperation is very essential to safeguard the health and dignity of present populations and protect future generations from escalating climate related health risks. In addition, article 16 of the Charter places a collective responsibility to ease disease burden on all states.

5.3.3. The Rights to Food and Adequate Nutrition; Water and Sanitation

Climate-driven weather patterns such as droughts, floods and cyclones have direct and indirect effects on the realization of the rights to food, adequate nutrition, water and sanitation. Though not expressly provided for under the Charter, these rights are protected and have increasingly been given legal weight by the Commission, as well as additional instruments such as the ICESCR. For instance, at its 65th Ordinary Session held from 21st October to 10th November 2019 in Banjul, the Commission called on all member states to 'take appropriate policy, institutional and legislative measures to ensure the full enjoyment of the right to food, including accessible and quality food that meets the requirement of nutrition and cultural acceptability.'[696]

However, agriculture in Africa is predominantly rain-fed and highly sensitive to climatic changes. Droughts reduce agricultural productivity by limiting water availability for crops and livestock, which many populations in Africa heavily rely on. Staple crops such as maize, millet and are particularly vulnerable to temperature and precipitation changes. This decreases food supply and increases the prices of what remains available. Floods and cyclones can also destroy farmlands and pastoral areas, food storages and infrastructure, heavily disrupting both production and distribution. This challenge is even more heightened in rural communities and low income households.[697] Over time, repeated climate shocks tend to undermine livelihoods and make adaptation difficult as it has been shown in preceding sections of this brief.

In addition, the United Nations General Assembly (UNGA), noting that access to sufficient, safe and affordable water is essential for life, health and dignity, recognized the right to water and sanitation in 2010.[698] However, this has greatly been affected in Africa due to the climate-altered patterns in the weather. Scientists have indicated that prolonged droughts diminish freshwater supplies, lowering groundwater levels and limiting access to satisfactory drinking water.[699] By contrast, floods and cyclones

[696] ACHPR, 'Resolution on the Right to Food and Nutrition in Africa - ACHPR/Res. 431 (LXV) 2019' https://achpr.au.int/en/adopted-resolutions/431-resolution-right-food-and-nutrition-africa-achprres431lxv2019 accessed 27 March 2026.
[697] Government of Mozambique, 'Cyclone Idai Report' (n 685).
[698] UNGA, 'Resolution 64/292 on the human right to water and sanitation' (28 July 2010) UN Doc A/Res/64/292.
[699] Anteneh Z Abiy, Assefa M Melesse, Wossenu Abtew and Dean Whitman, 'Rainfall Trend and Variability in Southeast Florida: Implications for Freshwater Availability in the Everglades' (2019) 14(2) PLOS ONE

contaminate water sources with pollutants, debris and even sewage. This, in turn, increases the risk of waterborne diseases. Women and girls who bear the responsibility for water collection in most cases in Africa are often disproportionately affected by its scarcity. In the worst of instances, women and girls could also risk violence and exploitation when water resources become scarce or distant. These are only a few of the challenges to the realization of the rights to adequate food, nutrition, water and sanitation connected with the climate crisis. Through regional cooperation, technical assistance and shared policies, African states can work together to address these challenges more effectively than acting individually. Common initiatives and joint management of natural resources such water bodies can assist African states to progressively build resilience and adaptation systems even in the face of climate change.

5.4. The International Legal Framework and Jurisprudence on State Cooperation

Having shown a direct link between the climate emergency and how it threatens the enjoyment of human rights in the African context, the task that now remains is to highlight that a determination of the duty to cooperate by the Court can assist in accelerating the response to this crisis. The obligation to cooperate is reflected across a wide spectrum of international instruments, as well as jurisprudence from the Courts, Tribunals and various treaty bodies.

Although the Charter does not contain a provision expressly titled or formulated to address international cooperation in the manner that may be found in some other instruments, the concept is implicit in certain parts of the text. In the first instance, the preamble of the Charter takes into consideration the fact that the enjoyment of rights and freedoms also implies the performance of duties on the part of everyone covered under it.[700] In other words, it considers that cooperation and mutual responsibility are central to the effective realization of the rights and freedoms embedded therein. The implication of this emphasis is that if individuals are called to cooperate, the expectation to do so is even higher for states. Some authors on the topic of cooperation and its dimensions in climate change governance have noted that 'in the international climate change regime, cooperation is referred to in all three of the principle governing instruments.'[701] Further, article 60 of the Charter permits the African Commission on Human and People's Rights, and by extension the Court, to draw inspiration from international law and from instruments adopted within the specialized agencies of the United Nations. It is on this basis that the Court is called on to clarify the nature and scope of states' obligation to cooperate in limiting global warming and averting the existential risks for present and future generations. Some provisions on this obligation are discussed hereunder:

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https://journals.plos.org/plosone/article/file?id=10.1371/journal.pone.0212008&type=printable accessed 27 March 2026.

[700] African Charter (n 668), preambular paragraph 7.

[701] Jason Rudall, 'The Obligation to Cooperate in the Fight Against Climate Change' (2021) 23 International Community Law Reform 184, 185.

5.4.1. The Obligation to Cooperate Under the UNFCCC

All fifty-four (54) African nations are parties to the 1992 UNFCCC[702] and they operate collectively as the African Group of Negotiators (AGN), currently led by the Republic of Ghana.[703] Under this Convention, one of the underpinning principles is that of Common but Differentiated Responsibilities and Respective Capabilities (CBDR-RC). While ensuring that state parties cooperate with each other in an attempt to stabilize global GHGs, this principle also captures the idea that it is the common responsibility of all states to protect and restore the environment but the levels and forms of their individual responsibilities may be adjusted to reflect differing national circumstances. This enhances compromise and agreement among states, which is important for this discourse because as indicated from the onset, Africa's contribution to the GHGs volume is quite minimal and historical emitters have a huge role to play in mitigating the impact of climate change on human rights on the Continent.

Aside from preamble paragraph 6 of the UNFCCC which calls for the widest possible cooperation by all countries and their participation in devising an effective response to the climate emergency, the Convention refers to cooperation in several other provisions including articles 3, 4, 5, 6, 7 and 9.[704] Taken together, these provisions form a legal foundation for collective efforts, or cooperation in this case, to stabilize GHGs and avert further risks to ecosystems and human societies. This duty has increasingly been reinforced by international adjudicative bodies across several regions. An assessment of this duty by the Court in Africa will strengthen both climate law and human rights jurisprudence on the Continent.

5.4.2. The Obligation to Cooperate Under the Kyoto Protocol to the UNFCCC

There can be no complete determination of the obligations of states in mitigating and adapting to climate threats without having due regard to the Kyoto Protocol.[705] This author argues that the Protocol is a foundational reference point for understanding why African states' engagement with historical emitters is not merely a matter of policy or intended goodwill on the part of the latter. The Protocol is very relevant to the obligation of African states to cooperate with historical emitters in addressing global warming and averting existential treats for present and future generations. It is through the Protocol that the general principles and objectives of the UNFCCC were translated into legally binding obligations for the countries that have ratified it. Particularly, articles 2, 10 and 13 are very instructive when dealing with the obligations of states to cooperate in not only combating climate change but also enhancing human and peoples' rights as guaranteed by the Charter.

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[702] United Nations Framework Convention on Climate Change (adopted 9 May 1992, entered into force 21 March 1994) 1771 UNTS 107 (UNFCCC).
[703] Brian Mantlana and Basanda Nondlazi, 'Understanding the African Group of Negotiators in the Multilateral Negotiations on Climate Change' (2024) 31 African Journal of International Affairs 1.
[704] UNFCCC (n 702).
[705] Kyoto Protocol to the United Nations Framework Convention on Climate Change (adopted 11 December 1997, entered into force 16 February 2005) 2303 UNTS 162.

By setting binding emission limits on historical emitters and placing them in its first annex, the Protocol points out the principal source of GHGs accumulation, thereby holding countries responsible for the largest share of emissions to higher burden. It follows that a reduction in emissions from the highest contributors would have the greatest effect on slowing down global warming and this would consequently address some of the challenges that are faced in the realization of human rights in Africa. In addition, article 2(1)(b) of the Protocol functions pursuant to article 4 of the UNFCCC in ensuring that state parties work together to share their experiences and exchange information on measures and ways aimed at improving transparency and effectiveness. A strict adherence to this strengthens the chances to bridge gaps between developing states like the majority in Africa and those more industrialized ones, further improving the principle of CBDR-RC. This article, read together with articles 10 and 15 of the Kyoto Protocol, forms a substantive standpoint on the obligation to cooperate among state parties.[706]

5.4.3. The Obligation to Cooperate Under the Paris Agreement

The duty for states to cooperate in the Paris Agreement (the Agreement)[707] somewhat differs from earlier climate regimes discussed. While the UNFCCC makes provision for the objectives of the climate regime and the Kyoto Protocol provides the first specific targets, the Agreement establishes a long-lasting and more procedural duty for state parties to cooperate. Under article 2(1) of the Agreement, the need for cooperation is no longer just a suggestion but a primary legal obligation necessary to achieve the collective goal of limiting global warming to 1.5°C. In the context of the realization of the human and peoples' rights in Africa, the duty to cooperate as espoused in the Agreement, is the legal bridge between the right to a healthy environment under article 24 of the Charter and the existential hardships around the Continent, brought about by climate change. The Agreement specifically recognizes human rights in its preamble and calls on all parties to consider them when addressing the issue of climate change, which is recognized as a common concern for humankind.[708]

An integral part of the obligation of states to cooperate under the Agreement is envisaged in article 4, which makes provision for Nationally Determined Contributions (NDCs). NDCs are particularly helpful in holding countries, especially historical emitters, accountable for their mitigation and adaptation commitments that will eventually add to the efforts of averting existential climate risks for present and future generations. Through NDCs, each state party is mandated to communicate its national climate commitments and strategies to mitigate or adapt to the impacts of global warming, based on the principle of CBDR-RC. This is important for the recognition of the Court because it provides a systematic way of states to cooperate. While holding historical emitters to a higher standard and requiring the highest

[706] Ibid.
[707] Paris Agreement to the United Nations Framework Convention on Climate Change (adopted 12 December 2015, entered into force 4 November 2016) TIAS No 16-1104.
[708] Ibid preamble para 11.

possible ambition from them, article 4(5) of the Agreement explicitly recognizes differentiation and provides flexibility for developing countries with the UN, the majority of which are African. This is very important for the Court to take into account as it addresses the climate disproportionality concern raised at the start of this brief. However, statistics show that notwithstanding the value NDCs add regarding the obligation of states to cooperate in stabilizing GHGs and averting existential climate risks for current and future generations, ambition gaps between African states and historical emitters still remain very significant. This author argues that the reason for the widened gaps could be that the more industrialized states are now opting to relate with developing ones on an economic trade or loan basis, as opposed to offering adequate financial aid and support premised on differentiation.[709] As one scholar has observed, 'along history, foreign aid has been viewed in different angles by both recipients and donors.'[710] This is sometimes the case even though in the spirit of fostering transparency, article 13(9) of the Agreement requires more industrialized states to declare how they are assisting developing ones. Further to the foregoing, article 6 of the Agreement also makes it possible for states to engage in voluntary cooperation and identify areas to work together on, focused on either mitigation or adaptation.

Having regard to all that has been stated, the Agreement lays a foundation upon which the Court can rely in determining the obligation of African states to cooperate, not just among themselves, but also with historical emitters to limit global warming to below 1.5°C threshold and avert an existential climate crisis for present and future generations on the Continent. While imperfect, the agenda for states to cooperate through NDCs represents a very critical bridge between climate governance and the realization of human rights in Africa. One of the shared characteristics under both the UNFCCC and the Paris Agreement is that states are enjoined to go beyond mitigation and cooperate to establish adaptation plans, as well as increase the adaptive capacity of states that are still lagging behind in terms of development. In essence, a finding of the Court that African states have the obligation to cooperate in this manner would give clarity and upgrade states' contributions to the protection and rehabilitation of areas affected by drought, desertification and floods. The trickle-down effect of this would be an improved realization of the human rights affected when climate-driven weather changes are not addressed.

5.4.4. International Jurisprudence on the Obligation of States to Cooperate

International Courts and Tribunals from other regions have progressively elaborated and significantly clarified the scope and content of the obligation to cooperate in addressing global warming and preventing climate-driven risks that threaten the enjoyment of human rights across generations. There is a plethora of these cases and some are outlined below for their persuasive value:

[709] This issue is explored again under the heading on climate finance in sub-section 5.5.1 of this chapter.
[710] F Niyonkuru, 'Failure of Foreign Aid in Developing Countries: A Quest for Alternatives' (2016) 7(3) Business and Economics Journal 1,3.

5.4.4.1. ICJ Advisory Opinion on the Obligations of States in Respect of Climate Change

On 29th March 2023, the United Nations General Assembly (UNGA) adopted a resolution[711] to request the International Court of Justice (ICJ) for an advisory opinion on the obligations of states in respect of climate change.[712] Regarding cooperation, this case could be said to have transformed mere political aspirations of states into a more enforceable duty or binding customary obligation because the questions brought before the ICJ were of a legal nature. One could relate this opinion to the African context by relying on the ICJ's emphasis that states must cooperate in good faith to prevent significant harm to the climate system. This speaks directly to article 24 of the Charter on the right to a satisfactory environment and validates the argument that stabilizing GHGs to safeguard the realization of human and peoples' rights of both current and future generations requires collective efforts from all states. The ICJ noted that while legal frameworks provide the structure for cooperation, more is required from states both at an individual and collective level. To be precise, the ICJ in underscoring the importance of state cooperation to combat the climate crisis opined that:

> A complete solution to this daunting, and self-inflicted problem requires the contribution of all fields of human knowledge, whether law, science, economics or any other. Above all, 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.[713]

The ICJ also reiterated that the principle of CBDR-RC does not establish new obligations on states but is relevant for the interpretation of climate treaties and determination of rules of international customary law that relate to the environment and ultimately have an impact on the realization or enjoyment of human rights.[714]

Prior to this advisory opinion, the ICJ had emphasized that states must prioritize cooperation when addressing transboundary environmental problems which may affect populations and interfere with the realization of their human rights. While not explicitly mentioning the term 'cooperation' in the case concerning the *Kasikili/ Sedudu Island,*[715] the ICJ found, by eleven votes to four, that sovereignty over a territory does not eliminate obligations to neighbouring states. This decision supports the broader rule of customary international law that states must cooperate to avoid causing transboundary harm and manage shared ecosystems for the benefit of current and future generations. This decision also found expression in other cases where the ICJ enjoins states to refer to environmental treaties and exchange

[711] UN General Assembly, 'Request for an advisory opinion of the International Court of Justice on the obligations of States in respect of climate change' (29 March 2023) UN Doc A/RES/77/276.
[712] ICJ, 'Advisory Opinion on the Obligations of States in Respect of Climate Change' (23 July 2025) (ICJ Climate Change Advisory Opinion) https://cdn.climatepolicyradar.org/navigator/XAA/2023/request-for-an-advisory-opinion-on-the-obligations-of-states-with-respect-to-climate-change_c552351dce95168dc30df84493f8722c.pdf accessed 27 March 2026.
[713] Ibid para 456.
[714] Ibid para 151.
[715] *Case Concerning Kasikili/Sedudu Island (Botswana/Namibia)* [1999] ICJ Rep 1045.

information or conduct Environmental Impact Assessments (EIAs) for projects which have transboundary impacts. In essence, the ICJ has guided that notification and consultation of other states regarding environmental projects are important dimensions of cooperation and must be exercised to the fullest extent possible.[716]

5.4.4.2. IACtHR Advisory Opinion on the Climate Emergency and Human Rights

On 9th January 2023, the Republic of Chile and the Republic of Colombia submitted a request to the IACtHR, seeking an advisory opinion on states' obligations in addressing the climate emergency under international human rights law.[717] With respect to the duty to cooperate, the majority of the Judges were of the opinion that the right to a healthy environment which constitutes a foundational element for the enjoyment of many other human rights, gives rise to an immediate obligation on states to work together in safeguarding the climate system.[718] Such cooperation is necessary to prevent human rights violations arising from climate change. In practical terms and of relevance to the African context, this obligation requires all states to work collectively to reduce GHG emissions. This entails not only through the adoption or signing up to regulatory frameworks establishing clear mitigation targets but also the implementation of effective measuring and monitoring mechanisms to ensure accountability.

The IACtHR also unanimously placed reliance on article 1(3) of the United Nations Charter (UN Charter)[719] and opined that states are obligated to collaborate in good faith to make progress in the respect, guarantee and progressive development of the human rights that are threatened by the climate emergency. Article 1(3) of the UN Charter establishes international cooperation in the advancement of human rights. In essence, the article calls upon states to cooperate internationally and encourage universal respect for human rights and fundamental freedoms.[720] This opinion of the IACtHR on states' obligation to cooperate is very relevant to the African context because it provides an available doctrinal and comparative precedent which the Court can only build on.

5.4.4.3. Advisory Opinion of the International Tribunal on the Law of the Sea (ITLOS)

In response to a request submitted by the Commission of Small Island States on Climate Change and International Law, the Tribunal[721] gave an advisory opinion and clarified that states have a binding obligation to cooperate in addressing marine pollution resulting from increased GHGs.[722] The Tribunal

[716] *Pulp Mills on the River Uruguay (Argentina v Uruguay* [2010] ICJ Rep 14, para 77; and *Gabčíkovo-Nagymaros Project (Hungary v Slovakia)*[1997] ICJ Reports 7.
[717] IACtHR, 'Advisory Opinion AO-32/25' (n 674).
[718] Ibid 216.
[719] Charter of the United Nations (adopted 26 June 1945, entered into force 24 October 1945) 1 UNTS XVI.
[720] Ibid.
[721] International Tribunal on the Law of the Sea.
[722] ITLOS, 'Request for an Advisory Opinion submitted by the Commission of Small Island States on Climate Change and international law – Advisory Opinion' (21 May 2024) (COSIS Advisory Opinion) https://www.itlos.org/fileadmin/itlos.pdf accessed 27 March 2026.

interpreted articles 197, 200 and 201 as read together with articles 194 and 192 of the United Nations Convention on the Law of the Sea (UNCLOS)[723] to emphasize that climate-driven pollution of the marine environment affects human rights and states must cooperate with due diligence to prevent, reduce and control such pollution.[724] The Tribunal stressed that, given the cumulative and transboundary nature of GHGs, proper protection of the environment and the consequent impact on the enjoyment of other rights cannot be achieved through individual national measures. Echoing the findings of the IPCC, the Tribunal stated that:

> [C]limate change has the characteristics of a collective action problem at the global scale, because most GHGs accumulate over time and mix globally, and emissions by any agent (e.g, individual, community, company, country) affect other agents. Effective mitigation will not be achieved if individual agents advance their own interests independently. Collective responses, including international cooperation, are therefore required to mitigate GHG emissions and address other climate change issues.[725]

In the Tribunal's opinion, cooperation at regional level is also paramount. This helps us understand and apply issues in the African context where it has been shown that climate change poses severe risks to the realization and enjoyment of several human and peoples' rights. The Tribunal's reasoning on the obligation of states to cooperate provides persuasive authority for any regional Court to conclude and affirm that stabilizing GHGs is part of states' binding responsibilities, not just at law but also in human rights.

5.4.4.4. Social and Economic Rights Action Centre (SERAC) and Another v Nigeria

At the continental level, the Commission has had occasion to contribute to the jurisprudence that confirms the notion that environmental degradation constitutes a human rights violation in the *SERAC* case.[726] The Commission categorically stated that states are not only required to refrain from violating human rights themselves, but are also obligated to prevent violations by third parties such as private corporations. This requires total cooperation from all states, especially with historical emitters where many large corporations are legally registered. Moreover, the Commission articulated a set of standards and measures that all African states should adopt. These standards reflect an emerging consensus in both international environmental law and human rights law that procedural rights are essential to the realization of substantive ones. Further, while recognizing the need for economic growth in Africa, it should not be at the expense of human dignity or the enjoyment of human rights. States have a binding obligation to cooperate in averting existential environmental harm for current and future generations even in the quest for economic growth.

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[723] United Nations Convention on the Law of the Sea (adopted 10 December 1982) 1833 UNTS 3.
[724] ITLOS, 'COSIS Advisory Opinion' (n 722) paras 247 to 321.
[725] Ibid para 297.
[726] *Social and Economic Rights Action Center (SERAC) and Center for Economic and Social Rights (CESR) v Nigeria* (26 October 2001) ACHPR Communication 155/96 (2001) AHRLR 60 (*SERAC*).

5.5. The International Legal Framework and Jurisprudence on State Cooperation

In paragraph 259 of its advisory opinion, the IACtHR emphasized that "since the protection of human rights in the context of the climate emergency is not limited to mitigation and adaptation actions, or to responding to loss and damage, the obligation of cooperation encompasses all the measures required to respond integrally to the climate emergency."[727] Throughout this chapter, it has been reiterated that the impacts of climate change are felt by every state and addressing them demands collective action. International frameworks like the UNFCCC and the Paris Agreement enable states to devise stronger multilateral legal commitments. Yet, it is also not in dispute that states differ significantly in their capacity to respond to the climate crisis. Some lack the requisite capacity and resources needed to reduce GHGs or adapt to the impacts while others have better means. This creates a gap between what is required and what many states can achieve on their own in reality. This gap can be bridged by enhancing state cooperation in the areas discussed below:

5.5.1. Climate Finance and Economic Aid to Africa

There has been no proper definition of what climate finance in Africa entails or the rules that apply to identify how funds and aid should be appropriated among the least developed countries, as well as what share to dedicate to both mitigation and adaptation. While the UNFCCC, the Paris Agreement and many other international and regional instruments embody provisions on financial support, they have largely remained insufficient to offset the adverse effects of climate change on African states which are struggling to adapt. Mitigation projects in Africa still receive a slightly larger share of funding from developed countries because they are more commercially structured and attractive to investors while adaptation projects remain underfunded despite rising climate impacts. For instance, in its 2022 Adaptation Gap Report, the UNEP estimated that annual climate change adaptation costs for developing states will likely reach US $160- 340 billion per year by 2030 and US $315-565 billion per year by 2050.[728] In 2025, the UNEP updated the cost of adaptation finance needed in developing countries alone, placing it at US$310 billion per year in 2035. In the interim, "international public adaptation finance flows to developing countries were US26 billion in 2023, down from US$28 billion the previous year"[729] and this amount is almost negligible when measured against what is estimated. Such a projection is especially overwhelming for African states that are grappling with several other challenges such as political instability and only have limited funds to utilize. This problem is compounded by the fact that most Global North countries, which are responsible for most historical GHGs, are also not on track to meet their pledges under the Paris Agreement, irrespective of the founding reaffirmation that developed countries should take lead in providing financial assistance to countries that are less endowed and more

[727] IACtHR, 'Advisory Opinion AO-32/25' (n 674) para 259.
[728] United Nations Environment Programme, 'Adaptation Gap Report: Too Little, Too Slow- Climate Adaptation Failure Puts World at Risk' (2022) 19.
[729] United Nations Environment Programme, 'Adaptation Gap Report: Running on Empty' (2025).

vulnerable.[730] Limiting global warming to 1.5°C requires scaled up climate finance, particularly for developing states. Some innovative ways in which African states can collaborate to raise and manage climate finance are discussed below.

Climate finance for African states must be carefully tailored to local socio-economic and institutional contexts to ensure effectiveness and sustainability in combating the impacts of climate change. While rapid response to extreme events in Africa is important, cooperation for long-term adaptive capacity should be prioritized. State parties to the Charter should cooperate in developing common standards and coordinated strategies aimed at overcoming structural barriers that inhibit sustainable investment. One practical way of enhancing such coordination is through the African Union (AU) which creates a platform for harmonizing financial policies and can be used to ensure even distribution of finances throughout the Continent.[731] Most climate finance flows in Africa have been channeled to mitigation activities which are associated with the increasing use of market instruments, such as loans at market rates and this raises concerns about states' debt sustainability, given that most of them are already in heavy debt or at high risk of it. Critics have strongly observed that:

> [C]limate finance is not about charity; it is about justice. Providing finance through loans is one of the most unjust actions that developed nations can take; it burdens developing countries with debt for a crisis they did not cause. They are, in effect, profiting from the pain of others.[732]

Owing to the fact that Africa mobilizes climate finance largely through debt, state cooperation is one sure way to enable governments to team up and craft policies that govern green credit lines, thematic bonds, debt swaps that depend on the severity of circumstances and risk sharing instruments. Through cooperation, African states can facilitate collective bargaining with developed countries for them to increase the share of grants and concessional loans instead of the prevailing market rates. African states can also collaborate under the umbrella of the AU to strengthen governance and invest in infrastructure that is beneficial for a blue economy in coastal states across the Continent. In addition, utilizing institutions like the African Development Bank (AfDB) can strengthen Africa's bargaining power in global climate negotiations, harmonize the distribution of climate finance across the Continent and ease the implementation of NDCs to achieve the climate goals for 2030.[733]

In sum, the need for state cooperation when dealing with climate finance cannot be overemphasized. The United Nations Development Programme (UNDP) advises that:

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[730] Zachary Pavlik, 'Leveraging Foreign Investment to Support Climate Change Adaptation in the Global South: Certifying Climate-Nexus Investments and Conditioning Protections' (2023) 53 Environmental Law 203, 206.
[731] FSD Africa, 'Landscape of Climate Finance in Africa Report by FSD Africa' (2022) https://fsdafrica.org/publication/landscape-of-climate-finance-in-africa/ (accessed 27 March 2026).
[732] OXFAM and CARE, 'Climate Justice - Climate Finance Shadow Report: Analysing Progress on Climate Finance under the Paris Agreement' (2025) 15 https://policy-practice.oxfam.org/resoiurces/climate-finance-shadow-report-2025-analysing-progress-on-climate-finance-under-621735/ accessed 27 March 2026.
[733] Ibid.

> [A]s scrutiny increases on the role of Multilateral Development Banks (MDBs) and other key actors within the global financial system and calls for development finance heighten, there is an opportunity for African countries to bolster their engagement in this discussion, to ensure African perspectives are captured so they can take advantage of any positive future reforms.[734]

Greater cooperation among African states will enhance their capacity to formulate and implement comprehensive strategies and policies that address climate change mitigation while strengthening adaptation and resilience for present and future generations. Scaling up both mitigation and adaptation finance, as well as leveraging innovative financing instruments to ensure that funds reach the communities that need them most can only happen through the unadulterated cooperation of not just African states among themselves, but also with historical emitters. Such efforts ultimately contribute to the improved realization and protection of human rights.

5.5.2. Technology Transfer, Scientific Research and Data Sharing

Enhanced cooperation among African states in technology transfer, scientific research and data is not merely recommended as an academic exercise. It is legally and morally essential, given the pace at which the climate crisis is affecting populations and their guaranteed human and peoples' rights on the Continent. The IPCC has confidently advised and concluded that limiting global warming and reducing climate risks for current and future generations requires "rapid and far-reaching transitions across all sectors and systems to achieve deep and sustained emissions reductions and secure a liveable and sustainable future for all."[735] While individual states are expected to pursue knowledge independently, the stabilization of GHGs can only be significantly achieved by the availability of services and studies on early warning systems and shared data infrastructure.[736] To design effective mitigation and adaptation strategies, African states need to collaborate with each other, as well as with historical emitters in research, technology transfer and data sharing.

Article 10 of the Paris Agreement highlights the importance of technology development and transfer in building resilience and reducing GHGs. Article 7(7)(c) also presents the strengthening of scientific knowledge and climate information systems as crucial to adaptation efforts.[737] In similar wording, articles 4(1)(g) and 12 of the UNFCCC call upon states to cooperate in scientific, technological, technical and socio-economic research, as well as in exchanging relevant data. These provisions also assist in demanding some sort of accountability from all state parties. At continental level, one of the aspirations of the AU is to have a prosperous Africa which is based on inclusive growth and sustainable

[734] S F Adeyemi and G Mwaniki in the United Nations Development Programme Report, 'Climate Finance in Africa: An Overview of Climate Flows, Challenges and Opportunities' (September 2024) 58.
[735] IPCC, 'Climate Change 2023 Synthesis Report: Summary for Policymakers' para C.3. https://www.ipcc.ch/report/ar6/syr/downloads/report/IPCC_AR6_SYR_SPM.pdf accessed 27 March 2026.
[736] Ibid.
[737] See Paris Agreement (n 707).

development.[738] One certain way to make progress in this regard is by improving science, technology and innovation, as underscored by the goals in the AU's framework document called Agenda 2063. Coordinated study and strengthened cooperation in the areas of technology transfer, scientific research and data sharing are necessary measures to avert existential climate crises and ensure the progressive realization of human rights for present and future generations across Africa.

5.5.3. Climate Justice Under the Afrocentric Philosophy of *'Ubuntu'*

The African Commission and Court jurisprudence has generally treated cooperation as an underlying principle of the Charter's communitarian approach rather than an explicitly legislated obligation. What sets the Charter apart is its emphasis on collective rights which stems from the philosophy of *Ubuntu.* When translated to English, this philosophy literally means "I am because we are" and it promotes the idea that a person's very existence is affirmed through their relationship with others. It is an internationally recognized custom throughout Africa. Based on articles 25 and 29(7) of the Charter, the *Ubuntu* philosophy places a duty on states to see to it that freedoms, rights and corresponding obligations and duties are understood. It also encourages all stakeholders to strengthen African cultural values in their relations with each other.[739] In other words, this philosophy embodies the need for collective action and ethical responsibility from which African states can leverage in a bid to stabilize GHGs. To add, sub-articles 2 and 8 of article 29 emphasize the duty of every individual to "preserve and strengthen positive African cultural values" and "contribute to the promotion and achievement of African unity" respectively.[740] These provisions imply an obligation, even though for individuals, to cooperate both within the society and across borders. The central foundation of the philosophy of *Ubuntu* is that it is built on equity and justice among all beings, which is also at the core of climate justice. It idealizes the rejection of domination, exclusion and exploitation, whether of people or ecosystems. However, in relation to climate justice in Africa, one commentator observed that:

> African communities- particularly the rural populace, disadvantaged, people with disabilities, the poor, women and children- tend to bear the burden of unjust environmental policies and practices. In these communities, dumping sites and heavy industries are for the most part, located closer to high-density residential areas, where the majority of poor people live.[741]

Under the philosophy of *Ubuntu,* African states are presented with an opportunity to cooperate in addressing the challenge of their communities bearing the climate burdens mostly created by others, challenging fossil-fueled developments that largely benefit the elites and historical emitters.[742] African states must cooperate and enhance cultural values that encourage mindset changes to avoid locking the

[738] African Union, 'Agenda 2063: The Africa We Want – Framework Document' (April 2015) 104-105 https://au.int/en/agenda2063/goals accessed 27 March 2026.
[739] See African Charter (n 668) Arts 25 and 29(7).
[740] Ibid Art 29(2) and (8).
[741] Munamato Chemhuru, *Environmental Justice in African Philosophy* (Routledge 2022) 1.
[742] Ibid.

Continent into fossil-fuel dependency, aligning with global frameworks like the Paris Agreement. In this way, the philosophy of *Ubuntu* can guide African societies towards low-carbon development pathways that reduce GHGs and contribute to alleviating existential climate crises threatening both present and future generations. Though based on the European Convention on Human Rights, the reasoning in *Urgenda Foundation v State of the Netherlands*[743] which supports the argument that states have a legal duty to take effective action against climate change can also be applied in the African context through the Charter and this philosophy.

5.6. Conclusion

In light of the foregoing, the obligations of African states to cooperate in stabilizing GHGs and addressing the impacts of climate change in both present and future generations is grounded in international law, as well as the African human rights system. It has been demonstrated that although African states have contributed least to cumulative global GHGs volumes, they face disproportionate climate-driven harm. This includes prolonged droughts, floods, heat waves and cyclones that undermine the enjoyment of rights guaranteed under the Charter. The rights to life, health, adequate food and nutrition, as well as water and sanitation are binding guarantees under the Charter and in most national constitutions, but their realization has been inhibited by climate change. Instruments such as the UNFCCC, the Kyoto Protocol and the Paris Agreement espouse the obligations of states regarding both mitigation and adaptation to climate change. To add, emerging jurisprudence and advisory opinions from international Courts and Tribunals further clarify what is expected from states in rising to responsibility reduce GHGs.

In this regard, the duty to cooperate is not discretionary for African states. It is very necessary for the realization of Charter rights. Practical strategies in climate finance, technology transfer, scientific research and climate data sharing form an essential element of this duty. They reflect the principles already embedded in the main climate regime such as CBDR-RC which cannot be ignored when pursuing pathways that are consistent with limiting global warming to under 1.5°C. Further, the Afrocentric philosophy of *Ubuntu* provides a lens through which state cooperation and equity in present and future generations may be understood. Properly understood, this philosophy highlights the fact that state cooperation and averting existential climate crises cannot be separated. The question is no longer whether climate change affects human rights or their realization in Africa. There is a plethora of evidence to this effect. The question that the Court now needs to answer is the extent to which African states must work with each other, and with historical emitters, in good faith to prevent foreseeable and irreversible harm.

[743] *Urgenda Foundation v The State of The Netherlands* (Supreme Court of the Netherlands, 20 December 2019) ECLI:NL:HR:2019:2007.

A reading of the Charter, together with international climate law instruments and informed by African traditions and philosophies supports the conclusion that states are under an obligation to cooperate, regionally and globally, to stabilize GHGs and avert an existential climate crisis for all generations.

General Conclusion

In conclusion, this Honourable Court possesses sufficient jurisdiction to consider the questions raised by PALU in their request for an advisory opinion regarding African States' human and peoples' rights obligations in the context of climate change, by applying the African Charter on Human and Peoples' Rights, and other relevant human rights instruments. This amicus curiae submission has conducted a thorough examination of African human and peoples' rights law, and found that the power of the Court to interpret and lay down the applicable custom and treaty law has been demonstrated through the vast African Charter jurisprudence, and is further supported by international law and principles.

This amicus curiae submits to the Court that a clean and sustainable climate system is an intrinsic precondition for the proper enjoyment of all interconnected human rights under the African Charter. The authors further submit that States do hold specific human and peoples' rights obligations under the African Charter to protect and safeguard the rights of individuals and peoples of the , present and future generations impacted by the adverse effects of climate change, as well as vulnerable populations. Together, the five chapters touch on each aspect of the legal questions raised by the PALU request for an advisory opinion on the obligations of States in relation to climate change.

The analysis in Etzelstorfer's **Chapter I** demonstrates that the African Court is not merely competent to address the human-rights dimensions of the climate crisis, but singularly placed to articulate an African-centred framework for State obligations under Article 24 of the Charter. The request falls squarely within the Court's advisory jurisdiction, and the Court's jurisprudence confirms that its interpretive authority extends across the full body of relevant African and international human-rights law. Read through Africa's intellectual, cultural, and legal traditions Article 24 emerges as a norm grounded in justice, dignity, and collective self-determination. Far from an aspirational clause, it constitutes a substantive environmental guarantee, progressively elaborated by the African Commission, sub-regional bodies, and the Court itself, and anchoring a comprehensive set of State duties of prevention, regulation, participation, information, and remedy. These obligations are inseparable from the Charter's broader protections of life, health, development, equality, and peoples' rights over natural resources. Although Article 24 does not expressly reference climate stability, such a guarantee is inherent in its logic, for climate change directly threatens the environmental conditions necessary for the effective enjoyment of human rights. Contemporary international jurisprudence reinforces this understanding, recognising climate change as a profound human-rights crisis that demands heightened duties of mitigation, adaptation, and protection, including in transboundary contexts. Rather than displacing the African Charter, this global alignment amplifies its animating principles and positions Article 24 at the centre of an emerging architecture of climate-responsive human-rights law.

O' Malley examined in **Chapter II** the application of Article 4, and the duty of care imposed on States to safeguard and vindicate the inviolable right to life. This chapter highlights the interconnection between human rights under the African Charter, identifies a causal link between the adverse effects of climate change and the threats posed to the right to life, and the relevant law to be applied. This analysis shows that States hold both negative and positive obligations, to prevent arbitrary killings, and to take positive action so that the conditions threatening the right to life do not come to fruition. Through an analysis of caselaw, it is shown that beneficiaries of African human rights instruments are duly entitled to loss, damages, and reparations where there has been a violation of their rights under the African Charter. The State is under an obligation to respect, protect, promote, and fulfil the rights under the African Charter for the benefit of its beneficiaries, and this includes the monitoring of private actors to ensure their compliance and commitment to upholding human rights and climate obligations. The broad interpretation of the protections granted by the right to life in the context of climate change supports the vindication of all fundamental human rights. The development of human rights principles in line with the duty of care of States and private actors in relation to climate change is the primary competence of the Court, and this advisory opinion presents an opportunity to tie these issues back to the ideological origins of the African Charter.

Spence examined in **Chapter III** the application of Article 22, regarding economic, social and cultural rights. This chapter implements a novel framework that connects principles of international law such as the common heritage of mankind and the common concern of humankind with the adverse effects of climate change on the wide enjoyment of human rights. The application of African Commission caselaw underlines the systemic threats posed by climate change to economic, social, and cultural rights, and delineates the obligations of States to prevent environmental harm, invest in adaptation, just transition, climate resilience mechanisms. This chapter clarified the need for States to uphold substantive and procedural obligations of public participation, transparent decision making, access to effective remedies, and engagement in international cooperation. States hold an individual and collective duty to frame the climate system as a valued, shared global resource that must be collectively protected. The degradation of the physical environment and climate system has deleterious effects on human activity, impeding the capacity and ability of beneficiaries of African human rights instruments to determine, pursue, and derive benefits from their own development. Such degradation acts as a direct violation the right to development guaranteed under the African Charter. The roots of decolonisation found in the articulation of these principles of international law position the Court to preserve and advance a legacy that rejects the economic, social and cultural exploitation posed by the adverse effects of climate change. The formal unification of the principles of common heritage and common concern would highlight the concentration of responsibility on a small number of wealthy States who do not bear the adverse effects of industrialization, and addresses the consequential systemic inequities suffered by African citizens as a matter of right.

Jordan's **Chapter IV** highlights the environmentally hazardous conditions imposed on children, present and future generations, women, indigenous peoples', and the elderly by the deleterious effects of climate change. Jordan then delves into the relevant rights impeded on by the adverse effects of climate change, and the according State obligations to combat systemic inequity by providing measures of protection relating to specific vulnerabilities. The intersectionality of challenges posed by the adverse effects of climate change is a common thread running throughout the chapter, with thought provoking implications for the resulting duty of care held by States in addressing the pressure on the wide enjoyment of fundamental human rights. Therefore it is laudable that the African Commission has blazed a trail in the adoption of critical legislation and frameworks of protection for vulnerable populations. As such, the chapter affirms that States are bound by the African Charter to engage in positive action to fulfil their commitments of safeguarding the communities discussed. In particular, Jordan recommends that their intensity must be translated to the implementation of the procedural and substantive measures which will realise the rights of vulnerable people. This analysis champions the African perspective and experience of the adverse effects of climate change through relevant law and credible data. The Court has the opportunity to employ the jurisprudence of the ICJ and IACtHR as interpretive tools to shape the constructive development of the special obligations of States in relation to vulnerable populations.

Mulenga examined in **Chapter V** the obligations of States to engage in a larger framework of international cooperation in order to address greenhouse gas emissions and limit global warming to the 1.5 degrees Celsius threshold set out in the Paris Agreement. As discussed, the wide enjoyment of human rights relies heavily on the interconnectivity of African Charter rights, which imposes a positive duty on States to strengthen these ties through meaningful engagement with other African States and historical emitters. The duty of cooperation is rooted in customary international law, and the importance of State cooperation cannot be overstated in mitigating the adverse effects of climate change. This chapter explores sectors that must incorporate cooperation as a matter of legal necessity, such as the harmonisation of climate finance and economic aid, technology transfer, and the sharing of scientific research and data. Most significantly, Mulenga advocates for the Afrocentric principle of 'Ubuntu' that emphasises the importance of collective rights, affirming that a person's very existence is supported through their relationship with others. This philosophy embodies a need for collective action and moral leadership that can be leveraged in a bid to stabilize greenhouse gas emissions and curb the adverse effects of climate change. States have an obligation under the principles of *Ubuntu* to guide the international community through the challenges presented by disproportionate climate burdens, regulating State and private actors in their engagement with fossil-fuel developments to avoid locking the Continent into further fossil-fuel dependency. It is within the ambit of the Court to guide African societies towards low-carbon development pathways to support the realisation of fundamental human rights set out in the African Charter, and to crystallize the spirit of Ubuntu in their advisory opinion on the obligations of States in relation to climate change.

This amicus curiae submission has emphasised the essential character of human rights in shaping the obligations of States and private actors in relation to climate change. It holds true that the violation of a human right is not just an injury to that particular victim, but to all beneficiaries of African human rights instruments. Urgent action is required to support the protection of human rights that are at risk due to the adverse effects of climate change. The authoritative position of the Court in dictating the obligations of States in relation to climate change is elevated by African human rights jurisprudence and the historical significance of decolonised States having the world stage on which to address systemic inequities imposed directly and indirectly by the adverse effects of climate change.

Though the contributions of African States to anthropogenic greenhouse gas emissions have been distinctively low, their vulnerabilities to the adverse effects of climate change have been disproportionately high. The unique situation of the Court to address these disparities will shape the normative development of climate change obligations through the application of the African Charter on Human and Peoples' Rights, and other relevant human rights instruments. Thus, this amicus curiae submits that the Court should articulate and impose robust positive obligations on States to protect and safeguard the rights of individuals and peoples of the present and future generations impacted by the adverse effects of climate change, as well as vulnerable populations, lest the adverse effects of climate change become irreversible.

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