

*Amicus Curiae* Brief  
To The African Court on Human and Peoples' Rights  
Arusha, United Republic of Tanzania

in the matter of

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

On behalf of:  
David R. Boyd<sup>1</sup>  
César Rodríguez-Garavito<sup>2</sup>  
Ashley Otilia Nemeth<sup>3</sup>

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<sup>1</sup> Professor of Law, Policy and Sustainability, University of British Columbia, Canada and former U.N. Special Rapporteur on the human right to a clean, healthy and sustainable environment (2018-2024). Dr. Boyd has reported on the impacts of climate change on human rights and the associated State obligations, e.g. Special Rapporteur on human rights and environment (David R. Boyd), *A Safe Climate*, A/74/161 (2019). He has filed more than a dozen amicus curiae briefs in leading climate and environmental justice cases around the world in recent years and his work has been cited by the International Court of Justice, Inter-American Court of Human Rights, European Court of Human Rights, and many national courts.

<sup>2</sup> Professor of Law and Chair of the Center for Human Rights and Global Justice at New York University (NYU) School of Law. Founding Director of the Earth Rights Research & Action (TERRA) Program at NYU Law, TERRA Clinic, More-Than-Human Rights (MOTH) Project, and the Climate Law Accelerator (CLX) Project. Affiliations are provided for informational purposes only. NYU Clinics, Centers, or Programs do not purport to represent the institutional views of NYU School of Law, if any.

<sup>3</sup> Director of Programs at the Climate Law Accelerator and Adjunct Professor of Clinical Law at the TERRA Clinic, both at NYU School of Law. Affiliations are provided for informational purposes only. NYU Clinics, Centers, or Programs do not purport to represent the institutional views of NYU School of Law, if any.

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## 1. Introduction: Human Rights Law and the Climate Crisis

1. In recent advisory opinions, both the International Court of Justice (ICJ) and the Inter-American Court of Human Rights (Inter-American Court) recognized the climate crisis as an “existential threat” to humanity.<sup>4</sup> The ICJ described climate change as an “existential problem of planetary proportions that imperils all forms of life and the very health of our planet”, while the Inter-American Court repeatedly referred to our current situation as a “climate emergency.”<sup>5</sup>

2. Africa is particularly vulnerable to the past, present, and future adverse effects of the climate crisis for a variety of geographic, demographic, and economic reasons, despite being a relatively minor contributor to global greenhouse gas emissions.<sup>6</sup> For the people of Africa, the climate crisis is also a human rights crisis. Even a seemingly modest increase in the average global temperature, to 1.5°C above pre-industrial levels, will substantially increase the number of Africans subjected to poverty, disasters, food insecurity, conflict, illness, and death. A larger increase in temperature, such as the current 2.1-3.9°C trajectory (assuming States maintain and implement current mitigation policies), would worsen these adverse impacts.<sup>7</sup> Ambitious and urgent action is needed, as risks, harms, and related losses and damages escalate with each increment of global warming.<sup>8</sup>

3. The ICJ unanimously confirmed that the obligations of States to address the climate crisis are shaped not only by the three climate treaties—United Nations Framework Convention on Climate Change (UNFCCC), Kyoto Protocol, and Paris Agreement—but also by international human rights law, international environmental law, and customary international law. In the Court’s words:

[T]he full enjoyment of human rights cannot be ensured without the protection of the climate system and other parts of the environment. In order to guarantee the effective enjoyment of human rights, States must take measures to protect the climate system and other parts of the environment. These measures may include, inter alia, taking mitigation and adaptation measures, with due account given to the protection of human rights, the adoption of standards and legislation, and the regulation of the activities of private actors. Under international human rights law, States are required to take necessary measures in this regard.<sup>9</sup>

4. In reviewing the impacts of climate change on several human rights (e.g. rights to life, health, adequate standard of living, privacy, family, and home), the ICJ emphasized that “it is difficult to

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<sup>4</sup> International Court of Justice, Advisory Opinion: Obligations of States in Respect of Climate Change, (Jul. 23, 2025), paras. 73, 456, <https://www.icj-cij.org/sites/default/files/case-related/187/187-20250723-adv-01-00-en.pdf> [hereinafter ICJ Climate Change AO]; Inter-American Court of Human Rights, Advisory Opinion AO-32/35, (May 29, 2025), paras. 288-89, 302, [https://www.corteidh.or.cr/docs/opiniones/seriea\\_32\\_en.pdf](https://www.corteidh.or.cr/docs/opiniones/seriea_32_en.pdf) [hereinafter IACtHR Climate Change AO].

<sup>5</sup> See e.g., ICJ Climate Change AO, para 456; IACtHR Climate Change AO, paras. 1, 2, 7, 16, 25.

<sup>6</sup> Hoesung Lee et al., Climate Change 2023 Synthesis Report, Intergovernmental Panel on Climate Change, p. 24, Statement C.1.3, [https://www.ipcc.ch/report/ar6/syr/downloads/report/IPCC\\_AR6\\_SYR\\_FullVolume.pdf](https://www.ipcc.ch/report/ar6/syr/downloads/report/IPCC_AR6_SYR_FullVolume.pdf).

<sup>7</sup> Olhoff Anne et al., Off target: Continued collective inaction puts global temperature goal at risk – Emissions Gap Report 2025, U.N. Environment Programme, p. xx, <https://wedocs.unep.org/rest/api/core/bitstreams/4830e1a8-14c0-44a5-a066-cdd2ba5b3e10/content>.

<sup>8</sup> ICJ Climate Change AO, paras. 82-83; IACtHR Climate Change AO, para. 195.

<sup>9</sup> ICJ Climate Change AO, para. 403.

see how [State] obligations can be fulfilled without at the same time ensuring the protection of the right to a clean, healthy and sustainable environment as a human right.”<sup>10</sup> The Inter-American Court similarly identified the right to a healthy environment as “the main right affected by climate change.”<sup>11</sup> Accordingly, this *amicus curiae* brief focuses on the implications of the human right to a clean, healthy, and sustainable environment (right to a healthy environment) for determining the obligations of African States to address the climate crisis.

## **2. African Leadership on the Right to a Healthy Environment**

5. Africa has a long history of pioneering leadership in legally recognizing the human right to a healthy environment.<sup>12</sup> The *African Charter on Human and Peoples’ Rights* (1981) was the first regional human rights instrument in the world to include the right to a healthy environment (Art. 24), setting an important precedent that linked international environmental law and international human rights law.<sup>13</sup> The *Additional Protocol to the African Charter on the Rights of Women in Africa* (the *Maputo Protocol*) reinforces this leadership, including both the right to a healthy environment (Art. 18) and the right to sustainable development (Art. 19).

6. Today, Africa is the only continent where all nations (54 out of 54) recognize the right to a healthy environment in law, whether through constitutions, legislation, or the ratification of regional treaties, such as the *African Charter* and the *Arab Charter on Human Rights*.<sup>14</sup> However, in eight African nations, the right is recognized solely through treaty ratification.<sup>15</sup>

7. The African Commission on Human and Peoples’ Rights was the first regional human rights tribunal in the world to issue a judgment in a contentious case involving violations of the right to a healthy environment.<sup>16</sup> The Commission determined that Governments have clear obligations under Art. 24 “to take reasonable and other measures to prevent pollution and ecological degradation, to promote conservation, and to secure an ecologically sustainable development and use of natural resources”.<sup>17</sup>

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<sup>10</sup> ICJ Climate Change AO, para. 393.

<sup>11</sup> IACtHR Climate Change AO, para. 268.

<sup>12</sup> Obiora C. Okafor and Goodwin E.K. Dzah, The African human rights system as ‘norm leader’: Three case studies, *African Human Rights Law Journal*, p. 690, (2021), <https://www.ahrlj.up.ac.za/okafor-oc-dzah-gek>; Goodwin E.K. Dzah, Theorising the right to environment: an Africological typology, *African Journal of International and Comparative Law*, (2019), <https://doi.org/10.3366/ajicl.2019.0258>.

<sup>13</sup> African Charter on Human and Peoples’ Rights, Organization of African Unity (1982), [hereinafter African Charter].

<sup>14</sup> U.N. Special Rapporteur on the human right to a clean, healthy and sustainable environment (David R. Boyd) [hereinafter U.N.S.R. on H.R. & Env.], Right to a Healthy Environment: Good practices, U.N. Gen. Ass., A/HRC/43/53, Annex IV: Recognition of the Right to a Healthy Environment in Constitutions, Legislation and Treaties: Africa Region (2020), [https://www.ohchr.org/sites/default/files/Documents/Issues/Environment/AfricanRegional\\_AnnexIV.docx](https://www.ohchr.org/sites/default/files/Documents/Issues/Environment/AfricanRegional_AnnexIV.docx).

<sup>15</sup> *Id.*

<sup>16</sup> *Social and Economic Rights Action Centre (SERAC) and Centre for Economic and Social Rights v. Nigeria*, African Commission on Human and Peoples’ Rights, Comm. No. 155/96 (Oct. 27, 2001), <https://africanlii.org/en/akn/aa-au/judgment/achpr/2001/35/eng@2001-10-27> [hereinafter *SERAC v. Nigeria*].

<sup>17</sup> *Id.* at para. 52.

8. In *LIDHO v Cote d'Ivoire*, the African Court on Human and Peoples' Rights confirmed that States must respect, protect, promote, and fulfil the right to a healthy environment, including through regulation of third parties such as private corporations.<sup>18</sup> With respect to the egregious dumping of hazardous waste in Abidjan, the Court concluded that the State had failed to adequately regulate and monitor multinational corporations. In an earlier decision, the African Court ruled that Kenya's eviction of the Indigenous Ogiek people from the Mau Forest under the guise of conservation violated their rights, including their right to a healthy environment.<sup>19</sup> Sub-regional tribunals in Africa have also addressed the right to a healthy environment, further solidifying its jurisprudential foundation.<sup>20</sup>

9. Both the African Court and the African Commission have clarified that the right to a healthy environment must be considered in the context of the right to development, another human right with deep roots in Africa.<sup>21</sup> The *Ogiek* and *Endorois* decisions emphasize this vital relationship, recognizing the critical role of Indigenous peoples in environmental protection and sustainable development.<sup>22</sup>

10. Numerous national courts in Africa have likewise enforced the right to a healthy environment. Courts in Kenya, Malawi, Nigeria, and South Africa have issued landmark decisions, with recent rulings specifically invoking the right in the context of the climate crisis.<sup>23</sup> The High Court of South Africa, for example, ruled that the State violated the right to a healthy environment by including new coal-fired power in its energy plan without assessing, *inter alia*, the decision's impact on children's right to a healthy environment.<sup>24</sup> In Kenya and South Africa, courts have

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<sup>18</sup> *Ligue Ivoirienne des Droits de l'Homme (LIDHO) & Others v. Republic of Côte d'Ivoire*, African Court on Human and Peoples' Rights, Application No. 041/2016 (Sep. 5, 2023), <https://africanlii.org/en/akn/aa-au/judgment/afchpr/2023/21/eng@2023-09-05> [hereinafter *LIDHO v. Côte d'Ivoire*].

<sup>19</sup> *African Commission on Human and People's Rights v. Republic of Kenya*, African Court on Human and Peoples' Rights, Application No. 006/2012 (May 26, 2017), <https://www.african-court.org/cpmt/storage/app/uploads/public/5f5/5fe/9a9/5f55fe9a96676974302132.pdf>.

<sup>20</sup> *Registered Trustees of Socio-Economic Rights and Accountability Project (SERAP) v. The Federal Republic of Nigeria*, ECOWAS Community Court of Justice, Case ECW/ CCJ/A PP/08/09, paras. 63-67, (Dec. 14, 2012), <https://caselaw.ihirda.org/entity/pftlz3gneo0wxsgq0kdszto6r?file=1650956721947oath9e3rph8.pdf&page=18>; James Thuo Gathii, Saving the Serengeti: Africa's new international judicial environmentalism, *Chicago Journal of International Law*, (2016), <https://chicagounbound.uchicago.edu/cjil/vol16/iss2/3/>.

<sup>21</sup> *Centre for Minority Rights Development (Kenya) and Minority Rights Group International on Behalf of Endorois Welfare Council v. Kenya*, African Commission on Human and Peoples Rights, Communication 276 of 2003 (Nov. 25, 2009), <https://africanlii.org/en/akn/aa-au/judgment/achpr/2009/102/eng@2009-11-25>; *African Commission on Human and People's Rights v. Republic of Kenya*, *supra* note 19.

<sup>22</sup> Olivier Dismas Ndayambaje, La contribution de la reconnaissance des droits des peuples autochtones à la protection de l'environnement à la lumière de l'affaire *Endorois c Kenya*, *Revue Québécoise de Droit International*, (2016), <https://doi.org/10.7202/1046512>; Tamara Morgenthau and Nikki Reisch, Litigating the Frontlines: Why African Community Rights Cases Are Climate Change Cases, *UCLA Journal of International Law and Foreign Affairs*, (2020), <https://escholarship.org/uc/item/59p4500v>.

<sup>23</sup> See e.g., *Africa Climate Alliance et al. v. Minister of Mineral Resources & Energy et al.*, High Court of South Africa, Case No. 56907/2021, (Dec. 04, 2024), <https://www.saflii.org/za/cases/ZAGPPHC/2024/1271.pdf>; *EarthLife Africa Johannesburg v. Minister of Environmental Affairs and Others*, High Court of South Africa, Case No. 65662/16, (Mar. 08 2017), <https://www.saflii.org/za/cases/ZAGPPHC/2017/58.pdf>; *Centre for Oil Pollution Watch v. Nigerian National Petroleum Corporation*, Supreme Court of Nigeria, SC 319/2013, (Jul. 20, 2018), [https://cdn.climatepolicyradar.org/navigator/NGA/2005/centre-for-oil-pollution-watch-copw-vs-nnpc-2018-supreme-court-of-nigeria\\_5ea857ce53466dc2a04bb90c55419e8c.pdf](https://cdn.climatepolicyradar.org/navigator/NGA/2005/centre-for-oil-pollution-watch-copw-vs-nnpc-2018-supreme-court-of-nigeria_5ea857ce53466dc2a04bb90c55419e8c.pdf).

<sup>24</sup> *Africa Climate Alliance et al. v. Minister of Mineral Resources & Energy et al.*, *supra* note 23, at para. 25.

invalidated authorizations for coal-fired power plants due to the failure to consider climate change and human rights issues during the environmental impact assessment processes.<sup>25</sup>

11. Consistent with this body of African jurisprudence, other regional and global courts have recently addressed the impact of the climate crisis on human rights. In 2024, the European Court of Human Rights noted that the “State’s primary duty is to adopt, and to effectively apply in practice, regulations and measures capable of mitigating the existing and potentially irreversible, future effects of climate change. This obligation flows from the causal relationship between climate change and the enjoyment of Convention rights.”<sup>26</sup> In 2025, the ICJ and the Inter-American Court both held that because of the wide-ranging impacts of climate and environmental damage, “the human right to a clean, healthy and sustainable environment is essential for the enjoyment of other human rights.”<sup>27</sup>

### **3. The Content of the Right to a Healthy Environment**

12. Decades of experience in Africa and elsewhere demonstrate that the right to a healthy environment includes both procedural and substantive elements.<sup>28</sup> The procedural elements include access to climate and environmental information, public participation in climate and environment-related decision-making, and access to justice with effective remedies. The substantive elements include a safe, healthy climate; healthy ecosystems and biodiversity; non-toxic environments where people can live, work, study, and play; healthy and sustainably produced food; access to safe and sufficient water and adequate sanitation; and clean air.<sup>29</sup>

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<sup>25</sup> *EarthLife Africa Johannesburg v. Minister of Environmental Affairs and Others*, *supra* note 23; *Save Lamu et al. v. National Environmental Management Authority and Amu Power Co. Ltd*, National Environmental Tribunal at Nairobi, Case No. 196 of 2016, (Jun. 26, 2019), [https://cdn.climatepolicyradar.org/navigator/KEN/2016/save-lamu-et-al-v-national-environmental-management-authority-and-amu-power-co-ltd\\_a86247c8a6536050fd13bb59f7e23373.pdf](https://cdn.climatepolicyradar.org/navigator/KEN/2016/save-lamu-et-al-v-national-environmental-management-authority-and-amu-power-co-ltd_a86247c8a6536050fd13bb59f7e23373.pdf).

<sup>26</sup> *Verein Klimasenioren and Others v. Switzerland*, European Court of Human Rights, Case No. 53600/20, para. 545, (Apr. 9, 2024), <https://hudoc.echr.coe.int/eng/?i=002-14304>.

<sup>27</sup> ICJ Climate Change AO, para. 393; IACtHR Climate Change AO, para. 274.

<sup>28</sup> U.N.S.R. on H.R. & Env. (David R. Boyd), Recognizing the right to a healthy environment, Gouvernement Princier- Principaute de Monaco and U.N. Human Rights Special Procedures, A/73/188, p. 2, (2018), <https://www.ohchr.org/sites/default/files/2022-05/Recognition-Summary-FINAL.pdf>; U.N. Committee on the Rights of the Child (CRC), General Comment No. 26 (2023) on children’s rights and the environment, with a special focus on climate change, CRC/C/GC/26, (Aug. 22, 2023), <https://www.ohchr.org/en/documents/general-comments-and-recommendations/crcgc26-general-comment-no-26-2023-childrens-rights>; Office of the United Nations High Commissioner for Human Rights et al., What is the Right to a Healthy Environment? Office of the United Nations High Commissioner for Human Rights and United Nations Environment Programme, Information Note, (Jan. 2025, 2023), <https://www.undp.org/publications/what-right-healthy-environment>; U.N. Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 27 (2025) on economic, social and cultural rights and the environmental dimension of sustainable development, E/C.12/GC/27, (Sep. 26, 2025); <https://www.ohchr.org/en/documents/general-comments-and-recommendations/ec12gc27-general-comment-no-27-2025-economic-social>.

<sup>29</sup> The U.N. Special Rapporteur on the human right to a clean, healthy and sustainable environment has published comprehensive reports on each of the substantive elements, including a safe climate, healthy ecosystems and biodiversity, healthy and sustainably produced food, clean air, safe and sufficient water, and a non-toxic environment. U.N.S.R. on H.R. & Env. (David R. Boyd), Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, U.N. Gen. Ass., A/74/161, (Jul. 15, 2019) (safe climate), <https://docs.un.org/en/a/74/161>; U.N.S.R. on H.R. & Env. (David R. Boyd),

13. In keeping with the spirit and intent of the *African Charter*, the right to a healthy environment is an autonomous right that has both individual and collective dimensions and belongs to both present and future generations. The individual dimension recognizes that every person can be directly or indirectly affected, in many ways, by damage to the climate or the environment. In its collective dimension, according to the Inter-American Court, “the right to a healthy environment constitutes a universal value that is owed to both present and future generations.”<sup>30</sup> The Court added that the guarantee of intergenerational equity is “essential for the interpretation and implementation of the obligations arising from the right to a healthy climate” as this right seeks to comprehensively protect humanity as a whole, including both present and future generations.<sup>31</sup> Moreover, because the right to a healthy environment belongs to both present and future generations, States must avoid placing disproportionate burdens on either by taking climate action (e.g., transitioning from fossil fuels to renewables) too slowly or too quickly.<sup>32</sup>

14. The vital importance of a safe climate, as part of the right to a healthy environment, reflects the UNFCCC, wherein all States pledged to “prevent dangerous anthropogenic interference with the climate system.”<sup>33</sup> The Paris Agreement is the first binding international climate treaty to explicitly acknowledge the link between climate change and human rights.<sup>34</sup> Moreover, outcome documents produced at recent Conferences of the Parties to the UNFCCC have included specific references to the right to a healthy environment.<sup>35</sup>

15. A safe, stable, and healthy climate system is a crucial part of the planetary life support system upon which all species depend, including *homo sapiens*. As noted by the former United Nations Special Rapporteur on human rights and the environment, “a safe climate is a vital element of the

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Human Rights Depend on a Healthy Biosphere, U.N. Gen. Ass., A/75/161, (Jul. 15, 2020) (healthy ecosystems and biodiversity), <https://docs.un.org/en/A/75/161>; U.N.S.R. on H.R. & Env. (David R. Boyd), Healthy and sustainable food: reducing the environmental impacts of food systems on human rights, U.N. Gen. Ass., A/76/179, (Jul. 19, 2021) (healthy and sustainably produced food), <https://docs.un.org/en/A/76/179>; U.N.S.R. on H.R. & Env. (David R. Boyd), Report of the Special Rapporteur, U.N. Human Rights Council, A/HRC/40/55 (Jan. 08, 2019) (clean air), <https://docs.un.org/en/a/hrc/40/55>; U.N.S.R. on H.R. & Env. (David R. Boyd), Report of the Special Rapporteur, U.N. Human Rights Council, A/HRC/46/28, (Jan. 19, 2021) (safe and sufficient water), <https://docs.un.org/en/A/HRC/46/28>; U.N.S.R. on H.R. & Env. (David R. Boyd), Report of the Special Rapporteur, U.N. Human Rights Council, A/HRC/49/53, (Jan. 12, 2022) (non-toxic environment), <https://docs.un.org/en/A/HRC/49/53>; see also U.N.S.R. on H.R. & Env. (Astrid Puentes Riaño), Overview of the implementation of the human right to a clean, healthy and sustainable environment, A/79/270, (Aug. 02, 2024), <https://digitallibrary.un.org/record/4060254>. All thematic reports of the current and previous Special Rapporteurs on human rights and the environment can be found at <https://www.ohchr.org/en/special-procedures/sr-environment/annual-thematic-reports>.

<sup>30</sup> IACtHR Climate Change AO, para. 272.

<sup>31</sup> IACtHR Climate Change AO, paras. 311-313.

<sup>32</sup> IACtHR Climate Change AO, para. 310.

<sup>33</sup> United Nations Framework Convention on Climate Change (May 9, 1992), art. 2 [hereinafter UNFCCC (1992)].

<sup>34</sup> Paris Agreement to the United Nations Framework Convention on Climate Change (Dec. 12, 2015), preamble [hereinafter Paris Agreement].

<sup>35</sup> UNFCCC, Outcome of the First Global Stocktake, FCCC/PA/CMA/2023/L.17, p. 2, (Dec. 13, 2023), [https://unfccc.int/sites/default/files/resource/cma2023\\_L17\\_adv.pdf](https://unfccc.int/sites/default/files/resource/cma2023_L17_adv.pdf); UNFCCC, Sharm El-Sheikh Implementation Plan, FCCC/CP/2022/L.19, p. 1, (Nov. 20, 2022), [https://unfccc.int/sites/default/files/resource/cp2022\\_L19\\_adv.pdf](https://unfccc.int/sites/default/files/resource/cp2022_L19_adv.pdf); UNFCCC, Global Mutirão, Uniting humanity in a global mobilization against climate change, p. 1, (Nov. 11, 2025), [https://unfccc.int/sites/default/files/resource/Mutir%C3%A3o\\_cop30.pdf](https://unfccc.int/sites/default/files/resource/Mutir%C3%A3o_cop30.pdf).

right to a healthy environment and is absolutely essential to human life and well-being.”<sup>36</sup> The Inter-American Court recently confirmed that “the right to a healthy climate, which protects the component of the environment that is directly affected in the context of the climate emergency” is a substantive element of the right to a healthy environment.<sup>37</sup> The Court clarified that the right to a safe and healthy climate requires “a climate system free from anthropogenic interference that is dangerous to humans and to Nature as a whole.”<sup>38</sup> As a result, the Court concluded, this right contributes to State obligations including: “(i) actions to address the causes of climate change and, in particular, mitigation of GHG emissions, [...] (ii) the protection of Nature and its components, and (iii) gradual progress towards sustainable development.”<sup>39</sup>

16. Domestic courts have affirmed that a safe and healthy climate is an element of the right to a healthy environment that is central to shaping States’ climate obligations.<sup>40</sup> The Supreme Court of Hawai’i held that the right to a healthy environment “encompasses the right to a life-sustaining climate system.”<sup>41</sup> According to the Supreme Court of Montana, the fact that climate change was not foreseen by the drafters of the Montana constitution did not preclude constitutional protection; it followed that “Montana’s right to a clean and healthful environment and environmental life support system includes a stable climate system.”<sup>42</sup>

17. National courts across diverse jurisdictions have increasingly relied on the Paris Agreement and the right to a healthy environment to define and strengthen domestic obligations to safeguard the climate. Referring to the Paris Agreement, the Supreme Court of India held that the right to a healthy environment is “undoubtedly” embedded in States’ duty of care to prevent harm and ensure citizens’ overall well-being and that States must “take effective measures to mitigate climate change and ensure that all individuals have the necessary capacity to adapt to the climate crisis.”<sup>43</sup> The Supreme Court of Brazil declared that the Paris Agreement is both an environmental treaty

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<sup>36</sup> U.N.S.R. on H.R. & Env. (David R. Boyd), Report of the Special Rapporteur on the issue of human rights obligations relation to the enjoyment of a safe, clean, healthy and sustainable environment, A/74/161, p. 2 (Jul. 15, 2019); <https://docs.un.org/en/a/74/161>; See also U.N.S.R. on H.R. & Env. (David R. Boyd), Right to a Healthy Environment: Good Practices, A/HRC/43/53, para. 2 (Dec. 30, 2019), <https://docs.un.org/en/A/HRC/43/53>; U.N.S.R. on H.R. & Env. (David R. Boyd), The human right to a clean, healthy and sustainable environment: a catalyst for accelerated action to achieve the Sustainable Development Goals, U.N. Gen. Ass., A/77/284, para. 44 (Aug. 10, 2022), <https://docs.un.org/en/A/77/284>; U.N.S.R. on H.R. & Env. (David R. Boyd), Women, girls and the right to a clean, healthy and sustainable environment, U.N. Human Rights Council, A/HRC/52/33, para 4 (Jan. 5, 2023), <https://docs.un.org/en/A/HRC/52/33>; U.N.S.R. on H.R. & Env. (David R. Boyd), Overview of the implementation of the human right to a clean, healthy and sustainable environment, U.N. Gen. Ass., A/79/270, para. 14 (Aug. 2, 2024), <https://docs.un.org/en/A/79/270>.

<sup>37</sup> IACtHR Climate Change AO, para. 300.

<sup>38</sup> IACtHR Climate Change AO, para. 300.

<sup>39</sup> IACtHR Climate Change AO, para. 320.

<sup>40</sup> United Nations Environment Programme, The Right to a Healthy Environment in Practice: A Decade Before the Courts (2015–2025), (Oct. 08, 2025), [https://wedocs.unep.org/bitstream/handle/20.500.11822/48696/Right\\_Healthy\\_Environment.pdf](https://wedocs.unep.org/bitstream/handle/20.500.11822/48696/Right_Healthy_Environment.pdf).

<sup>41</sup> *In the matter of Hawai’i Electric Light Company, Inc.*, Supreme Court of the State of Hawai’i, SCOT-22-0000418, p. 16 (Mar. 13 2023), [https://cdn.climatepolicyradar.org/navigator/USA/2023/in-re-hawaii-electric-light-co\\_c067fe87d34e4aafef4ffb46b705085e.pdf](https://cdn.climatepolicyradar.org/navigator/USA/2023/in-re-hawaii-electric-light-co_c067fe87d34e4aafef4ffb46b705085e.pdf).

<sup>42</sup> *Held v. Montana*, Supreme Court of the State of Montana, DA 23-0575, para. 30, (Dec. 18, 2024), [https://cdn.climatepolicyradar.org/navigator/USA/2020/held-v-state\\_b0f016be7a082b01434be4a4fc7f06ef.pdf](https://cdn.climatepolicyradar.org/navigator/USA/2020/held-v-state_b0f016be7a082b01434be4a4fc7f06ef.pdf).

<sup>43</sup> *M K Ranjitsinh and Others v. Union of India and Others*, Supreme Court of India, Civil Appeal No. 3570/2022, para. 29 (2024), [https://cdn.climatepolicyradar.org/navigator/IND/2022/mk-ranjitsinh-et-al-v-union-of-india-et-al\\_fd41237346488150a6dac0581d8d6230.pdf](https://cdn.climatepolicyradar.org/navigator/IND/2022/mk-ranjitsinh-et-al-v-union-of-india-et-al_fd41237346488150a6dac0581d8d6230.pdf).

and a human rights treaty with “supra-legal” status, meaning that it prevails over ordinary laws while remaining subordinate to the Constitution.<sup>44</sup> Similarly, the Supreme Court of Nepal ordered the government to enact a new law to mitigate climate change to fulfil Nepal’s commitments under the Paris Agreement and to give effect to the constitutional right to a healthy environment.<sup>45</sup>

#### **4. The Right to a Healthy Environment Protects All People and Requires Heightened Protection for Vulnerable Groups**

18. While the climate crisis impacts everyone, certain groups face disproportionate and, at times, unique vulnerabilities. The Pan African Lawyers Union’s (PALU) Request robustly describes how climate change exacerbates pre-existing inequalities across Africa and places specific groups at heightened risk of harm.<sup>46</sup> The PALU Request identifies women and girls, children, older persons, Indigenous peoples, and environmental human rights defenders as among those most affected.<sup>47</sup> It further acknowledges persons with disabilities, victims of natural disasters, and migrants and refugees as facing unique vulnerabilities.<sup>48</sup> The ICJ affirmed this view, highlighting women, children, Indigenous peoples, local communities, migrants, persons with disabilities, and other vulnerable groups as especially impacted by climate change.<sup>49</sup>

19. It is widely understood that climate and environmental harms can violate the right to a healthy environment through distinct and intensified impacts on certain populations.<sup>50</sup> The 2022 U.N. General Assembly resolution recognizing the right to a healthy environment specifically highlighted the unique risks faced by women and girls, as well as individuals in vulnerable positions, including Indigenous peoples, children, older persons, and persons with disabilities.<sup>51</sup> Like all human rights, the right to a healthy environment belongs to all people, but heightened protection is required for especially vulnerable groups. Jurisprudence on State obligations related to climate change and the right to a healthy environment confirms that States must provide heightened protection for those most vulnerable to the adverse impacts of climate change.

20. The affirmative duty to provide heightened protection for vulnerable groups is supported by numerous sources of law. The *African Charter*, *International Covenant on Civil and Political Rights*, and *International Covenant on Economic, Social and Cultural Rights*, among others,

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<sup>44</sup> *PSB et al. v. Brazil.*, Supreme Court of Brazil, ADPF 651, para. 17 (Jul. 1, 2022), [https://cdn.climatepolicyradar.org/navigator/BRA/2020/psb-et-al-v-brazil-on-climate-fund\\_05be57ab26742aa5c10378464a562ed6.pdf](https://cdn.climatepolicyradar.org/navigator/BRA/2020/psb-et-al-v-brazil-on-climate-fund_05be57ab26742aa5c10378464a562ed6.pdf) (unofficial English translation).

<sup>45</sup> *Shrestha v. Office of the Prime Minister et al.*, Supreme Court of Nepal, Order 074-WO-0283, para. 5 (Dec. 25, 2018), [https://cdn.climatepolicyradar.org/navigator/NPL/2017/shrestha-v-office-of-the-prime-minister-et-al\\_13ab109d8d566b88df52ca26d99823d2.pdf](https://cdn.climatepolicyradar.org/navigator/NPL/2017/shrestha-v-office-of-the-prime-minister-et-al_13ab109d8d566b88df52ca26d99823d2.pdf) (unofficial English translation).

<sup>46</sup> Request by the Pan African Lawyers Union (PALU) for an advisory opinion on the obligations of states regarding the climate change crisis, pp. 25-33 (May 2, 2025), <https://www.african-court.org/cpmt/storage/app/uploads/public/68a/6ca/fb0/68a6cafb0e6f6880543145.pdf> [hereinafter PALU Request].

<sup>47</sup> *Id.* at paras. 61-86.

<sup>48</sup> *Id.* at paras. 46, 58, 59.

<sup>49</sup> ICJ Climate Change AO, paras. 77, 374, 382-384.

<sup>50</sup> U.N.S.R. on H.R. & Env. (John Knox), Framework Principles on human rights and the environment, A/HRC/37/59, (Jan. 24, 2018), <https://docs.un.org/en/A/HRC/37/59>.

<sup>51</sup> U.N. Gen. Ass., Resolution 76/300, The human right to a clean, healthy and sustainable environment, p. 2 (Aug. 1, 2022), <https://docs.un.org/en/A/RES/76/300>.

explicitly recognize this duty.<sup>52</sup> As noted by the African Commission, “[t]he right to equality includes the adoption of special measures for the purpose of securing the adequate advancement of members of vulnerable and disadvantaged groups to enable their equal enjoyment of economic, social and cultural rights.”<sup>53</sup> Treaty bodies and human rights courts, including the Committee on the Rights of the Child and the Inter-American Court, have clarified that mutually reinforcing human rights obligations support heightened protection for vulnerable populations in the context of climate change.<sup>54</sup>

21. As noted in the U.N. Special Rapporteur’s *Report on Women, Girls and the Right to a Clean, Healthy and Sustainable Environment*, the intersection of the triple planetary crisis with systemic gender-based discrimination and patriarchal norms exacerbates the harms imposed on women and girls.<sup>55</sup> At the same time, women and girls are recognized as “powerful, transformative agents of change” and “indispensable partners and leaders in the transition to a just and sustainable future.”<sup>56</sup> Accordingly, respecting, protecting, and fulfilling the right to a healthy environment requires that those who are most vulnerable to the harms of climate change must not only be protected but also empowered to contribute to and lead in addressing this crisis.

22. Children also face unique and acute vulnerabilities, a reality of particular importance in the African context. Almost half (46 percent) of the population of Africa is under the age of 18.<sup>57</sup> As noted by the Committee on the Rights of the Child, “children have a right to a clean, healthy and sustainable environment,” which is both a right on its own and necessary for the enjoyment of other human rights.<sup>58</sup> Due to their developing physiology and immune systems, children are especially susceptible to the effects of food and water insecurity and the transmission of diseases worsened by climate change, all of which adversely affect the substantive elements of the right to a healthy environment.<sup>59</sup> The Inter-American Court’s recent Advisory Opinion provides extensive

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<sup>52</sup> African Charter, *supra* note 13, at art. 18(4); U.N. CESCR, General Comment No. 27, *supra* note 28, at para. 39; International Covenant on Civil and Political Rights (ICCPR), arts. 24, 26, (Mar. 23, 1973), <https://www.ohchr.org/sites/default/files/ccpr.pdf>; U.N. Human Rights Committee (HRC), General Comment No. 36 on Article 6 (Right to Life), para. 18 (Sep. 3, 2019), <https://docs.un.org/en/CCPR/C/GC/36>; International Covenant on Economic, Social and Cultural Rights (ICESCR), arts. 2, 10 (Dec. 16, 1966), <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights>; Paris Agreement, *supra* note 33, at arts. 7, 9(c).

<sup>53</sup> African Commission on Human and Peoples’ Rights, Principles and Guidelines on the Implementation of Economic, Social and Cultural Rights in the African Charter on Human and Peoples’ Rights, p. 16, para. 34 (2010), <https://achpr.au.int/sites/default/files/files/2021-08/achprinstrguidedraftescrighsteng.pdf>.

<sup>54</sup> U.N. CRC, General Comment No. 26, *supra* note 28; U.N. Committee on the Elimination of Discrimination against Women, General Recommendation No. 37 on the Gender-Related Dimensions of Disaster Risk Reduction in the Context of Climate Change, (2018), <https://digitallibrary.un.org/record/1626306?v=pdf>; IACtHR Climate Change AO, paras. 223, 242, 381.

<sup>55</sup> U.N.S.R. on H.R. & Env. (David R. Boyd), Women, girls and the right to a clean, healthy and sustainable environment, A/HRC/52/33, p. 1 (Jan. 5, 2023), <https://documents.un.org/doc/undoc/gen/g22/618/95/pdf/g2261895.pdf>.

<sup>56</sup> *Id.* at 2.

<sup>57</sup> United Nations Children’s Fund (UNICEF), The State of African Children 2025: Statistical Compendium, (Apr. 5, 2025), <https://data.unicef.org/resources/soac-2025/>.

<sup>58</sup> U.N. CRC, General Comment No. 26, *supra* note 28, at paras. 8, 63.

<sup>59</sup> U.N. CRC, General Comment No. 26, *supra* note 28, at paras. 22, 38-50; IACtHR Climate Change AO, para. 597; *see also* What Is the Right to a Healthy Environment? Information Note, *supra* note 28 at 5.

detail regarding States' obligations to ensure "differentiated protection of children" in the context of climate change, ranging from access to health services to access to free and effective legal aid.<sup>60</sup>

23. Acute vulnerabilities are also faced by Indigenous people, who are disproportionately impacted by environmental degradation due to their close ties to their lands.<sup>61</sup> Indigenous peoples "often face grave and even-life threatening risks for defending the traditional lands, resources and territories upon which their communities depend for survival, livelihoods and religious and customary practices."<sup>62</sup> The Inter-American Court highlights various substantive and procedural "progressive measures" that States should — and in some cases must — prioritize the protection of Indigenous rights and participation in addressing the climate crisis.<sup>63</sup>

24. Environmental human rights defenders in Africa increasingly face a disturbing array of risks in carrying out their invaluable advocacy activities on behalf of people and the planet. These risks include intimidation, harassment, surveillance, criminalization, arbitrary detention, violence, and even murder. Over 100 environmental human rights defenders were killed in Africa between 2012 and 2024.<sup>64</sup> The Inter-American Court highlighted "the fundamental work of environmental defenders in the context of the climate emergency" and "the existence of a 'special duty of protection' of the State with respect to them."<sup>65</sup> This special duty of protection includes: (i) recognizing, promoting and guaranteeing the rights of human rights defenders, (ii) guaranteeing a safe and enabling environment in which defenders can operate freely, without threats, restrictions or risks, and (iii) investigating and, where appropriate, punishing attacks, threats or intimidation that defenders may suffer in the exercise of their work.<sup>66</sup>

## **5. Guiding Principles in Applying the Right to a Healthy Environment**

25. Ten legal principles, drawn from international human rights law and international environmental law, are relevant to the role of the right to a healthy environment in shaping States' obligations to address the climate crisis. These include prevention, precaution, common but differentiated responsibilities and respective capabilities, the best interests of the child, intergenerational equity, equality and non-discrimination, non-regression, best available science, the polluter pays principle, and maximum available resources.

### **A. Prevention**

26. An undisputed and essential element of both international human rights law and international environmental law is that States have an obligation to protect against reasonably foreseeable harm

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<sup>60</sup> IACtHR Climate Change AO, paras. 596-604.

<sup>61</sup> What Is the Right to a Healthy Environment? Information Note, *supra* note 28 at 5.

<sup>62</sup> *Id.* at 5.

<sup>63</sup> IACtHR Climate Change AO, paras. 605-613.

<sup>64</sup> Global Witness, 2,253 land and environmental defenders were killed or disappeared between 2012 and 2024, <https://globalwitness.org/en/campaigns/land-and-environmental-defenders/in-numbers-lethal-attacks-against-defenders-since-2012/>.

<sup>65</sup> IACtHR Climate Change AO, para. 566.

<sup>66</sup> IACtHR Climate Change AO, paras. 566-587.

to human rights, the climate, and the environment.<sup>67</sup> States must not only refrain from violating human rights or harming the environment through their own actions, but must prevent third parties from doing so. In 1972, the Stockholm Declaration clarified that States have the “responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction.”<sup>68</sup> The obligation of prevention arises when there is a risk of “significant damage.”<sup>69</sup>

27. The ICJ concluded that because climate change “poses a quintessentially universal risk to all States,” “a heightened degree of vigilance and prevention is required,” and therefore “the standard of due diligence for preventing significant harm to the climate system is stringent.”<sup>70</sup> The Inter-American Court emphasized that “[t]he obligation to guarantee rights and, specifically, the duty of prevention, acquires a specific content in relation to the right to a healthy environment.”<sup>71</sup> The Court identified a range of State obligations flowing from the harm prevention principle, including duties of due diligence, regulation, supervision and monitoring (including particular duties owed to Indigenous Peoples), carrying out environmental impact assessments, preparing contingency plans, and mitigating environmental damage.<sup>72</sup>

## B. The Precautionary Principle

28. Scientists are increasingly concerned about tipping points in the Earth’s climate system, thresholds that, if crossed, would result in disruptive impacts to ecosystems, economies, and society that could be unavoidable even if temperatures are brought down later.<sup>73</sup> The IPCC warned that self-reinforcing feedbacks in the Earth’s climate system could cause long-term destabilization, with higher risks if humanity overshoots 1.5°C.<sup>74</sup> These daunting but uncertain dangers highlight the importance of the precautionary principle and the urgency of taking immediate and ambitious steps to decarbonize the global economy.

29. The UNFCCC provides that “[t]he Parties should take precautionary measures to anticipate, prevent or minimize the causes of climate change and mitigate its adverse effects.”<sup>75</sup> The

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<sup>67</sup> See, e.g., U.N. HRC, General Comment No. 36, *supra* note 52, at para. 18; *Öneryildiz v. Turkey*, European Court of Human Rights, no. 48939/99, (Nov. 30, 2004), <https://hudoc.echr.coe.int/eng?i=001-67614>; *Budayeva v. Russia*, European Court of Human Rights, no. 15339/02, (Mar. 20, 2008), <https://hudoc.echr.coe.int/fre?i=001-85436>.

<sup>68</sup> Stockholm Declaration on the Human Environment, United Nations Conference on the Human Environment, Stockholm, A/CONF.48/14/Rev.1, Principle 2, (Jun. 5 to 16, 1972)

<sup>69</sup> *Case of Pulp Mills on the River Uruguay (Argentina v. Uruguay)*, International Court of Justice, para. 101, (Apr. 20, 2010), <https://www.icj-cij.org/sites/default/files/case-related/135/135-20100420-JUD-01-00-EN.pdf>; *Certain Activities and Construction of a Road (Costa Rica v. Nicaragua)*, International Court of Justice, para. 104 (Dec. 16, 2015), <https://www.icj-cij.org/sites/default/files/case-related/152/152-20151216-JUD-01-00-EN.pdf>.

<sup>70</sup> ICJ Climate Change AO, paras. 137-138.

<sup>71</sup> IACtHR Climate Change AO, para. 275.

<sup>72</sup> IACtHR Climate Change AO, para. 230; See also *The Environment and Human Rights*, Inter-American Court of Human Rights, Advisory Opinion OC-23/17, paras. 142, 146, 152-54, 162-69, 171-72, (Nov. 15, 2017), [https://www.corteidh.or.cr/docs/opiniones/seriea\\_23\\_ing.pdf](https://www.corteidh.or.cr/docs/opiniones/seriea_23_ing.pdf).

<sup>73</sup> Will Steffen et al., *Trajectories of the Earth System in the Anthropocene*, PNAS vol 115, no. 33, (Aug. 14, 2018), <https://www.pnas.org/doi/epdf/10.1073/pnas.1810141115>.

<sup>74</sup> Valérie Masson-Delmotte et al., *Global Warming of 1.5°C*, Intergovernmental Panel on Climate Change, p. 283, (2019), [https://www.ipcc.ch/site/assets/uploads/sites/2/2019/06/SR15\\_Full\\_Report\\_High\\_Res.pdf](https://www.ipcc.ch/site/assets/uploads/sites/2/2019/06/SR15_Full_Report_High_Res.pdf).

<sup>75</sup> UNFCCC (1992), *supra* note 33, at art. 3.3.

precautionary principle is also part of the Rio Declaration on Environment and Development, which affirms that “where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.”<sup>76</sup>

30. The ICJ and the Inter-American Court both emphasized the importance of precaution in tackling the climate crisis.<sup>77</sup> The U.N. Human Rights Committee has also urged States to “pay due regard to the precautionary approach” when addressing threats like climate change.<sup>78</sup>

### C. Common But Differentiated Responsibilities and Respective Capabilities

31. Both the UNFCCC and the Paris Agreement refer to the principle of common but differentiated responsibilities and respective capabilities, meaning that “developed country Parties should take the lead in combating climate change and the adverse effects thereof.”<sup>79</sup> As the ICJ noted, “the principle of common but differentiated responsibilities and respective capabilities reflects the need to equitably distribute the burdens of the obligations in respect of climate change, taking into account, *inter alia*, States’ historical and current contributions to cumulative GHG emissions, and their different current capabilities and national circumstances, including their economic and social development.”<sup>80</sup> The Inter-American Court adopted a similar position.<sup>81</sup>

### D. The Best Interests of the Child

32. The Inter-American Court observed that the climate crisis has greater effects on those who, today, are very young and must live their whole lives in an increasingly adverse climate.<sup>82</sup> Pursuant to the *Convention on the Rights of the Child*, which enjoys almost universal ratification, “[i]n all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.”<sup>83</sup> The rights of children, including the best interest of the child and their rights to information, participation, and a healthy environment, should be considered in developing and implementing all climate actions, including mitigation, adaptation, climate finance, and environmental impact assessments.<sup>84</sup>

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<sup>76</sup> Rio Declaration on Environment and Development (1992), Principle 15; *see also* ICJ Climate Change AO, para. 158 (citing the same).

<sup>77</sup> ICJ Climate Change AO, para. 158; IACtHR Climate Change AO, paras. 216, 228.

<sup>78</sup> U.N. HRC, General Comment No. 36, *supra* note 52, at para. 62.

<sup>79</sup> UNFCCC (1992), *supra* note 33, at art. 3; Paris Agreement, *supra* note 33, at arts. 2, 4.3.

<sup>80</sup> ICJ Climate Change AO, para. 148.

<sup>81</sup> IACtHR Climate Change AO, paras. 309, 327.

<sup>82</sup> IACtHR Climate Change AO, para. 312; *see also* UNICEF, *The Climate Crisis is a Child Rights Crisis: Introducing the Children’s Climate Risk Index*, UNICEF, (Aug. 2021), <https://www.unicef.org/media/105376/file/UNICEF-climate-crisis-child-rights-crisis.pdf>.

<sup>83</sup> Convention on the Rights of the Child, art. 3 (Nov. 20, 1989), <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child>.

<sup>84</sup> U.N. CRC, General Comment No. 26, *supra* note 28, at paras. 16-19, (Aug. 22, 2023), <https://docs.un.org/en/CRC/C/GC/26>.

## E. Intergenerational Equity

33. Closely related to the principle of the best interests of the child is the principle of intergenerational equity.<sup>85</sup> The ICJ stated that “[i]ntergenerational equity is an expression of the idea that present generations are trustees of humanity tasked with preserving dignified living conditions and transmitting them to future generations.”<sup>86</sup> The ICJ added that the relevance of intergenerational equity to States’ obligations in respect of climate change is “undisputable,” underscoring that this principle must always be taken into consideration when States contemplate, decide on, and implement climate-related policies and measures.<sup>87</sup>

34. Similarly, the Inter-American Court held that “the guarantee of intra- and intergenerational equity is essential for the interpretation and fulfilment of the duties deriving from the right to a healthy climate, insofar as this right, in its collective dimension, pursues the integral protection of humanity as a whole.”<sup>88</sup> The Inter-American Court also highlighted that States must “promote mechanisms to integrate the interests of ... future generations in their climate actions” and that delays in mitigation and adaptation “mean transferring an extraordinary responsibility to future generations, and increase the risk of suffering the negative effects of climate change, particularly for the most vulnerable.”<sup>89</sup> The Constitutional Court of Germany reached a similar conclusion.<sup>90</sup>

## F. Equality and Non-discrimination

35. All States, when taking action to address the climate crisis, must act consistently with the fundamental human rights obligations of equality and non-discrimination.<sup>91</sup> States should recognize that climate change disproportionately affects certain vulnerable and marginalized populations, including inter alia, children, adolescents, Indigenous peoples, rural communities, refugees, migrants, women, persons with disabilities, and older persons.<sup>92</sup> States’ climate policies must avoid both direct and indirect discrimination, while proactively reducing historical or systemic discrimination, for example, by prioritizing the closure of coal-fired power plants located in vulnerable and/or marginalized communities.<sup>93</sup> When fulfilling procedural obligations, States should remove barriers that individuals, groups, and communities face in receiving information, participating in decision-making, or seeking remedies via access to justice. States should also ensure that the burdens of climate mitigation or adaptation actions do not fall unduly on vulnerable or marginalized persons or communities.

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<sup>85</sup> Hoesung Lee et al., Climate Change 2023 Synthesis Report, Intergovernmental Panel on Climate Change, p. 24, Statement C.1.3, [https://www.ipcc.ch/report/ar6/syr/downloads/report/IPCC\\_AR6\\_SYR\\_FullVolume.pdf](https://www.ipcc.ch/report/ar6/syr/downloads/report/IPCC_AR6_SYR_FullVolume.pdf).

<sup>86</sup> ICJ Climate Change AO, para. 156.

<sup>87</sup> ICJ Climate Change AO, paras. 155, 157.

<sup>88</sup> IACtHR Climate Change AO, para. 313.

<sup>89</sup> IACtHR Climate Change AO, paras. 194, 469.

<sup>90</sup> *Neubauer et al. v Germany*, Federal Constitutional Court, 1 BvR 2656/18, paras. 148, 193, 197, 199, 299, (Mar. 24, 2021), [https://cdn.climatepolicyradar.org/navigator/DEU/2020/neubauer-et-al-v-germany\\_918d5f39d1cba624f9c683a5292905f5.pdf](https://cdn.climatepolicyradar.org/navigator/DEU/2020/neubauer-et-al-v-germany_918d5f39d1cba624f9c683a5292905f5.pdf).

<sup>91</sup> IACtHR Climate Change AO, paras. 588-629; *see also* ICCPR *supra* note 52, at art. 2; ICESCR, *supra* note 52, at art. 2(2).

<sup>92</sup> IACtHR Climate Change AO, para. 596.

<sup>93</sup> U.N.S.R. on H.R. & Env. (John Knox), Framework Principles on human rights and the environment, A/HRC/37/59, paras. 7-9 (Jan. 24, 2018), <https://docs.un.org/en/A/HRC/37/59>.

## G. Non-regression

36. The principle of non-regression, widely recognized in international treaties (e.g., the Escazu Agreement), complements the principle of progressive realization.<sup>94</sup> States should not allow or pursue actions that have the effect of diminishing the legal protection of human rights, the climate system, or the environment.<sup>95</sup> Consequently, once a State has enacted or accepted a measure of climate or environmental protection, it should not weaken it. For example, mitigation targets established in Nationally Determined Contributions (NDCs) must be progressively strengthened, not weakened.<sup>96</sup> The non-regression principle ensures that States work toward progressively stronger standards in meeting global climate and environmental challenges.<sup>97</sup>

## H. Best Available Science

37. State responses to the climate crisis, including all mitigation and adaptation measures, must be informed by the best available science.<sup>98</sup> The human right to enjoy the benefits of scientific progress is protected by Article 15 of the *International Covenant on Economic, Social and Cultural Rights*, and is closely linked to the right to a healthy environment.<sup>99</sup> Various international courts and tribunals have confirmed that in the context of climate change, the best available science is represented by the reports of the Intergovernmental Panel on Climate Change, complemented by the traditional knowledge of Indigenous Peoples and local communities.<sup>100</sup>

## I. The Polluter Pays Principle

38. As noted by the Inter-American Court, the polluter pays principle is a fundamental principle in environmental law, requiring State and private parties responsible for pollution to bear the costs of prevention, remediation, and compensation.<sup>101</sup> African courts have confirmed the importance of this principle. For example, in *KM & 9 others v. Attorney General & 7 others*, the Supreme Court of Kenya held that fulfilling constitutional, environmental, and human rights obligations required holding a polluting business financially accountable and ordered nearly USD \$13 million in remediation for soil and water heavily contaminated by lead and compensation to affected

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<sup>94</sup> A.D. Mitchell and J. Munro, An International Law Principle of Non-Regression from Environmental Protections, *International and Comparative Law Quarterly* vol 72, (2023), <https://www.cambridge.org/core/services/aop-cambridge-core/content/view/DFB6236C0504491E00B4174EE6D13186/S0020589322000483a.pdf/an-international-law-principle-of-non-regression-from-environmental-protections.pdf>.

<sup>95</sup> IACtHR Climate Change AO, paras. 222, 240.

<sup>96</sup> ICJ Climate Change AO, paras. 240-241.

<sup>97</sup> Paris Agreement, *supra* note 33, at art. 4.3.

<sup>98</sup> IACtHR Climate Change AO, para. 486.

<sup>99</sup> Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes (Marcos Orellana), Right to science in the context of toxic substances, A/HRC/48/61, para. 10, (Jul. 26, 2021), <https://docs.un.org/en/A/HRC/48/61>.

<sup>100</sup> ICJ Climate Change AO, para. 137; IACtHR Climate Change AO, paras. 476-487; International Tribunal on the Law of the Sea, Advisory Opinion: Obligations of States to prevent, reduce and control marine pollution and to protect and preserve the marine ecosystem from the impacts of climate change (May 21, 2024), para. 208; *see also Verein Klimasenioreninnen and Others v. Switzerland*, *supra* note 26, at 429.

<sup>101</sup> IACtHR Climate Change AO, para. 287.

victims.<sup>102</sup> The Court viewed compensation as necessary to vindicate the right to a healthy environment.

## J. Maximum Available Resources

39. States have an obligation to invest the maximum available resources in respecting, protecting, and fulfilling human rights, including the right to a healthy environment.<sup>103</sup> In the words of the Inter-American Court, “[t]he climate emergency accentuates the need to allocate the maximum available resources to protect individuals and groups who, because they are in situations of vulnerability, are exposed to particularly severe impacts of climate change.”<sup>104</sup> The Committee on Economic, Social and Cultural Rights further clarifies that States must ensure the transparent, equitable, and sustainable use of domestic resources.<sup>105</sup> Strengthening governance over public revenues, particularly from extractive industries, is therefore integral to using the “maximum available resources” to realize rights threatened by climate change.<sup>106</sup> States must also ensure that public resources are deployed “in a manner compatible with ecological limits and the objectives of sustainable development.”<sup>107</sup>

40. States should consider establishing and properly managing sovereign wealth funds to reserve a fair share of the economic benefits of fossil fuel production for future generations. Chronic mismanagement of national resources, particularly in oil- and mineral-rich States, has historically constrained governments’ ability to invest in environmental protection, sustainable development, and fulfilling human rights.<sup>108</sup> Nigeria, for example, has produced more oil than Norway since the 1960s,<sup>109</sup> yet Norway’s sovereign wealth fund is hundreds of times larger than Nigeria’s fund.<sup>110</sup>

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<sup>102</sup> *KM & 9 others v. Attorney General & 7 others*, Supreme Court of Kenya, Petition No. E019 of 2023 consolidated with Petition No. E021 of 2023, paras. 100, 164-174, (Dec. 6, 2024), <https://supremecourt.judiciary.go.ke/wp-content/plugins/download-attachments/includes/download.php?id=5262> [hereinafter *KM v. Attorney General*].

<sup>103</sup> ICESCR, *supra* note 52, at art. 2(1).

<sup>104</sup> IACtHR Climate Change AO, para. 242.

<sup>105</sup> U.N. CESCR, General Comment No. 27, *supra* note 28, at paras. 25-26.

<sup>106</sup> U.N. CESCR, General Comment No. 27, *supra* note 28, at para. 24.

<sup>107</sup> U.N. CESCR, General Comment No. 27, *supra* note 28, at para. 4.

<sup>108</sup> Pr Atangana Ondo Henri, Natural resources curse: A reality in Africa, Resources Policy (Oct. 2019), <https://www.sciencedirect.com/science/article/pii/S0301420719300388>; Manuella Appiah & Ting Zhang, Escaping the Resource Curse in Sub-Saharan Africa, The Hague Institute for Global Justice Policy Brief 4 (Aug. 2013), <https://thehagueinstituteforglobaljustice.org/wp-content/uploads/2023/07/PB4-Escaping-Resource-Curse-Sub-Saharan-Africa.pdf>.

<sup>109</sup> Nigeria National Bureau of Statistics, Petroleum Statistics: Crude Oil Production (Volume and Value) and Oil Refining (1961-2014), (2017); Norwegian Ministry of Energy, Historical Production, (2025) <https://www.norskipetroleum.no/en/facts/historical-production/>; See also Energy Institute, Statistical Review of World Energy, Oil Production dataset, (2025), <https://ourworldindata.org/grapher/oil-production-by-country?country=NOR~NGA>.

<sup>110</sup> Compare Norges Bank Investment Management, Half-year report 2025: Government Pension Fund Global, <https://www.nbim.no/en/news-and-insights/reports/2025/half-year-report-2025/> (approximately 1.9 trillion USD as of Jun. 30, 2025) with Nigeria Sovereign Investment Authority, Interim condensed consolidated and separate financial statements for the quarter ended 31 Mar. 2025, Nigeria: <https://nsia.com.ng/investor-relations/q1-2025-financial-statement/> (approximately 3.2 billion USD as of Mar. 31, 2025).

41. To ensure that the production of oil, gas, and coal maximizes benefits to the public, States with fossil fuel resources should also implement appropriate taxation and royalty regimes. In this regard, the Norwegian law and policy framework that imposes taxes totaling 78 percent on the profits of oil and gas companies offers a practice worthy of emulation (22 percent regular corporate tax and 56 percent special tax on the oil and gas industry).<sup>111</sup>

42. Finally, to assist in mobilizing the maximum available resources, fossil fuel subsidies should be critically reviewed by States to avoid delaying the energy transition. The only fossil fuel subsidies that are potentially justifiable from a human rights perspective are those that focus on benefitting low-income Africans (e.g., subsidies for clean cookstoves that rely on gas).

## **6. The Right to a Healthy Environment Requires States to Mitigate Climate Change**

43. The right to a healthy environment offers extensive guidance regarding State obligations to mitigate adverse impacts upon the Earth’s climate system. These obligations relate to establishing ambitious targets and effective measures in NDCs, requisite standards of due diligence, requirements for environmental and human rights impact assessments, the necessity of phasing out fossil fuels, and avoiding false solutions.

44. According to the ICJ, mitigation measures must be “designed to achieve the deep, rapid, and sustained reductions of GHG emissions that are necessary for the prevention of significant harm to the climate system” and “must guarantee the effective enjoyment of human rights.”<sup>112</sup> Similarly, the Inter-American Court held that to protect the global climate system, fulfill the right to a healthy environment, and prevent human rights violations resulting from damage to the climate system, all States are “obliged to mitigate their GHG emissions” and must develop, implement, and periodically revise a human rights-based strategy to achieve their mitigation targets.<sup>113</sup> This requires legislation, regulations, and standards governing significant sources of greenhouse gas emissions, as well as protecting and restoring carbon sinks.<sup>114</sup> States must apply a human rights-based approach to all laws, regulations, policies, and actions related to the climate crisis, including prioritizing actions to protect the most vulnerable and marginalized populations.<sup>115</sup>

45. Both the ICJ and the Inter-American Court clarified State obligations related to the preparation and implementation of NDCs, the cornerstone of the Paris Agreement to which all African States are parties. NDCs must reflect each State’s highest ambition,<sup>116</sup> be “more demanding than” previous NDCs (i.e., guided by the principle of progressivity), be based on the best available science, be grounded in human rights, and include effective measures to achieve the intended

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<sup>111</sup> Pricewaterhouse Coopers, Norway (Jul. 1, 2025), <https://taxsummaries.pwc.com/norway/corporate/taxes-on-corporate-income>.

<sup>112</sup> ICJ Climate Change AO, paras. 282, 403.

<sup>113</sup> IACtHR Climate Change AO, paras. 321-22, 333-44.

<sup>114</sup> IACtHR Climate Change AO, paras. 321-22.

<sup>115</sup> U.N.S.R. on H.R. & Env. (John Knox), Framework Principles on human rights and the environment, A/HRC/37/59 (Jan. 24, 2018), <https://docs.un.org/en/A/HRC/37/59>.

<sup>116</sup> Paris Agreement, *supra* note 33, at art. 4.3.

targets.<sup>117</sup> Collectively, all States must advance sufficiently ambitious NDCs, based on equity and common but differentiated responsibilities and respective capabilities, to be capable of fulfilling the Paris Agreement’s commitment to limit global warming to 1.5°C.<sup>118</sup>

46. According to the Inter-American Court, States’ mitigation targets “must be set with the objective of preventing climate damage as a condition for respecting and guaranteeing the right to a healthy environment”.<sup>119</sup> Both the ICJ and the Inter-American Court held that mitigation targets for each State must be informed by “(i) its current and cumulative historical contribution to climate change, (ii) its capacity to contribute to mitigation measures, and finally, (iii) the circumstances in which it finds itself.”<sup>120</sup>

47. Because of the immense magnitude of potential harm caused by the climate crisis, States must implement their mitigation and adaptation obligations with enhanced due diligence. The ICJ held that the governing standard for States’ climate action is stringent due diligence, requiring States to: (i) use all means at their disposal to prevent activities from causing significant harm to the climate system and the environment; (ii) adopt appropriate measures and enforce them with vigilance; and (iii) establish a national system, including legislation, administrative procedures and an enforcement mechanism necessary to regulate the activities in question to achieve the intended objective.<sup>121</sup> The ICJ concluded that a State that fails to take all measures within its power to exercise due diligence in performing its primary obligation to prevent significant harm to the climate system commits an internationally wrongful act entailing its responsibility.<sup>122</sup>

48. Similarly, the Inter-American Court held that enhanced due diligence requires States to:

- a) adopt proactive and ambitious preventive measures to avoid the worst climate scenarios;
- b) use the best available science in the design and implementation of climate actions;
- c) integrate the human rights perspective into the formulation, implementation, and monitoring of all laws, policies, and measures related to climate change to ensure that they do not create new vulnerabilities or exacerbate preexisting ones;
- d) adequately monitor the effects and impacts of the adopted measures;
- e) strictly comply with procedural obligations, including access to information, participation, and access to justice; and
- f) ensure transparency and accountability in relation to State climate action.<sup>123</sup>

#### **A. States Must Conduct Environmental and Human Rights Impact Assessments for Significant Emissions-Generating Activities**

49. As an important part of their mitigation obligations to prevent significant climate, environmental, and human rights harms, States must ensure that environmental and human rights

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<sup>117</sup> ICJ Climate Change AO, paras. 237-249.

<sup>118</sup> ICJ Climate Change AO, paras. 242-247.

<sup>119</sup> IACtHR Climate Change AO, para. 325.

<sup>120</sup> IACtHR Climate Change AO, para. 327; ICJ Climate Change AO, para. 247.

<sup>121</sup> ICJ Climate Change AO paras. 28, 132, 135-38, 175, 208, 272-73, 280-81, 290-92, 343, 347, 349, 457(3)(B)(a).

<sup>122</sup> ICJ Climate Change AO, para. 409.

<sup>123</sup> IACtHR Climate Change AO, para. 236.

impact assessments are conducted for proposed industrial activities and economic policies that will produce or contribute to significant increases in greenhouse gas emissions or other types of harm to the Earth's climate system.<sup>124</sup> These assessments should be comprehensive in nature, incorporating direct, indirect, domestic, transboundary, cumulative, short- and long-term, climate, biodiversity, environmental, health, cultural, social, and human rights impacts.<sup>125</sup>

50. In the context of climate change, it is essential that all environmental impact assessments rigorously address lifecycle emissions, impacts on carbon sinks (e.g., oceans, forests, wetlands, soils), alternatives with lower emissions, and the option of not proceeding with the proposed project or policy.<sup>126</sup> Environmental assessments should always be based on the best available science, make information easily available to the public, enable full public participation, and enable concerned individuals, communities, and organizations to pursue effective remedies through timely and affordable access to justice.<sup>127</sup>

51. The Inter-American Court held that States must secure “public access to pertinent information, and satisfactory channels for participation and accountability.”<sup>128</sup> This view is shared by African courts that have evaluated alleged violations of the right to a healthy environment. For example, in *Ken Kasinga v. Daniel Kiplagat Kirui & 5 Others*, the Kenyan Environment and Land Court held government defendants liable for failing to ensure public participation in a licensing process.<sup>129</sup> The Kenyan High Court has ruled similarly in cases involving inadequate public participation in the process of preparing environmental impact assessments (EIAs).<sup>130</sup> Meaningful public participation is therefore a necessary component of any adequate assessment of private projects and developments.

## **B. States Must Prioritize Phasing Out Fossil Fuels**

52. Given that greenhouse gas emissions caused by the combustion of fossil fuels are the dominant cause of the climate crisis, effective mitigation measures must prioritize a rapid transition away from fossil fuels. In 2012, the International Energy Agency estimated that two-thirds of proven fossil fuel reserves must not be burned if humanity is to limit warming to 2°C.<sup>131</sup> The inescapable conclusion is that the exploration for, and development of, additional fossil fuel resources will lock

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<sup>124</sup> ICJ Climate Change AO, paras. 297-98; IACtHR Climate Change AO, paras. 358-363.

<sup>125</sup> U.N.S.R. on H.R. & Env. (Astrid Puentes Riaño), Framework for environmental, social and human rights impact assessments and the right to a clean, healthy and sustainable environment, A/80/187 (Jul. 17, 2025), <https://docs.un.org/A/80/187>.

<sup>126</sup> *Id.* at Annex 1.

<sup>127</sup> *Id.* at 58, 70-79.

<sup>128</sup> IACtHR Climate Change AO, para. 349.

<sup>129</sup> *Ken Kasinga v. Daniel Kiplagat Kirui & 5 Others*, Environment and Land Court of Kenya at Nakuru, Petition No. 50 of 2013, (Nov. 4, 2015), [https://r2he.info/wp-content/uploads/files/Ken\\_Kasinga\\_vs\\_Daniel\\_Kiplagat\\_Kirui\\_&\\_5\\_Others.pdf](https://r2he.info/wp-content/uploads/files/Ken_Kasinga_vs_Daniel_Kiplagat_Kirui_&_5_Others.pdf).

<sup>130</sup> *Mohamed Ali Baadi and Others v. Attorney General*, High Court of Kenya, Petition No. 22 of 2012 (2018), [https://r2he.info/wp-content/uploads/files/Mohamed\\_Ali\\_Baadi\\_and\\_Others\\_v.\\_Attorney\\_General.pdf](https://r2he.info/wp-content/uploads/files/Mohamed_Ali_Baadi_and_Others_v._Attorney_General.pdf).

<sup>131</sup> International Energy Agency, World Energy Outlook 2012, p. 25, <https://www.iea.org/reports/world-energy-outlook-2012>.

in a future that both precludes achieving the required emission reductions and results in extensive, expensive stranded assets.<sup>132</sup>

53. Despite comprising 19 percent of the global population, Africa’s share of global greenhouse gas emissions in 2023 was only 3.6 percent.<sup>133</sup> Hundreds of millions of Africans still lack access to electricity in their homes, providing Africa the opportunity to leapfrog the fossil fuel era in addressing these gaps. Several African States, including the Central African Republic, the Democratic Republic of Congo, Ethiopia, and Lesotho, already generate 100 percent of their electricity from renewable sources.<sup>134</sup> A partnership between the African Development Bank and the World Bank plans to invest \$35 billion to extend electricity access to 300 million people in Africa by 2030, primarily through solar energy.<sup>135</sup> Ethiopia, moreover, recently enacted a world-leading law prohibiting the import and sale of new gas- and diesel-powered passenger vehicles.<sup>136</sup>

54. In light of the conclusive evidence that climate change poses an existential threat to human rights, authorizing additional oil, gas, and coal exploration, development, and infrastructure that exacerbate the crisis is fundamentally inconsistent with the right to a healthy environment.<sup>137</sup> The ICJ has made this clear, warning that the “[f]ailure of a State to take appropriate action to protect the climate system from GHG emissions — including through fossil fuel production, fossil fuel consumption, the granting of fossil fuel exploration licences or the provision of fossil fuel subsidies — may constitute an internationally wrongful act which is attributable to that State.”<sup>138</sup>

55. Priority actions include phasing out coal and ending the practice of gas flaring. Burning coal is widely recognized as the dirtiest means of generating electricity, producing large volumes of greenhouse gas emissions and contaminating air, water, and soil.<sup>139</sup> Yet burning coal continues to be the predominant means of producing electricity in some African States (e.g., South Africa, Morocco, Zimbabwe, Egypt, Botswana). In order to respect, protect, and fulfil the right to a healthy environment, African States should strive to replace coal with renewable energy—the cheapest and cleanest alternative—as rapidly as possible. African States should also collectively urge wealthy nations to fulfil their international climate and human rights obligations by providing grants or zero-interest loans to finance this essential energy transition. In both Africa and South

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<sup>132</sup> International Energy Agency, *World Energy Outlook 2016*, p. 76, <https://www.iea.org/reports/world-energy-outlook-2016>.

<sup>133</sup> International Energy Agency, *Africa*, <https://www.iea.org/regions/africa/emissions#how-much-co2-do-countries-in-africa-emit>.

<sup>134</sup> *Yearly Electricity Data*, Ember, <https://ember-energy.org/data/yearly-electricity-data/>.

<sup>135</sup> World Bank Group, *New Partnership Aims to Connect 300 Million to Electricity by 2030* (Apr. 17, 2024), <https://www.worldbank.org/en/news/press-release/2024/04/17/new-partnership-aims-to-connect-300-million-to-electricity-by-2030>.

<sup>136</sup> Thabo Nkosi, *Ethiopia Bans Gasoline and Diesel Imports in World-First Sustainable Mobility Policy*, EV24 (Sep. 15, 2025), <https://www.ev24.africa/ethiopia-bans-gasoline-and-diesel-imports-in-world-first-sustainable-mobility-policy/>.

<sup>137</sup> U.N.S.R. on H.R. & Env. (David R. Boyd), *A Safe Climate: Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment*, U.N. Gen. Ass., A/74/161, paras. 76-83 (Jul. 15, 2019), <https://docs.un.org/en/a/74/161>.

<sup>138</sup> ICJ *Climate Change AO*, para. 427.

<sup>139</sup> *See e.g.*, Union of Concerned Scientists, *Coal Power Impacts* (Jul. 9, 2019), <https://www.ucs.org/resources/coal-power-impacts>.

America, courts have concluded that flaring gas from petroleum production violates the right to a healthy environment, given that it both exacerbates the climate crisis and pollutes the air.<sup>140</sup>

56. It is worth highlighting that Angola, Ethiopia, Mauritius, Morocco, and Senegal are members of the Powering Past Coal Alliance, an international initiative to eliminate dependence on coal.<sup>141</sup> Angola and Ethiopia are already coal-free, while Mauritius has pledged to end the use of coal for electricity generation by 2030 and Morocco and Senegal by 2040.<sup>142</sup> These actions and commitments reflect an inspiring intention to fulfil the right to a healthy environment.

### C. States Must Avoid False Solutions

57. It is essential for States to avoid false solutions to the climate crisis, as these false solutions may involve serious human rights consequences. A particularly problematic example in the African context involves carbon markets, dominated by credits for nature-based solutions such as tree planting, forest conservation, and reforestation. Many forest-based carbon credit programs, including a major project in Zimbabwe, have been revealed as fraudulent for failing to create tangible climate actions or benefits.<sup>143</sup> A business based in the United Arab Emirates (Blue Carbon) has allegedly acquired the ‘carbon rights’ to millions of hectares of land across Africa through opaque transactions with governments in Angola, Kenya, Liberia, Tanzania, Zambia, and Zimbabwe.<sup>144</sup>

58. There is a grave danger that Indigenous peoples and other land-based traditional communities will be evicted, displaced, or otherwise subjected to human rights violations as a result of these carbon credit schemes.<sup>145</sup> Even when carbon credits are implemented as intended, there is still a risk that human rights violations may occur. The African Court found that Kenya’s eviction of the Indigenous Ogiek people from the Mau Forest under the guise of conservation was a violation of their rights, including their right to a healthy environment.<sup>146</sup> There is a substantial risk that forest-dependent people will be evicted from the lands upon which their cultures, livelihoods, and rights depend, under the guise of protecting or restoring forests to create carbon credits. As the African

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<sup>140</sup> See e.g., *Herrera Carrion et al. v Ministry of Environment et al.*, Multicompetent Chamber of the Provincial Court of Justice of Sucumbios (Ecuador), Case No. 21201202000170, (Jul. 29, 2021), [https://www.climatecasechart.com/documents/herrera-carrion-et-al-v-ministry-of-the-environment-et-al-caso-meberos-ruling\\_be90](https://www.climatecasechart.com/documents/herrera-carrion-et-al-v-ministry-of-the-environment-et-al-caso-meberos-ruling_be90); *Gbemre v. Shell Petroleum Development Company of Nigeria Ltd. et al.*, Federal High Court of Nigeria (Nov. 14, 2005), [https://www.climatecasechart.com/documents/gbemre-v-shell-petroleum-development-company-of-nigeria-ltd-and-others-judgment\\_92e3](https://www.climatecasechart.com/documents/gbemre-v-shell-petroleum-development-company-of-nigeria-ltd-and-others-judgment_92e3).

<sup>141</sup> Our Members, Powering Past Coal Alliance, <https://poweringpastcoal.org/members/>.

<sup>142</sup> *Id.*

<sup>143</sup> Patrick Greenfield, Revealed: More than 90% of rainforest carbon offsets by biggest certifier are worthless, analysis shows, *The Guardian* (Jan. 18, 2023), <https://www.theguardian.com/environment/2023/jan/18/revealed-forest-carbon-offsets-biggest-provider-worthless-verra-aoe>; Ben Elgin, Majority of Carbon Credits From Tarnished Project Deemed Bogus, *Bloomberg Law* (Oct. 17, 2025), <https://news.bloomberglaw.com/environment-and-energy/majority-of-carbon-credits-from-tarnished-project-deemed-bogus>.

<sup>144</sup> Evelyn Kpadeh Seagbeh & Kunle Adebajo, The case of Africa’s ‘vanishing’ carbon deals, *KTBS* (Nov. 21, 2025), [https://www.kten.com/news/the-case-of-africas-vanishing-carbon-deals/article\\_a68f5335-c71f-5607-b76a-d11fd6043e0.html](https://www.kten.com/news/the-case-of-africas-vanishing-carbon-deals/article_a68f5335-c71f-5607-b76a-d11fd6043e0.html).

<sup>145</sup> Claire Marshall, Kenya’s Ogiek people being evicted for carbon credits—lawyers, *BBC* (Nov. 9, 2023), <https://www.bbc.com/news/world-africa-67352067>.

<sup>146</sup> *African Commission on Human and People’s Rights v. Kenya*, *supra* note 19.

Court noted, the traditional way of life of the Ogiek people contributes to rights-based conservation rather than ecological degradation.<sup>147</sup> While protecting and conserving biodiversity and ecosystems is a legal obligation for African States, this must be accomplished in a manner consistent with the human rights and land rights of Indigenous peoples.

## **7. The Right to a Healthy Environment Requires States to Adapt to Climate Change**

59. The imperative for States to adapt to climate change has never been greater. As climate change worsens and catalyzes more extreme weather events and slow-onset disasters, adaptation is increasingly crucial to limit the harm imposed on human and non-human life.<sup>148</sup> African States already face outsized climate burdens, and the most vulnerable are expected to face increasing climate harms, including worsening poverty, malnutrition, and inequalities.<sup>149</sup> For example, for African farmers, 95 percent of whom depend on rain-fed agriculture, flooding and drought will cause devastating decreases in crop yields without significant adaptation efforts.<sup>150</sup> Importantly, even if global emissions were significantly reduced today, current and past emissions will still generate significant harm.<sup>151</sup>

60. Understanding the adaptation obligations related to the right to a healthy environment is therefore essential to assessing the adequacy of States' climate responses. As climate impacts in Africa increasingly affect the rights to life, health, and an adequate standard of living and the substantive elements of the right to a healthy environment (clean air, safe water, etc.), adaptation measures become compulsory to fulfill States' obligations. As noted by the Inter-American Court, States are "required to prevent [climate impacts on natural and human systems] through measures designed to avoid or reduce them to the greatest extent possible."<sup>152</sup> Yet, States in Africa remain underfinanced and underprepared to implement their adaptation obligations.<sup>153</sup>

61. The following section synthesizes the advisory opinions of the ICJ and Inter-American Court, as well as the U.N. Human Rights Committee. Given that State obligations under climate change and human rights treaties inform one another,<sup>154</sup> the ICJ's interpretations of adaptation obligations pursuant to the Paris Agreement and related instruments likewise illuminate the adaptation duties

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<sup>147</sup> *Id.*

<sup>148</sup> United Nations Development Programme, What is climate change adaptation and why is it crucial? (Jan. 30, 2024), <https://climatepromise.undp.org/news-and-stories/what-climate-change-adaptation-and-why-it-crucial>.

<sup>149</sup> World Meteorological Organization, Africa faces disproportionate burden from climate change and adaptation costs (Sep. 2, 2024), <https://wmo.int/news/media-centre/africa-faces-disproportionate-burden-from-climate-change-and-adaptation-costs>; Hoesung Lee et al., Climate Change 2023 Synthesis Report, Intergovernmental Panel on Climate Change, p. 49, [https://www.ipcc.ch/report/ar6/syr/downloads/report/IPCC\\_AR6\\_SYR\\_FullVolume.pdf](https://www.ipcc.ch/report/ar6/syr/downloads/report/IPCC_AR6_SYR_FullVolume.pdf).

<sup>150</sup> John Choptiany, Africa's smallholder farmers face collapse if we do not act on climate change, CGIAR (Aug. 14, 2025), <https://www.cgiar.org/news-events/news/614033-autosave-v1/>.

<sup>151</sup> *Id.*

<sup>152</sup> IACtHR Climate Change AO, paras. 377-78.

<sup>153</sup> Inger Andersen, Making good on the right to a healthy environment, United Nations Environment Programme (Jun. 20, 2024), <https://www.unep.org/news-and-stories/speech/making-good-right-healthy-environment>. The practical limitations of adaptation funding and related rights of States to seek resources and assistance are further addressed in Section 9.

<sup>154</sup> ICJ Climate Change AO, para. 404.

that flow from the right to a healthy environment. This section identifies the key components of States' adaptation duties: planning, implementation, and ongoing monitoring and adjustment. It then explains the due diligence standard that governs these obligations and concludes by demonstrating how a failure to adapt may constitute a violation of the right to a healthy environment and other rights.

### **A. States Must Plan for, Implement, and Continuously Monitor and Adjust Adaptation Measures**

62. The ICJ identifies three primary State obligations related to adaptation: (i) planning measures, (ii) implementation, and (iii) continuous monitoring, evaluation, and adjustment.<sup>155</sup> These obligations play an important role in safeguarding the right to a healthy environment. The Inter-American Court provides additional guidance on these obligations.

#### **i. States Must Plan for Adaptation Based on Concrete Data and With Special Attention to Vulnerable Groups**

63. The ICJ and the Inter-American Court have affirmed the importance of prioritizing vulnerable groups when taking action to address climate change.<sup>156</sup> The IPCC documented the current and projected outsized impacts that vulnerable populations in Africa face. Women and girls face greater water collection burdens, hygiene and sanitation impacts, and reductions in agricultural productivity due to lower adaptive capacity.<sup>157</sup> People living in poverty and rural communities, as well as subsistence farmers, are and will be disproportionately impacted.<sup>158</sup>

64. According to the Inter-American Court, planning for adaptation requires States to “collect comprehensive and disaggregated data on the risks of climate change to people and ecosystems, assess those risks, and identify the rights and population groups that are particularly vulnerable.”<sup>159</sup> Such data help States consider the specific ways in which vulnerable groups are impacted when planning for adaptation. Studies demonstrate, for example, that lower-than-average rainfall in West and Central Africa is associated with nearly two fewer years of schooling in adolescence, and that non-adaptative farming practices reduce childhood educational attainment as children miss school to contribute to household incomes.<sup>160</sup> Planning adaptation measures with children in mind, therefore, contributes to fulfilling obligations pursuant to the right to a healthy environment. Based on collected data about vulnerable groups, all States must establish national adaptation plans.<sup>161</sup>

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<sup>155</sup> ICJ Climate Change AO, paras. 256-257; *see also infra* notes 172-175 and accompanying text.

<sup>156</sup> ICJ Climate Change AO, paras. 374, 382; IACtHR Climate Change AO, para. 381.

<sup>157</sup> Ayansina Ayanlade et al., Africa Chapter *in* Climate Change 2022: Impacts, Adaptation and Vulnerability, Sixth Assessment Report of the Intergovernmental Panel on Climate Change, pp. 1346, 1350, (2022), [https://www.ipcc.ch/report/ar6/wg2/downloads/report/IPCC\\_AR6\\_WGII\\_Chapter09.pdf](https://www.ipcc.ch/report/ar6/wg2/downloads/report/IPCC_AR6_WGII_Chapter09.pdf).

<sup>158</sup> IACtHR Climate Change AO, para. 381; Ayanlade et al., *supra* note 157, at 1350.

<sup>159</sup> IACtHR Climate Change AO, para. 389(i).

<sup>160</sup> Ayanlade et al., *supra* note 157, at 1350, 1387.

<sup>161</sup> ICJ Climate Change AO, at paras. 256, 257; *see also* IACtHR Climate Change AO, paras. 380-381, 389(i).

## ii. States Must Implement Evidence-Based Adaptation Measures

65. States must go beyond planning to implement adaptation measures to yield actionable results for communities.<sup>162</sup> The ICJ listed examples of substantive adaptation actions, including restoring ecosystems; installing early warning systems; promoting regenerative farming and crop diversification; weatherproofing buildings; and managing land to reduce wildfire risk.<sup>163</sup> The Inter-American Court provided further examples, including ensuring an adequate water supply in drought-affected areas, designing strategies to address extreme weather events, and protecting key ecosystems.<sup>164</sup>

66. These examples are directly relevant to fulfilling the right to a healthy environment and can be used to guide African States in fulfilling their implementation obligations. For example, only 40 percent of Africa’s population has access to early warning systems despite increasingly frequent events like flooding and drought, posing significant risks to human rights.<sup>165</sup> Therefore, States should “establish climate information services and early warning systems that enable them to anticipate and respond to multiple risks.”<sup>166</sup>

67. The examples provided by both the ICJ and the Inter-American Court demonstrate what the IPCC views as pursuing a wider view of “where support is needed and how to build climate resilience.”<sup>167</sup> Take, for example, the need for adaptation measures specific to agriculture and food production. Since 1961, Africa has seen a 34% decline in agricultural productivity due to climate change, significantly more than other regions.<sup>168</sup> While adaptation measures must address sustainable agriculture and food production, they must also strengthen processing, storage, and distribution systems to ensure consistent access to adequate food.<sup>169</sup>

68. Both the ICJ and the Inter-American Court underscored the importance of protecting and restoring ecosystems as part of States’ adaptation obligations. The Inter-American Court described specific ecosystems in Central and South America that are essential to ensuring the right to a healthy environment.<sup>170</sup> As noted by the IPCC, there are numerous vulnerable ecosystems across Africa that must be preserved, including: tropical forests (resilient carbon sinks); mangroves, seagrasses, and coral reefs (fish habitats, carbon sequestration, and shoreline protection); and freshwater ecosystems such as rivers, wetlands, and lakes (key food sources).<sup>171</sup>

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<sup>162</sup> ICJ Climate Change AO, para. 256; *Daniel Billy and others v. Australia*, United Nations Human Rights Committee (2019), para. 2.7, [https://cdn.climatepolicyradar.org/navigator/XAA/2019/daniel-billy-and-others-v-australia-torres-strait-islanders-petition\\_74c333a6ed0f3e23287590b060e3994c.pdf](https://cdn.climatepolicyradar.org/navigator/XAA/2019/daniel-billy-and-others-v-australia-torres-strait-islanders-petition_74c333a6ed0f3e23287590b060e3994c.pdf) (concluding adaptation plans were insufficient “to ensure the long-term habitability of the islands”).

<sup>163</sup> ICJ Climate Change AO, para. 258.

<sup>164</sup> IACtHR Climate Change AO, paras. 401-402.

<sup>165</sup> *Id.* (describing how 48, 40, and 38 countries in Africa face threats from flooding, drought, and changes in precipitation respectively).

<sup>166</sup> IACtHR Climate Change AO, para. 389(i).

<sup>167</sup> Ayanlade et al., *supra* note 157, at 1308.

<sup>168</sup> World Meteorological Organization, *supra* note 149.

<sup>169</sup> Ayanlade et al., *supra* note 157, at 1301, 1349.

<sup>170</sup> IACtHR Climate Change AO, para. 366.

<sup>171</sup> Ayanlade et al., *supra* note 157, at 1333-36.

### iii. States Must Monitor, Evaluate, and Adjust Adaptation Measures

69. Adaptation measures are relevant for assessing whether a State is fulfilling its obligations with due diligence because they reduce the risk of significant harm.<sup>172</sup> According to the ICJ, States must implement adaptation actions, “including the development or *enhancement* of relevant plans, policies and/or contributions.”<sup>173</sup> Effective mechanisms for monitoring, evaluating, and adjusting adaptation measures are therefore essential for ascertaining if States are meeting their due diligence obligations.<sup>174</sup> The Inter-American Court similarly concluded that “States must design and implement a system for regular monitoring, evaluation, and learning for their national adaptation efforts and develop the institutional and budgetary capacity to implement such a system.”<sup>175</sup>

#### B. Adaptation Obligations Are Subject to a Due Diligence Standard, Which May Be Stringent or Enhanced

70. The ICJ affirmed that the fulfilment of adaptation obligations is to be assessed against a standard of due diligence.<sup>176</sup> This standard is rooted in “obligations of conduct in international environmental law,” which require States to use all the means at their disposal in fulfilling their obligations.<sup>177</sup> Echoing the Inter-American Court and the International Tribunal on the Law of the Sea, the ICJ found that the due diligence standard depends on the context.<sup>178</sup> In interpreting the customary duty to prevent significant harm, the ICJ stated that: “the degree of a given risk of harm is always an important element for the application of the due diligence standard: the higher the probability and the seriousness of possible harm, the more demanding the required standard of conduct.”<sup>179</sup>

71. Scientific information informs the required standard of due diligence.<sup>180</sup> Current climate science indicates that numerous climate hazards are deemed high-probability and high-impact, elevating the risk of serious harm and the stringency of due diligence for adaptation obligations. The ICJ affirmed that States “must use their best efforts, in line with the best available science” to identify and implement measures “that are capable of enhancing adaptive capacity, strengthening resilience and reducing vulnerability to climate change.”<sup>181</sup>

72. For the Inter-American Court, the climate emergency warrants “enhanced due diligence.”<sup>182</sup> Given the “extraordinary risk” that climate change already poses to human rights, the Court concluded that “States must act with enhanced due diligence to comply with the obligation of

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<sup>172</sup> ICJ Climate Change AO, para. 282.

<sup>173</sup> *Id.* at para. 256 (emphasis added).

<sup>174</sup> *Id.* at para. 282.

<sup>175</sup> IACtHR Climate Change AO, para. 389.

<sup>176</sup> *Id.* at para. 258.

<sup>177</sup> *Id.* at paras. 132, 175 (citing *Pulp Mills on the River Uruguay (Argentina v. Uruguay)* Judgment).

<sup>178</sup> ICJ Climate Change AO, para. 280; Obligations of States to prevent, reduce and control pollution of the marine environment and to protect and preserve the marine environment in relation to climate change impacts, ITLOS Advisory Opinion of May 21, 2024, para. 239; IACtHR Climate Change AO, para. 232.

<sup>179</sup> ICJ Climate Change AO, para. 275.

<sup>180</sup> *Id.* at para. 283.

<sup>181</sup> *Id.* at para. 258 (internal quotations omitted).

<sup>182</sup> IACtHR Climate Change AO, para. 233.

prevention arising from the obligation to guarantee [human rights] in the context of the climate emergency.”<sup>183</sup> Given the disproportionate impact the African continent has and will continue to experience, the regional context requires a stringent or enhanced standard of due diligence in fulfilling States’ adaptation obligations.

### **C. The Failure to Adapt May Constitute a Violation of the Right to a Healthy Environment and Other Related Rights**

73. Given the crucial nature of adaptation measures to fulfilling the right to a healthy environment and related rights, it follows that failing to plan, implement, and continuously monitor, evaluate, and adjust adaptation measures may violate these rights.<sup>184</sup> The ICJ endorsed the U.N. Human Rights Committee’s conclusion that Australia’s failure to implement timely and adequate adaptation measures to address the adverse impacts of climate change violated the right to privacy, family life, and housing.<sup>185</sup> The Inter-American Court similarly recognized that States’ failure to adapt could constitute violations of the rights to a healthy environment, life, personal integrity, health, private and family life, property, housing, freedom of movement and residence, food, water, work and social security, culture, and education.<sup>186</sup>

74. Disparities in resources do not diminish the fundamental obligation of States to prevent human rights harms through adequate adaptation. As the Inter-American Court held, the existence of the obligation to prevent human rights violations “does not depend on States’ level of development; in other words, the obligation of prevention applies equally to developed and developing States, without prejudice to the details relating to the obligation to cooperate and the principle of common but differentiated responsibilities.”<sup>187</sup> However, the specific circumstances of each State and the principle of common but differentiated responsibilities undoubtedly bear on the “scale and cost” of adaptation measures.<sup>188</sup> For Africa, it is a key point that the ICJ emphasized that wealthy States have a “legally binding obligation” to “assist the developing country parties that are particularly vulnerable to the adverse effects of climate change in meeting the costs of adaptation to those adverse effects.”<sup>189</sup>

## **8. The Right to a Healthy Environment Requires States to Regulate Business Conduct**

75. The African Court previously recognized that States have obligations, connected to the right to a healthy environment, to regulate business conduct.<sup>190</sup> In *LIDHO v. Cote d’Ivoire*, the Court held that the State breached its duty to protect the right to a healthy environment by failing to

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<sup>183</sup> *Id.* at para. 233.

<sup>184</sup> ICJ Climate Change AO, paras. 256-257.

<sup>185</sup> *Id.* at para 381.

<sup>186</sup> IACtHR Climate Change AO, paras. 234, 393-457.

<sup>187</sup> *Id.* at para. 237.

<sup>188</sup> *Id.* at para. 237.

<sup>189</sup> ICJ Climate Change AO, para. 211.

<sup>190</sup> *LIDHO v. Côte d’Ivoire*, *supra* note 18, at para. 247.

adequately regulate and monitor businesses that were dumping hazardous waste.<sup>191</sup> The African Commission also recognized that Articles 21 and 24 of the *African Charter* require States to adopt regulatory frameworks that govern extractive industries.<sup>192</sup> According to the Commission, the landmark *Social and Economic Rights Action Centre (SERAC)* case affirmed this view, establishing that “the [S]tate should, at the minimum, ensure that its agents *or any third party* does not interfere with the right of communities and individuals to access and use... resources.”<sup>193</sup> The Commission noted that “[g]overnments have a duty to protect their citizens, not only through appropriate legislation and effective enforcement but also by protecting them from damaging acts that may be perpetrated by private parties.”<sup>194</sup>

76. The African Court’s conclusions have been affirmed by the ICJ and the Inter-American Court,<sup>195</sup> pursuant to both climate change treaties and international human rights law.<sup>196</sup> Moreover, the duty to regulate private actors is subject to a stringent or enhanced due diligence standard.<sup>197</sup> States must take certain measures, including adopting “legislation, administrative procedures and an enforcement mechanism necessary to regulate the activities in question.”<sup>198</sup>

### **A. The Obligation to Regulate Business Conduct Is Subject to a Stringent Due Diligence Standard and Requires States to Take Specific Actions**

77. The ICJ, Inter-American Court, and African case law demonstrate that stringent due diligence and the right to a healthy environment require States to take specific regulatory actions, including: (i) preparing risk and impact assessments; (ii) ensuring information, transparency, and participation; (iii) reducing emissions; and (iv) monitoring, evaluation, and enforcement.

#### **i. States Must Enact Preventive Measures**

78. The ICJ and the Inter-American Court consider risk and impact assessments essential to upholding the obligation to adopt “appropriate rules and measures... necessary for the prevention of significant harm to the climate system.”<sup>199</sup> Indeed, proactively assessing risks to the environment is a customary rule of international law, and the ICJ confirmed it applies to “particularly significant proposed individual activities contributing to GHG emissions.”<sup>200</sup> The Inter-American Court places this obligation in the human rights context by finding that “States must adopt the necessary administrative, regulatory and legislative measures to ensure that

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<sup>191</sup> *LIDHO v. Côte d’Ivoire*, *supra* note 18, at paras. 131-135, 182-186, 246-247.

<sup>192</sup> African Commission on Human and Peoples’ Rights, *State Reporting Guidelines And Principles On Articles 21 And 24 Of The African Charter Relating To Extractive Industries, Human Rights and The Environment*, pp. vi, 14, 16, 33-34, (Oct. 30, 2021), <https://achpr.au.int/en/node/845> [hereinafter African Commission’s Guidelines on Extractive Industries].

<sup>193</sup> *Id.* at p. 23-24, paras. 14-15 (emphasis added).

<sup>194</sup> *SERAC v. Nigeria*, *supra* note 16, at para. 57.

<sup>195</sup> *See e.g.*, ICJ Climate Change AO, paras. 160, 282, 403; IACtHR Climate Change AO, paras. 345-351.

<sup>196</sup> ICJ Climate Change AO, paras. 403-404; IACtHR Climate Change AO, para. 345.

<sup>197</sup> ICJ Climate Change AO, paras. 138, 252, 282; IACtHR Climate Change AO, paras. 233, 236.

<sup>198</sup> ICJ Climate Change AO, paras. 281, 403.

<sup>199</sup> ICJ Climate Change AO, paras. 282, 295-298; IACtHR Climate Change AO, para. 230.

<sup>200</sup> ICJ Climate Change AO, para. 298.

business enterprises establish and implement effective due diligence processes with regard to environmental and human rights matters.”<sup>201</sup>

79. These prevention processes, grounded in the U.N. Guiding Principles on Business and Human Rights and recent developments in international law, are intended to “identify, prevent, mitigate and, when applicable, remedy the possible adverse impacts of business activities on the environment or on human rights.”<sup>202</sup> Assessments must be conducted before activities are carried out and when private projects are renewed, extended, or modified.<sup>203</sup> African case law has held governments to account for failing to require environmental impact assessments before authorizing private development projects with significant adverse climate impacts.<sup>204</sup>

80. African jurisprudence on the right to a healthy environment demonstrates that assessments must adequately address environmental risks, provide sufficient mitigation measures, and meaningfully involve public participation.<sup>205</sup> Licensing harmful private projects may itself indicate a breach of States’ duties to prevent environmental harm and uphold the right to a healthy environment. In *KM & 9 Others v. Attorney General*, for example, government authorization of a lead acid battery-recycling facility that emitted hazardous fumes and waste was held to violate these obligations.<sup>206</sup> The same reasoning may apply to licensing fossil-fuel projects that constitute “significant proposed individual activities contributing to GHG emissions to be undertaken within [a State’s] jurisdiction or control,” as described by the ICJ.<sup>207</sup> As the High Court of South Africa held in evaluating the license granted to Shell and other companies for exploring new oil and gas reserves, poor decision-making by government actors during licensing procedures can violate the right to a healthy environment.<sup>208</sup>

81. The Inter-American Court’s expansive approach to risk assessment and business due diligence is especially salient in the African context. The Court concluded that human rights law requires assessments capable of identifying “human rights and environmental impacts, including climate change-related impacts, across the *entire* value chain.”<sup>209</sup> While processes must be “appropriate to the size, sector and operating context of each enterprise,” they must also “encompass *all* its operations, products and services, including domestic and international supply chains.”<sup>210</sup> Given the extensive presence of multinational businesses in Africa, a similarly rigorous standard is warranted.<sup>211</sup>

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<sup>201</sup> IACtHR Climate Change AO, para. 348.

<sup>202</sup> *Id.*

<sup>203</sup> *Id.* at para. 362.

<sup>204</sup> *EarthLife Africa Johannesburg v. Minister of Environmental Affairs and Others*, *supra* note 23, at para. 54.

<sup>205</sup> *Save Lamu et al. v. National Environmental Management Authority and Amu Power Co. Ltd*, *supra* note 25.

<sup>206</sup> *KM v. Attorney General*, *supra* note 102, paras. 100, 164-174.

<sup>207</sup> ICJ Climate Change AO, para. 298.

<sup>208</sup> *Sustaining the Wild Coast NPC and Others v. Minister of Mineral Resources and Energy and Others*, High Court of South Africa, Case No. 3491/2021, paras. 113, 139 (Sep. 1, 2022), [https://r2he.info/wp-content/uploads/files/Sustaining the Wild Coast NPC and Others v. Minister of Mineral Resources and Energy and Others.pdf](https://r2he.info/wp-content/uploads/files/Sustaining_the_Wild_Coast_NPC_and_Others_v._Minister_of_Mineral_Resources_and_Energy_and_Others.pdf).

<sup>209</sup> ICJ Climate Change AO, para. 347 (emphasis added).

<sup>210</sup> *Id.* at para. 348 (emphasis added).

<sup>211</sup> Valerio Leke et al., Africa’s overlooked business revolution, McKinsey & Company (Nov. 15, 2018), <https://www.mckinsey.com/featured-insights/middle-east-and-africa/africas-overlooked-business-revolution>.

## **ii. States Must Regulate Businesses to Ensure Information, Transparency, and Public Participation**

82. The jurisprudence of the ICJ, Inter-American Court, and African national courts confirms that access to information, transparency, and public participation are integral to the due diligence obligation and thus essential components of effective regulation of business conduct. While the ICJ did not refer to emissions disclosure mandates, it held that due diligence requires States to acquire, analyze, and act upon scientific and technological information relevant to the probability and seriousness of climate harm.<sup>212</sup> Given that greenhouse gas emissions are the primary cause of climate change, the obligation to pursue relevant scientific information presupposes the availability of reliable emissions data from both public and private sources. This data is necessary for States to establish legal frameworks “reasonably capable” of achieving their mitigation commitments, guided by the best available science.<sup>213</sup> The Inter-American Court affirmed the importance of such disclosures for fulfilling human rights obligations.<sup>214</sup>

## **iii. States Must Regulate Corporate Emissions**

83. The ICJ affirmed that States must regulate emissions from private actors to fulfill their climate obligations and meet the stringent standard of due diligence. In the ICJ’s view, “appropriate rules and measures include, but are not limited to, regulatory mitigation mechanisms that are designed to achieve the deep, rapid, and sustained reductions of GHG emissions that are necessary for the prevention of significant harm to the climate system.”<sup>215</sup> Guided by a stringent standard of due diligence, States must take necessary measures to achieve the objectives they set out in their NDCs, “including in relation to activities carried out by private actors.”<sup>216</sup> A State’s failure to take “appropriate action to protect the climate system from GHG emissions,” including through “the granting of fossil fuel exploration licenses or the provision of fossil fuel subsidies,” may constitute an “internationally wrongful act which is attributable to that State.”<sup>217</sup> The Inter-American Court also recognized that States cannot meet their human rights and environmental obligations without regulating private emissions.<sup>218</sup>

84. Because some enterprises “bear greater responsibility for their impacts on climate change” than others, the Inter-American Court recommended that States “take into consideration the role played by the different components of financial conglomerates and transnational corporations.”<sup>219</sup> Such an approach allows States to attribute responsibility to parent companies and “establish differentiated obligations...based on the actual and historical contribution of business enterprises to climate change,” thereby imposing stricter requirements “on those whose activities are major sources of GHG emissions.”<sup>220</sup> Certainty is not required. Rather, States are “obliged to take into

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<sup>212</sup> ICJ Climate Change AO, para. 283.

<sup>213</sup> *Id.* at paras. 245, 253, 283-284, 295-298.

<sup>214</sup> IACtHR Climate Change AO, paras. 347, 348.

<sup>215</sup> ICJ Climate Change AO, para. 282.

<sup>216</sup> *Id.* at paras. 246, 252.

<sup>217</sup> *Id.* at para. 427.

<sup>218</sup> IACtHR Climate Change AO, paras. 336, 347.

<sup>219</sup> *Id.* at para. 350.

<sup>220</sup> *Id.* at para. 350.

account the best available science,” and adopt “realistically implementable” measures that deliver “prompt results” and remain “sustainable over time.”<sup>221</sup>

85. The scientific evidence demonstrating disproportionate emissions by major businesses underscores the importance of States’ obligations to effectively regulate these emissions. Transnational businesses are among the leading contributors to climate change.<sup>222</sup> Some of these high-emitting enterprises generate significant and harmful emissions in Africa. Accordingly, to satisfy the right to a healthy environment, including its requirement of maintaining a healthy climate system, African States must regulate corporate emissions.

#### **iv. States Must Enact Monitoring, Evaluation, and Enforcement Measures**

86. The jurisprudence of the ICJ, Inter-American Court, and African national courts confirms that monitoring, evaluation, and enforcement are required to fulfill due diligence obligations. The ICJ held that the measures created by States to regulate the conduct of public and private operators within their jurisdiction or control must be “be accompanied by effective enforcement and monitoring mechanisms to ensure their implementation.”<sup>223</sup> In the ICJ’s view, these mechanisms are fundamental to meeting due diligence obligations.<sup>224</sup>

87. When business activities result in adverse impacts on environmental or human rights, the Inter-American Court acknowledged States’ duties to remedy or mitigate these situations.<sup>225</sup> Enforcement measures, such as the revocation of licenses and compensation for injured parties, have been affirmed by African courts. For example, governments in Botswana, Malawi, Mozambique, Tanzania, and Zimbabwe revoked licenses or phased out the use of highly hazardous pesticides, demonstrating the capacity to fulfil their obligation to protect the right to a healthy environment by regulating businesses and implementing/enforcing those regulations.<sup>226</sup>

### **9. African States Cannot Meet Their Climate Change and Human Rights Obligations Without Support from the International Community**

88. African States face immense funding gaps in striving to meet their climate mitigation, adaptation and regulation obligations related to respecting, protecting and fulfilling the right to a healthy environment. The Continent requires an estimated \$2.8 trillion between 2020 and 2030 to

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<sup>221</sup> *Id.* at para. 336.

<sup>222</sup> Carbon Majors: 2023 Data Update, Carbon Majors (Mar. 2025), <https://carbonmajors.org/briefing/The-Carbon-Majors-Database-2023-Update-31397>.

<sup>223</sup> ICJ Climate Change AO, para. 282.

<sup>224</sup> *Id.* at paras. 138, 281.

<sup>225</sup> IACtHR Climate Change AO, paras. 230, 248.

<sup>226</sup> U.N.S.R. on H.R. & Env. (David R. Boyd), Annex 2 to A/HRC/55/43, Good practices: Supplementary information to “Business, planetary boundaries, and the right to a clean and sustainable environment,” United Nations Human Rights Special Procedures, para. 47, (Feb. 19, 2024), <https://www.ohchr.org/en/documents/thematic-reports/ahrc5543-business-planetary-boundaries-and-right-clean-healthy-and>.

fully implement current NDCs.<sup>227</sup> African States remain structurally dependent on international finance flows to implement their NDCs, and by extension, their human rights obligations.<sup>228</sup> The Continent has contributed the least to greenhouse gas emissions, yet bears a disproportionate share of the costs and harms, making climate finance both a justice imperative and a legal obligation.<sup>229</sup>

89. Developed States are obligated by law to provide resources and assistance to developing States, pursuant to the climate change treaties and the customary duty to cooperate.<sup>230</sup> This obligation creates an effective right for developing States to seek assistance in mitigating and adapting to climate change. This is supported not only by the practical implications of funding gaps, but also by States' duties to give effect to human rights. Because the right to a healthy environment encompasses the right to a safe climate, and realizing the right to a healthy environment requires substantial financial resources, African States must seek and cooperate in securing adequate funding from developed States to fulfill their intertwined climate and human rights obligations.<sup>231</sup>

### **A. Developed States Are Required to Assist Developing States, Creating a Corresponding Right to Seek Mitigation and Adaptation Support**

90. The ICJ described the duty to cooperate under customary international law as “indispensable” in addressing climate change.<sup>232</sup> As the ICJ explained, this duty is “intrinsically linked to the duty to prevent significant harm to the environment, because uncoordinated individual efforts by States may not lead to a meaningful result.”<sup>233</sup> The Inter-American Court emphasized that cooperation requires an equitable distribution of climate burdens, informed by States' respective contributions to climate change and their capabilities.<sup>234</sup>

91. Climate treaties give concrete expression to this duty by requiring developed States to provide mitigation and adaptation support to developing States.<sup>235</sup> Guided by the principle of common but differentiated responsibilities and respective capabilities, the UNFCCC identified developed States, listed in Annex II, as bearing primary responsibility for mobilizing climate finance.<sup>236</sup> The Paris Agreement reaffirmed this by tasking developed States to “continue to take the lead in mobilizing climate finance from a wide variety of resources, instruments and channels.”<sup>237</sup> In accordance with their obligations, developed States committed during COP 29 to providing \$300

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<sup>227</sup> Sandra Freitas & George Mwaniki, *Climate Finance in Africa: An Overview of Climate Finance Flows, Challenges and Opportunities*, UNDP & African Union Comm'n, p. 40, (Sep. 2024), [https://au.int/sites/default/files/documents/44101-doc-Climate\\_Finance\\_in\\_Africa\\_Report.pdf](https://au.int/sites/default/files/documents/44101-doc-Climate_Finance_in_Africa_Report.pdf)

<sup>228</sup> Climate Policy Initiative, *Landscape of Climate Finance in Africa*, p. 6 (Sep. 2022), <https://www.climatepolicyinitiative.org/wp-content/uploads/2022/09/Landscape-of-Climate-Finance-in-Africa.pdf>

<sup>229</sup> Casey Crownhart, *The three charts show who is most to blame for climate change*, MIT Tech. Rev. (Nov. 18, 2022), <https://www.technologyreview.com/2022/11/18/1063443/responsible-climate-change-charts/>.

<sup>230</sup> ICJ Climate Change AO, paras. 211, 227, 264; IACtHR Climate Change AO, paras. 129, 255, 264.

<sup>231</sup> U.N.S.R. on H.R. & Env. (David R. Boyd), *Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment*, U.N. Gen. Ass., A/74/161, para. 87 (Jul. 15, 2019). <https://www.ohchr.org/Documents/Issues/Environment/SREnvironment/Report.pdf>

<sup>232</sup> ICJ Climate Change AO, paras. 140, 215.

<sup>233</sup> *Id.* at para. 141.

<sup>234</sup> IACtHR Climate Change AO, paras. 258, 310.

<sup>235</sup> ICJ Climate Change AO, para. 264; Paris Agreement, *supra* note 33, at art. 9.

<sup>236</sup> UNFCCC (1992), *supra* note 33, at Annex II.

<sup>237</sup> Paris Agreement, *supra* note 33, at arts. 9.1, 9.3.

billion annually in financing and mobilizing \$1.3 trillion annually from all sources by 2035.<sup>238</sup> The ICJ confirmed that such support must include financial, technological, and capacity-building assistance, consistent with historical responsibility and greater capability.<sup>239</sup>

92. As noted by the ICJ, developed States must assist developing States in meeting the costs of mitigation and adaptation at a level “that allows for the achievement” of the collective temperature goal of 1.5°C.<sup>240</sup> African States, many of which are classified as least developed under the UNFCCC, therefore have a corresponding right to seek and receive such assistance.<sup>241</sup> As recognized by the Inter-American Court, there is a continuing connection and concern between the “insufficiency of the resources made available to the States who most require them to move forward with climate action” and the resulting public debt taken on by them.<sup>242</sup> High levels of debt distress pervade Africa,<sup>243</sup> yet recent calculations estimate that more than half of climate finance flowing into the continent is a form of debt.<sup>244</sup> Appropriate support from developed States to enable African States to meet their climate obligations should, therefore, include grants or zero-interest loans, partial or total debt cancellation, and other forms of finance that do not exacerbate debt stress.<sup>245</sup>

### **B. The Right of Developing States to Seek Assistance Is Reinforced by States’ Duties to Adopt Measures Necessary to Give Effect to Human Rights**

93. The corresponding right of developing States to seek climate assistance flows directly from, and supports, States’ obligations to fulfill the right to a healthy environment and related human rights—a mutually constitutive legal relationship that the ICJ affirmed.<sup>246</sup> Climate change threatens a wide range of rights, and the inability of States to adequately mitigate and adapt elevates these risks.<sup>247</sup> The African Commission affirmed that States must take responsibility to secure conditions necessary for environmental protection and sustainable development, including “adequately resourced mechanisms and institutions” capable of supervising and enforcing fiscal, environmental, labor, and human rights standards.<sup>248</sup> Where States lack the resources to fulfill

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<sup>238</sup> UNFCCC, COP29 U.N. Climate Conference Agrees to Triple Finance to Developing Countries, Protecting Lives and Livelihoods, (Nov. 24, 2024), <https://unfccc.int/news/cop29-un-climate-conference-agrees-to-triple-finance-to-developing-countries-protecting-lives-and>

<sup>239</sup> ICJ Climate Change AO paras. 211-212, 226-227.

<sup>240</sup> ICJ Climate Change AO, paras. 211, 264, 265.

<sup>241</sup> LDC by Region, UNFCCC, (Dec. 2024), <https://unfccc.int/resource/ldc/documents/ldcbyregion.pdf>

<sup>242</sup> IACtHR Climate Change AO, para. 261; *see also id.* at 208 (noting that coordination in climate finance is “particularly desirable” and that “adopting objectives that integrate the fight against climate change with the protection of human rights would prevent the high levels of debt incurred by States with fewer resources—due to disaster response and other cumulative impacts—from increasing the vulnerability of sovereign debt.”).

<sup>243</sup> Climate Policy Initiative, *supra* note 228.

<sup>244</sup> *Id.* at 6.

<sup>245</sup> Peninnah Mbabazi, Reimagining Reparations and Climate Finance for Africa’s Future, Center for Economic and Social Rights (CESR) (Sep. 25, 2025), <https://www.cesr.org/reimagining-reparations-and-climate-finance-for-africas-future/>; ICJ Climate Change AO, para. 265 (stating that the level of support for mitigation must be consistent with the collective goal of limiting warming to 1.5°C).

<sup>246</sup> ICJ Climate Change AO, para. 404.

<sup>247</sup> PALU Request, *supra* note 46.

<sup>248</sup> African Commission’s Guidelines on Extractive Industries, *supra* note 192, at pp. vi, 14, 16, 33-34.

these duties, failing to seek sufficient climate finance will impair their ability to give effect to the right to a healthy environment and related rights.

### **C. Developing States Must Cooperate With One Another, and Intra-African Cooperation Is Essential Given the Scale and Urgency of Regional Needs**

94. The duty to cooperate applies not only between developed and developing States but also among developing States. African regional instruments highlight the importance of such cooperation. The *African Union Climate Change and Resilient Development Strategy (2022-2032)* and the African Commission’s *Resolution 417 on the Human Rights Impacts of Extreme Weather* emphasize that African States must work collectively and with international partners to demand, access, and effectively utilize the climate finance necessary to safeguard the rights of their peoples.<sup>249</sup>

95. The *African Charter* also imposes a duty on States to “recognize and ensure the effective realization” of the rights it enshrines.<sup>250</sup> Its framing of collective rights requires coordinated regional action to address climate threats that transcend national boundaries.<sup>251</sup> This imperative is echoed by the African Commission’s climate-related resolutions, which reinforce that procedural and substantive cooperation are integral components of African and international human rights governance.<sup>252</sup>

96. Such cooperation is especially critical in the African context, given persistent technical and institutional capacity constraints. A joint report by the U.N. Development Programme and the African Union concluded that African institutions often lack the internal systems required to meet the standards of international climate funds and face technical challenges in developing pipelines of viable mitigation and adaptation projects.<sup>253</sup> These constraints are compounded by stark disparities in regional climate finance flows: half of climate finance entering Africa is concentrated among ten States, while the ten most climate-vulnerable countries receive only ten percent.<sup>254</sup>

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<sup>249</sup> African Union, *Climate Change and Resilient Development Strategy and Action Plan (2022–2032)*, pp. 18-20 (Jun. 28, 2022) [https://au.int/sites/default/files/documents/41959-doc-CC\\_Strategy\\_and\\_Action\\_Plan\\_2022-2032\\_08\\_02\\_23\\_Single\\_Print\\_Ready.pdf](https://au.int/sites/default/files/documents/41959-doc-CC_Strategy_and_Action_Plan_2022-2032_08_02_23_Single_Print_Ready.pdf); African Commission on Human and Peoples’ Rights, *Resolution 417 on Human Rights Impacts of Extreme Weather in Eastern and Southern Africa*, (May 19, 2019), <https://achpr.au.int/en/adopted-resolutions/417-resolution-human-rights-impacts-extreme-weather-eastern-and-souther>.

<sup>250</sup> African Charter, *supra* note 13, at art. 1.

<sup>251</sup> *Id.* at 134, arts. 22, 24, 25.

<sup>252</sup> African Commission on Human and Peoples’ Rights, *Resolution on Climate Change and Human Rights in Africa*, ACHPR/Res.342(LVIII)2016, (Apr. 20, 2016), <https://achpr.au.int/en/adopted-resolutions/342-resolution-climate-change-and-human-rights-africa-achpres342lviii2>; *Resolution on the Human Rights Impacts of Extreme Weather in Eastern and Southern Africa due to Climate Change*, *supra* note 249; *Climate Change and Resilient Development Strategy and Action Plan (2022–2032)*, *supra* note 249.

<sup>253</sup> Sandra Freitas & George Mwaniki, *Climate Finance in Africa: An Overview of Climate Finance Flows, Challenges and Opportunities* 10, UNDP & African Union Comm’n (Sep. 2024) [https://au.int/sites/default/files/documents/44101-doc-Climate\\_Finance\\_in\\_Africa\\_Report.pdf](https://au.int/sites/default/files/documents/44101-doc-Climate_Finance_in_Africa_Report.pdf)

<sup>254</sup> Climate Policy Initiative, *supra* note 228, at 6.

## **10. The Right to a Healthy Environment Requires States to Provide Access to Justice and Effective Remedies**

### **A. Violating the Right to a Healthy Environment May Constitute an Internationally Wrongful Act**

97. Under the International Law Commission's *Articles on the Responsibility of States for Internationally Wrongful Acts* (ARSIWA), a State's failure to comply with its international obligations — including those arising from climate treaties and international human rights law — may constitute an internationally wrongful act and give rise to obligations to provide remedies.<sup>255</sup> The U.N.'s *Basic Principles and Guidelines on the Right to Remedy and Reparation* further affirm that a State's violation of international human rights law triggers an obligation to provide effective remedies, including reparation, to victims of the violation.<sup>256</sup>

98. The jurisprudence of the African Court, as well as the advisory opinions of the ICJ and Inter-American Court, confirms that the right to a healthy environment is a legally binding norm under international law.<sup>257</sup> Its violation may therefore qualify as an internationally wrongful act. In the climate context, violations of the right to a healthy environment could arise from non-compliance with climate treaty obligations, and breaches of the procedural and substantive elements that constitute the right.

99. As the ICJ emphasized, obligations under international human rights law, climate treaties, and relevant environmental treaties “inform each other.”<sup>258</sup> Duties established under climate agreements thus form part of the legal framework through which States must fulfill the right to a healthy environment. The ICJ has identified numerous potentially wrongful acts that could violate the right to a healthy environment, including a breach of climate treaty duties (e.g., submitting an inadequate NDCs), failing to exercise due diligence to regulate greenhouse gas emissions, failing to prevent significant transboundary harm, neglecting to conduct environmental impact assessments, and failing to take reasonable measures to protect the climate system from greenhouse gas emissions, including through fossil-fuel production, consumption, licensing, or subsidies.<sup>259</sup>

100. Violations of the right may also arise from breaches of its substantive elements — such as failing to ensure a safe climate, clean air, safe and sufficient water, freedom from toxic exposure, or healthy ecosystems and biodiversity<sup>260</sup> — as well as from breaches of its procedural elements,

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<sup>255</sup> International Law Commission, Draft Articles on the Responsibility of States for Internationally Wrongful Acts, art. 2, (2001), [https://legal.un.org/ilc/texts/instruments/english/draft\\_articles/9\\_6\\_2001.pdf](https://legal.un.org/ilc/texts/instruments/english/draft_articles/9_6_2001.pdf), (hereinafter ARSIWA).

<sup>256</sup> U.N. General Assembly, Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, A/RES/60/147, para. 3(d), (Dec. 16, 2005), <https://www.ohchr.org/sites/default/files/2021-08/N0549642.pdf>.

<sup>257</sup> *LIDHO v. Côte d'Ivoire*, *supra* note 18, at paras. 178-180; ICJ Climate Change AO, para. 393; IACtHR Climate Change AO, para. 270; African Charter, *supra* note 13, at art. 24.

<sup>258</sup> ICJ Climate Change AO, para. 404.

<sup>259</sup> ICJ Climate Change AO, paras. 427, 444, 446.

<sup>260</sup> IACtHR Climate Change AO, paras. 295-304, 435-440.

including access to information or public participation in environmental decision-making.<sup>261</sup> The Inter-American Court has repeatedly affirmed States' obligations to guarantee the substantive elements of the right to a healthy environment, recognizing their centrality to the enjoyment of human rights.<sup>262</sup> National courts in Africa have similarly found that violations of the procedural and substantive elements comprising the right give rise to State responsibility, including where heightened duties are owed to vulnerable populations.<sup>263</sup>

## **B. Access to Justice is Necessary for Providing Effective Remedies**

101. States cannot provide victims of rights violations with effective remedies without first providing them access to justice. States must ensure that domestic and regional mechanisms are available for individuals and communities to seek redress against State governments — as well as private actors — for human rights violations caused by their acts and omissions in relation to the climate crisis. Access to justice is vital to the protection of all human rights, including the right to a healthy environment, as it ensures accountability, reparations, and the restoration of rights. The African Court has repeatedly recognized that access to justice and effective remedies are implicitly required by Articles 1 and 7(1)(a) of the *African Charter*.<sup>264</sup>

102. To ensure the availability of effective remedies, individuals, communities, and organizations should have access to judicial and administrative systems that: (i) are impartial, independent, affordable, transparent and fair; (ii) promptly review and adjudicate claims; (iii) possess the necessary expertise and resources; (iv) allow for appeal to a higher body; and (v) issue binding decisions, including interim measures, compensation, restitution, and reparation.<sup>265</sup> States should ensure that standing rules do not prevent individuals, communities, Indigenous peoples, or civil society organizations from bringing rights-based climate claims.

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<sup>261</sup> IACtHR Climate Change AO, paras. 471-587, IACtHR Climate Change AO, paras. 236, 460-470, 488-500, 519-523, 530-539; *Claude Reyes v. Chile*, Inter-American Court of Human Rights, Series C, No. 151, Judgment (Merits, Reparations and Costs), para. 174 (Sep. 19, 2006),

[https://www.corteidh.or.cr/docs/casos/articulos/seriec\\_151\\_ing.pdf](https://www.corteidh.or.cr/docs/casos/articulos/seriec_151_ing.pdf).

<sup>262</sup> IACtHR Climate Change AO, paras. 297, 435; *Case of the Inhabitants of La Oroya v. Peru*, Inter-American Court of Human Rights, Series C, No. 511, paras. 115-129 (Nov. 27, 2023),

[https://www.corteidh.or.cr/docs/casos/articulos/seriec\\_511\\_ing.pdf](https://www.corteidh.or.cr/docs/casos/articulos/seriec_511_ing.pdf); *U'wa Indigenous People v. Colombia*, Inter-American Court of Human Rights, Series C, No. 530, paras. 288-304 (Jul. 4, 2024),

<https://jurisprudencia.corteidh.or.cr/es/vid/1048554331>.

<sup>263</sup> See, e.g., *Peter K Waweru v. Republic of Kenya*, High Court of Kenya at Nairobi, miscellaneous civil application 118 of 2004, (Mar. 2, 2006), <https://www.globalhealthrights.org/wp-content/uploads/2013/02/HC-2004-Peter-Waweru-v.-Republic-of-Kenya.pdf>; *Export Processing Zone Authority et al. v. National Environment Management Authority et al.*, Supreme Court of Kenya, Petition E021 of 2023 (Dec. 6, 2024),

<https://new.kenyalaw.org/akn/ke/judgment/kesc/2024/75/eng@2024-12-06>; *Minister of Environmental Affairs v. The Trustees for the time being of Groundwork Trust and Others*, The Supreme Court of Appeal of South Africa, 549/2023 (Apr. 11, 2025), <https://www.saflii.org/za/cases/ZASCA/2025/43media.pdf>.

<sup>264</sup> *LIDHO v. Côte d'Ivoire*, *supra* note 18, at paras. 151-155; *Munthali v. Republic of Malawi*, ACHPR, Application No. 022/2017, para 102 (Jun. 23, 2022), <https://www.african-court.org/cpmt/storage/app/uploads/public/62b/ab9/014/62bab9014b016912965804.pdf>.

<sup>265</sup> U.N.S.R. on H.R. & Env. (John Knox), Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, A/HRC/37/59, para. 29 (Jan. 24, 2018), <https://docs.un.org/en/a/hrc/37/59>.

103. Procedures should be available for claims of imminent and foreseeable harm as well as past and present violations. Given the unique nature of the right to a healthy environment, these procedures should accommodate both individual and collective claims. States should also ensure that administrative and judicial decisions are made public and promptly and are effectively enforced.<sup>266</sup> To ensure meaningful access, States should provide guidance on how the public may access judicial and non-judicial mechanisms and help vulnerable and marginalized populations in overcoming obstacles such as language, illiteracy, cost, or distance, including through the provision of legal aid and other forms of support.<sup>267</sup>

### **C. Effective Remedies Include Continuing Performance, Cessation, Guarantees of Non-repetition, and Reparations**

104. Where an act or omission is attributable to the State, represents a breach of an international obligation, and is causally tied to resulting harm, the full set of legal consequences pursuant to the law of State responsibility may follow.<sup>268</sup> The African Court, the ICJ, and the Inter-American Court have all confirmed that the available remedies in cases involving violations of the right to a healthy environment include States' continued duty to perform obligations, cease the wrongful conduct, provide guarantees of non-repetition, and make reparations.<sup>269</sup> In the words of the African Court, remedies "must be able to respond fully to allegations of human rights violations" and "must be, at the very least, available, effective and satisfactory."<sup>270</sup>

105. Cessation and reparation are of fundamental importance for human rights violations, including the right to a healthy environment. Cessation may require the repeal or withdrawal of laws, permits, or concessions enabling the wrongful act.<sup>271</sup> Reparation may take the form of restitution, compensation (pecuniary and non-pecuniary), and satisfaction, either alone or in combination.<sup>272</sup> The African Court, the ICJ, and the Inter-American Court have consistently held that reparations may be awarded when an internationally wrongful act and a causal link to the harm are established.<sup>273</sup> The Inter-American Court further held that "[i]n the context of the climate emergency, States are obliged to provide for effective mechanisms, both judicial and administrative, to enable victims to access full reparation" taking into account the impacts on individuals, communities, and Nature.<sup>274</sup>

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<sup>266</sup> *Id.*

<sup>267</sup> *Id.* at para. 30.

<sup>268</sup> ARSIWA, *supra* note 140, at arts. 2, 28; ICJ Climate Change AO, para 445.

<sup>269</sup> *LIDHO v. Côte d'Ivoire*, *supra* note 18, at paras. 153, 202-204; ICJ Climate Change AO, para. 445; IACtHR Climate Change AO, para. 556.

<sup>270</sup> *LIDHO v. Côte d'Ivoire*, *supra* note 18, at para. 153.

<sup>271</sup> ICJ Climate Change AO, paras. 447-448.

<sup>272</sup> *Id.* at art. 34.

<sup>273</sup> ICJ Climate Change AO, paras. 433-438; IACtHR Climate Change AO, para. 553; *Sébastien Germain Marie Aïkoué Ajavon v. Republic of Benin*, African Court on Human and Peoples' Rights, Application No. 062/2019, para. 139, (Dec. 4, 2020), <https://www.african-court.org/cpmt/storage/app/uploads/public/602/10a/50c/60210a50cb6e2538353022.pdf>; *Houngue Eric Noudehouenou v. Republic of Benin*, African Court on Human and Peoples' Rights, Application No. 003/2020, para 117 (Dec. 4, 2020), <https://www.african-court.org/cpmt/storage/app/uploads/public/5fc/fa5/8f0/5fcfa58f00c5c467702763.pdf>.

<sup>274</sup> IACtHR Climate Change AO, paras. 557-558.

### i. Restitution

106. As the Inter-American Court emphasized, reparation must prioritize full restitution, which restores the situation that existed before the wrongful act.<sup>275</sup> The ICJ observed that in the context of damage caused by climate change, “restitution may take the form of reconstructing damaged or destroyed infrastructure, and restoring ecosystems and biodiversity.”<sup>276</sup> The Inter-American Court agreed, finding that “restitution measures aimed at restoring the climate system and ecosystems” include “increased mitigation commitments, as well as the financing and implementation of conservation or restoration actions and plans.”<sup>277</sup> In addition, these measures must aim to strengthen the adaptive capacities and resilience of affected persons and impacted ecosystems, which may be facilitated by coastal protection, debt relief, technology transfer, capacity-building, and protection of Indigenous land rights — as put forth by numerous States, including the African Union, during the ICJ’s climate change proceedings.<sup>278</sup>

### ii. Compensation

107. When restitution proves impossible or insufficient, a responsible State has an obligation to compensate.<sup>279</sup> Two kinds of compensation can be awarded in response. Pecuniary damages provide compensation for tangible losses such as medical costs, property damage, and lost income.<sup>280</sup> Non-pecuniary, or “non-economic,” damages provide compensation for intangible losses such as emotional or psychological harms, pain and suffering, disruption of culture, and loss or degradation of valued ecosystems.<sup>281</sup> The Inter-American Court has highlighted the importance of non-pecuniary damages in cases involving environmental harm to the traditional territories of Indigenous peoples.<sup>282</sup>

### iii. Satisfaction

108. Satisfaction is also a relevant means of reparation in the climate context and may complement or substitute awards of compensation and restitution.<sup>283</sup> According to the ICJ, satisfaction may

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<sup>275</sup> IACtHR Climate Change AO, para. 556.

<sup>276</sup> ICJ Climate Change AO, para. 451.

<sup>277</sup> IACtHR Climate Change AO, para 558.

<sup>278</sup> Maria Antonia Tigre et al., *Climate Law, A Panoply of Consequences? Remedies and Reparations in the ICJ’s Climate Opinion*, *Climate Law – A Sabin Center Blog*, (Aug. 13, 2025), <https://blogs.law.columbia.edu/climatechange/2025/08/13/a-panoply-of-consequences-remedies-and-reparations-in-the-icjs-climate-opinion/> (citing *Antigua and Barbuda, the African Union, Brazil, Colombia, and Vanuatu*); *see also Daniel Billy et al., v. Australia*, *supra* note 162.

<sup>279</sup> ICJ Climate Change AO, para 452.

<sup>280</sup> *Pueblo Mello Massacre v. Colombia*, Inter-American Court of Human Rights, Series C, No 140, para. 247 (Jan. 31, 2006), [https://www.corteidh.or.cr/docs/casos/articulos/seriec\\_140\\_ing.pdf](https://www.corteidh.or.cr/docs/casos/articulos/seriec_140_ing.pdf).

<sup>281</sup> *Cantoral-Benavides v. Peru*, Inter-American Court of Human Rights, Series C, No 88, para. 53, (Dec. 3, 2001), [https://www.corteidh.or.cr/docs/casos/articulos/seriec\\_69\\_ing.pdf](https://www.corteidh.or.cr/docs/casos/articulos/seriec_69_ing.pdf); *Case of Velásquez-Rodríguez v. Honduras*, Inter-American Court of Human Rights, Series C, No 7, para. 27. (Jul. 21, 1989), [https://www.corteidh.or.cr/docs/casos/articulos/seriec\\_04\\_ing.pdf](https://www.corteidh.or.cr/docs/casos/articulos/seriec_04_ing.pdf).

<sup>282</sup> *The Saramaka People v. Suriname*, Inter-American Court of Human Rights, Series C, No 172, (Nov. 28, 2007), [https://www.corteidh.or.cr/docs/casos/articulos/seriec\\_172\\_ing.pdf](https://www.corteidh.or.cr/docs/casos/articulos/seriec_172_ing.pdf); *The Indigenous Communities of the Lhaka Honhat (Our Land) Association v. Argentina*, Inter-American Court of Human Rights, Series C, No 400 (Feb. 6, 2020), [https://www.corteidh.or.cr/docs/casos/articulos/seriec\\_400\\_ing.pdf](https://www.corteidh.or.cr/docs/casos/articulos/seriec_400_ing.pdf).

<sup>283</sup> IACtHR Climate Change AO, para 556.

take the form of declarations of wrongfulness, expressions of regret, formal apologies, public acknowledgements, and public education initiatives on climate change.<sup>284</sup> Formal apologies and judicial declarations, though sometimes viewed as symbolic, may “carry significant normative weight.”<sup>285</sup>

#### **D. Access to Justice and Effective Remedies Obligations Similarly Apply to Violations Caused by Private Actors**

109. Effective access to justice and remedies also requires States to prevent and redress environmental and human rights harms caused by private actors like domestic and transnational businesses. As noted by the African Commission, “[g]overnments have a duty to protect their citizens, not only through appropriate legislation and effective enforcement, but also by protecting them from damaging acts that may be perpetrated by private parties.”<sup>286</sup> The African Court has agreed, holding that States have an “obligation to prosecute emanating from the right to an effective remedy” in cases where private actors cause serious environmental and human rights harms.<sup>287</sup>

110. The obligation to provide access to justice and effective remedies for human rights and environmental violations by private actors in the climate context arises from a wide range of conduct, including emissions-generating activities. The Inter-American Court has explained that because private conduct inconsistent with national mitigation policies affects the global climate system, States must establish legal consequences, including orders to cease unlawful activities and provide compensation for resulting climate impacts, without prejudice to liability for other human rights violations.<sup>288</sup>

111. The Inter-American Court also raised the thorny problem of corruption, which regrettably also afflicts African States. The Court noted that “in the context of the climate emergency, the obligation of prevention in relation to the activities of businesses implies, inescapably, the duty to avoid and sanction acts of corruption that seek to undermine the effective implementation of climate change mitigation or adaptation measures.”<sup>289</sup>

#### **E. Key Jurisprudence on Remedies for Violations of the Right to a Healthy Environment**

112. In its leading decision involving violations of the right to a healthy environment, *LIDHO v Cote d’Ivoire*, the African Court ordered the respondent State to implement the following remedies within six months:

- i. create a compensation fund for victims harmed by the dumping of hazardous waste;
- ii. pay symbolic damages to the applicants for moral prejudice;

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<sup>284</sup> ICJ Climate Change AO, para 455.

<sup>285</sup> Tigre et al., *supra* note 278.

<sup>286</sup> *SERAC v. Nigeria*, *supra* note 16, at para. 57.

<sup>287</sup> *LIDHO v. Côte d’Ivoire*, *supra* note 18, at para. 162.

<sup>288</sup> IACtHR Climate Change AO, para 356.

<sup>289</sup> *Id.* at para 357.

- iii. open an “independent and impartial investigation into the alleged violations in order to establish the criminal and individual liability of all persons and entities involved with a view to prosecuting and punishing them”;
- iv. provide victims with adequate and appropriate medical and psychological assistance;
- v. implement legislative and regulatory reforms to prohibit hazardous waste dumping;
- vi. amend its laws to recognize corporate liability for environmental harm and the mishandling of toxic waste;
- vii. organize training courses on human rights and environmental protection for relevant civil servants and include these courses in school and university curricula;
- viii. implement specific actions to strengthen State capacity to respond to such violations; and
- ix. publish the judgment on a government website for at least one year.<sup>290</sup>

113. The African Court underscored the importance of guarantees of non-repetition because they “serve to prevent future violations, stop ongoing violations and reassure victims of past violations that the harm they suffered will not reoccur.”<sup>291</sup> The Court added that it is “very important to ensure that reparation efforts are coordinated with other judicial initiatives including criminal prosecutions to punish the perpetrators, truth-telling and institutional reform.”<sup>292</sup>

114. In the leading case *La Oroya v. Peru*, the Inter-American Court found that industrial pollution violated the right to a healthy environment.<sup>293</sup> The Court ordered Peru to strengthen environmental regulations, clean contaminated areas, rehabilitate damaged ecosystems, monitor air, soil, and water quality, ensure that polluters pay for the environmental damage they cause, and compensate victims, with higher amounts awarded to children, women, and older persons due to their particular vulnerabilities.<sup>294</sup> Monetary compensation included both pecuniary and non-pecuniary damages, such as health costs, lost earnings, and pain and suffering.<sup>295</sup> The Inter-American Court further clarified that States must “prevent, investigate, punish and redress” violations of the right to a healthy environment by businesses.<sup>296</sup>

115. National courts in Africa have likewise granted significant remedies for violations of the right to a healthy environment. In the *Owino Uhuru* case, the Supreme Court of Kenya held both public institutions and corporate actors liable for severe lead contamination, ordering environmental remediation, regulatory enforcement to prevent future pollution, substantial monetary compensation, and free healthcare for affected residents.<sup>297</sup> In *African Climate Alliance & Others v. Minister of Mineral Resources and Energy & Others*, the High Court of South Africa invalidated

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<sup>290</sup> *LIDHO v. Côte d’Ivoire*, *supra* note 18, at paras. 215, 221, 232, 239, 245, 247, 249, 254, 259.

<sup>291</sup> *Id.* at para. 244.

<sup>292</sup> *Id.* at para. 230.

<sup>293</sup> *Case of the Inhabitants of La Oroya v. Peru*, *supra* note 262, at para. 167.

<sup>294</sup> *Id.* at para. 333.

<sup>295</sup> *Id.* at p. 132, para. 23.

<sup>296</sup> *Id.* at para. 110.

<sup>297</sup> *Export Processing Zone Authority et al. v. National Environment Management Authority et al.*, *supra* note 263, at paras. 6-7, 183.

a plan to expand coal-fired electricity generation because it violated children’s right to a healthy environment.<sup>298</sup>

116. This growing body of jurisprudence at the intersection of human rights and environmental law demonstrates robust remedial measures are not only consistent with international law but necessary to give full effect to the right to a healthy environment in the face of accelerating climate impacts.

## 11. Conclusion

117. The world faces a dire and unprecedented global climate crisis that is already inflicting grievous impacts on human rights, disproportionately harming poor, vulnerable, and marginalized people. Many African States and their peoples are on the front lines of this crisis, despite contributing minimally to global emissions. Yet there are no insignificant emissions; every molecule of greenhouse gas emitted anywhere on Earth counts. All States must therefore prioritize ambitious mitigation. As the IPCC has emphasized, “[e]very bit of warming matters, every year matters, every choice matters.”<sup>299</sup> It has further warned that the window of opportunity to secure a liveable and sustainable future for all is rapidly closing — the choices made in this decade will have consequences now and for millennia.<sup>300</sup>

118. The Supreme Court of the Netherlands underscored this principle in 2019 when it rejected arguments that a State bears no responsibility if other States fail to meet their climate obligations or if its share of global emissions is small.<sup>301</sup> The Court emphasized that “[t]he need to reduce greenhouse gas emissions is becoming ever more urgent. Every emission of greenhouse gases leads to an increase in the concentration of greenhouse gases in the atmosphere, and thus contributes to reaching the critical limits of 450 ppm [to keep at 2°C] and 430 ppm [to keep at 1.5°C].”<sup>302</sup> As of 04 December 2025, the world has already emitted 427.12 ppm.<sup>303</sup>

119. As highlighted by the U.N. Special Rapporteur on human rights and climate change, the imperative of phasing out fossil fuels should be seen as “part of an obligation to develop new economic models that provide goods and services that enhance human and planetary well-being,

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<sup>298</sup> *African Climate Alliance et al. v. Minister of Mineral Resources and Energy et al.*, High Court of South Africa, Case No. 56901/2021, paras. 11–12 (Apr. 12, 2024), [https://cdn.climatepolicyradar.org/navigator/ZAF/afr2021/africa-climate-alliance-et-al-v-minister-of-mineral-resources-energy-et-al-cancelcoal-case\\_5199ef0626fdeac4b136e01dd00a1d83.pdf](https://cdn.climatepolicyradar.org/navigator/ZAF/afr2021/africa-climate-alliance-et-al-v-minister-of-mineral-resources-energy-et-al-cancelcoal-case_5199ef0626fdeac4b136e01dd00a1d83.pdf).

<sup>299</sup> Intergovernmental Panel on Climate Change, Special Report: Global Warming of 1.5°C, p. vi (2018), <https://www.ipcc.ch/sr15/>.

<sup>300</sup> Intergovernmental Panel on Climate Change, Summary for Policymakers, Sixth Assessment Report, p. 25 (2023), <https://www.ipcc.ch/report/ar6/syr/summary-for-policymakers/>.

<sup>301</sup> *Netherlands v. Urgenda*, Supreme Court of the Netherlands, No. 19/00135, Supreme Court of the Netherlands, para. 5.7.7 (Dec. 12, 2019), [https://www.climatecasechart.com/documents/urgenda-foundation-v-state-of-the-netherlands-judgment\\_ed17](https://www.climatecasechart.com/documents/urgenda-foundation-v-state-of-the-netherlands-judgment_ed17).

<sup>302</sup> *Id.* at para. 4.6.

<sup>303</sup> Global Monitoring Laboratory, Trends in Atmospheric Carbon Dioxide, National Oceanic and Atmospheric Administration (last visited Dec. 5, 2025), <https://gml.noaa.gov/ccgg/trends/monthly.html>.

reducing the production of unnecessary and toxic products, and deprioritizing the demands of the richest groups of society who worsen social exclusion and extreme poverty.”<sup>304</sup>

120. At the same time, adaptation must not be ignored. Given the current and escalating impacts of the climate crisis, African States must invest in measures that protect their people and strengthen resilience. However, financing for adaptation, as well as compensation for loss and damage, must come from the wealthy States that have caused the climate crisis. Climate finance must alleviate, not exacerbate, the severe debt burdens that many African States already face.

121. The bottom line is that protecting human rights from the devastating impacts of climate change is an international human rights obligation for all States, not an option. The ongoing failure of States to implement effective and equitable mitigation and adaptation measures constitutes a violation of multiple human rights, including the right to a healthy environment.

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<sup>304</sup> U.N. Special Rapporteur on the promotion and protection of human rights in the context of climate change (Elisa Morgera), The imperative of defossilizing our economies, A/HRC/59/42, para. 49 (2025) <https://docs.un.org/A/HRC/59/42>.

Respectfully submitted this 5<sup>th</sup> day of December, 2025,



Dr. David R. Boyd  
United Nations Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy, and sustainable environment  
Associate Professor of Law, Policy & Sustainability  
Institute for Resources Environment & Sustainability  
School of Public Policy and Global Affairs  
2202 Main Mall, Office 433  
University of British Columbia  
Vancouver, BC V6T 1Z4, Canada  
Tel: +1 250 539 8181  
Email: david.r.boyd@ires.ubc.ca



César Rodríguez-Garavito  
Professor of Clinical Law  
Chair, Center for Human Rights and Global Justice  
Director, Earth Rights Research & Action (TERRA) Program  
New York University (NYU) School of Law  
245 Sullivan Street, Office 601  
New York, NY 10012  
United States of America  
Tel: +1 212 992 6195  
Email: cesar.rodriguez@nyu.edu



Ashley Otilia Nemeth  
Director of Programs, Climate Law Accelerator  
Adjunct Professor of Clinical Law, Earth Rights Research & Action (TERRA) Program  
New York University (NYU) School of Law  
139 MacDougal St, Office 506  
New York, NY 10012  
United States of America  
Tel: +1 212 992 6195  
Email: a.nemeth@nyu.edu