

IN THE AFRICAN COURT ON HUMAN AND PEOPLE'S RIGHTS, ARUSHA

REQUEST FOR ADVISORY OPINION NO. 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**

**Made under article 4 of the Protocol to the African Charter on Human and
People's Rights on the establishment of an African Court on Human and
People's Rights, Rule 82(1) of the Rules of the African Court on Human and
Peoples Rights and all enabling provisions of the law**

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A. SUMMARY OF FACTS

1. The climate change crisis is an unprecedented threat to humanity and the planet.¹ Nowhere is this more evident than in Africa, where communities that have contributed the least to greenhouse gas emissions bear the brunt of climate change's devastating impacts.² The United Nations (UN) has indeed

¹ See generally Intergovernmental Panel on Climate Change, *Climate Change 2022: Impacts, Adaptation, and Vulnerability*, in Sixth Assessment Report of the Intergovernmental Panel on Climate Change, CAMBRIDGE U. PRESS, https://www.ipcc.ch/report/ar6/wg2/downloads/report/IPCC_AR6_WGII_FullReport.pdf ("IPCC 2022 Report").

² See *Africa suffers disproportionately from climate change*, WORLD METEOROLOGICAL ORG., Sept. 4, 2023, [https://wmo.int/media/news/africa-suffers-disproportionately-from-climate-change#:~:text=Nairobi%20September%202023%20\(WMO,World%20Meteorological%20Organization%20\(WMO\)\)](https://wmo.int/media/news/africa-suffers-disproportionately-from-climate-change#:~:text=Nairobi%20September%202023%20(WMO,World%20Meteorological%20Organization%20(WMO))) (citing World Meteorological Organization, *State of the Climate in Africa 2022*, WMO-No. 1330, <https://library.wmo.int/records/item/67761-state-of-the-climate-in-africa-2022>).

named Africa, “the continent most vulnerable to the impacts of climate change”.³

2. Historical inequities have contributed significantly to Africa’s unique vulnerabilities. Colonial exploitation, for example, decimated Indigenous and local land-management practices, stripped people of their resources, leaving legacies of underdeveloped economies and fragile and exploited ecosystems in its wake. These legacies continue to expose marginalized populations to threats from climate change that infringe upon their most basic rights.
3. Across the continent, Africans are suffering the consequences of climate change, whether from rising temperatures, unrelenting droughts, catastrophic floods, vanishing biodiversity, or threats to livelihoods. Climate change in Africa has had prior, current and will have future consequences that impact the enjoyment of numerous rights.⁴
4. The climate crisis exacerbates systemic injustices and implicates a wide range of rights– from the right to life to the right to health or property, the right to live in an environment conducive to development, water, housing, property, free disposal of wealth and natural resources, development, religion, assembly and the right to live in a clean, healthy, and sustainable environment.
5. Despite the stark realities of the increasing toll of climate change, many African nations remain inadequately prepared to address the challenges posed by climate change. African nations must prioritize improving policy and legal frameworks in relation to adaptation and resilience, including investments in meteorological and climate research, the establishment of

³ United Nations, *Fact Sheet on Climate Change: Africa is Particularly Vulnerable to the Expected Impacts of Global Warming*, https://unfccc.int/files/press/backgrounders/application/pdf/factsheet_africa.pdf (“UN Fact Sheet”). See also IPCC 2022 Report, *supra* note 1.

⁴ See UN Fact Sheet, *supra* note 3. See also IPCC 2022 Report, *supra* note 1.

robust early warning systems, and the strengthening of their adaptive capacities. They must also tackle pre-existing vulnerabilities such as widespread poverty, inadequate infrastructure, and weak institutional frameworks, which exacerbate the region's susceptibility to climate shocks. By taking action, African nations can reduce the impacts of climate change and build the necessary foundation for sustainable growth and human development.

6. Below are detailed accounts of the major impacts, effects and types of violations caused by the climate change crisis in each major sub-region (North, East, Southern, West and Central Africa) on the African continent. To avoid the petition being prolix we have not listed every impact that has emanated from the climate change crisis in Africa.

North Africa

7. Water scarcity is a significant persistent issue in Northern Africa, with climate change exacerbating the existing challenge. The Intergovernmental Panel on Climate Change (IPCC) has recognized water insecurity as a key climate change risk driven by increasing temperatures and droughts.⁵ In 2023 alone, severe droughts exceeding historic levels occurred across the region in Morocco, Tunisia, and Algeria.⁶ North African countries have also faced precipitation deficits and experienced the most heatwaves in Africa, further threatening water resources.⁷

⁵ Intergovernmental Panel on Climate Change, *Climate Change 2023: Synthesis Report* at 49-50 (2023), https://www.ipcc.ch/report/ar6/syr/downloads/report/IPCC_AR6_SYR_LongerReport.pdf.

⁶ World Meteorological Organization, *State of the Climate in Africa 2023*, WMO-No. 1360 at 12 (2024), <https://library.wmo.int/records/item/69000-state-of-the-climate-in-africa-2023>.

⁷ *Id.* at 12-13.

8. Some reports indicate that as much as 83% of the population in North Africa is currently exposed to extremely high water stress.⁸ As demand for water is expected to increase and climate change continues to drive more frequent and intense droughts, lower average precipitation, and increased temperatures, water shortages are projected to worsen,⁹ with an increased risk of harm to human health, livelihood, the environment, economy, and undermining political stability.
9. In 2017, a shortage of drinking water in Zagora, Morocco sparked a “thirst protest”.¹⁰ Water shortages, which have been linked to climate change, along with the significant water usage of large agriculture export-oriented fruit farms outside the city led to protests about the lack of water availability for individual use.¹¹ In response to the protests, police arrested twenty-three protestors and jailed eight.¹² The Zagora protest is not unique, there have been similar protests in Tunisia,¹³ and Algeria due to water shortages.¹⁴ The situation in Morocco also has remained dire, as the country has entered its sixth year of drought in 2024.¹⁵

⁸ See Samantha Kuzma, et al., *25 Countries, Housing One-Quarter of the Population, Face Extremely High Water Stress*, WORLD RES. INST., Aug. 16, 2023, <https://www.wri.org/insights/highest-water-stressed-countries>.

⁹ See Annamaria Mazzoni et al., *Forecasting water budget deficits and groundwater depletion in the main fossil aquifer systems in North Africa and the Arabian Peninsula*, 53 GLOBAL ENV'T CHANGE 168 (2018), <https://www.sciencedirect.com/science/article/abs/pii/S0959378017306945>.

¹⁰ Sophie Desmidt, *Climate change and security in North Africa: Focus on Algeria, Morocco and Tunisia*, CASCADES at 17 (2021), <https://www.cascades.eu/wp-content/uploads/2021/02/CASCADES-Research-paper-Climate-change-and-security-in-North-Africa-1.pdf>.

¹¹ Sophie Nunnally, *In Zagora, Morocco, residents never know when water will flow so they leave the taps on*, USA TODAY, Apr. 5, 2018, <https://www.usatoday.com/story/news/world/2018/04/05/morocco-water-shortage/465498002/>. See also Alexander Jusdanis, *The Making of a Water Crisis*, DISSENT, Aug. 1, 2018, https://www.dissentmagazine.org/online_articles/morocco-water-crisis-thirst-protests-colonialism-climate-change/.

¹² Nunnally, *supra* note 12.

¹³ *Tunisia water shortages spark warnings of 'thirst uprising'*, NAT'L NEWS, Oct. 18, 2024, <https://www.thenationalnews.com/world/tunisia-water-shortages-spark-warnings-of-thirst-uprising-1.216805>. See also Desmidt, *supra* note 11, at 17, 25.

¹⁴ Basma El Atti, *'Thirst uprising:' protests erupt over water shortage in Algeria*, NEW ARAB, June 19, 2024, <https://www.newarab.com/news/protests-erupt-over-water-shortage-algeria>. See also *Water Conflict Chronology*, PACIFIC INST., <https://www.worldwater.org/conflict/map/>; Desmidt, *supra* note 11, at 17, 25.

¹⁵ *Morocco heading for a sixth year of drought – Minister*, AFRICA NEWS, Aug. 13, 2024, <https://www.africanews.com/2023/12/23/morocco-heading-for-a-sixth-year-of-drought-minister/>.

10. Al Massira Dam – Morocco’s second largest dam registered its, “lowest fill level since its construction in 1976, at less than 6%, compared to almost 99% in May 2013”.¹⁶
11. The “thirst protests” reflect multiple human impacts that water scarcity has on individuals and communities in North Africa. Water shortages can affect access to water, sanitation, and subsistence farming as well as lead to increases in disease, undernutrition and food insecurity, and injuries to women and girls who are relied on to collect water.¹⁷ In addition, the scarcity may lead to conflict over resource allocation. In this context, competition over water has tended to favour elite actors who grow water-intensive, export-oriented crops, which can increase local inequities.¹⁸
12. Beyond the specific human impacts, North African countries may experience losses as high as 6 to 14% of their GDP by 2050 due to climate-related water scarcity.¹⁹ In Morocco, where agriculture accounts for one third of the workforce, an estimated 159,000 agricultural workers have lost their jobs since 2023, which has been attributed to the severe droughts.²⁰

¹⁶ *State of the Climate in Africa 2023*, *supra* note 7, at 13. https://library.wmo.int/viewer/69000/download?file=1360_State-of-the-Climate-in-Africa-2023_en.pdf&type=pdf&navigator=1

¹⁷ See *The Water Crisis: A Health Crisis*, WATER.ORG, <https://water.org/our-impact/water-crisis/health-crisis/>.

¹⁸ See Desmidt, *supra* note 11, at 10.

¹⁹ Malak Altaeb, *Ecological Security Threats in North Africa for 2040: Water Scarcity and Desertification*, COUNCIL ON STRATEGIC RISKS, July 18, 2024, <https://councilonstrategicrisks.org/2024/07/18/ecological-security-threats-in-north-africa-for-2040-water-scarcity-and-desertification/> (citing World Bank, “Beyond Scarcity: Water Security in the Middle East and North Africa” (2017), <https://www.worldbank.org/en/topic/water/publication/beyond-scarcity-water-security-in-the-middle-east-and-north-africa>).

²⁰ Ismail Bellaouali, *Crucial farm jobs dry up in drought-stricken Morocco*, PHYS.ORG, July 13, 2024, <https://phys.org/news/2024-07-crucial-farm-jobs-dry-drought.html>.

13. The water scarcity and “thirst protests” are emblematic of the way that specific impacts affect multiple human rights simultaneously. In this context, a number of civil and political rights as well as economic, social, cultural, and environmental rights are all at issue. The inability of millions to access safe drinking water or maintain livelihoods through agriculture directly affects the right to life (African Charter, art. 4) and the right to health (African Charter, art. 16) for example.

14. Furthermore, the lack of effective state action to address these challenges also undermines the collective right to a satisfactory environment conducive to development (African Charter, art. 24). “Thirst protests” signal the need to ensure the freedoms to expression and association (African Charter, arts. 9-11) and to protect climate defenders in Africa. Some scarcity situations also implicate state obligations to “eliminate all forms of foreign economic exploitation” (African Charter, art. 21(5)) to ensure their people can fully benefit from their own natural resources.

West Africa

15. West Africans are already experiencing the effects of climate change, which are only expected to worsen as temperatures continue to rise and weather patterns become more unpredictable.²¹ Drought, inter communal conflicts, violent conflicts, internal displacements and migration as well as food insecurity are prevalent in the Sahel region, which is estimated to be heating up 1.5 times faster than the global average.²² Additionally the region is facing coastal erosion and rising sea levels.²³ In February 2024, for example, West Africa faced historic heatwaves, including in Ghana, Benin,

²¹ See Baba Ahmed and Carlos Mureithi, *Laborers and street vendors in Mali find no respite as deadly heat wave surges through West Africa*, ASSOCIATED PRESS, Apr. 19, 2024, <https://apnews.com/article/mali-heat-wave-climate-change-7945d75a8c92ecb282db36118a15e4e8> (“‘Our study found that the extreme temperatures across the region simply wouldn’t have been possible without human-caused warming,’ said Clair Barnes, the lead author and a researcher at Imperial College London”).

²² United Nations Office of the High Commissioner, *Human Rights Climate Change and Migration in the Sahel*, at 4 (2021), <https://www.ohchr.org/sites/default/files/2021-11/HR-climate-change-migration-Sahel.pdf>.

²³ IPCC 2022 Report, *supra* note 1.

and Togo; temperatures in some places exceeding 40°C (104°F), with a heat index of 50°C (122°F).²⁴

16. In February 2024, dangerous humid heat hit across West Africa which resulted in drastic measures during the 2024 Africa Cup of Nations football tournament, where for the first time, the Confederation of African Football (CAF) implemented two-minute cooling breaks at the 30th and 75th minutes of the final match.

17. Between 2014 and 2019, a total of 700,000 people were displaced mainly due to flooding in West Africa.²⁵

18. Over a four-day period in April 2024, a Malian hospital was overrun with heat-stricken patients and reported 102 deaths; this death toll was particularly alarming as only 130 deaths had been reported for the entire month of April during the previous year.²⁶ A study by World Weather Attribution concluded that in 2024 extreme temperatures would not have been possible without the influence of climate change, and the researchers found that heatwaves like these are at least 10 times more likely today because of climate change.²⁷

²⁴ Ayesha Tandon, *Climate change made west Africa's 'dangerous humid heatwave' 10 times more likely*, CARBON BRIEF, Mar. 21, 2024, <https://www.carbonbrief.org/climate-change-made-west-africas-dangerous-humid-heatwave-10-times-more-likely/>.

²⁵ OCHA, "Humanitarians sound the alarm on impact of flooding across West and Central Africa: more than 700,000 people affected this year already," 13 August 2024 <https://www.unocha.org/publications/report/democratic-republic-congo/humanitarians-sound-alarm-impact-flooding-across-west-and-central-africa-more-700000-people-affected-year-already> .

²⁶ Ahmed and Mureithi, *supra* note 23.

²⁷ World Weather Attribution, "Dangerous humid heat in southern West Africa about 4°C hotter due to climate change," Mar. 21, 2024, <https://www.worldweatherattribution.org/dangerous-humid-heat-in-southern-west-africa-about-4c-hotter-due-to-climate-change/>. See also Izidine Pinto et al., *Dangerous humid heat in southern West Africa about 4°C hotter due to climate change*, Mar. 21, 2024, <https://spiral.imperial.ac.uk/handle/10044/1/110082>; Delger Erdenesanaa, *Climate Change Made an Early Heat Wave in West Africa 10 Times as Likely*, NY TIMES, Mar. 21, 2024, <https://www.nytimes.com/2024/03/21/climate/climate-change-heat-wave-west-africa.html>.

19. West Africa is also reporting changes in weather patterns, including climate-related droughts and flooding that are interrupting agricultural cycles and reducing food production.²⁸ This extreme weather has affected the region's agricultural output,²⁹ including critically important staples as well as products such as cocoa.³⁰ West Africa produces an estimated 70% of the world's cocoa, and in 2021, cocoa farming accounted for 10% of Ghana's GDP, employing over one million farmers.³¹ However, cocoa trees are highly sensitive, and to thrive, they require specific temperature, water, and soil conditions, which have been disrupted by climate change. Farmers were severely affected by the excessive rainfall during the end of 2023 that resulted in the outbreak of crop diseases that caused cocoa pods to rot and harden.³²

20. In 2024, farmers continued to bring in less than expected harvests, and the International Cocoa Organization has reported that global cocoa production is projected to decline by 11.7% in the 2023-2024 season.³³ These effects

²⁸ 'My farm was destroyed by drought then floods - I am confused', BBC, Oct. 17, 2024, <https://www.bbc.com/news/videos/c30154lrg9vo>.

²⁹ Martin Guttridge-Hewitt, *Extreme weather is about to send the price of chocolate soaring*, ENV'T J., Sept. 26, 2024, <https://environmentjournal.online/headlines/100341/> ("Beyond cacao, crops including maize and soya are being so badly affected that farmers in northern Ghana are leaving their ancestral homelands and heading to big cities such as Accra in search of alternative work.").

³⁰ *Id.*; see also Joseph Hoppe & Giulia Petroni, *Cocoa and Coffee Prices Have Surged. Climate Change Will Only Take Them Higher*, WALL STREET JOURNAL, Apr. 11, 2024, <https://www.wsj.com/articles/cocoa-and-coffee-prices-have-surged-climate-change-will-only-take-them-higher-d9b77e24>.

³¹ Emily Chen, *Bittersweet: The Harsh Realities of Chocolate Production in West Africa*, HARVARD INT'L REV., Dec. 14, 2024, <https://hir.harvard.edu/bittersweet-the-harsh-realities-of-chocolate-production-in-west-africa/#:~:text=Most%20of%20this%20cocoa%20is,labor%20driven%20by%20extreme%20poverty>. See also *Increasing Cocoa Production in Ghana - The Importance of the 4PS*, GHANA COCOA BD., Jan. 12, 2024, <https://cocobod.gh/news/increasing-cocoa-production-in-ghana-the-importance-of-the-4ps#:~:text=Cocoa%2C%20scientifically%20known%20as%20Theobroma,Ghana's%20gross%20foreign%20exchange%20reserves>.

³² John Edem Kongor et al., *Cocoa production in the 2020s: challenges and solutions*, 5 CABI AGRIC. BIOSCI 102 (2024), <https://doi.org/10.1186/s43170-024-00310-6>.

³³ *May 2024 Quarterly Bulletin of Cocoa Statistics*, INT'L COCOA ORG., May 31, 2024, <https://www.icco.org/may-2024-quarterly-bulletin-of-cocoa-statistics/>.

are anticipated to only worsen, as researchers predict climate change will make cocoa harder to cultivate, “in the coming decades, with one study forecasting Ivory Coast’s most suitable growing areas will shrink by more than 50% by the 2050s.”³⁴

21. The extreme heatwaves and agricultural disruptions in West Africa raise significant human right’s concerns. The unprecedented 2024 heatwaves, implicate the right to life under (African Charter, art. 4) and the right to health (African Charter, art. 16), as governments failed to implement adequate heat action plans to mitigate impacts from such climate-related events. The devastation to farming also represents a profound threat to a number of rights, including the right to economic, social, and cultural development (African Charter, arts. 21, 22, 24).
22. West Africa has been identified as a significant "hotspot" for the impacts of climate change. The Sahel region in West Africa, characterised by semi-arid grasslands south of the Sahara Desert, has experienced some of the most severe consequences of climate change. Temperatures in this region have risen higher than the global average.
23. This has led to a rise in sea levels and an increased likelihood of storm surges, posing a threat to coastal communities. Moreover, changes in water temperature, erosion, and overfishing have caused a decline in the catch potential for commercial fishermen. Consequently, Senegalese fishermen are increasingly venturing into Mauritanian waters, leading to violent confrontations between fishermen and the Mauritanian coast guard³⁵.

³⁴ Joe Bavier, *Chocolate prices to keep rising as West Africa’s cocoa crisis deepens*, REUTERS, Mar. 28, 2024, <https://www.reuters.com/investigates/special-report/westafrica-cocoa/#:~:text=And%20a%20significant%20rebound%20in,nations%20faces%20other%20major%20headwinds.&text=Researchers%20predict%20climate%20change%20will,than%2050%25%20by%20the%202050s>

³⁵ Robert Muggah, *In West Africa, Climate Change Equals Conflict*, *Foreign Policy*, Feb. 18, 2021 <https://foreignpolicy.com/2021/02/18/west-africa-sahel-climate-change-global-warming-conflict-food-agriculture-fish-livestock/>.

Climate change is altering security landscapes across the region by leveraging and escalating regional political tensions, violent conflicts and complex humanitarian emergencies.

24. To address the effects of climate change, governments in the region are turning to carbon markets as a, “solution” to emissions reduction. A number of these carbon projects for instance tree planting on communal and indigenous peoples' lands, are implemented without the free prior and informed consent of communities. For example, in Senegal, an American company's afforestation project is reported to have impacted 37 affected villages (over 10,000 people) who are demanding the immediate return of their land – a 20,000-hectare concession, as well as adequate remediation and compensation for the harm and economic loss inflicted upon communities.³⁶ The community claims that the concession was granted against their will and without their consent and that they had used the land for generations for wood, food, medicinal plants, and, most crucially, pasture.³⁷ They also claim that the project blocked passage along customary routes between villages and water sources while the irrigation canals caused the death of at least three children by drowning.³⁸

25. In addition, Blue Carbon has purchased land for carbon market projects amounting to 10% of Liberia,³⁹ where the company reached a deal with the Liberian government without consulting local communities, while activists report that the land is owned by Indigenous peoples and the government had no right to sell its land. One of the major concerns of community

³⁶ Grain, Local communities in Senegal demand the return of their land acquired by US firm, 16 Jun 2022 <https://grain.org/en/article/6860-local-communities-in-senegal-demand-the-return-of-their-land-acquired-by-us-firm>.

³⁷ *id.*

³⁸ *Id.*

³⁹ [Taiwo Adebayo](#), *A Dubai company's staggering land deals in Africa raise fears about risks to Indigenous livelihoods* April 7, 2024, <https://apnews.com/article/carbon-credits-africa-communities-protests-92f99dfd488c80e1b5a4cae69c07e6fd>

members is the lack of formal regulation of the carbon credit industry given the lack of legal frameworks on this issue.⁴⁰ Carbon markets are often coined as false solutions,⁴¹ and their consequences violate (articles 14 and 21(3) of the African Charter).

Southern Africa

26. In Southern Africa, climate change has underscored how its effects can lead to hunger and also have a disproportionate impact on the rights of women and girls. Like other parts of Africa, climate change in Southern Africa has been connected to hotter temperatures, unpredictable flooding, and intense periods of drought.⁴²

27. These changes have in turn been linked to water scarcity, pest outbreaks, and the decimation of crops and livestock.⁴³ Together, these effects can lead to food insecurity and regional hunger crises.

28. In 2024, Southern Africa experienced its most devastating drought in over a century, driven by an unprecedented El Niño cycle caused record-high temperatures across the region; while El Niño exacerbated short-term weather conditions, the scale of loss was compounded by the long-term

⁴⁰ *id.*

⁴¹ False solution within the context of climate change, refers to a proposed measure that pretends to address climate change but doesn't truly tackle the root causes or even exacerbates the problem. These solutions often focus on single aspects of the issue, ignoring the broader complexity of the climate crisis. *Inter Alia*, some examples are Carbon offsets and markets, geoengineering technologies, Industrial carbon capture and sequestration (CCS), etc....

⁴² IPCC 2022 Report, *supra* note 1, at 1328.

⁴³ *Id.* at 48-49.

effects of climate change.⁴⁴ This drought led to “widespread crop failure and livestock losses in a region where 70 percent of the population relies on agriculture,” and a hunger crisis ensued.⁴⁵ In 2000, floods in Mozambique caused 640 deaths, affected about 2,000,000 people, displaced over 4 000 in the capital city of Maputo, and impacted agricultural land.⁴⁶

29. In 2019, flooding due to Cyclone Idai destroyed about 1 billion of infrastructure, and destroyed at least 715,000 hectares of crops.⁴⁷

30. The Southern African Development Community estimated that at least 61 million people, or approximately 17% of the Southern African population, needed aid as the result of the drought and its subsequent crop loss.⁴⁸ The UN Office for the Coordination of Humanitarian Affairs (OCHA) estimated in September 2024 that “20 million people are experiencing crisis levels of

⁴⁴ *Devastating drought and floods in Southern Africa: WFP Chief calls for global action as millions face food insecurity*, UNITED NATIONS WORLD FOOD PROGRAMME, May 22, 2024, <https://www.wfp.org/news/devastating-drought-and-floods-southern-africa-wfp-chief-calls-global-action-millions-face>. See also UNITED NATIONS WORLD FOOD PROGRAMME, *Southern Africa Drought*, <https://www.wfp.org/emergencies/southern-africa-drought>; *Southern Africa: El Niño Forecast and Impact (As of August 2024)*, U.N. OFF. FOR COORDINATION HUMANITARIAN AFFS., Aug. 30, 2024, <https://www.unocha.org/publications/report/malawi/southern-africa-el-nino-forecast-and-impact-august-2024>; Press Release, *Africa faces disproportionate burden from climate change and adaptation costs*, WORLD METEOROLOGICAL ORG., Sept. 2, 2024, <https://wmo.int/news/media-centre/africa-faces-disproportionate-burden-from-climate-change-and-adaptation-costs> (discussing drought and climate change in Southern African in 2024); *Southern Africa: El Niño Regional Humanitarian Overview, September 2024*, U.N. OFF. FOR COORDINATION HUMANITARIAN AFFS., Sept. 20, 2024, <https://www.unocha.org/publications/report/mozambique/southern-africa-el-nino-regional-humanitarian-overview-september-2024> (noting climate change exacerbated effects of 2023/2024 El Niño); Nyasha Chingono, *Nearly 68 million suffering from drought in Southern Africa, says regional bloc*, REUTERS, Aug. 17, 2024, <https://www.reuters.com/world/africa/nearly-68-million-suffering-drought-southern-africa-says-regional-bloc-2024-08-17/>.

⁴⁵ *Southern Africa Drought*, *supra* note 38. See also *Devastating drought and floods in Southern Africa*, *supra* note 38 (discussing how region is certain areas saw “40 and 80 percent of their maize harvests decimated.”); *Southern Africa: El Niño Forecast and Impact (As of August 2024)*, *supra* note 38 (noting that “[t]he impact of the dry spell on food security is severe in a region where 70 per cent of smallholder farmers rely on rain-fed agriculture for their livelihood.”).

⁴⁶ Relief web, *Mozambique: Cyclone Idai & Floods Situation Report No. 1 (as of 2 April 2019)*, <https://reliefweb.int/report/mozambique/mozambique-cyclone-idai-floods-situation-report-no-1-2-april-2019>

⁴⁷ Relief web, *Mozambique: Cyclone Idai & Floods Situation Report No. 1 (as of 2 April 2019)*, <https://reliefweb.int/report/mozambique/mozambique-cyclone-idai-floods-situation-report-no-1-2-april-2019>

⁴⁸ *Devastating drought and floods in Southern Africa*, *supra* note 38; see also Alexander Wexler, *Drought-Stricken Countries Kill Elephants to Feed the Hungry*, WALL STREET JOURNAL, Oct. 5, 2024, <https://www.wsj.com/world/africa/drought-stricken-countries-kill-elephants-to-feed-the-hungry-da3d1> (discussing how the drought has led some authorities to kill elephants to provide meat for hungry communities).

hunger,” and “[m]ore than 1.1 million children under five are facing severe acute malnutrition.”⁴⁹ Scientists warn that future droughts are likely to be even more severe.⁵⁰

31. In Zimbabwe, drought has been a concerning issue for a number of communities forcing some families into debt, in order to place food on the table. ⁵¹For women and girls, who are often tasked with collecting water, droughts can mean traveling increasingly long distances to access dwindling water sources.⁵² Drought may impact their education opportunities and heighten their risk of gender-based violence if families are displaced.⁵³

32. The droughts and resulting hunger and malnutrition in Southern Africa implicate a host of fundamental rights, including the right to life (Art. 4) and the right to health (African Charter, art. 16). The disruption of agricultural livelihoods and to access sufficient water also threatens the right to a satisfactory environment conducive to development (African Charter, arts. 21, 22, 24). The cases in Southern Africa also highlight the disproportionate impact of the climate crisis on women and girls, including impacts on their right to education (African Charter, art. 17) and their right to equality and

⁴⁹ *Southern Africa: El Niño Forecast and Impact (As of August 2024)*, *supra* note 38. See also *Southern Africa Drought*, *supra* note 38 (noting the World Food Programme estimates that 21 million children in the southern Africa are malnourished, while 27 million people lack reliable food access).

⁵⁰ IPCC 2022 Report, *supra* note 1, at 555 (“Extreme weather events causing highly impactful floods and droughts have become more likely and (or) more severe due to anthropogenic climate change (high confidence)”).

⁵¹ WorldVision *El Niño Drought Devastates Zimbabwean Family's Livelihood, but Hope Remains* <https://www.wvi.org/stories/global-hunger-crisis/el-nino-drought-devastates-zimbabwean-familys-livelihood-hope-remains>.

⁵² CGIAR Initiative on Climate Resilience, *Extreme weather is disrupting lives in southern Africa: New policies are needed to keep the peace*, CGIAR, Nov. 10, 2024, <https://www.cgiar.org/news-events/news/extreme-weather-is-disrupting-lives-in-southern-africa-new-policies-are-needed-to-keep-the-peace/>. See also Chikwe Mbweeda, *How empowering women can help Southern Africa combat climate change*, CARE, Sept. 19, 2024, <https://www.care.org/news-and-stories/empowering-women-to-combat-climate-change-in-southern-africa/>.

⁵³ *Extreme weather is disrupting lives in southern Africa*, *supra* note 44. See also Mbweeda, *supra* note 44.

freedom from discrimination (African Charter, art. 18(3)) as well as their right to protection of their family and social welfare (African Charter, art. 18(1)).

33. Carbon market projects have had concerning implications for Indigenous communities in Southern Africa. For instance, in Malawi, the Malawi Carbon Market Initiative,⁵⁴ was recently established, and part of its function is to ensure equitable revenue distribution and benefits to the local communities.⁵⁵ Transparency and accountability in carbon trading seem to be a big issue there as there are claims that Malawi has not benefited as much as it should have from such projects. Blue Carbon, acquired enormous swaths of land in numerous African countries to develop into carbon market projects, with land deals in southern Africa already covering 20% of Zimbabwe and 10% of Zambia.⁵⁶

34. A report by the Zimbabwe Environmental Lawyers Association (ZELA) highlights that there exists little to no publicly available evidence, reports or literature that highlights any undertaking of extensive public consultations prior to the gazetting of the regulations on carbon markets in the country.⁵⁷ The fact that there is no legal obligation for consultation to occur prior to the gazetting of a statutory instrument and the lack of access to information about this field of regulation, raises serious concern on the compliance of these provisions with the Constitution of Zimbabwe, 2013,⁵⁸ international legal standards.

⁵⁴ Charles Mpaka, *Malawi Moves To Regulate Carbon Trading Amid Transparency Concerns in Global Market*, May 27, 2024, <https://www.globalissues.org/news/2024/05/27/36814>

⁵⁵ *Id.*

⁵⁶ CNNClimate A UAE company has secured African land the size of the UK for controversial carbon offset projects November 23, 2023 <https://edition.cnn.com/2023/11/22/climate/uae-cop28-adnoc-fossil-fuels-expansion-climate-intl/index.html> .

⁵⁷ Zela , *Legal Analysis Of Zimbabwe's Carbon Credits Trading Regulations, Statutory Instrument 150/2023* , <https://zela.org/download/legal-analysis-of-zimbabwes-carbon-credits-trading-regulations-statutory-instrument-150-2023/>

⁵⁸ No. 20 At, 2013 (Act No.1 of 2013).

35. Furthermore, it appears that the legislature did not provide for measures of transparency with respect to the access to carbon credit information. For instance, neither the designated authority nor the Minister is required to publish any information related to carbon credits, the number of registered carbon trading projects, carbon credits issued and traded, progressive effect on the country's greenhouse gas emissions and similar data.

East Africa

36. In East Africa, climate change is associated with mass displacement and disruption of pastoral communities' way of life as resources have become increasingly scarce.

37. East Africa stands at the epicenter of one of the most devastating humanitarian crises fuelled by climate change: cyclical and intensifying droughts that are pushing millions to the brink of famine.⁵⁹

38. The region is no stranger to droughts, but in recent years, the events have become more severe, prolonged, and frequent with researchers saying the augmented severity is attributable to anthropogenic climate change.⁶⁰ What were once periodic dry spells have become chronic droughts, leaving the region in an exacerbated state of food insecurity.⁶¹ The scale of the crisis is

⁵⁹ World Health Organization, *Greater Horn of Africa (GHOA) – Food Insecurity and Health Crisis – Public Health Situation Analysis*, July 9, 2024, https://cdn.who.int/media/docs/default-source/2021-dha-docs/who-ghoa-phsa-090724.pdf?sfvrsn=ef03afa5_1&download=true.

⁶⁰ Sarah Kaplan, *Climate change caused catastrophic East Africa drought, scientists say*, WASHINGTON POST, Apr. 27, 2023, <https://www.washingtonpost.com/climate-environment/2023/04/27/climate-change-drought-east-africa/>.

⁶¹ See *id.*; *Greater Horn of Africa*, *supra* note 46. See also *Drought and food insecurity in the greater Horn of Africa*, WORLD HEALTH ORG., July 30, 2024, <https://www.who.int/emergencies/situations/drought-food-insecurity-greater-horn-of-africa>.

staggering as it upends livelihoods, fuels mass migrations, and pushes millions towards starvation.⁶²

39. The East Africa region is home to many pastoral and agro-pastoral communities that depend on livestock raising and production for subsistence.⁶³ As the increasingly frequent droughts become prolonged due to climate change and it is harder to recover between periods of severe drought, there is an increase in resource and land conflicts as people are forced to fight over limited access to water and food.⁶⁴

40. In Kenya, a country that has experienced its longest and most severe drought in recent history,⁶⁵ the pastoralist communities are amongst the hardest hit by the region's drought crisis.⁶⁶ For herders, the crisis has reached catastrophic levels with livestock mortality exceeding 2.6 million animals over five years.⁶⁷ This loss of livestock has a reverberating effect on

⁶² Kaplan, *supra* note 47. See also International Organization for Migration, *East and Horn of Africa Regional Drought Response 2023*, (2023), https://crisisresponse.iom.int/sites/g/files/tmzbd11481/files/appeal/pdf/2023_East_and_Horn_of_Africa_Regional_Drought_Response_2023.pdf.

⁶³ *Id.* at 3.

⁶⁴ *Id.* (noting that “[i]n the context of growing resource scarcity, especially over the availability of water and associated livelihood losses linked to climate change, there has been an increase in communal and resource-based

conflicts over cattle, crowding at drying waterpoints for livestock, and other limited sources.”). See also Aloysious Tumusiime, *The climate, displacement and conflict nexus: a snippet on its impacts on livelihoods in East Africa*, HUMANITARIAN PRAC. NETWORK, Mar. 13, 2024, <https://odihpn.org/publication/the-climate-displacement-and-conflict-nexus-a-snippet-on-its-impacts-on-livelihoods-in-east-africa/#:~:text=The%20rainy%20season%20in%20northern,grief%2C%20trauma%20and%20prolonged%20insecurity> (discussing the land conflicts arising among the Turkana and Marsabit communities in Northern Kenya).

⁶⁵ Oda Lykke Jernberg, *Data is critical tool as farmers fight drought in Kenya*, NORWEGIAN REFUGEE COUNCIL, 2023, <https://www.nrc.no/expert-deployment/feature/data-is-critical-tool-as-farmers-fight-drought-in-kenya/#article>.

⁶⁶ Jarso Mokku, *Climate change destroys the livelihoods of Kenyan pastoralists*, U.N. AFRICA RENEWAL, Jan. 2023, <https://www.un.org/africarenewal/magazine/january-2023/climate-change-destroys-livelihoods-kenyan-pastoralists>.

⁶⁷ Office for the Coordination of Humanitarian Affairs, *Drought Response Plan – Kenya* at 5 (2023), <https://humanitarianaction.info/plan/1137/article/kenya-drought-response-plan-2023>.

women, children, and the elderly as sharp declines in milk consumption caused increased incidents of malnutrition.⁶⁸

41. As animals perish, entire family structures are destabilized. The death of a herd means more than just lost income; it means lost social connections, a disrupted food supply, and it puts a way of life at-risk.

42. Drought in Kenya and across East Africa is not only an environmental and humanitarian crisis – it is also a growing source of local conflict.⁶⁹ As water sources and grazing lands dry up, competition over resources has intensified, leading to clashes amongst communities who are struggling to survive.⁷⁰ Prolonged droughts have disrupted traditional systems of resource sharing, leading to a breakdown in cooperation and a rise in tension as communities face compounded resource scarcity.⁷¹ For example, the “spiral of violence” between the Turkana and Pokot communities has been linked with drought, heat stress, and diseases affecting livestock.⁷² Research in Turkana County also indicates that periods of below-average rainfall correspond with higher rates of violence.⁷³

43. East Africa’s experience with climate change, including climate displacement and local conflict, touches on numerous fundamental rights. The right to life (African Charter, art. 4) and the right to health (African

⁶⁸ *Id.*

⁶⁹ International Crisis Group, *Absorbing Climate Shocks and Easing Conflict in Kenya’s Rift Valley* at 3-4 (Apr. 2023), https://www.crisisgroup.org/sites/default/files/2023-04/b189-kenya-climate-shocks_1.pdf.

⁷⁰ *Id.*

⁷¹ Tanaya Gupta et al., *How does climate change exacerbate the root causes of conflict in Kenya* at 1, CGIAR FOCUS CLIMATE SEC., (Jan. 2023), <https://cgspace.cgiar.org/server/api/core/bitstreams/11d679f2-ae01-4a2f-95e1-a89b298cdf02/content>.

⁷² *Id.* at 5.

⁷³ *Id.* at 6.

Charter, art. 16) are gravely threatened as millions face starvation, malnutrition, and waterborne diseases due to prolonged droughts. The droughts are so severe as to cause displacement and to threaten the collapse of the pastoralist ways of life, which implicates the right to economic, social, and cultural development (African Charter, arts. 21, 22, 24). Finally, the resulting resource conflicts driven by scarcity may disrupt the right to peace and security (African Charter, art. 23).

44. In the East African region, the impact of climate change is expected to increase the frequency and severity of disease outbreaks, particularly malaria. The future risk of malaria is projected to rise in the densely populated highland areas of East Africa, which traditionally experienced high rainfall but relatively low temperatures that inhibited severe malaria outbreaks. However, eastern Africa has experienced prolonged droughts in recent years, resulting in significant economic, political, and humanitarian challenges.

45. Since 2020, six consecutive seasons of low rainfall have had a major impact on millions of people in Somalia, Ethiopia, and Kenya. This extended drought is believed to be linked to a multi-year La Niña event, potentially exacerbated by global climate change.⁷⁴ The resulting famine was compounded by a locust swarm, affecting over 23 million individuals with acute food shortages.⁷⁵ As one of the world's most impoverished regions, the Horn of Africa is home to millions of people facing chronic food and water insecurity, malnutrition, and limited access to basic services including infrastructure, health care, education, and social welfare. The ongoing

⁷⁴ UNDRR Horn of Africa floods and drought, 2020-2023 - *Forensic analysis* <https://www.undrr.org/resource/horn-africa-floods-and-drought-2020-2023-forensic-analysis>

⁷⁵ *id*

drought has turned these underlying conditions into acute food insecurity for over 4 million inhabitants⁷⁶.

46. Koroso et al⁷⁷ conducted a study in Southern Ethiopia and reported that pastoralists in the region suffered extreme hardship, including more than 75 % loss of livestock and extensive migration from drought areas. The persistent dry conditions forced many to leave their homes in search of sustenance, resulting in refugee movements and internal displacement. This displacement led to conflicts between various groups, amplified by long standing tensions between herders and landowners. The increased frequency of droughts has also affected electricity generation in the region, as a significant portion of the area's power comes from hydroelectric sources. As a result, Kenya and Tanzania have begun to reduce their dependence on hydropower and diversify into alternative energy sources such as natural gas, geothermal, and wind power.

47. In mid-2023, the La Niña weather pattern transitioned to a severe El Niño event, bringing heavy rainfall to the drought-affected Horn of Africa and causing destructive flooding.⁷⁸ The floods displaced nearly 1 million people across Ethiopia, Kenya, and Somalia, leading to health risks such as waterborne diseases and malaria.⁷⁹

⁷⁶ WorldWeather Attribution Human-induced climate change increased drought severity in Horn of Africa 27 April, 2023 <https://www.worldweatherattribution.org/human-induced-climate-change-increased-drought-severity-in-southern-horn-of-africa/> .

⁷⁷ G. Koroso, A. Muchie, G. Faris: Drought vulnerability and impacts of climate change on pastoralist and their adaptation measures in southern Ethiopia: a comprehensive review.

⁷⁸ UNDRR Horn of Africa floods and drought, 2020-2023 - *Forensic analysis* <https://www.undrr.org/resource/horn-africa-floods-and-drought-2020-2023-forensic-analysis> .

⁷⁹ UNICEF Almost 1 Million People in Kenya, Burundi, Tanzania, and Somalia Affected as Unprecedented Heavy Rains Continue to Wreak Havoc in Eastern Africa, 09 May 2024 <https://www.unicef.org/press-releases/almost-1-million-people-kenya-burundi-tanzania-and-somalia-affected-unprecedented> . UNICEF *Almost 1 Million People in Kenya, Burundi, Tanzania, and Somalia Affected as Unprecedented Heavy Rains Continue to Wreak Havoc in Eastern Africa*, 09 May 2024

48. These natural disasters have strained the public finances of the affected countries, constraining their capacity to respond effectively. For instance, Kenya is at high risk of debt distress, Ethiopia defaulted on its bonds, and Somalia is already in debt distress.⁸⁰ The need to support Eastern and other African countries to address the impact of these extreme weather events by building resilience to external shocks cannot be overemphasised.

49. With respect to carbon markets, the afforestation projects in Kachung and Bukaleba in forest reserves in Uganda are examples of projects that have hurt the local population while benefitting European actors. There are 17 villages adjacent to the Kachung industrial monoculture plantation and many villagers have been denied access to the plantation. This land was vital for growing food, grazing livestock and collecting firewood and other forest resources. Food insecurity, hunger and poverty are acute in these villages.

50. Meanwhile, Blue Carbon has reportedly acquired land in Tanzania amounting to 8% of the country's land as well as millions of hectares of land in Kenya, to develop carbon market projects to which local communities have not consented, under the guise of fighting climate change.⁸¹

Central Africa

In 2024, Central Africa experienced historic flooding that caused immense individual and economic loss, exacerbating existing regional instability and community vulnerabilities.⁸²

⁸⁰ State of play of Debt Burden in Africa 2024 <https://media.afreximbank.com/afrexim/State-of-Play-of-Debt-Burden-in-Africa-2024-Debt-Dynamics-and-Mounting-Vulnerability.pdf>.

⁸¹ Carbon Herald, *Theodora Stankova*, *Blue Carbon Gets Access To 'Millions Of Hectares' In Kenya In Controversial Deal* <https://carbonherald.com/blue-carbon-gets-access-to-millions-of-hectares-in-kenya-in-controversial-deal/>

⁸² Reliefweb, West and Central Africa: Flooding Situation 2024 Overview - as of 10 February 2025, <https://reliefweb.int/report/chad/west-and-central-africa-flooding-situation-2024-overview-10-february-2025>

51. The IPCC projects that the frequency and intensity of heavy precipitation events are projected to increase throughout Africa with each degree of increased warming.⁸³ This increased precipitation heightens the risk of flooding, particularly in Central Africa, with associated damage and costs.⁸⁴ Already, climate change has been associated with an increase in the frequency of floods.⁸⁵ As climate change drives more frequent and intense flooding, Central Africa is likely to face an increased risk of harm to individual life, health, and livelihood, threats to economic development, and an increased strain on existing political instability.

52. Chad has been acutely affected by flooding, as “[e]ntire villages have been left under water and families have lost everything.”⁸⁶ According to the UN, between July and September 2024, historic flooding in the country killed over 341 people, destroyed more than 164,000 homes, and impacted 1.5 million people in all provinces.⁸⁷ The floods forced people to leave refugee camps to seek shelter in locations without access to food, health services, or sanitation facilities.⁸⁸ In areas where stagnant waters remained after flooding, people also faced increased risk of mosquito borne illnesses.⁸⁹

⁸³ Intergovernmental Panel on Climate Change, *Regional fact sheet – Africa*, in Sixth Assessment Report of the Intergovernmental Panel on Climate Change, CAMBRIDGE U. PRESS, https://www.ipcc.ch/report/ar6/wg1/downloads/factsheets/IPCC_AR6_WGI_Regional_Fact_Sheet_Africa.pdf.

⁸⁴ *Global warming worsening deadly flooding in Africa, warn scientists*, AL-JAZEERA, Oct. 23, 2024, <https://www.aljazeera.com/news/2024/10/23/global-warming-worsened-floods-across-africa-scientists>. See also Arona Diedhiou et al., *Changes in climate extremes over West and Central Africa at 1.5 degrees C and 2 global warming*, 13 ENV’T RSCH. LETTERS 1, 8 (2018), <https://iopscience.iop.org/article/10.1088/1748-9326/aac3e5>.

⁸⁵ Leslie Fauvel, *Climate Change-Worsened Floods Wreak Havoc In Africa*, BARRON’S, Oct. 28, 2024, <https://www.barrons.com/news/climate-change-worsened-floods-wreak-havoc-in-africa-ec11beb9>.

⁸⁶ *Devastating floods displace huge swathes of the population across West and Central Africa*, INT’L FED’N OF RED CROSS AND RED CRESCENT SOCIETIES, Sept. 19, 2024, <https://www.ifrc.org/press-release/devastating-floods-displace-huge-swathes-population-across-west-and-central-africa>.

⁸⁷ See *id.*; *Chad flood: 341 dead, 1.5 million people affected since July, says UN*, FIRSTPOST, Sept. 10, 2024, <https://www.firstpost.com/world/chad-flooding-leaves-341-dead-some-1-5-million-people-affected-since-july-un-13813498.html>.

⁸⁸ Beverly Goldberg, *Severe Floods Displace Locals and Refugees Across Chad*, HEBREW IMMIGRANT AID SOC’Y, Sept. 13, 2024, <https://hias.org/news/flooding-chad-2024/>.

⁸⁹ *Id.*

The flooding is also estimated to have destroyed more than 250,000 hectares of cropland and 30,000 heads of livestock, increasing the risk of food shortages in a country already struggling with food insecurity.⁹⁰ According to the Red Cross Climate Centre, climate change “is likely to have significantly worsened the situation.”⁹¹

53. The shrinking and flooding of the Lake Chad basin has led to around 3 million people being displaced and an additional 11 million needing humanitarian assistance. Lake Chad, which has receded from 25000 km in the 1960s to between 2000 km and 1500 km over the last 40 years.

54. Central Africa is also strained by violent conflicts and widespread displacement, making it one of the most vulnerable regions to the impacts of climate change.⁹² Flooding and long-term rises in air temperature are “multiplier threats to the existing vulnerability” of Central Africa, worsening poverty and increasing existing regional political fragility and community vulnerabilities, such as disease and food insecurity.⁹³ Flooding can disrupt herders’ migratory patterns, for example, forcing them into new territories and sparking territorial and resource-based conflicts that only intensify

⁹⁰ United Nations Office for the Coordination of Humanitarian Affairs, *Chad: UN, partners respond to massive nationwide floods*, Aug. 28, 2024,

<https://www.unocha.org/news/chad-un-partners-respond-massive-nationwide-floods#:~:text=The%20United%20Nations%20Office%20for,affecting%20more%20than%20960%2C000%20people.>

⁹¹ *Devastating floods*, *supra* note 69. See also United Nations Office for the Coordination of Humanitarian Affairs, *Chad*, <https://www.unocha.org/chad> (noting that the consequences of the climate crisis remain the four main drivers of humanitarian needs in Chad).

⁹² Archibald S. Henry, *How Climate Change Fuels Instability in Central Africa*, U.S. INST. PEACE, Sept. 22, 2022, <https://www.usip.org/publications/2022/09/how-climate-change-fuels-instability-central-africa>.

⁹³ Munum Hassan et al., *Mean Temperature and Drought Projections in Central Africa: A Population-Based Study of Food Insecurity, Childhood Malnutrition and Mortality, and Infectious Disease*, 20(3) INT. J. ENV. RSCH. PUB. HEALTH 1, 17 (2023), <https://pmc.ncbi.nlm.nih.gov/articles/PMC9915533/>. See also Henry, *supra* note 75.

existing tensions.⁹⁴ In addition, in countries undergoing political transitions like Chad and the Central African Republic, responding to climate disasters can further strain new governments and potentially trigger new waves of popular discontent or displacement.⁹⁵

55. The severe flooding in Central Africa raises a number of critical inter-related human rights concerns. The historic 2024 floods implicate the right to life (African Charter, art. 4), as inadequate disaster preparedness has left communities vulnerable to disease, food insecurity, and displacement. The destruction of croplands and livelihoods also poses a significant threat to the right to economic, social, and cultural development (African Charter, art. 22). Finally, prolonged flooding, coupled with fragile infrastructure and political institutions, disproportionately affects displaced and vulnerable populations threatening their rights to health (African Charter, art 16), exacerbating resource conflicts, and undermining efforts to move people out of poverty.

Vulnerabilities

56. Despite various regions having specific impacts that stem from the climate change crisis there are commonalities within various groups of people living across the African continent which need to be highlighted in order to show the harmful impacts of the climate change crisis and how such harm violates the African Charter. To avoid the petition being prolix only certain examples have been highlighted below and this is not an exhaustive list of all groups of people being affected by the climate change crisis.

⁹⁴ See United Nations Regional Office for Central Africa, *Collection of Best Practices for the Prevention and Resolution of Conflicts between Farmers and Herders in West and Central Africa*, Dec. 2023, https://unoca.unmissions.org/sites/default/files/collection_of_best_practices_for_the_prevention_and_resolution_of_conflicts_between_farmers_and_herders_in_west_and_central_africa.pdf; Leif Brottem, *The Growing Complexity of Farmer-Herder Conflict in West and Central Africa*, AFR. CTR FOR STRATEGIC STUD., July 12, 2021, <https://africacenter.org/publication/growing-complexity-farmer-herder-conflict-west-central-africa/>.

⁹⁵ See Henry, *supra* note 75.

57. Climate change in Africa has worsened existing inequalities, putting vulnerable populations and communities at risk, including children, women, persons with disabilities, the elderly, indigenous communities, and victims of natural disasters. For example, indigenous peoples are particularly vulnerable to climate change due to their reliance on the land for subsistence and cultural and spiritual practices.

58. Recent reports from the International Panel for Climate Change indicate that drought resulting from changing climate patterns on the continent will displace roughly 700 million people.⁹⁶ The World Bank estimates that by 2050, Latin America, Sub-Saharan Africa, and Southeast Asia will produce approximately 143 million more climate immigrants.⁹⁷ Northwest Africa, for example, is facing a confluence of climate challenges including sea level rise, drought, and desertification resulting in seasonal migrants who place considerable strain on their country of origin and as well as destination countries.

59. Given the scale of the problem outlined above, climate change is presenting an existential human rights challenge that may require the Court to outline rights-based approaches and recommendations for States to arrest and reverse the negative impact of the climate crisis.

Groups of people most affected by climate change

Women & Girls

60. The African Union (AU), in its African Union Climate Change and Resilient Development Strategy and Action Plan (2022-2032) acknowledged that women and girls are more exposed and vulnerable to climate change

⁹⁶ UNDRR, World “at a crossroads” in drought management, up 29% in a generation and worsening, says UN <https://www.preventionweb.net/news/world-crossroads-drought-management-29-generation-and-worsening-says-un>.

⁹⁷ https://documents1.worldbank.org/curated/en/983921522304806221/pdf/124724-BRI-PUBLIC-NEWSERIES-Groundswell-note-PN3.pdf?source=post_page-----#:~:text=The%20reportGroundswell%3A%20Preparing%20for%20Internal,within%20their%20own%20countries%20to

because they are often poorer, receive less education, and are not involved in political and household decision making that affect their lives.⁹⁸ They are also vulnerable to climate change due to their role in subsistence rain fed agriculture, water management and weaker access to resources and decision-making power.⁹⁹

61. According to a United National Development Programme report, women and children are 14 times more likely to die than men when there is extreme weather disaster.¹⁰⁰ Further research by World Bank indicates that, men and women, boys and girls have different experiences of disasters.¹⁰¹ Gender dynamics impact both the way they are affected by disasters and their capacity to withstand and recover from them. Gender inequalities can result in gender-differentiated disaster impact, and differentiated impacts can influence gender dynamics, which in turn affect future resilience to shocks.¹⁰²

62. There has therefore been a rise in the voices that are calling for a gender focused response to climate change. Further there have been calls to the State to have gender focussed strategies to climate change. The call for a

⁹⁸ https://au.int/sites/default/files/documents/41959-doc-CC_Strategy_and_Action_Plan_2022-2032_08_02_23_Single_Print_Ready.pdf

⁹⁹ Ademola Oluborade Jegede, 'The Climate Change Regulatory Framework and Indigenous Peoples Lands in Africa: Human Rights Implications' 2016 University of Pretoria Press.

¹⁰⁰ UNDP, *Women are hit hardest in disasters, so why are responses too often gender-blind?*, March 24, 2022 <https://www.undp.org/blog/women-are-hit-hardest-disasters-so-why-are-responses-too-often-gender-blind#:~:text=The%20statistics%20are%20staggering%3B%20when,Tsunami%2C%2070%20percent%20were%20women.>

¹⁰¹ World Bank Group *Gender Dynamics of Disaster Risk and Resilience* <https://www.worldbank.org/en/topic/disasterriskmanagement/publication/gender-dynamics-of-disaster-risk-and-resilience>

¹⁰² [Id.](#)

gender focused response took the centre stage in the 29th Conference of Parties OP29 Climate Conference.¹⁰³

63. The case of, *Verein KlimaSeniorinnen Schweiz and others v. Switzerland*, (the *Verein case*)¹⁰⁴ which was filed by an association of elderly women challenging Switzerland's' inadequate climate policies and that the deficiency in policy therefore violated the women's rights to life and health.¹⁰⁵ Their arguments had been anchored on the fact that their health is threatened by heat waves made worse by climate crisis.¹⁰⁶ The European Court of Human Rights in its finding, held that there was a violation of the right to respect for private and family life and access to Court.¹⁰⁷ This Court speaks to the need to have clarity on what are the State responsibilities as pertains to having policies that focus on having strategies that bear in mind the vulnerability of girls and women.

Children

64. Africa has the world's youngest population and young generations of today will experience significant climate change impacts throughout their lifetime. Some of the impacts that the youth are likely to experience include school disruptions, social and political disorders, food insecurity, diseases, developmental disorders and threats to water and sanitation services.¹⁰⁸

¹⁰³ UN Women *COP29 decisions deliver gains for gender equality in climate action, but more remains to be done* <https://www.unwomen.org/en/news-stories/news/2024/11/cop29-decisions-deliver-gains-for-gender-equality-in-climate-action-but-more-remains-to-be-done>

¹⁰⁴ Application no. 53600/20 , ECtHR, [https://hudoc.echr.coe.int/eng/#{%22itemid%22:\[%22002-14304%22\]}](https://hudoc.echr.coe.int/eng/#{%22itemid%22:[%22002-14304%22]}).

¹⁰⁵ Id para 231

¹⁰⁶ Id.

¹⁰⁷ Id para 171.

¹⁰⁸ African Union, African Union Climate and Resilient Development Strategy 2022-2032 <https://www.fao.org/faolex/results/details/es/c/LEX-FAOC222624/#:~:text=This%20African%20Union%20climate%20change,Nations%20Framework%20Convention%20on%20Climate>.

65. According to UNICEF, 32 out of the 45 countries identified as the worst affected by climate change in the Children's Climate Risk Index are in sub-Saharan Africa. Children are especially vulnerable to the impacts of climate change as their developing minds and bodies are more susceptible to environmental changes.¹⁰⁹ They will also inherit the future impacts of climate change caused by current greenhouse gas emissions. Climate change not only threatens the immediate survival of children but also their growth and development, as well as their ability to learn, play, and reach adulthood.¹¹⁰
66. Moreover, many African children live in families and communities with limited capacity to adapt to climate-induced emergencies and slow-onset events. Approximately 490 million children under the age of 18 in 35 African countries are at risk of suffering the impacts of climate change.¹¹¹
67. According to a UNICEF report,¹¹² children have been ignored in the response to Climate Change, despite their unique vulnerability. Only 2.4% of climate finance from key multilateral climate funds support projects incorporating child-responsive activities. This is further affirmed in the case of, *African Climate Alliance & Others v Minister of Minerals Resources and Energy & Others*,¹¹³ in so far as children and future generations need to be considered in key processes.¹¹⁴

¹⁰⁹ UNICEF Climate Change Risk Index 2021 < <https://data.unicef.org/resources/childrens-climate-risk-index-report/> https://data.unicef.org/resources/childrens-climate-risk-index-report/?gl=1*1hgv21o*_ga*MTM1NTE3Njg4MC4xNzAzNjkwNjQy*_ga_ZEPV2PX419*MTcxMzgZnZE2OC4zLjAuMTcxMzgZnZE2OC42MC4wLjA.

¹¹⁰ Benyam Dawit Mezmur, 'The Calm Before the Storm: Child Rights Climate Litigation in Africa' https://www.scielo.org.za/scielo.php?script=sci_arttext&pid=S2225-71602023000100033

¹¹¹ UNICEF Climate Change Index.

¹¹² UNICEF <https://www.unicef.org/reports/climate-changed-child>

¹¹³ (56907/2021) [2024] ZAGPPHC 1271 (4 December 2024) para 27.

¹¹⁴ (56907/2021) [2024] ZAGPPHC 1271 (4 December 2024) para 27.

The Elderly

68. Elderly persons also constitute a particularly vulnerable group in the context of climate change across the African continent. Due to age-related health conditions, reduced mobility, and limited access to emergency services and healthcare, older people are disproportionately affected by the intensifying impacts of climate-related phenomena, such as extreme heat, floods, droughts, and food insecurity.

69. In the *Verein* case, the European Court of Human Rights affirmed the particular vulnerability of elderly women to the effects of climate change, finding that the state's failure to adopt adequate mitigation measures constituted a violation of the applicants' right to respect for private and family life.¹¹⁵ The Court recognized that elderly persons, especially women, face heightened health risks due to climate-induced heatwaves, and emphasized the duty of states to take proactive measures to protect vulnerable populations from foreseeable environmental harm. This reasoning underscores a broader principle that is also applicable to African States: elderly people have specific vulnerabilities to climate change, for which climate policies and practices must be responsive and inclusive.

70. In line with Article 18(4) of the African Charter, States must adopt climate policies that respond to the unique vulnerabilities of elderly persons, including through inclusive disaster preparedness and health care strategies.

Indigenous people

71. In the realm of the climate change crisis and legal frameworks in environmental law, indigenous people are a particularly vulnerable group.¹¹⁶ They are considered vulnerable chiefly due to their dependence upon and close relationship with their environment, land and its resources.

¹¹⁵ ECtHR, *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland*.

¹¹⁶ UN Declaration on the Rights of Indigenous Peoples

72. The preambles to both the UN Declaration on the Rights of Indigenous Peoples and the Paris Agreement recognise the rights of indigenous people, their peculiar vulnerability, and the obligation by states to respect, protect and fulfil their fundamental human rights.
73. In the year 2000, the African Commission on Human and Peoples' Rights (the African Commission) adopted the Resolution on the Rights of Indigenous People's Communities. Amongst other things, the resolution established a working group of experts on the rights of indigenous communities in Africa whose mandate includes indigenous people's right to self-determination and the promotion of their cultural development and identity. As a result, African States have a personal and collective obligation to respect, protect and fulfil the fundamental human rights of indigenous people in light of the negative effects of climate change.
74. The Ogiek Judgement,¹¹⁷ handed down by the African Court on Human and Peoples' Rights (the Court), stipulated that Indigenous communities are communities that are to be protected by the African Charter and that any unhindered access to their traditional land and the natural resources found on such land would impact the very survival of such vulnerable communities.¹¹⁸
75. In a Colombian case,¹¹⁹ a group of indigenous people sued the government and other private actors for diverting a river for the purposes of mining

¹¹⁷ *AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS v. REPUBLIC OF KENYA* APPLICATION No. 006/2012 Paragraph 105 – 113.

¹¹⁸ *Id.*

¹¹⁹ *Center for Social Justice Studies et al. v. Presidency of the Republic et al.* Judgment T-622/16 Constitutional Court of Colombia (November 10, 2016), https://elaw.org/wp-content/uploads/archive/attachments/publicresource/SU69817_Cerrejon%2028nov2017%20decision.pdf

activities. In this matter, their Constitutional Court found that the authorization of mining activities ignored the particular social and environmental conditions of the region (La Guajira).¹²⁰ In particular, the Constitutional Court reasoned that climate change has significantly impacted the region's natural water supply. Depriving this group of indigenous people of their natural resources (in particular water), was tantamount to depriving them of their right to life. The Constitutional Court emphasised the positive obligation to protect the rights of indigenous people as a vulnerable group which is oftentimes disproportionately affected by the effects of global warming.

76. Protecting the rights of indigenous people in view of climate change includes ensuring their participation in decision-making processes and considering their traditional knowledge and practices in climate change mitigation and adaptation strategies. Further, States have the advantage of being able to legislate in favour of protecting indigenous people, an obligation they should take seriously.

77. In Africa, the Commission ruled that the Ogoni,¹²¹ had suffered violations of their right to health (Article 16) and to a satisfactory environment, favourable to their development (Article 24) due to the government's failure to prevent pollution and ecological degradation. It held further, that the State's failure to monitor oil activities and involve local communities in decisions violated the right of the Ogoni people to freely dispose of their wealth and natural resources (Article 21).

78. The case is significant as, in it, the Commission fleshed out the negative and positive obligations imposed on states by Article 16, 24 and 21 as well

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¹²¹ *Social and Economic Rights Action Center & the Center for Economic and Social Rights v. Nigeria* (Communication No. 155/96)

as the implied rights to food and housing/shelter. Notably the Commission stated that governments have a duty to protect their citizens by protecting them from damaging acts that may be perpetrated by private parties and that this duty calls for positive action on part of governments.

79. An additional positive aspect of the decision was the Commission's recognition that the rights expressly set out in the Charter are not exhaustive of the rights protected by it. The Commission observed that the oil extraction and processing resulted in effects on a range of human rights (life, housing, health, food, water, etc.) due to the far-reaching damage to the land and livelihoods of the Ogoni people.¹²²

Environmental human rights defenders

80. According to a Global Witness 2023/2024 Annual Report, approximately 2100 environmental defenders were killed globally between 2012 and 2023 while protecting the environment.¹²³ However, the organisation has noted that accurately recording such cases can be challenging, and there may be a higher number of unreported incidents of environmental defenders being persecuted and killed while safeguarding nature.¹²⁴

81. The Business and Human Rights Resources Centre reported that nearly three in five attacks including violence, threats, and judicial harassment were linked to extractive industries. Between 2020 to 2021, 58 attacks recorded in Uganda were opposing the activities of the mining, oil, and gas

¹²² Id para 58.

¹²³ Global witness, More than 2,100 land and environmental defenders killed globally between 2012 and 2023, 10 September 2024 <https://globalwitness.org/en/press-releases/more-than-2100-land-and-environmental-defenders-killed-globally-between-2012-and-2023/>

¹²⁴ <https://www.globalwitness.org/en/campaigns/environmental-activists/standing-firm>.

companies in community lands and forests,¹²⁵ while in 2023, a total of 41 were recorded in Africa¹²⁶.

82. According to UNEP, environmental defenders remain highly vulnerable and under attack across the globe.¹²⁷ Worldwide, environmental defenders face growing assaults and murders in conjunction with increasing intimidation, harassment, stigmatization and criminalization. Global Witness organisation alleges that in 2021 approximately four human rights defenders were killed a week while protecting environmental rights, and many more are continually harassed, intimidated, criminalized and forced from their lands.¹²⁸

83. Environmental defenders face extreme violence as they oppose infrastructural development, logging and mining operations, illegal fishing, amongst others.¹²⁹ This is usually perpetrated by private entities, in collusion with governments. There is need to enforce laws that recognize environmental defenders and provide them access to justice when their rights are infringed upon.

¹²⁵ <https://www.business-humanrights.org/en/from-us/briefings/hrds-2021/human-rights-defenders-business-in-2021-protecting-the-rights-of-people-driving-a-just-transition>.

¹²⁶ <https://www.business-humanrights.org/en/from-us/briefings/hrds-2023/people-power-under-pressure-human-rights-defenders-business-in-2023/>

¹²⁷ UNEP, Responding to the needs of environmental defenders and civil society, 22 Apr 2020, <https://www.unep.org/news-and-stories/story/responding-needs-environmental-defenders-and-civil-society>

¹²⁸ Global witness, Decade of defiance , 28 September 2022 <https://globalwitness.org/en/campaigns/land-and-environmental-defenders/decade-of-defiance/>

¹²⁹ IUCN COMMISSION ON ENVIRONMENTAL, ECONOMIC AND SOCIAL POLICY, 'DEFENDERS AND THE MANY FACES OF REPRESSION' SEPTEMBER 2021, <https://portals.iucn.org/library/sites/library/files/documents/Policy-Matters-Issue-22-vol1.pdf> at 19,

84. These incidents point to an increasingly hostile environment for environmental defenders, many of whom are targeted precisely for exercising their fundamental rights.

85. Environmental defenders have the right to assemble peacefully and to express themselves against environmental harm, and advocate for sustainable and equitable development. The growing pattern of reprisals against environmental defenders represents not only a violation of their individual rights but a broader threat to democratic participation, environmental governance, and accountability. Pursuant to Article 11, states have a positive obligation to respect, protect, and facilitate the right of environmental defenders to assemble freely and without fear of persecution.

B. LEGAL MATTERS

Jurisdiction and Admissibility

86. The Court is empowered to consider Requests for Advisory Opinions under Article 4(1) of the Protocol to the African Charter on Human and Peoples Rights on the Establishment of an African Court on Human and Peoples' Rights (Court Protocol) and Rule 82 of the Rules of the African Court on Human and Peoples Rights (Rules of Court).

87. Article 4 grants the Honourable Court advisory jurisdiction on any legal matter relating to the Charter or any other relevant human rights instrument, provided that the subject matter of the Opinion is not related to a matter being examined by the Commission.

88. PALU submits that this Request for an Advisory Opinion is a legal matter relating to the human and peoples' rights obligations of African States to protect the rights of citizens in the context of the climate crisis.

Applicable Law

89. PALU relies on the following provisions: -

- a) Constitutive Act of the African Union
- b) African Charter for Human and Peoples Rights, especially articles 2, 3, 4, 5, 8, 9, 10, 11, 12, 14, 16, 17, 18, 19, 20, 21, 22, 23, 24, 60 and 61
- c) African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention)
- d) Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol)
- e) The African Charter on the Rights and Welfare of the Child
- f) The Revised African Convention on Conservation of Nature
- g) Any other Relevant Instrument.

90. PALU invites the Honourable Court to also take cognisance of the international climate change treaties which have been ratified by most African States as follows: -

- a) United Nations Framework Convention on Climate Change
- b) Kyoto Protocol to the United Nations Framework Convention on Climate Change
- c) Paris Agreement
- d) United Nations Convention on Combatting Desertification
- e) United Nations Convention on Biological Diversity
- f) Any other Relevant Instrument.

91. PALU further invites the Honourable Court to consider the following guidelines, resolutions, and frameworks as possible interpretative tools: -

- a) African Commission on Human and Peoples' Rights State Reporting Guidelines and Principles on article 21 and 24 of the African Charter Relating to Extractive Industries, Human Rights and Environment 2018;
- b) African Commission on Human and Peoples Rights Resolution 153 on Climate Change and Human Rights;
- c) African Commission on Human and Peoples Rights Resolution 342 on Climate Change and Human Rights in Africa;
- d) African Commission on Human and Peoples Rights Resolution 417 on the Human Rights Impacts of Extreme Weather in Eastern and Southern Africa;
- e) African Commission on Human and Peoples Rights Resolution on Climate Change and Forced Disappearance.

Issues for determination

92. **PALU respectfully places before this Honourable Court the following issues for determination: -**

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

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

93. **If either or both of the questions above are resolved in the affirmative, this Honourable Court is invited to further dispose of the following questions: -**

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

climate change, considering the relevant provisions of the African Charter?

- (b) Given the unique and significant implications of the responsibilities and duties to vulnerable individuals and populations, whether State parties to the African Charter on Human and Peoples' Rights (the Charter) have positive obligations to protect vulnerable populations including environmental human rights defenders, indigenous communities, women, children, youth, future generations, the current generation, past generations, the elderly and people with disabilities from the impact of climate change in line with the relevant treaties?**
- (c) What, if any, are applicable human rights obligations of States to facilitate a just, transparent, equitable and accountable transition in the context of climate change in Africa?**
- (d) What, if any, are the applicable obligations of African States in the implementation of adaptation, resilience and mitigation measures in response to climate change?**
- (e) What, if any, are applicable human rights obligations of States to compensate for loss, damage and reparations?**
- (f) What responsibilities, if any, do African States have in relation to third parties, including international monopolies, multinational corporations and non-state actors operating on the continent, to ensure that international and regional treaties and laws on climate change are respected, protected, promoted and implemented?**
- (g) What, if any, is the nature of the obligations on African States to cooperate in the framework of international cooperation with other states especially historical emitters to limit global warming to below the 1.5°C threshold, to avert an existential climate crisis for present and future generations on the continent?**

Statement Regarding legal standing

94. This is a request for an Advisory Opinion to the Court by PALU,¹³⁰ an African organisation that is recognized by the AU through a Memorandum of Understanding (the “MoU”) entered in 2006 (annexed hereto as “**Annexure 1**”).

95. PALU submits that as an African organisation recognised by AU, under the Rules of the Court, and defined by this Honourable Court, it has demonstrated the requisite *locus standi* to file the present request for an Advisory Opinion.

96. This Honourable Court has defined “organisation” to include a non-governmental organisation and “African organisation” to refer to an organisation that is registered in an African State, has structures at the sub-regional, regional or continental levels, or undertakes its activities beyond the territory where it is registered. PALU therefore submits that it meets all the above criteria to be classified as an African organisation.

97. PALU further respectfully submits that its *locus standi* to request Advisory Opinions before this Honourable Court has been authoritatively established inter alia in: -

(a) Advisory Opinion No 001/2018 - Request by the Pan African Lawyers Union (PALU): On the compatibility of Vagrancy Laws with the African Charter on Human and Peoples’ Rights and other human rights instruments applicable in Africa

¹³⁰ Representing the African Climate Platform, a coalition of african civil society organisations, front-line communities, defenders, feminist groups, youth groups, public interest environmental and human rights lawyers, and indigenous communities for an advisory opinion on African States’ human rights obligations in the context of climate change in africa.

(b) Advisory Opinion No 001/2020 - Request by the Pan African Lawyers Union (PALU): On the right to participate in the government of one's country in the context of an election held during a public health emergency or a pandemic, such as the Covid-19 crisis

Interlinkages between the Rights espoused under the African Charter

98. Given the existential and consequential threats posed by climate change and its impact on the enjoyment of human rights, we believe that a rights-based climate approach is needed to address the challenges posed by climate change. It is our considered view that the human rights framework (primarily anchored on the Charter and other applicable regional and international human rights instruments) provides a robust legal framework upon which the Court may rely to define States' responsibilities and duties in the context of climate change. This is because the Charter clearly provides for collective rights and the explicit protection of the right to a healthy environment. In this regard, we invite the Court to consider the human rights obligations of the State in light of Charter provisions, more specifically, Articles 2, 3, 4, 5, 8, 9, 10, 11, 12, 14, 16, 17, 18, 19, 20, 21, 22, 23 and 24.

99. We assert that there is a link between climate change and the enjoyment or otherwise of these rights by the African citizenry. We additionally assert that African States must respect the rights of people in their jurisdiction in measures they take to respond to the climate crisis.

Paramountcy Of the Right to A Satisfactory Environment under Article 24 of the African Charter

100. African States, as custodians of the environment under both international and national law, have obligations to protect the rights to a satisfactory and clean environment, health, life, water, and sanitation, for both present and future generations in light of the negative impacts of climate change. They also have obligations to respect human rights in measures taken to combat the climate crisis. We invite the court to consider the positive obligations on

States in light of the above mentioned articles given the intersection of climate change and the enjoyment of these fundamental rights.

101. We take the view that Article 24 of the Charter is the preeminent provision upon which the Court should anchor obligations of States with regard to addressing the impact of climate change. Article 24 provides that:

All peoples shall have the right to a general satisfactory environment favourable to their development.

102. In the matter of *Social and Economic Rights Action Centre (SERAC) and another v. Nigeria*,¹³¹ the court held that, “The right to a general satisfactory environment under Article 24 of the Charter, (...) imposes clear obligations upon a government. It requires the state 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.”¹³²

103. The provision recognizes the importance of the environment for the well-being of individuals and peoples and emphasises the duty of States to protect and improve the quality of the environment. The provision recognizes the importance of the environment for the well-being of individuals and peoples and emphasises the duty of States to protect and improve the quality of the environment. This provision has been adequately interpreted in regional jurisprudence.¹³³ The African Commission,¹³⁴ noted

¹³¹ *Social and Economic Rights Action Centre (SERAC) and another v. Nigeria* (2001) AHRLR 60 (ACHPR 2001), <https://achpr.au.int/en/decisions-communications/social-and-economic-rights-action-center-serac-and-center-economic-15596>

¹³² Id para 52.

¹³³ See generally, *The Social and Economic Rights Action Centre for Economic and Social Rights (SERAC) v. Nigeria*, Communication No. 155/96, ()

¹³⁴ *The Social and Economic Rights Action Centre for Economic and Social Rights (SERAC) v. Nigeria*, Communication No. 155/96; *LIDHO and Others v Republic of Cote d’Ivoire* (Application 041/2016) [2023] AfCHPR 21 (5 September 2023).

that the right to a general satisfactory environment obliged the State 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. The interpretation of this section has become more urgent and critical given the level of the climate crisis today.

104. Article 18 of the Maputo Protocol provides for the right to a healthy and sustainable environment in the context of women's rights and we believe that this buttresses our claim for States to protect their citizenry from the otherwise harmful effects of climate change.

105. The right to a satisfactory environment implies that States have a duty to protect the environment from activities that may harm it, including those leading to climate change. States are obligated to take proactive measures to prevent harm to the environment, including actions that exacerbate climate change. This duty includes implementing policies and regulations to reduce greenhouse gas emissions, promote sustainable practices, and protect ecosystems vulnerable to climate impacts. Article 24 also encompasses the right to receive information concerning the environment. States are obliged to provide accessible and relevant information on climate change impacts, risks, adaptation strategies, and mitigation efforts to empower individuals and communities to participate in environmental decision-making processes.

106. The right to a satisfactory environment entails the promotion of sustainable development practices that balance economic growth with environmental protection. States are required to adopt policies and measures that promote sustainable practices, renewable energy sources, and climate-resilient infrastructure to mitigate the impacts of climate change. States must ensure the active participation of individuals and communities in environmental decision-making processes, particularly those related to climate change

adaptation and mitigation. This includes consulting with affected populations, indigenous groups, and other stakeholders to develop inclusive and effective climate policies. Given the transboundary nature of climate change, states are obligated to cooperate at the regional and international levels to address shared environmental challenges. This includes sharing knowledge, technology, and resources to enhance climate change adaptation and mitigation efforts across borders.

107. Such priorities must also be taken into account in responses to carbon offsets, including in the afforestation projects, which often harm the environment through unsustainable practices such as monoculture tree plantations, which reduce biodiversity, deplete water resources, and degrade soil quality. These projects may compromise the ability of local communities to live in an environment that supports their development, which may violate their right to a healthy environment favourable to their development having been used to certain lifestyles that has endured over several generations.

Linking the right to a general satisfactory environment and others

108. Article 16 of the Charter affirms the right to health for all individuals. We draw the Court's attention to the link between Article 16 and Article 24 of the Charter and argue that one may not be enjoyed without the enjoyment of the other. We see a clear connection between the obligation on States to take measures to protect the environment (Article 24) and the attainment of the right to health (Article 16). We therefore request the Court to set out obligations of States by linking mutually reinforcing provisions of the Charter and spelling out the obligations of States that will ensure a holistic enjoyment of rights by African citizenry in the context of climate change.

The intersection of the right to a general satisfactory environment and the right to economic, social, and cultural development (Article 22)

109. Article 22 of the Charter addresses the right to economic, social, and cultural development. It emphasises the importance of States parties to the Charter in ensuring the realisation of this right for individuals and peoples. Furthermore, Article 22 highlights the responsibility of States to promote and protect the right to development. It calls for the adoption of appropriate measures, including the formulation of policies and programs, to ensure equitable distribution of resources, eradicate poverty, and achieve sustainable development. We believe that this Article has overarching and overlapping obligations on States in light of the climate crisis and may require the Court to interpret it given its link to climate change.

The intersection of the right to life (Article 4) and the right to satisfactory environment (Article 24)

110. In deciding on the obligations on States *viz* climate change, we invite the Court to consider the relationship between the attainment of the right to a satisfactory environment and the right to life (Article 4 of the Charter). We argue that the right to life is central to climate change and climate justice. As demonstrated above, the negative effects of climate change are threatening human life and the quality thereof. We believe that the African citizenry can only enjoy the right to life *viz* the environment and climate change, if States put all the reasonably possible and necessary measures in place to ensure that the right to life of citizens is not put to risk by the effects of climate change.

111. Global warming and climate change are human rights issues. The right to life is inseparable from climate change matters, but its content and extent is still a matter of discourse. This entails, at the very least, that States should take effective measures to uphold the right to life and adopt measures to mitigate and adapt to climate change and prevent foreseeable loss of life. We would therefore exhort the Court to specifically make a finding on the

connection between climate change and the right to life and make recommendations to States on how the two mutually reinforcing rights (right to life and right to a satisfactory environment) may be attained through State action.

State Obligations

112. In the case of, *La LIDHO, LE MIDH, LA FIDH & others vs Republic of Cote d'Ivoire*,¹³⁵ this Court stated that, “a state’s obligation under international law includes the duty to respect, protect, promote and implement the rights enshrined in instruments to which it is a party”.¹³⁶

113. The Court further emphasised that a state that is a party to a convention does not have a mere duty to protect their citizens but has a positive duty to undertake measures which ensure the effective dissemination and enjoyment of the rights concerned, in terms of the African Charter.

114. African States therefore have a duty to implement the UNFCCC in so far as it impacts articles 2, 3, 4, 5, 8, 9, 10, 11, 12, 14, 16, 17, 18, 19, 20, 21, 22, 23 and 24 of the Charter. In relation to this, the Court held that, “...international human rights law imposes a fourfold obligation on States, being, to respect, protect, promote and implement the rights guaranteed by the conventions to which they subscribe. While the obligation to respect requires the State party to refrain from committing violations, the obligation to protect requires the State party to protect rights-holders from violation by third parties. The obligations to promote and implement require the State to take the necessary measures to ensure the effective dissemination and enjoyment of the rights concerned”.¹³⁷

¹³⁵ Application 041/2016 [2023] AfCHPR 21 (5 September 2023). <https://africanlii.org/akn/aa-au/judgment/afchpr/2023/21/eng@2023-09-05>.

¹³⁶ Id para 182.

¹³⁷ id 131 .

Sustainable Development Goals

115. Sustainable development refers to a development approach that balances economic growth, social progress, and environmental protection to meet the needs of the present generation without compromising the ability of future generations to meet their own needs.¹³⁸ It aims to promote inclusive and equitable development while minimising the negative impacts on ecosystems and natural resources. In order to properly contextualise and adequately frame the obligations of States in the context of Climate change, we ask the Court to consider some international instruments and other soft law sources on Sustainable Development goals that have expounded on our understanding of climate issues.

116. The UN has what are known as Sustainable Development Goals (SDGs)¹³⁹ which were adopted by UN member states in 2015 and provide a comprehensive framework for sustainable development. They encompass 17 goals and 169 targets, addressing various dimensions of sustainability, including poverty eradication, education, health, gender equality, clean energy, sustainable cities, and responsible consumption and production.

117. Further, during the 1992 United Nations Conference on Environment and Development (UNCED), UN member states adopted the Rio Declaration on Environment and Development.¹⁴⁰ The Rio Declaration emphasises the integration of environmental and developmental concerns. It affirms sustainable development as a guiding principle and sets out 27 principles to guide sustainable development efforts.

¹³⁸ The Brundtland Report: 'Our Common Future'

<https://www.are.admin.ch/are/en/home/media/publications/sustainable-development/brundtland-report.html>

¹³⁹ <https://sdgs.un.org/goals>.

¹⁴⁰ <https://culturalrights.net/en/documentos.php?c=18&p=195#:~:text=The%20Rio%20Declaration%20states%20that,and%20key%20sectors%20of%20societies>.

118. The United Nations Framework Convention on Climate Change (UNFCCC),¹⁴¹ which is the overarching instrument on climate change was ratified by nearly all countries. This convention recognizes the importance of sustainable development in addressing climate change. It acknowledges the different circumstances and capabilities of countries and emphasises the need for equity and common but differentiated responsibilities in climate action.

119. At regional level, the AU developed Agenda 2063.¹⁴² Agenda 2063 is a strategic framework for the socioeconomic transformation of Africa. It envisions a prosperous and sustainable Africa, guided by principles of sustainable development, good governance, and human rights. On the other hand, the African Charter on Human and Peoples' Rights recognizes the right of all peoples to development and highlights the interdependence between development, human rights, and the environment.

120. In addition, the AU has the African Union's Policy Framework for Sustainable Development in Africa.¹⁴³ This policy framework, also known as Agenda 2063 Aspirations, provides guidance for African countries in achieving sustainable development. It emphasizes inclusive growth, environmental sustainability, and resilience to climate change. These international and African legal instruments provide a foundation for the concept of sustainable development, guiding policymakers and stakeholders in promoting a holistic and balanced approach to development that considers economic, social, and environmental dimensions. The court may draw from these instruments to frame State obligations properly and adequately in the context of climate change.

¹⁴¹ <https://unfccc.int/>.

¹⁴² <https://au.int/en/agenda2063/overview>.

¹⁴³ <https://au.int/en/agenda2063/overview>.

Sustainable Use

121. Intricately tied to the concept of sustainable development is sustainable use. The concept of 'Sustainable Use' refers to the responsible and balanced utilisation of natural resources, taking into account the long-term preservation of ecosystems, the well-being of present and future generations, and the need to address climate change and environmental concerns.¹⁴⁴ It involves utilising resources in a manner that ensures their availability for future use and minimises negative impacts on the environment.

122. Sustainable use recognizes the importance of promoting economic and social progress while ensuring the protection of the environment. It emphasises that development should be pursued in a sustainable manner, considering the interdependence of economic growth, social well-being, and environmental conservation.¹⁴⁵ Further, sustainable use is closely linked to mitigation and adaptation efforts. It involves reducing greenhouse gas emissions, transitioning to clean and renewable energy sources, and promoting sustainable practices that contribute to climate resilience.¹⁴⁶ Sustainable use recognizes that addressing climate change is essential for the well-being of communities, the preservation of ecosystems, and the achievement of sustainable development goals.¹⁴⁷ We propose that these concepts be woven into and linked to relevant human rights obligations as set out in the Charter.

¹⁴⁴ <https://www.iisd.org/articles/deep-dive/sustainable-use-natural-resources-governance-challenge> .

¹⁴⁵ <https://www.un.org/sustainabledevelopment/sustainable-consumption-production/> .

¹⁴⁶ Id.

¹⁴⁷ Id.

123. Additionally, the Convention on Biological Diversity (UNCBD)¹⁴⁸ highlights the sustainable use of biological resources as one of its three objectives. It promotes the conservation and sustainable use of biodiversity, recognizing that biodiversity is crucial for sustainable development and addressing climate change.

Sustainable Development

124. At Global level, the UNFCCC emphasises the promotion of sustainable development in the context of climate change. It recognizes the importance of sustainable use and conservation of forests and other ecosystems, as well as the sustainable management of resources.¹⁴⁹

125. The United Nations Convention on Combating Desertification (UNCCD),¹⁵⁰ also emphasises the promotion of sustainable development. UNCCD supports and amplifies the UNFCCC when it pertains to climate change, land degradation and desertification. Its main objective is to combat desertification and mitigate the effects of drought in countries experiencing serious drought and/or desertification, particularly in Africa through effective action at all levels. It is supported by international cooperation and partnership arrangements, in the framework of an integrated approach which is consistent with Agenda 21,¹⁵¹ with a view to contributing to the achievement of sustainable development, which falls squarely within the ambit of climate change and recognizes the need for sustainable use of land and water resources.

¹⁴⁸ <https://www.cbd.int/> .

¹⁴⁹ Articles 3(4) and 4 (d) <https://unfccc.int/resource/docs/convkp/conveng.pdf> .

¹⁵⁰ <https://www.unccd.int/convention/overview#:~:text=The%20United%20Nations%20Convention%20to,and%20the%20effects%20of%20drought>.

¹⁵¹ <https://sustainabledevelopment.un.org/content/documents/Agenda21.pdf> <https://sustainabledevelopment.un.org/content/documents/Agenda21.pdf>

126. At regional level, the African Convention on the Conservation of Nature and Natural Resources emphasizes the sustainable use of natural resources. It highlights the need to conserve ecosystems and promote the sustainable management and utilization of natural resources for the benefit of present and future generations.

127. Regionally, the African Union's Policy Framework for Sustainable Development in Africa (Agenda 2063) emphasizes sustainable development in Africa. It recognizes the importance of sustainable use and management of natural resources to achieve social, economic, and environmental sustainability. These international and African treaty provisions reflect the recognition of sustainable use as a crucial principle for the protection of the environment, addressing climate change, and ensuring the right to development. They provide a framework for promoting sustainable practices, minimizing environmental degradation, and achieving a balance between development aspirations and the need to preserve natural resources for future generations. We take the view that these instruments can be relied upon to properly set out State obligations under the Charter as stated above.

The Protection of the Rights of Marginalised Groups

128. We particularly invite the Court to specifically delineate the rights of marginalised groups and set out the nuances relating to women, children, people with disabilities, the elderly, the environmental human rights defenders, and indigenous groups, including the right to free prior and informed consent.

Intergenerational Equity

129. Intergenerational equity is a key component to sustainability. This translates to protecting the environment and its finite natural resources from

exhaustion and extinction to enable the future generations to enjoy its utility. The ‘future generations’ in this instance are both the children living in the present day and those to be born in the future.¹⁵² Consequently, intergenerational equity deals with the protection and fulfilment of the rights of children.

130.Children have a right to be part of and involved in the processes and procedures that will impact their future and other future generations failure to do so will violate their right to an environment that is not harmful to their health or well-being.¹⁵³

131.The UNFCCC embeds intergenerational equity as a founding principle within the international climate change regime,¹⁵⁴ framed as the need to “protect the climate system for the benefit of present and future generations of humankind,”¹⁵⁵ which is further reinforced by the inclusion of sustainable development as a core principle within the UNFCCC framework and the Paris Agreement Preamble.

132.Article 22 of the African Charter as read with Principle 3 of the Rio Declaration points to the need for development to be sustainable and meet the developmental needs of present and future generations.

¹⁵²Svenja Behrendt, “ Facing the Future Conceiving Legal Obligations Towards Future Generations ” *Politics and Governance* Vol 12 (2024) at 2; Aoife Daly, Intergenerational rights are children's rights: Upholding the right to a healthy environment through the UNCRC *Netherlands Quarterly of Human Rights* 41 no. 3 (2023) 132 at 136 ; also see Stephen Humphreys *Against Future Generations*, *The European Journal of International Law* Vol. 33 no. 4 1061 at 1063

¹⁵³ *African Climate Alliance & Others v Minister of Minerals Resources and Energy & Others* (56907/2021) [2024] ZAGPPHC 1271 (4 December 2024) para 23 and 24.

¹⁵⁴ (Venn, 2019), Venn, A. (2019) 24—Social Justice and Climate Change. In: Letcher, T.M., Ed., *Managing Global Warming: An Interface of Technology and Human Issues*, Elsevier, Amsterdam, 711-728.

¹⁵⁵ (UNFCCC, 1992, Article 3),

133. In view of the foregoing, States, in particular African States have a positive duty to enact legislation aimed at protecting the environment's finite resources for the benefit of 'future generations.' This includes but is not limited to taking measures to mitigate greenhouse gas emissions, promoting sustainable development, and protecting the rights of future generations. Since children will be the major beneficiaries of the environment, it is prudent that their interests are placed before those of anyone else. In every decision affecting children, their best interests ought to be paramount, and State parties to conventions in Africa have a duty to protect present and arriving children's human rights.

134. States are bound not to harm the environment in view of protecting the interests of existing children and their enjoyment of both the present and future environment. When dealing with climate change, States should take into consideration the rights of children as these will either enjoy or endure the effects of climate change.

135. The UNFCCC, Kyoto Protocol, Paris Agreement, the UNCBD and the UNCCD, are the foremost climate change instruments that states depend on for guidance in mitigating the effects of climate change and 'saving the planet'. In interpreting the obligations of States in the region, we highlight the importance of these international agreements on climate issues and urge the Court to rely on them in consideration of this advisory opinion.

Consideration of obligations of States on violations by third parties

136. We invite the Court, in delineating obligations of States, to consider the question of how third parties,¹⁵⁶ should be held accountable for climate change violations. MNCs have been proven to contribute significantly to net carbon emissions leading to climate change. Multinational corporations and companies are responsible for nearly a fifth of climate-changing carbon

¹⁵⁶ third parties are, inter alia, non-state actors, international monopolies, large companies, multinational monopolies, Multinational Corporation and/or State-Owned Multinational Corporations.

dioxide emissions.¹⁵⁷ In 2023, the Carbon Majors database attributed 33.9 gigatonnes of carbon dioxide equivalent (GtCO₂e) emissions to 169 active companies—marking a 0.7% rise from the previous year. These emissions represented 78.4% of all global CO₂ emissions from fossil fuels and cement. Notably, more than half of these emissions were linked to just 36 companies.¹⁵⁸

137. Third parties account for the majority of carbon emissions. African States have an obligation to their citizens and to international human rights and climate change treaties, to address the impacts of climate change caused by third parties. Article 21 of the African Charter,¹⁵⁹ is instructive as to how African States ought to deal with third parties operating within their jurisdictions.

138. In the *Pulp Mills*,¹⁶⁰ case before the International Court of Justice, the court found that States had an obligation within the realm of duty of care to be, “vigilant in their enforcement and the exercise of administrative control applicable to public and private operators, such as the monitoring of activities undertaken by such operators.”¹⁶¹

139. The Charter provides that African States have the duty to eliminate all forms of foreign economic exploitation as usually brought by third parties in order for their people to fully enjoy the utility of their natural resources. Additionally, the same Article talks about considering international law

¹⁵⁷ Id.

¹⁵⁸ <https://influencemap.org/briefing/The-Carbon-Majors-Database-2023-Update-31397> .

¹⁵⁹ Article 21,(5) African Charter on Human and People’s Rights.

¹⁶⁰ *Pulp Mills on the River Uruguay (Argentina v. Uruguay)*, Judgment, I.C.J. Reports 2010, <https://www.icj-cij.org/sites/default/files/case-related/135/135-20100420-JUD-01-00-EN.pdf> .

¹⁶¹ Id.

principles when dealing with natural resources. The legal standards applicable to States' Parties when addressing these effects include international environmental agreements, national laws and regulations, environmental impact assessments and international human rights law amongst other standards.

140. The UNFCCC addresses the role of multinational companies in climate change through its principles and provisions. While the UNFCCC does not specifically mention multinational companies, it recognizes the importance of engaging all relevant stakeholders, including the private sector, in addressing climate change. For instance, the preamble to the UNFCCC reiterates States' 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. Under the Paris Agreement, countries are required to submit Nationally Determined Contributions (NDCs) outlining their climate change mitigation and adaptation targets and actions. Third parties operating within a country's jurisdiction can contribute to the achievement of these targets through their own actions, investments, and technological deployment¹⁶².

141. Once third parties are part of NDCs and regularly contribute, it becomes easier for African States to monitor their activities and the extent to which these companies are assisting in mitigating the negative impacts of climate change. As earlier established, third parties are heavy carbon polluters, but they also bring much needed investment and development opportunities to their host countries. As a result, there is a need to balance the benefits they may bring to host countries (particularly African countries) and their impact on climate change in the context of the human rights architecture of the continent.

142. Therefore, their participation and contribution to NDCs is one way of offsetting their carbon emissions. This is a way through which states can

¹⁶² Paris Agreement, Article 6 (8b)

address climate change attributable to third parties considering it is an accountability mechanism.

143. African States have obligations to protect and promote human rights, including the rights to life, health, a healthy environment, and cultural integrity. If the actions of multinational companies contribute to climate change impacts that violate these rights, states have a duty to take appropriate measures to prevent and mitigate harm. We exhort the Court to clearly articulate the obligations of States in the context of activities of third parties that may be contributing to the climate crisis.

Obligations of African States with respect to traditional emitters

144. We invite this court to consider the obligations of African States in respect of traditional emitters. African States have an obligation to advocate for climate justice on the global stage and engage in diplomatic efforts to hold traditional emitting countries accountable for their historical contributions to climate change. This includes participating in international climate negotiations and calling for ambitious emission reduction targets and financial support for adaptation and mitigation efforts in developing countries.

145. African States have a right to demand climate finance from traditional emitting countries to support adaptation and mitigation efforts. This financial support is crucial for vulnerable countries to build resilience to climate impacts, transition to low-carbon economies, and cope with the costs of climate-induced disasters.

146. African States can seek compensation from traditional emitting countries for the loss and damage caused by climate change impacts. This could include financial compensation for the costs of climate adaptation measures,

infrastructure damage, loss of livelihoods, and other climate-related losses suffered by African communities.

147. African States have an obligation to promote climate justice principles, which emphasise the ethical and moral responsibility of historically high-emitting countries to address the impacts of climate change on vulnerable regions like Africa. This includes advocating for equitable burden-sharing, fair access to resources, and the protection of human rights in climate action.

148. In accordance with Article 21, it is crucial to give careful consideration to the rights of individuals who have experienced and suffered loss and damage and as a consequence thereof, are demanding reparations due to the impacts of the Climate Crisis across the African continent. This is especially significant in terms of their legal rights to reclaim their land, natural resources and properties impacted by Climate Change and their quest and rights to seek recognition to receive fair compensation in instances of spoliation or wrongful dispossession.

149. Given the imminent existential crisis posed by global warming, with various scientific reports¹ pointing towards the inadequacies of targeting the 1.5°C threshold to stem the climate crisis, we invite the Court to delineate the obligations on the African States to put pressure on historical emitters to do more to bring down emissions and attain a target well below the 1.5°C threshold. Based on the available body of scientific evidence on the inadequacies of 1.5 degree threshold, it is important that Africa, as one of the most vulnerable continents, demand that historical emitters do more to bring the global average temperature further below 1.5°C. The 1.5°C threshold is considered to be, at best, a political compromise, but not a true "safe limit," World Meteorological Organization (WMO) reports that as

recently as January 2025 we reached temperatures of 1.75°C.¹⁶³ Given the above and the likely irreversible effects of global warming on present and future generations on the continent, we request the Court to draw from the ITLOS, the European Court², and the IPCC and thus our case .

Duty of Care

150. Furthermore, we invite the court to consider the duty of care requirement in so far as the effects of climate change are concerned. The duty of care is a foundational principle that guides decision-making and conduct in environmental matters. In the context of climate change, the Duty of Care often entails recognizing the potential harm caused by activities that contribute to climate change, such as carbon-intensive industries, deforestation, or unsustainable land use practices. It emphasises the need for proactive measures to mitigate and adapt to the impacts of climate change, safeguarding the rights and well-being of present and future generations.

151. A recent case from the *Milieudefensie et al. v. Royal Dutch Shell plc*,¹⁶⁴ indicates that establishing a legal duty of care could be an effective approach to holding corporations accountable for their contribution to climate change.¹⁶⁵

152. The 2020 *Urgenda Foundation v. The State of the Netherlands*¹⁶⁶ case marked a significant milestone in climate change litigation. The Supreme Court of the Netherlands ruled that the Dutch government had violated its

¹⁶³ <https://wmo.int/media/news/january-2025-sees-record-global-temperatures-despite-la-nina>

¹⁶⁴ *Milieudefensie et al. v. Royal Dutch Shell PLC* RC.26.358/16 https://climatecasechart.com/wp-content/uploads/non-us-case-documents/2024/20241112_8918_judgment.pdf

¹⁶⁵ *Id.*

¹⁶⁶ HA ZA 13-1396, C/09/456689, https://climatecasechart.com/wp-content/uploads/non-us-case-documents/2019/20191220_2015-HAZA-C0900456689_judgment-1.pdf .

duty of care, as stipulated in Articles 2 and 8 of the European Convention on Human Rights, by failing to reduce greenhouse gas emissions. The court's decision was based on Dutch constitutional law and international legal principles.

153. In another notable case, *Sharma v. Minister for the Environment in Australia*¹⁶⁷, the court recognized a new duty of care owed by the Federal Minister for the Environment to individuals under the age of 18 who may suffer harm from the climate change impacts of a coal mine.

154. In the case, of *Earthlife Africa Johannesburg v Minister of Environmental Affairs and Others*,¹⁶⁸ The case highlighted the government's obligation to consider environmental impacts in decision-making processes and to take proactive measures to prevent environmental harm.

155. The District Court,¹⁶⁹ at the Hague ruled that Royal Dutch Shell is obligated to reduce the carbon emissions of its activities by a net 45% by the end of 2030, relative to 2019 levels, as part of its corporate policy. This obligation includes making "best-efforts" to reduce or prevent carbon emissions from its business relationships, including end-users. The court based the company's reduction obligation on the unwritten standard of care in the Dutch Civil Code. This standard draws from the Kelderluik criteria, established by a judgement of the Supreme Court of the Netherlands, which outlines factors to consider in cases of negligence, similar to the "Learned Hand" formula used in Anglo-American legal systems.

¹⁶⁷ Minister for the Environment v Sharma (No 2) [2022] FCAFC 65, https://climatecasechart.com/wp-content/uploads/non-us-case-documents/2022/20220422_VID-389-of-2021-2021-FCA-560-2021-FCA-774-2022-FCAFC-35-2022-FCAFC-65_judgment.pdf

¹⁶⁸ *Earthlife Africa Johannesburg v Minister of Environmental Affairs and Others* (2017)2 All SA 519 (GP) <https://www.saflii.org/za/cases/ZAGPPHC/2017/58.html> .

¹⁶⁹ *Milieudefensie et al. v. Royal Dutch Shell PLC* RC.26.358/16, <https://climatecasechart.com/non-us-case/milieudefensie-et-al-v-royal-dutch-shell-plc/>.

156. In the Advisory Opinion brought before the International Tribunal for the Law of the Sea, (ITLOS) the court found that, although states had the right to exploit their own environmental and development policies with the resources in a state or territory, such right is complemented by the fact that each state had a reciprocal duty to protect the environment and to not cause damage to other states or of areas beyond the limits of national jurisdiction.¹⁷⁰

157. In the same proceedings the Court held that, “environmental impact assessments are to be conducted with any planned activity that might, have a significant impact or harmful changes caused by anthropogenic greenhouse gas emission. The Tribunal went on to further state that any environmental impact assessment process can include cumulative impact assessments or assessments that look at socio-economics impacts.”¹⁷¹

158. The standard also incorporates human rights principles, particularly the right to life and respect for private and family life. Additionally, soft law instruments endorsed by Royal Dutch Shell, such as the UN Guiding Principles on Business and Human Rights, the UN Global Compact, and the OECD Guidelines for Multinational Enterprises, played a role in interpreting the unwritten standard of care.

159. We therefore exhort the Court to make a specific finding that States have an obligation to ensure third parties comply with the duty of care in terms of the relevant principles under private international law.

¹⁷⁰ Request for an advisory opinion submitted by the commission of small island states on climate change and international law advisory opinion nr 31 2024 paragraph 186 – 188. <https://www.itlos.org/en/main/cases/list-of-cases/request-for-an-advisory-opinion-submitted-by-the-commission-of-small-island-states-on-climate-change-and-international-law-request-for-advisory-opinion-submitted-to-the-tribunal/>

¹⁷¹ id para 353 and 367.

Environmental Impact Assessments and the Duty of Care

160. We exhort the Court to direct States to actively require third parties like MNCs to comply with environmental standards that reduce carbon emissions and arrest climate change. This can take the form of ensuring that MNCs conduct comprehensive EIAs before undertaking major projects or activities that may have significant climate change impacts. EIAs assess the potential environmental consequences of a project and enable the identification of measures to mitigate or minimise those impacts.

161. States can use the findings of EIAs to inform decision-making and impose conditions on multinational companies to address climate change concerns. EIAs typically used to be carried out only to meet requirements of foreign donors, they are now mandated in over 22 Sub-Saharan countries as an important element of domestic environmental law and policy.¹⁷²

162. Under Article 12 of the Kyoto Protocol, there is a requirement for Parties to the Protocol to promote and facilitate the transfer of environmentally sound technologies, including those relating to energy, to assist developing countries in achieving sustainable development and reducing greenhouse gas emissions. This provision includes promoting the use of appropriate methods, such as EIAs, to assess the environmental impacts of technology transfer projects.

163. The language of Article 12 specifically mentions the need to assess the potential adverse effects on the environment, including those related to climate change, as part of the decision-making process for technology transfer projects. While not explicitly mandating the use of EIAs, this provision implies the importance of conducting comprehensive environmental assessments to evaluate the potential impacts of projects

¹⁷² The legal and regulatory framework for environmental impact assessments, A study of selected countries in Sub-Saharan Africa, Mohammah A. Bekhechi and Jean-Roger Merder, 2002

and ensure their compatibility with sustainable development goals and climate change mitigation efforts.

164. Once an EIA is conducted, it becomes easier for a State to regulate MNCs within their jurisdiction in view of pollution, environmental degradation and climate change effects flowing directly from their business enterprises.

165. We therefore exhort the Court to make a specific finding that States have an obligation to ensure third parties like MNCs comply with environmental regulations in line with the Charter provisions stated above.

C. ARE THERE PENDING PROCEEDINGS BEFORE THE AFRICAN COMMISSION ON HUMAN AND PEOPLE'S RIGHTS?

166. Under Rule 82(3) of the Rules of the Court, PALU submits that the present Request for an Advisory Opinion does not relate to any other matter pending before the African Commission.

D. SUMMARY OF THE REQUEST

167. The Pan African Lawyers Union (PALU), an African organisation recognised by the African Union (AU), has submitted a Request for an Advisory Opinion to the African Court on Human and People's Rights (the Court).

168. The Pan African Lawyers Union (PALU) makes this Request in collaboration with the African Climate Platform in parallel with African civil society organizations including, the Environmental Lawyers Collective for Africa, Natural Justice and resilient⁴⁰.

169. The Request is made in terms of Article 4(1) of the Protocol to the African Charter on Human and People's Rights on the establishment of an African Court on Human and People's Rights read with Rule 82(1) of the Rules of

the African Court. PALU asserts that the Court has the necessary jurisdiction to consider this request, which concerns the human rights obligations of African States in the context of the climate crisis.

170. The climate change crisis is highlighted as an existential threat to humanity and the planet, disproportionately impacting Africa, despite the continent's minimal contribution to greenhouse gas emissions. The United Nations has identified Africa as "the continent most vulnerable to the impacts of climate change". The sources detail that climate change has had, and will continue to have, significant consequences across the continent, impacting the enjoyment of numerous human and peoples' rights. Historical inequities, such as colonial exploitation, are noted as contributing to Africa's unique vulnerabilities and exacerbating the threats posed by climate change.

Vulnerable Populations

171. Climate change worsens existing inequalities, placing specific vulnerable groups at increased risk. These include: -

(a) Women and Girls: Often poorer, less educated, and excluded from decision-making, they are highly exposed to climate change impacts due to their roles in agriculture and water management. They are significantly more likely to die during extreme weather events and face increased risks to education and safety due to displacements and resource scarcity.

(b) Children: Africa has the world's youngest population, and children are uniquely vulnerable due to developing bodies and minds and limited capacity to adapt to climate shocks. They face risks like school disruptions, social disorder, food insecurity, diseases, and threats to

water and sanitation. Millions are at risk, yet they have been largely ignored in climate response and finance.

(c) The Elderly: Disproportionately affected by climate phenomena like heat, floods, droughts, and food insecurity due to age-related health conditions and reduced mobility.

(d) Indigenous Peoples: Particularly vulnerable due to their reliance on land and resources for subsistence and cultural practices. Climate impacts on land and resources directly threaten their survival and traditional ways of life. Carbon market projects implemented without their free prior and informed consent have further impacted their rights and access to land and resources.

(e) Environmental Human Rights Defenders: Face increasing assaults, murders, intimidation, harassment, and criminalization for opposing activities harmful to the environment. Their targeting is a violation of their rights to assembly and expression and a threat to democratic participation and environmental governance.

Legal Matters

172. PALU's request is grounded in the African Charter and other regional and international human rights and climate change instruments. PALU emphasizes the right to a general satisfactory environment (Article 24 of the African Charter) as a preeminent provision, noting that it imposes clear obligations on States to prevent pollution, promote conservation, and ensure ecologically sustainable development. This right is linked to the right to health (Article 16), development (Article 22), and life (Article 4), highlighting that the enjoyment of these rights is interdependent in the

context of climate change. The right to a satisfactory environment implies State duties to reduce emissions, promote sustainable practices, provide information, ensure public participation, and cooperate internationally.

173. The Request asks the Court to determine several key issues, including: -

- (a) The Court's jurisdiction over African States' human and peoples' rights obligations regarding the climate emergency.
- (b) The interpretation and application of custom and treaty law concerning State obligations on climate change.
- (c) Specific State human rights obligations towards past, present and future generations affected by climate change.
- (d) Positive obligations of States to protect vulnerable populations, including environmental human rights defenders, indigenous communities, women, children, the elderly, and people with disabilities.
- (e) Applicable obligations concerning a just, transparent, equitable, and accountable transition.
- (f) Applicable obligations in implementing adaptation, resilience and mitigation measures.
- (g) Applicable obligations concerning compensation for loss, damage and reparations.
- (h) Responsibilities of African States regarding violations by third parties (international monopolies, multinational corporations) operating within their jurisdiction. These entities contribute significantly to emissions and States have obligations under the Charter (Article 21) and international law to regulate and monitor their activities. The importance of Environmental Impact Assessments (EIAs) in regulating third-party activities is highlighted.
- (i) Obligations of African States concerning traditional emitters (historically high-emitting countries), including advocating for climate justice,

demanding climate finance, seeking compensation for loss and damage, and promoting equitable burden-sharing.

- (j) The application of the duty of care principle for States and potentially corporations in addressing climate change impacts.

174. PALU emphasizes that African States have a fourfold obligation under international human rights law: to respect, protect, promote and implement the guaranteed rights, including a positive duty to undertake measures ensuring effective dissemination and enjoyment of these rights. Concepts such as "Sustainable Development," "Sustainable Use," and "Intergenerational Equity" are presented as crucial interpretative tools for framing State obligations.

PREFERRED LANGUAGE OF CORRESPONDENCE

The preferred language of correspondence is English.

Signed and dated at **Arusha, Tanzania**, this 2nd day of **May 2025**

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