

African Court on Human and Peoples' Rights

Request for an Advisory Opinion on the Obligations of States with Respect to
the Climate Change Crisis

Amicus Brief submitted by Fernand Guevara Mekongo Mballa on Climate Change and the Principle of Common but Differentiated Responsibilities in Africa

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I. Statement of interest

We submit this *amicus curiae* brief to the African Court on Human and People's Rights (Court) in the matter of the Request by the Pan African Lawyers Union (PALU) for an Advisory Opinion on the Obligations of States with Respect to the Climate Change Crisis. Our interest in submitting this amicus is motivated by our position as Doctoral candidate in international law, writing a thesis on the Principle of Common but Differentiated Responsibilities under the direction of Professor Jean Didier Boukongou. Additionally, we currently serve as co-leader for Africa at the Sabin Center's network of rapporteurs on climate change at Columbia University (New –York). Our other involvements include membership of the International Public Policy Association (IPPA). On this capacity, we chaired the panel on “*Access to clean energies in developing countries by the year 2030: How to increase access by the year 2030 and beyond in the context of climate change?*” during the IPPA Conference in Chiang Mai, Thailand, (July 2-July 4, 2025). We also presented a paper titled “*the local effects of economic partnership agreement between Cameroon and European Union*” during the 4th International Workshop on Public Policy Guadalajara 2024. Our paper proposal titled “*Public policy responses to climate change at regional levels: a comparative analysis between MERCOSUR and the AFRICAN UNION*” has been accepted for presentation in the T02W01 panel titled: *What can be done? Comparing public policy responses and climate change issues across regions as two sides of the same challenge*, for the 5th International Workshop on Public Policy to be held in Ottawa (Canada) next July. Further training courses in law include: *Key Essentials: Trade Rules, Sustainable Development and the Law*, delivered by Cambridge University (March 2026). Some of our publications include “Lessons from the Escazu Agreement for Environmental and Human Rights Protection in Africa”, Book chapter in Ivo Ganchev (Ed), *Lessons from Regional Responses to Health, Environmental and Security Challenges in Latin America*, Vernon Press, January 2024. Under the direction of Maria Antonia Tigre and Koley Silverman Roati, *ITLOS Advisory Opinion on Climate Change: Summary of Briefs and Statements Submitted to the Tribunal*, Report, 10, 2023. Available at: https://scholarship.law.columbia.edu/sabin_climate_change/208/.

The purpose of this brief is to explain how the principle of common but differentiated responsibilities (CBDR) should be implemented in the cooperation between African countries and developed countries that bear a historical responsibility in the climate change. Our analysis is based on the specific vulnerability of the African continent to climate change, history, climate law, science and regional legal instruments of the African Union (AU).

II. Introduction and summary

The African Court on Human and People Rights (ACrHPR) has been requested by the Pan African Lawyers Union (PALU) for an advisory opinion on the obligations of states with respect to the climate change crisis. This request is the latest in a wave of advisory opinions requests on climate change, to which regional or international courts were subject. Indeed, the International Tribunal of the Law of the Sea (ITLOS), the Inter American Court on Human Rights, and the International Court of Justice have one after the other, delivered advisory opinions on climate change, hence highlighting its centrality as a global concern. The request raises among others the issue of state obligations regarding international cooperation, most specifically the 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.

The purpose of this Amicus is to highlight how the CBDR may help (re)define the cooperation between countries that bear an historical responsibility in climate change and African countries. Part I addresses the specific vulnerability of the African continent to climate change. Part II explains the connection between History and African vulnerability to climate change through colonization and after the independences. Part III provides the legal rationale for an African exception the CBDR principle. Part IV, elaborates on how the normative and institutional framework of the AU could make the CBDR effective and transformative in Africa.

Key conclusions: First, African vulnerability to climate change is neither natural nor accidental, instead, it has its roots in the relationship between Africa and countries which bear historical responsibility in climate change, namely former colonial Masters.

Secondly, this historical vulnerability explains the inability of African Countries to address climate change with the same financial and technological resources as developed countries do.

Thirdly, the climate change regime provides grounds for an African adaptability for the CDBR principle.

Finally, AU's normative and institutional framework provides the background for a transformative cooperation between Africa and developed countries in the implementation of the CBDR principle.

I. The African specific vulnerability to climate change.

1. The overall impact of climate change in Africa compared to developed countries.

Compared to other regions of the world, Africa is specifically vulnerable to climate change. This peculiarity is evidenced by science. According to the IPCC 2022 report, Most African countries are expected to experience high temperatures unprecedented in their recent history earlier in this century than generally wealthier, higher latitude countries (*high confidence*). As low latitudes have lower internal climate variability (e.g. low seasonality), low-latitude African countries are projected to have their populations exposed to large increases in frequency of daily temperature extremes (hotter than 37 99.9% of their historical records) earlier in the 21st century compared to generally wealthier nations at higher latitudes¹. Additionally, although higher warming rates are projected over high latitudes during the first half of this century, societies and environments in low-latitude, low-income countries are projected to become exposed to unprecedented climates before those in high latitude, developed countries².

2. The regional impacts of climate change in Africa

The specificity of African vulnerability to climate change is further evidenced at regional levels. In northern Africa, the same source highlights that mean and seasonal temperatures have increased at twice the global rate over most areas (*high confidence*)³. Concerning precipitations, their annual mean decreased over most of the region between 1971–2000, with gradual recoveries in some countries like Algeria and Tunisia since the year 2000, and in Morocco since the year 2008. Similarly since the 1960s days with more than 10 mm of rainfall have decreased and the number of consecutive dry days have increased in the eastern parts of North Africa, while in the western parts of North Africa heavy rainfall and flooding has increased. In West Africa, mean annual and seasonal temperatures have increased 1–3°C since the mid-1970s with the highest increases in the Sahara and Sahel. The frequency of very hot days (TX >35°C) and tropical nights have increased by 1–9 days and 4–13 nights per decade between 1961–2014, and cold nights have become less frequent. In the 21st century, heat waves have become hotter, longer and more extended compared to the last two decades of the 20th century⁴. Concerning precipitations, negative trends in rainfall accompanied by increased rainfall variability were observed between 1960s– 1980s over West Africa, caused by a

¹ IPCC WGII Sixth Assessment Report, Chapter 9, 9-46

² Ibidem.

³ Ibidem, 9-51

⁴ Ibidem, 9-52

combination of anthropogenic aerosols and greenhouse gases emitted between 1950s–1980s. Declining rainfall trends ended by 1990 due to the growing influence of greenhouse gasses and reduced cooling effect of aerosol emissions, with a trend to wetter conditions emerging in the mid-1990s accompanied by more intense, but fewer precipitation events. A shift to a later onset and end of the West African monsoon is also reported in West Africa and Sahel (*low confidence*). Between 1981–2014 the Gulf of Guinea and the Sahel have experienced more intense precipitation events, and the frequency of mesoscale storms has tripled. Extreme heavy precipitation indices show increasing trends from 1981–2010, increasing high flow events in large Sahelian rivers as well as small to mesoscale catchments leading to pluvial and riverine flooding. Meteorological, agricultural and hydrological drought in the region has increased in frequency since the 1950s (*medium confidence*)⁵.

In Central Africa, despite the lack of first-hand observation on the ground, the IPCC notices mean annual temperature has increased by 0.75°C–1.2°C since 1960. The number of hot days, heat waves and heat wave days increased between 1979–2016 and cold extremes have decreased. Additionally, lack of direct observation in the ground results in *medium confidence* about the increase in the total number of heat extremes over the region⁶. With regard to precipitations, the abovementioned lack of ground observation results in *low confidence* in changes in extreme rainfall. Yet there is some evidence of drying since the mid-20th century through decreased mean rainfall and increased precipitation deficits, as well as increases in meteorological, agricultural and ecological drought (*medium confidence*). Finally, Southern and eastern Central Africa were identified as drought hotspots between 27 1991–2010⁷.

In Eastern Africa, mean temperatures over the region have increased by 0.7°C–1°C from 1973 to 2013, depending on the season, with the greatest increases found in northern and central regions. As for precipitations, short rains (October–November–December) have shown a long-term wetting trend from the 1960s until present over Equatorial East Africa. Comparatively, the long rainfall season (March–April–May) has experienced a long-term drying trend between 1986 and 2007, with rainfall declines in each of these months and a shortening of the wet season. Furthermore, drought frequency has doubled from once every six to once every three years and has become more severe during the long and summer rainfall seasons than during the short rainfall season since the year 2005. Lastly in Southern Africa, mean annual temperatures over the region have increased by between 1.04°C and 1.44°C over the period

⁵ IPCC WGII Sixth Assessment Report, Chapter 9, 9-53.

⁶ Ibidem.

⁷ Ibidem.9-54

1961–2015 depending on the observational dataset and in northern Botswana and Zimbabwe increasing 1.6°C–1.8°C between 1961–2010. The annual number of hot days have increased in southern Africa over the last four decades and the occurrence of cold extremes, including frost days, have decreased⁸. Regarding precipitations, mean annual rainfall has increased over parts of Namibia, Botswana and southern Angola during 1980–2015 by between 128 and 256 mm. By contrast, since the 1960s, decreasing precipitation trends have been detected over the South African winter rainfall region (*high confidence*) and the far eastern parts of South Africa (*low confidence*). Furthermore, the frequency of meteorological drought increased by between 2.5–3 events per decade since 1961 and the probability of the multi-year drought over the southwestern cape of South Africa increased by a factor of three in response to global warming and the number and intensity of extreme precipitation events have increased over the last century⁹.

3. The various losses and damages associated with climate change in Africa

These variations in temperatures and precipitations have generated loss and damages including on ecosystems and biodiversity, human habitat and infrastructures, economy and means of subsistence as well as heritage. Regarding ecosystems and biodiversity, they are impacted in various ways. Terrestrial ecosystems are now subject to woody plant expansion at the rate of 2,4% per decade, especially in grasslands and savannahs. According to the IPCC, there is high agreement that this is attributable to increased CO₂, warmer and wetter climates, declines in burned area and release from herbivore browsing pressure, but the relative importance of these interacting drivers remains uncertain¹⁰. Woody encroachment is the dominant trend in the western and central Sahel, occurring over 24% of the region, driven primarily by shifts in rainfall timing and recovery from drought. Shifts in demography, geographic ranges and abundance of plants and animals are also observed. An increase in frequency and intensity of hot, dry weather after wildfires led to a long-term decline in plant biodiversity in Fynbos since the 1960s. The death of many of the African oldest baobabs is also observed. Regarding animals, there is strong evidence that vegetation change caused by global warming is having chronic sublethal impacts, including reduced foraging efficiency and loss of body mass, with heat extremes driving mass mortality events in birds and bats. Also, increased woody cover has decreased the occurrence of bird, reptile and mammal species that require

⁸ IPCC WGII Sixth Assessment Report, Chapter 9, 9-56.

⁹ Ibidem.

¹⁰ Ibidem, 9.6.1.1 *Terrestrial Ecosystems*, 9-61

grassy habitats. Additionally, drop in fruits production due to global warming has resulted in the decrease of the body condition of fruit-dependent forest elephants by 11% 18 from 2008–2018¹¹.

Freshwater ecosystems are very sensitive to climate variations. The IPCC observes that anthropogenic climate change resulted in the increase of water temperatures from 0.2°C to 3.2°C in several lakes over the 1927-2014 period. Climate change also altered the physical and chemical properties of inland water bodies, affecting water quality and productivity of algae, invertebrates and fish (*high confidence*)¹². Global warming further caused the reduction of biological productivity, changes in the insect's emergence time, and loss of fish habitats. The consequences of all these impacts are detrimental not only to biodiversity per se, but also for human livelihood, as they cause reduced fisheries productivity as well as reduced water quality and supply.

The IPCC further finds that marine ecosystems are also negatively impacted by anthropogenic climate change. It alters physical and chemical properties of seawater (increased temperature, salinity and acidification, and changes in oxygen concentration, ocean currents and vertical stratification), (*high confidence*)¹³. The ecosystems of the West Africa coastline are especially vulnerable because of extensive low-lying deltas exposed to sea level rise, erosion, saltwater intrusion and flooding. Anthropogenic global warming may partly have caused shifts in the distribution of marine species in southern Africa, including anchovy, sardine, hake, rock lobster and seabirds. Climate change further compromises the ecosystems of mangroves, seagrasses and coral reefs (*medium confidence*). Activities like oil and gas extraction, deforestation, canalization and de-silting of waterways have been the largest factors in mangrove destruction in West Africa. Mangrove cover was reduced 48% in Mozambique in 2000 from tropical cyclone Eline, with 100% mortality of seaward mangroves dominated by *Rhizophora mucronata*. Recovery of mangrove species was observed years later in sheltered sites¹⁴.

Loss and damage from anthropogenic climate change heavily impacts human housing and infrastructures. Between 2010 and 2020, more than 166 million people were impacted by dangers associated with climate change in Africa¹⁵. These have manifested through the rise in

¹¹ Ibidem, 9-62.

¹² IPCC WGII Sixth Assessment Report, Chapter 9, 9.6.1.3 Freshwater Ecosystems, 9-63.

¹³ Ibidem, 9.6.1.4 Marine Ecosystems, 9-64

¹⁴ Ibidem.

¹⁵ Ibidem, IPCC, *Climate change 2022, Impacts, Adaptation and vulnerability*, Chapter 9, pp 9-17, 9-18.

sea level, drought, floods, tropical cyclones, and landslides. For example, in Egypt in 2010, 2011, and 2015, storms and the rise in sea level caused a water level increase of about 1.2 m compared to sea level¹⁶. This resulted in coastal flooding and damage to the nearby infrastructure. In 2015, in the city of Alexandria, heavy rainfall led to flooding, causing contamination of the drinking water network which became brackish, reduction of the water supply to health services, as well as contamination of the drinking water service by seawater.

Similarly, in the far north of Cameroon, the floods of the Chari River and its tributaries regularly cause flooding with significant damage to the populations. In November 2023, in the town of Blangoua in the department of Logone and Chari, nearly 10,000 people were affected and 23 households were displaced¹⁷. In October of the previous year¹⁸, the same phenomenon affected the departments of Mayo Danay and Logone and Chari. This resulted in the displacement of 38,000 households (or about 200,000 people), the flooding of 10 districts in the city of Kousséri, and 150 villages in the districts of Zina, Logone-Birni, Makary, and Blangoua. In addition, 18,200 homes were destroyed, 126 schools were flooded, depriving 32,813 children (including 15,826 girls) of access to education. 27,000 hectares of land were destroyed, 5,886 animals lost, 294 water points contaminated, and 1,194 latrines submerged.

In Southern Africa, the drought caused by the El Niño phenomenon in 2015-2016 impacted 8.6 million people in the Western Cape region and caused an estimated \$2.2 billion in damages. It led to a 75% decrease in energy production at the Kariba Dam in Zambia and a 34% decrease at the Cahora Bassa Dam in Mozambique, creating chaos in the electricity supply¹⁹.

Regarding the floods in Malawi in 2019, nearly 975,600 people were affected. This resulted in 60 deaths, 672 injuries, and 86,976 displaced persons. 1,841 km of roads, valued at an estimated US\$31.6 million, were destroyed. The total cost of losses and damages was as follows:²⁰ : housing (\$106.9 million), energy (\$3.1 million), water and sanitation (\$6.4 million), transportation (\$37 million), total cost of destroyed physical property (\$157.7 million).

In the city of Blantyre alone: housing (\$29.87 million), energy (\$0.38 million), transportation (\$1.72 million).

Tropical cyclones Idai and Kenneth struck Mozambique, Zimbabwe, and Malawi in 2019. In Mozambique, Cyclone Kenneth destroyed 40,000 homes and 19 health centers.

¹⁶ . For comparison, the level in the Nile Delta region is 0.4-0.5 m

¹⁷ Mfochivé O.F, Rübe C., Kuhnenn K., op.cit., p12

¹⁸ Ibidem.

¹⁹ IPCC, *Climate change 2022, Impacts, Adaptation and vulnerability*, op.cit., p 9-100

²⁰ Ibidem.

Specifically in Mozambique, Cyclone Idai destroyed or damaged 1,345 km of power transmission lines, 10,216 km of distribution lines, two 90 MW power plants, 30 substations, and 4,000 transformers, with total damages estimated at US\$133.5 million and losses in the energy sector estimated at US\$47.9 million. The human toll in Mozambique reached 1.5 million, including 602 deaths. Notably, the city of Beira is considered the first city in the world to be wiped off the map as a result of climate change. Indeed, 60% of the city was flooded, 70% of homes were damaged or completely destroyed, and 90% of the energy system was damaged²¹.

Furthermore, according to the IPCC, small islands, low-lying coastal areas and deltas²², are more vulnerable to the risks inherent in rising sea levels. These risks apply in all cases to all or part of the continent, and negatively impact the GDP of the affected states in Africa as elsewhere in the world.²³

Landslides are also a significant threat. In August 2017 in Freetown, at least 500 people were killed and 600 were reported missing. 3,000 people were left homeless and 349 houses were destroyed. Many sanitation facilities and educational buildings were also destroyed. The total cost of these landslides was estimated at US\$31.6 million. In Yaoundé in October 2023, torrential rains triggered a landslide that resulted in the deaths of at least 30 people, as well as extensive property damage.

Economically, rising average temperatures and decreased rainfall have reduced economic output and growth in Africa more than anywhere else in the world. According to some estimates, Gross National Product per capita (GNP/capita) is 13.1% lower than it would have been on the continent had climate change not occurred since 1991, although the impacts vary between countries. Furthermore, a 1°C temperature increase over a 20-year period would have reduced growth by 0.67 percentage points, with the greatest impacts recorded in the Central African Republic, the Democratic Republic of Congo, and Zimbabwe.²⁴.According to the IPCC, had it not been for the decline in rainfall observed between the 1960s and 2000, the

²¹ Ibidem.

²² GIEC, 2018 : résumé à l'intention des décideurs, réchauffement planétaire de 1,5°C, rapport spécial du GIEC sur les conséquences d'un réchauffement planétaire de 1,5°C par rapport aux niveaux préindustriels et les trajectoires associées d'émissions mondiales de gaz à effet de serre, dans le contexte du renforcement de la parade mondiale au changement climatique, du développement durable et de la lutte contre la pauvreté, conclusion B.2.3, https://www.ipcc.ch/site/assets/uploads/sites/2/2019/09/IPCC-Special-Report-1.5-SPM_fr.pdf. (Accessed on February 12th, 2026).

²³ Intergovernmental Panel on Climate Change, *Climate Change 2014: Impacts, Adaptation and Vulnerability. Part A: Global and Sectoral Aspects. Contribution of Working Group II to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change, Summary for Policymakers*, 2014, p.17, https://www.ipcc.ch/site/assets/uploads/2018/02/ar5_wgII_spm_en.pdf (accessed on February 12th, 2026).

²⁴ IPCC, *Climate change 2022, Impacts, Adaptation and vulnerability*, op.cit. p 9-130

GDP gap between Africa and the rest of the world would have been 15-40% smaller than it is now.²⁵

The IPCC also documents the impact of climate change on cultural heritage in Africa. It is highly likely that climate change will affect the millennia-old rock art that abounds on the continent and is extremely fragile in the face of the elements. Furthermore, rising sea levels are permanently submerging artifacts and shipwrecks submerged by climate change or other geological factors. This is the case of the ancient Egyptian city of Thonis-Heraclion. On land, intangible heritage is also suffering the effects of climate change. Alone or in conjunction with inappropriate governance decisions, it can threaten the preservation of this heritage. For example, questionable land-use decisions coupled with decreased rainfall have reduced the flow of the Yobe River in Nigeria and jeopardized the Bade fishing festival due to declining fish stocks.

II. The Rights affected by the consequences of climate change in Africa

1. The rights within the African Charter on People and Human Rights

a) *Individual rights*

From the consequences climate change, With regard to the African Charter, the rights impacted by climate change are In their individual dimension, the rights impacted by climate change include the right to life (Article 4), the right to receive information (article 9) which is relevant here about the risks associated with climate change, the right to property (article 14), which is relevant regarding the damages on properties caused by climate change, the right to the best attainable state of physical and mental health (article 16) relevant considering the impacts of climate change on health, the right to education and culture (article 17 in conjunction with article 25) considering the consequences of climate change on towns and cities including rural areas as above-mentioned, as well as its impact on the ability of people to sustain/perpetuate their cultural practices. women, children and elder people are amongst the most vulnerable persons to climate change (per article 18 §3 and 4 the African Charter provides for their protection).

b) *Collective rights*

Regarding collective rights, the right for all people self-determination is enshrined in article 20 of the African Charter which stipulates that “All peoples shall have right to existence. They shall have the unquestionable and inalienable right to self-determination. They shall freely

²⁵ Ibidem

determine their political status and shall pursue their economic and social development according to the policy they have freely chosen”. However, the consequences of climate change are an impediment to the self determination of African people because they cannot more freely pursue their economic and social development according to the policy they have freely chosen, because climate change factors in.

More so, it impinges on the right of African people to the free disposal of their wealth and natural resources enshrined in article 21 of the African Charter. Owing to climate change, African countries are now constrained in the free disposal of their wealth and natural resources. For example, because of climate change, they may now be constrained or compelled to phase out the use of fossil fuels, hence, relinquish the very leverage that enabled the prosperity of developed country which bear a historical responsibility in the climate change. Indeed, according to the ICJ’s findings on the Advisory Opinion on State Obligations related to climate change, “failure of a State to take appropriate action to protect the climate system from GHG emissions — including through fossil fuel production, fossil fuel consumption, the granting of fossil fuel exploration licenses or the provision of fossil fuel subsidies — may constitute an internationally wrongful act which is attributable to that State”²⁶.

The African Charter also prescribes the right of all people to “their economic, social and cultural development with due regard to their freedom and identity and in the equal enjoyment of the common heritage of mankind” (article 22). In this perspective, climate which enables and sustains life on earth for millions years now, can be considered a common heritage for mankind, whose enjoyment is unequal nowadays because the consequences of global warming are more acute in Africa compared to other regions of the world.

Most importantly, climate change has an impact on the quality of the environment. The African Charter acknowledges that “all peoples shall have the right to a general satisfactory environment favorable to their development” (article 24). The abovementioned consequences and impacts of climate change do not favor the development of African Countries. Furthermore, in ICJ’s Advisory Opinion on the Obligations of States in Respect of Climate Change, the Court found that “a clean, healthy and sustainable environment is a precondition for the enjoyment of many human rights, such as the right to life, the right to health and the right to an adequate standard of living, including access to water, food and housing. The right to a clean, healthy and sustainable environment results from the interdependence between human rights and the

²⁶ ICJ, *Obligations of States In Respect of Climate Change*, Advisory Opinion, 23rd of July 2025. §427

protection of the environment. Consequently, in so far as States parties to human rights treaties are required to guarantee the effective enjoyment of such rights, it is difficult to see how these obligations can be fulfilled without at the same time ensuring the protection of the right to a clean, healthy and sustainable environment as a human right. The human right to a clean, healthy and sustainable environment is therefore inherent in the enjoyment of other human rights”²⁷.

Lastly, climate change also affects human security because it is perceived as a multiplier of the existing threats. The African Charter prescribes that “All peoples shall have the right to national and international peace and security” (article 23). Within the UN, the link between climate change and security is mentioned in resolutions on security issues about African countries. In 2017, during a Security Council’s visit mission in the Lake Chad region, then Niger’s President Mahamadou Issoufou linked the shrinking of the Lake Chad - which had lost nearly 90% of its area since 1960 and its harmful effects on the living conditions of nearby populations to climate change- , subsequently creating the conditions for the emergence of the terrorist group Boko Haram. This led to the adoption of resolution 2349²⁸ in 2017 by the Security Council, which emphasized the “adverse effects of climate change and ecological among other factors on the stability of the Region, including through water scarcity, drought, desertification, land degradation, and food insecurity, and emphasize[d] the need for adequate risk assessments and risk management strategies by governments and the United Nations relating to these factors”.

Resolution 2448²⁹ adopted in 2018 about the Central African Republic recognizes in its 21st Preamble “ the adverse effects of climate change, ecological change and natural disasters, among other factors, on the stability of the Central African Region, including through drought, desertification, land degradation, and food insecurity, and [*stressing*] the need for adequate risk assessment by the United Nations relating to these factors and for long - term strategies by the governments of the Central Africa Region and the United Nations to support stabilization and build resilience”.

The 21st Preamble of resolution 2429³⁰ adopted in 2018 of the UN Security Council on Sudan recognizes “the adverse effects of climate change, ecological changes and natural

²⁷ ICJ, *Obligations of States In Respect of Climate Change*, *op.cit*§393

²⁸ S /RES/2349

²⁹ S/RES/2448 (2018)

³⁰ S/RES/2429 (2018)

disasters, among other factors, on the situation in Darfur, including through drought, desertification, land degradation and food insecurity”.

Resolution 2480 on Mali adopted in 2019 emphasizes in its 15th preamble “ the need for adequate risk management strategies, by the Government of Mali and the United Nations, of ecological changes, natural disasters, drought, desertification, land degradation, food insecurity, energy access, climate change, among other factors, on the security and stability of Mali”.

The 9th Preamble of Resolution 2472³¹ on Somalia adopted in 2019, emphasizes “the need for adequate risk assessment and risk management strategies by the FGS and the UN, of climate change, other ecological changes, natural disasters, energy access, and other factors on the stability of Somalia”.

In the 18th Paragraph of the Statement by the President of the Security Council on “Peace consolidation in West Africa” in July 2020, “ The Security Council recognizes the adverse effects of climate change, energy poverty, ecological changes and natural disasters, including through drought, desertification, land degradation and food insecurity among other factors on the Stability of West Africa and the Sahel Region and continues to stress the need for long term strategies, based on risk assessments, by governments and the United Nations, to support stabilisation and build resilience and encourages UNOWAS to continue to integrate this transformation on its activities”³². The risks generally associated with climate change are :

- Local resource competition.
- Livelihood, insecurity and migration.
- Extreme weather events and disasters.
- Volatile food prices and provisions.
- Transboundary water management
- Sea level rise and coastal degradation.

2. Other rights

Yet, the African Charter does not provides for the rights to food, water and housing. The right to food is a right that is extremely vulnerable to climate change in Africa. The IPCC observes that issues related to food systems are all encompassing and include apart

³¹ S/RES/2472 (2019)

³² S/PRST/2020/7

from production, “processing, storage, distribution and consumption”³³. The related knowledge however, is only focused on production, hence limiting the knowledge about the impact of climate change of the right to food. It further notes that extreme climate events have been key drivers in rising acute food insecurity and malnutrition of millions of people requiring humanitarian assistance in Africa (*high confidence*). Indeed, Between 2015 and 2019, an estimated 38 45.1 million people in the Horn of Africa and 62 million people in eastern and southern Africa required humanitarian assistance due to climate-related food emergencies. Additionally, children and pregnant women experience disproportionately greater adverse health and nutrition impacts (*very high confidence*). On a projective perspective, the IPCC finds that “future climate warming will likely have a substantial impact on food security in Africa and is anticipated to coincide with low adaptive capacity as climate change intensifies anthropogenic stressors, as 85% of Africa's poor live in rural areas and mostly depend on agriculture for their livelihoods”³⁴..

The right to water is closely related to the right to food and is subsequently impacted by climate change. According to the IPCC, “changes in water quantity and quality due to climate change are expected to affect food availability, stability, access and utilisation”³⁵. In Africa specifically, there is increase in water scarcity, as illustrated by the droughts in Cape Town between 2015 and 2018. According to the IPCC projections, By 2050, up to 921 million additional people in Africa could be exposed to climate change-related water stress, while up to 459 million could experience reduced exposure³⁶. This highlights the severity and potential consequences of water scarcity due to climate change in Africa, especially in major towns.

The right to housing is under threat because of climate change in, Africa, especially in association with urban settlements. According to the IPCC, “urban vulnerabilities and exposure to climate change are increasing (*medium to high confidence*) and are influenced by patterns of urban settlement and housing characteristics”³⁷. It further finds that about 70% of African cities are highly vulnerable to climate shocks of which small- and medium-sized towns and cities are more at risk. The most important threats to the right to housing especially in urban settlements are flooding and water scarcity generated by drought. Almost one-third of African cities with

³³ IPCC *WGII Sixth Assessment Report*, Chapter 9, 8, p9-83

³⁴ Ibidem, p9-84

³⁵ IPCC, *climate change and water*, IPCC Technical Paper VI, 2008.p3

³⁶ IPCC *WGII Sixth Assessment Report*, Chapter 9, 8, p9-76

³⁷ Ibidem.p9-101

populations of 300,000 or more are located in areas of high exposure to at least one natural hazard, including floods (12%) and droughts (20–25%)³⁸.

The recognition by the Court of the necessity and urgency to protect those rights would enlarge the protection of the rights under threat by climate change beyond the scope of those guaranteed by the African Charter protected by

III. The Historical rationale behind African specific vulnerability to climate change.

The specific vulnerability of the African continent to climate change is largely attributable to the circumstances of its integration into the global trade through the colonial economic system which generated structural imbalances (A), which persist in the post-colonial economic system (B).

1. The colonial economic system as a source of the continent's structural vulnerability to climate change

The relationship linking Africa to developed countries, which bear historical responsibility for anthropogenic greenhouse gas emissions since colonization, is one of extractivism. In this logic, the resource-rich African continent became the ideal location for the extraction of natural resources, aiming to supply Western industry and economy with raw materials and basic products at lower cost, thus generating colossal profit margins for capitalist industry. Indeed, the descendants of yesterday's slaves were transformed into forced laborers—underpaid—in the exploitation of natural resources on their own continent. As Toussaint and Appadoo observe “European empires turned entire continents, most evidently Africa, into territories of resource extraction, human exploitation, and environmental disposability. This transformation was not merely a by-product of empire; it was the precondition for securing colonial dominance. The forced cultivation of cash crops (such as cocoa, cotton, and palm oil), mining (of gold, diamonds, copper in particular), and the violent clearing of forests and land for monoculture and resource transport laid the foundation for today’s carbon-intensive global economy”³⁹. This assertion can be demonstrated.

In Cameroon, German colonization aimed to transform the territory into a vast commercial and plantation area⁴⁰. In this context, the implementation of German policy

³⁸ IPCC *WGII Sixth Assessment Report*, Chapter 9, p9-101

³⁹ Toussaint P and Appadoo K A., ‘Reparative justice and the colonial continuum: towards a Pan-African Research and Policy Agenda on Climate Reparations’ (2025) 9 *African Human Rights Yearbook*, pp597-598 ((593616) <http://doi.org/10.29053/2523-1367/2025/v9a26>

⁴⁰ Ahidjo, P. (2018). “German administration and management of natural resources in Kamerun (1884–1916)” in. *Journal of Advances in Social Science and Humanities*, 4(6), p. 5.

contributed to entrenching the territory's climatic vulnerability. First, the imperial decree of June 15, 1896, transformed so-called "vacant and ownerless" lands into the property of the German Kaizer, thus paving the way for the appropriation of land belonging to indigenous communities and the large-scale exploitation of natural resources⁴¹.

This economic development will be characterized by the exploitation of natural resources and agriculture. Among the natural resources, timber, including species such as ebony, iroko, and sapele, attracted the interest of large German companies like *Südkamerun Gesellschaft* and Nord-West *Kamerun Gesellschaft*, which will acquire vast forest concessions of 7 million and 4.5 million hectares respectively⁴². In agriculture, cash crops such as cocoa, bananas, tobacco, and especially oil palm monoculture were introduced, which would later prove highly vulnerable to climatic variations, particularly rainfall and temperature fluctuations. This resulted in an outward-looking economy, the consequences of which continued to be felt after independence. This pursuit of economic profitability to feed the metropolitan economy was not without repercussions.

Germany's economic exploitation of Cameroon's territory had environmental consequences. According to a study by the World-Wide Fund (WWF), the territory lost approximately 3.3 million hectares of forest between 1900 and 1960⁴³, thus reducing the forest's capacity as a carbon sink. Furthermore, this exploitation will disrupt the natural regeneration cycle of the forests. In agricultural terms, the introduction of the aforementioned cash crops had negative effects on soils and local ecosystems, particularly in the western highlands, such as erosion and biodiversity, owing to environmentally harmful practices such as slash-and-burn agriculture, intensive deforestation, and oil palm monoculture.⁴⁴

This rampant exploitation will also lead to human rights violations. For example, cases of forced labor to meet the productivity demands of German companies operating in the territory are documented, such as *the Südkamerun Gesellschaft*, where forced laborers were compelled to harvest rubber⁴⁵. Furthermore, changes in land use, characterized by the imposition of monoculture as well as the cultivation of crops favored by the colonizers, impacted the lifestyles and livelihoods of many local populations, making access to natural resources scarcer and more difficult. This

⁴¹ Nguiffo, S., Kenfack, P. E., & Mballa, N, *Land dynamics, ethnocracy, and the challenge of ethnocultural integration in Cameroon*. Volume 43(1),2019, p. 211–231. <https://doi.org/10.7202/1060877ar>

⁴² Uret-Canale, J. (n.d.), *Black West and Central Africa: The colonial period (1900–1945)*, Tome 2, p. 531.

⁴³ Dkamela, G. P. *Analysis of the drivers of deforestation and forest degradation in Cameroon: Final report*, 2014. WWF Cameroon

⁴⁴ Mfochivé O.F, Rübe C., Kuhnenn K., *The damage (being) done : The case for climate reparations between Germany and Cameroon*, op.cit.p7

⁴⁵ Ibidem.p8

inevitably led to disparities and conflicts between populations, as seen in the Korup National Park⁴⁶. As Mfochivé et al. point out in their study, these conflicts often resulted in the forced displacement of populations⁴⁷..

Generally speaking, the picture of colonization and its effects on both populations—in terms of human rights violations—and the environment—in terms of damage—is the same, given that the colonial powers were all European and all practiced an export-oriented economic system within their territories. The difference with slavery is that colonization no longer imposed forced migration overseas to enforce forced labor, but with the same terrible consequences for those who failed to meet the expected production quotas. The scandal of the atrocities committed against the populations of the Belgian Congo, the property of King Leopold II, in rubber cultivation to support the growth of the automotive industry is just one example⁴⁸.

The continent's reckless and unrestrained extractivism undermined the very foundations of future African states, stripping them of any capacity to cope with the coming consequences of climate change, while simultaneously providing developed countries with the capital necessary to develop the technologies they will need for their economic growth. Rail, trains, steamships, airplanes, automobiles, and industries developed during colonization, largely based on the natural resources that colonization allowed to be plundered worldwide, especially in Africa. The prosperity of developed countries, built upon colonization now enables them to develop environmentally less harmful technologies. Acceding independence will not fundamentally alter this situation, which explains Africa's current vulnerability to the consequences of climate change and its difficulties in addressing them autonomously. More so, as the African legal regional framework especially regarding human rights was nonexistent, the right violated during the colonial period can only be assessed under the United Nations Universal Declaration on Human Rights, especially those that protected human dignity (articles 1, 2, 4, 5), the right to property (article 17), the right to health (article 25), and the right to « a social and international order in which the rights and freedoms set forth in [this Declaration] can be fully realized » (article 28.)

⁴⁶ Mbatu, R. *Deforestation in the Korup National Park area, Cameroon: Addressing the disconnect between policy and implementation. International Journal of Sustainable Development & World Ecology*, 23(1), 2016p. 77–90.

⁴⁷ Mfochivé O.F, Rübe C., Kuhnenn K., op.cit., p8

⁴⁸ See for example Hochschild, A., *King Leopold's Ghost: A Story of Greed, Terror, and Heroism in Colonial Africa*. Boston: Houghton Mifflin, 1998.

2. The post-colonial economic system: a perpetuation of colonial logic.

Acceding independence didn't change the role ascribed to Africa in the global economy. Indeed, within a system where it did not set prices, Africa remained a supplier of raw materials and basic goods to the West. These prices, in addition to being low compared to those of major international financial centers (London, New York, Amsterdam), are characterized by their volatility. The discovery of fossil fuel resources on the continent, the negative climate consequences of which developed countries had been aware since at least the 1960s,⁴⁹ played a key role in the relationship between African countries and their former colonial masters, and remains the core of their economies, especially those in the Gulf of Guinea region.

This extractive industry—to which, since the 2008 financial crisis, we must also add land grabbing⁵⁰, encouraged by "facilities due to the weakness of the continent's legal framework"⁵¹—is largely financed by capital from the former colonial power, which is its main shareholder, even though there is a growing share of actors from emerging Asian economies⁵². Raw materials and basic products are extracted or harvested in their raw form, then exported and processed in developed countries where they create added value, before being re-imported to the continent. The most striking example of the perpetuation of this colonial cycle are the minerals critical to the necessary ecological transition. Cobalt, of which Africa holds two-thirds of the world's reserves, particularly the Democratic Republic of Congo, is extracted in its raw form and exported for use in manufacturing lithium batteries for electric vehicles. The vehicles with these batteries are then re-imported to the continent. With the disappearance of gasoline-powered vehicles in the medium term, they are expected to dominate the automotive market⁵³. The environmental consequences of cobalt extraction in the arc stretching over from Kolwezi in Katanga Province in the DRC to Luanshya in Copperbelt Province in Zambia are documented.

⁴⁹ *Expert Report of Professor Naomi Oreskes on Historical Knowledge and Awareness, in Government Circles, of the Effects of Fossil Fuel Combustion as the Cause of Climate Change* (dated 29 January 2024) (pièce D), par. 4 Cited by the Republic of Vanuatu in its Written Comments in the proceedings relating to the Request for an Advisory Opinion on the Obligations of States in the Matter of Climate Change submitted to the ICJ by the UNGA. §178

⁵⁰ This practice dates back to colonial times. As early as 1934, the Northern Rhodesia/Zambia's Smoke Damage (Prohibition) Act prohibited any claims within a 5-mile radius of a copper mine, regardless of the level of pollution. In other words, it effectively granted the right to pollute the land surrounding industrial facilities without regard for the rights of local populations or the environmental consequences. Cf: Malm A. and Hornborg A., 'The Geology of Mankind? A Critique of the Anthropocene Narrative', in *The Anthropocene Review* 1, No. 1 (2014): 64, doi.org/10.1177/2053019613516291

⁵¹ Fache V., " les acquisitions à grande échelle des terres et le développement durable au Cameroun », in *Cahier Africain des droits de l'Homme : Développement durable en Afrique*, n°13, Décembre 2016, p259

⁵² Especially China

⁵³ Ethiopia has already banned the importation of gasoline-powered vehicles into its territory

They result in severe ecosystem damage due to pollution of water, food crops, as well as the ambient air, thus negatively impacting population health⁵⁴. Once again, while paying the cost of the externalities of energy transition, Africa seems absent from the very heart of the challenges linked to the ecological transition imposed by climate change, namely mastering the value-creating technological revolution that accompanies it, in order to reduce dependence on fossil fuels.

This pattern illustrates the perpetuation of the colonial model, whereby the extraction of the continent's resources, in addition to failing to contribute any real added value locally, is always accompanied by environmental damages such as soil and river degradation, deforestation, population displacement, the weakening of ecosystems and social resilience⁵⁵, as well as human rights violations. These observations reflect the externalization beyond their frontiers by developed countries of the costs associated with energy transition, while they benefit from the added value. As Toussaint and Appadoo observe, “The wealth accumulated through resource extraction thus continues to be exported, enriching shareholders in the Global North – much like it did to power European colonial metropolises – while leaving a trail of environmental destruction and limiting capacity for adaptation. Open pit mining, oil and gas exploration, and deforestation reduce the ability of ecosystems to regulate floods, retain moisture and support agriculture. Contaminated water and degraded soils undermine food security and public health. Cash crop systems introduced during colonial rule remain widespread, further contributing to biodiversity loss and reducing ecological stability. These environmental harms are reinforced by land dispossession and exploitative labor practices, including child labor, gender-based violence, and other human rights violations, which erode the community networks essential for climate resilience and justice. These overlapping dynamics not only reflect historical injustice but actively increase Africa’s exposure to climate risks while constraining the very capacities needed to respond. Extractivism today is not simply a legacy of colonialism but an ongoing mechanism driving climate injustice”⁵⁶. The example of the SERAC case, or more recently, the social and environmental damages generated by mining in eastern Cameroon, demonstrate the relevance of these observations.⁵⁷.

⁵⁴ Muimba-Kankolongo A, Banza Lubaba Nkulu C, Mwitwa J, Kampemba FM, Mulele Nabuyanda M., ‘Impacts of Trace Metals Pollution of Water, Food Crops, and Ambient Air on Population Health in Zambia and the DR Congo’, *Journal of Environmental Public Health*, July 5 2022;2022:4515115. Doi: 10.1155/2022/4515115. PMID: 35844936; PMCID: PMC9277192.

⁵⁵ Toussaint P and Appadoo K A., op.cit.; p 600.

⁵⁶ Ibidem; pp 600-601

⁵⁷ See for example Mekongo-Mballa F.G., Oumba P., Zivo Gapa A, « Cameroon’s Extractive Revival: The New Policy on Mineral Exploitation » in Zivo Gapa A., *The Politics of New African Resource Discoveries in the Post-Curse Era*, Lexington Books, 2024. pp157-176

The resulting instability in revenues will push African countries into bilateral or multilateral debts to supplement revenues from extractive industries, which are generally insufficient to implement credible development policies. This economic structure, dating back to colonization, explains why revenues from the exploitation of mineral resources, fossil fuels, and/or forest resources on the continent are used more to repay debts owed to the Bretton Woods institutions and other multilateral and bilateral lenders.⁵⁸, just like Africa's difficulties in mobilizing endogenous resources to address climate change autonomously. Hence, there is a link between the indebtedness of African countries, extractivism, and the continent's vulnerability to climate change."

IV. The climate change regime and African adaptability to the CBDR Principle.

1. The incipient CBDR: Principles 11 and 23 in the Stockholm 1972 Declaration.

Because of their differences in capacities and circumstances although theoretically equals, the CBDR principle is specific form of differentiation in international (environmental) law that defines the modalities of equitable cooperation among countries in addressing global environmental threats. The CBDR is incipient in the Stockholm Declaration in 1972 especially through principle 11 according to which "The environmental policies of all States should enhance and not adversely affect the present or future development potential of developing countries, nor should they hamper the attainment of better living conditions for all, and appropriate steps should be taken by States and international organizations with a view to reaching agreement on meeting the possible national and international economic consequences resulting from the application of environmental measures ". In other words, it recognized a geometric variability in the implementation of environmental protection measures taking into account the situation of the different parties, especially the right to development for some of them which should not be constrained by environmental considerations.

Along the same lines, mention must also be made of Principle 23, which specified that " Without prejudice to such criteria as may be agreed upon by the international community, or to standards which will have to be determined nationally, it will be essential in all cases to consider the systems of values prevailing in each country, and the extent of the applicability of standards which are valid for the most advanced countries but which may be inappropriate and

⁵⁸ Ibidem, p599.

of unwarranted social cost for the developing countries ". Yet those principles didn't have any legal binding.

2. The emergence of the CBDR: The Rio 92 Declaration

The CBDR emerged from the 1992 Rio Declaration on Environment and Development which established sustainable development on the international agenda, based on three pillars: economic development, social development, and environmental protection. As a reminder, this refers to development that meets the needs of the present generation without compromising the ability of future generations to meet their own needs. The Declaration also recognized the principle of common but differentiated responsibilities and laid its foundations. Specifically mentioned in Principle 7 of the Declaration, this principle consensual principle between developed and developing countries among which African countries, rests on a three-pronged approach grounded in equity, this time within an innovative framework of intragenerational equity—that is, equity implemented within a single generation—unlike the dominant concept at the time, intergenerational equity, which focused on equity between several generations. The aim was to reduce the gap between countries of the Global North and those of the Global South in terms of environmental protection. This three-part framework consists, in addition to the aforementioned principle, of principles 5 and 6. This means that the principle of common but differentiated responsibilities in the Rio Declaration expresses equity through a threefold approach.

Developmental equity is enshrined in Principle 5 of this Declaration. According to this principle, “all States and all peoples must cooperate in the essential task of eradicating poverty, which is an indispensable condition for sustainable development, in order to reduce disparities in living standards and better meet the needs of the majority of the world's people.” In other words, the issue is that poverty is a global scourge whose eradication all States must undertake, as it is a prerequisite for the sustainable development to which all people are entitled.

Economic equity stems from Principle 6. Therefore, “the situation and particular needs of developing countries, especially the least developed countries and the most environmentally vulnerable countries, must be given special priority. International actions undertaken in the field of environment and development should also take into account the interests and needs of all countries.” This is therefore a differentiation based on the needs of a certain category of countries. These countries are more environmentally vulnerable than others. This category of countries should be given special attention by providing them with the means to cope with environmental threats. It is therefore a matter of ensuring that the consideration of environmental requirements, which have a cost and additional burden for the most vulnerable

countries, is integrated into the implementation of the MEA (Measures of Environmental Assessment). In short, it is a matter of ensuring that the constraint linked to taking environmental considerations into account does not undermine the capacity of this category of countries to develop. This principle establishes the foundation upon which the needs of developing countries and least developed countries, such as African nations, will receive special attention. It underpins the various financial mechanisms related to environmental issues and pertaining to special and differentiated treatment to assist developing countries.

According to principle 7 of the Rio Declaration, States shall cooperate in a spirit of global partnership to conserve, protect and restore the health and integrity of the Earth's ecosystem. In view of the different contributions to global environmental degradation, States have common but differentiated responsibilities. The developed countries acknowledge the responsibility that they bear in the international pursuit of sustainable development in view of the pressures their societies place on the global environment and of the technologies and financial resources they command". In other words, not all countries have contributed to the degradation of the environment at the same level. Therefore, although the responsibility to preserve the environment is a common task to all countries, their actual responsibilities may differ. Hence, developed countries have a particular responsibility in the protection of the global environment, given the impact of their societies on this environment and the resources at their disposal.

3. The CBDR specificity within the climate change regime: the acknowledgement of historical responsibility of developed countries.

The CBDR in the climate change regime differs from the approach of the Rio Declaration. Indeed, in the climate change regime, the United Nations Framework Convention on Climate Change (UNFCCC) acknowledges the historical responsibilities of developed countries in the occurrence of climate change. The third preamble of the UNFCCC notes "that the largest share of historical and current global emissions of greenhouse gases has originated in developed countries, that per capita emissions in developing countries are still relatively low and that the share of global emissions originating in developing countries will grow to meet their social and development needs". In other words, in the climate change regime, the differentiation in the obligation of each category of Parties is made along economic parameters.

It follows that within this regime; the obligations of Parties may actually differ. The climate change regime establishes the obligations of Parties along the distinction between developed and developing countries. The actual content of those obligations may vary within the twofold distinction. For example, in the Kyoto Protocol, the maximalist approach of

differentiation between developed and developing countries was actually implemented. Constraining greenhouse gases (GHG) emissions reduction were ascribed to developed countries (annex I countries and economies in transition alike) at the expense of developing countries. However, the implementation of this approach proved to be unsuccessful because of the lack of commitment of the major polluters among developed countries at the time. For example, the US, argued about their lack of awareness of the environmental consequences of reckless exploitation of natural resources at the time on the one hand, and the lack of commitment of major polluters from the developing world, among which China, to commit to the Kyoto Protocol. It follows that, some other developed countries like Canada, decided to follow the footsteps of the US upon the end of the first commitment period for reducing anthropogenic greenhouse gas emissions, subsequently diminishing the impact of the Kyoto Protocol on GHGs mitigation.

The Paris Agreement took a different approach. It went from an economic based differentiation that characterized the Kyoto Protocol, to a climate-based differentiation. In this respect, it has been reframed to include the national circumstances / respective capabilities (CBDR-RC). Indeed, the third preamble of the Paris Agreement explicitly refers to “the principle of equity and common but differentiated responsibilities and respective capabilities, in the light of different national circumstances”. In other words, it factors the contribution or national circumstances in the emission of GHGs and the subsequent obligations of Parties.

Therefore, the obligations of Parties shall vary according to this parameter. Among the general and transversal obligations among the general and cross-cutting obligations, article 3§2 of the Paris Agreement stipulates that “Each Party shall prepare, communicate and maintain successive nationally determined contributions that it intends to achieve. Parties shall pursue domestic mitigation measures, with the aim of achieving the objectives of such contributions”. Furthermore, and most importantly, each of the nationally determined contributions “will represent a progression beyond the Party’s then current nationally determined contribution and reflect its highest possible ambition, reflecting its common but differentiated responsibilities and respective capabilities, in the light of different national circumstances” (art.3§3).

Concerning specific and differentiated obligations, article 7§9 of the Paris Agreement prescribes that “Each Party shall, as appropriate, engage in adaptation planning processes and the implementation of actions, including the development or enhancement of relevant plans, policies and/or contributions, which may include:

- (a) The implementation of adaptation actions, undertakings and/or efforts;
- (b) The process to formulate and implement national adaptation plans;

- (c) The assessment of climate change impacts and vulnerability, with a view to formulating
- nationally determined prioritized actions, taking into account vulnerable people, places and ecosystems;
- (d) Monitoring and evaluating and learning from adaptation plans, policies, programs and actions; and
- (e) Building the resilience of socioeconomic and ecological systems, including through economic diversification and sustainable management of natural resources”.

The materialization of the “Paris Agreement is also contingent upon the specific obligations ascribed to developed Parties towards developing countries. The Paris Agreement prescribes that “Developed country Parties shall provide financial resources to assist developing country Parties with respect to both mitigation and adaptation in continuation of their existing obligations under the Convention” (art.9§1). It further prescribes that “developed country Parties should continue to take the lead in mobilizing climate finance from a wide variety of sources, instruments and channels” (art.9§3) and that “such mobilization of climate finance should represent a progression beyond previous efforts” (art.9§3).

Apart from financial assistance, a nuanced approach regarding technology support for developing countries is inscribed in the Paris agreement which nevertheless impose obligations to developed countries. Article 10§2 of the Paris Agreement prescribes that “Parties, noting the importance of technology for the implementation of mitigation and adaptation actions under this Agreement and recognizing existing technology deployment and dissemination efforts, shall strengthen cooperative action on technology development and transfer”. The Paris Agreement establishes a Technology Mechanism to that end. It further notes that “Accelerating, encouraging and enabling innovation is critical for an effective, long-term global response to climate change and promoting economic growth and sustainable development” (art.10§5) and that “Such effort shall be, as appropriate, supported, including by the Technology Mechanism and, through financial means, by the Financial Mechanism of the Convention, for collaborative approaches to research and development, and facilitating access to technology, in particular for early stages of the technology cycle, to developing country Parties” (art.10§5). Finally, it prescribes that “. Support, including financial support, shall be provided to developing country Parties for the implementation of this Article, including for strengthening cooperative action on technology development and transfer at different stages of the technology cycle, with a view to achieving a balance between support for mitigation and adaptation” (art.10§6). This call for

enhanced cooperation between developing Parties and other Parties implicitly concerns developed countries Parties, if we take into consideration that the Paris Agreement and the climate change regime distinguish between developed and developing Parties.

4. The effectiveness of the CBDR –RC regime under the prism of the first global stocktake : A limited impact

The First Global Stocktake provides hand appreciation of the CBDR- RC within the climate change regime. It “Underlines that, despite overall progress on mitigation, adaptation and means of implementation and support, Parties are not yet collectively on track towards achieving the purpose of the Paris Agreement and its long-term goals”⁵⁹. On mitigation, it “notes with concern the findings in the latest version of the synthesis report on nationally determined contributions that implementation of current nationally determined contributions would reduce emissions on average by 2 per cent compared with the 2019 level by 2030 and that significantly greater emission reductions are required to align with global greenhouse gas emission trajectories in line with the temperature goal of the Paris Agreement and recognizes the urgent need to address this gap”⁶⁰. It further “notes with significant concern that, despite progress, global greenhouse gas emissions trajectories are not yet in line with the temperature goal of the Paris Agreement, and that there is a rapidly narrowing window for raising ambition and implementing existing commitments in order to achieve it”⁶¹. In other words, the global effort to meet the Paris Agreement goal on mitigation was not on track by the first global stocktake.

Concerning adaptation, ,while the First Global Stocktake “Recognizes the increasing adaptation planning and implementation efforts being undertaken by Parties towards enhancing adaptive capacity, strengthening resilience and reducing vulnerability, as set out in national adaptation plans, adaptation communications and nationally determined contributions, as appropriate”⁶² as well as “the significant efforts of developing country Parties in formulating and implementing national adaptation plans, adaptation communications and nationally determined contributions, as appropriate, including through their domestic expenditure, as well as their increased efforts to align their national development plans”⁶³, it nevertheless “Also

⁵⁹ UNFCCC, Draft decision -/CMA.5 Outcome of the first global stocktake, *FCCC/PA/CMA/2023/L.17*, 13th December 2023, §2

⁶⁰ Ibidem, §21.

⁶¹ Ibidem. § 24

⁶² Ibidem. § 44

⁶³ Ibidem. § 45

recognizes the significant challenges developing country Parties face in accessing finance for implementing their national adaptation plans”⁶⁴.

Among other limitations, the First Global Stocktake mentions “gaps in implementation of, support for and collective assessment of the adequacy and effectiveness of adaptation”⁶⁵, insufficient early warning systems⁶⁶ and lack of knowledge sharing and international cooperation to address complex cascading risks associated with climate change⁶⁷. Consequently, the First Global Stocktake calls for “accelerated implementation of adaptation, particularly in this decade”⁶⁸, “Encourages the implementation of integrated, multi-sectoral solutions”⁶⁹, “Calls on Parties that have not yet done so to have in place their national adaptation plans, policies and planning processes by 2025 and to have progressed in implementing them by 2030”⁷⁰; as well as “to enhance their adaptation efforts in line with what is needed to achieve the goal in Article 2, paragraph 1(b), of the Paris Agreement and the global goal on adaptation, taking into account the framework for the global goal on adaptation referred to in decision -/CMA.5”⁷¹ and “Urges Parties and invites non-Party stakeholders to increase ambition and enhance adaptation action and support, in line with decision -/CMA.5,4 in order to accelerate swift action at scale and at all levels, from local to global, in alignment with other global frameworks, towards the achievement of, inter alia, the following targets by 2030”⁷². In all, there’s still a lot that needs to be achieved adaptation goals, especially by the year 2030.

The First Global Stocktake provides the opportunity to evaluate the effectiveness of the obligations of developed countries towards developing countries within the CBDR-RC. Concerning financial obligations, it noted “with deep regret that the goal of developed country Parties to mobilize jointly USD 100 billion per year by 2020 in the context of meaningful mitigation actions and transparency on implementation was not met in 2021, including owing to challenges in mobilizing finance from private sources, and welcomes the ongoing efforts of developed country Parties towards achieving the goal of mobilizing jointly USD 100 billion per year”⁷³. More so it noted “with concern that the adaptation finance gap is widening, and that

⁶⁴ Ibidem. § 46

⁶⁵ Ibidem. § 48

⁶⁶ Ibidem. § 49

⁶⁷ UNFCCC, Draft decision -/CMA.5 Outcome of the First Global Stocktake, *FCCC/PA/CMA/2023/L.17*, 13th December 2023, §52

⁶⁸ Ibidem, §53.

⁶⁹ Ibidem, §55

⁷⁰ Ibidem, §59

⁷¹ Ibidem, §62

⁷² Ibidem, §63.

⁷³ Ibidem, §80.

current levels of climate finance, technology development and transfer, and capacity-building for adaptation remain insufficient to respond to worsening climate change impacts in developing country Parties, especially those that are particularly vulnerable to the adverse effects of climate change”⁷⁴.

Although the financial pledge of developed countries to provide 100 billion US Dollars per year by 2020 to developing countries was hardly achieved a couple of years behind the schedule, it remains insufficient regarding the actual needs of developing countries especially African countries. This further raises doubt on the effectiveness of the pledge by developed country to triple that – still insufficient aid – by the year 2030 made during the COP 29. Indeed, according to the NUDP⁷⁵, adaptation needs for the year 2025 estimated to be in a plausible central range of US\$310–365 billion/year for developing countries by the year 2035 (in constant 2023 prices, not inflation-adjusted). International public adaptation finance flows to developing countries were tracked at US\$26 billion in 2023 (in constant 2023 prices), a slight decline compared to 2022. Annual growth in these finance flows has averaged around 7 per cent per year (2019–2023), which is below the 12 per cent annual increase needed to meet the Glasgow Climate Pact of a doubling by 2025, and recent announcements increase the likelihood that this goal may not be achieved. The following table illustrates the gap between adaptation needs in developing countries and the actual financial flows:

Region	Annual finance needs/ adaptation costs (2035)	Current finance flows (average 2022–2023)	Annual adaptation finance gap
All developing countries	US\$310 billion–365 billion	US\$26 billion	US\$284–339 billion
LDCs	US\$33.5 billion–46 billion	US\$10.4 billion	US\$23.1–35.6 billion
SIDS	US\$4.2 billion–6 billion	US\$1.2 billion	US\$3.0–4.8 billion

Source: NUDP, *Adaptation Gap Report 2025: Running on empty*, 2025, p50

With regard to technology development and transfer, the First Global Stocktake noticed some difficulties. Hence it “Highlights the persistent gaps and challenges in technology development and transfer and the uneven pace of adoption of climate technologies around the world and urges Parties to address these barriers and strengthen cooperative action, including with non-Party stakeholders, particularly with the private sector, to rapidly scale up the deployment of existing technologies, the fostering of innovation and the development and transfer of new technologies”.⁷⁶

⁷⁴ Ibidem, §81

⁷⁵ NUDP, *Adaptation Gap Report 2025: Running on empty*, 2025, p40

⁷⁶ UNFCCC, Draft decision -/CMA.5 Outcome of the First Global Stocktake, *FCCC/PA/CMA/2023/L.17*, 13th December 2023, §103

Overall, it appears that the CBDR-RC prescribed in the UNFCCC; especially in its Paris Agreement version, is far from being effective, because of the insufficient implementation of the obligation of the Parties regarding mitigation and adaptation on the one hand, and the insufficient materialization of financial commitment of developed Parties and persistent gaps in technology transfer.

5. The CBDR- RC principle and the needs of African countries

From these shortcomings in the actual implementation of the CBDR –RC in the climate change regime, some observations can be drawn about Africa. The First Global Stocktake already observed “that human-caused climate change impacts are already being felt in every region across the globe, with those who have contributed the least to climate change being most vulnerable to the impacts, and, together with losses and damages, will increase with every increment of warming”⁷⁷. From national circumstances / respective capabilities, Africa is historically the continent that contributed the least to climate change, and which suffers and will continue to suffer the most from its consequences. Indeed, the actual contribution of Africa to anthropogenic GHGs emissions is only 4% according to the IPCC.

Comparatively, the needs of the continent regarding adaptation are high. Indeed, adaptation needs for sub-Saharan Africa alone are estimated at 51 billion US Dollars ⁷⁸. Since the Bali Action Plan in 2007, the approach to address the issue of climate change was designed on three pillars, mitigation, adaptation and finance. Yet, the First Global Stocktake reveals imbalances in the implementation of those requirements. It notes “that most observed adaptation responses are fragmented, incremental, sector-specific and unequally distributed across regions, and that, despite the progress made, significant adaptation gaps still exist across sectors and regions and will continue to grow under current levels of implementation”⁷⁹.

Lastly, from a climate justice perspective, the loss and damages associated with climate change in the continent are extremely high as already demonstrated. Some studies valued them between 290 – 580 billion US Dollars per year by 2030⁸⁰. They are part of the climate debt owed by developed countries who bear the historical responsibility of climate change to developing countries which bear its brunt. That climate debt is valued at 193 billion

⁷⁷ UNFCCC, Draft decision -/CMA.5 Outcome of the First Global Stocktake, *FCCC/PA/CMA/2023/L.17*, 13th December 2023, §15 (b)

⁷⁸ NUDP, *Adaptation Gap Report 2025*: op.cit. p45

⁷⁹ UNFCCC, Draft decision -/CMA.5 Outcome of the First Global Stocktake, op.cit. § 15 (c)

⁸⁰ Heinrich Böll Stiftung, “Spotlighting the Finance Gap: What Differentiates Finance for Addressing Loss and Damage from other Types of Finance” (2022), available at: <https://us.boell.org/sites/default/files/2021-05/Spotlighting%20the%20Finance%20Gap%20-%20Loss%20and%20Damage%20brief%203.pdf>

US Dollars, out of which 45 for sub-Saharan Africa⁸¹. Overall, there is a huge gap between the funding needed to address climate change in the continent, and the funds effectively available. According to a brief by Noma Tamale and Adebayo Majekolagbe, “using 2019/2020 figures, the continent’s annual climate finance flow was USD 29.5 billion. If this trend continues, Africa will only receive about 10% of its annual climate finance need of USD 277 billion per annum between 2021 and 2030”⁸². Hence, the actual circumstances of African countries when it comes to mitigation, adaptation, loss and damage, provide the rationale for a specific implementation of the CBDR- RC principle within the continent. These national circumstances set them apart within the category of developing countries and motivate the implementation of the CBDR – RC under the prism of reparations, considering the consequences of climate change in the continent.

V. The AU’s normative and institutional framework as background for a transformative cooperation between Africa and developed countries in the implementation of the CBDR -RC principle.

The magnitude of the impact of climate change consequences in Africa motivate a regional approach in the implementation of the CBDR-RC within the continent. This approach is based in cooperation which is the recognized method to address global challenges, bearing in mind that climate change is a ‘common concern for mankind’. In the recent ICJ’s Advisory Opinion on State obligations related to climate change, the Court found that “The duty to co-operate lies at the core of the Charter of the United Nations. Article 1 of the Charter commits States “[t]o achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character”⁸³. More so, it found that “That observation also applies to the duty to co-operate in so far as it finds expression in many binding and non-binding instruments relating specifically to the environment. The duty to co-operate is a central obligation under the climate change treaties and other environmental treaties”⁸⁴.

With regard to the specific circumstances of African countries in relation to climate change, emphasis should be put on the secondary obligations, deriving from the violation of

⁸¹ Fanning, A. L., & Hickel, J., *Compensation for atmospheric appropriation*, LSE Research Online Documents on Economics, 119717. London School of Economics and Political Science, 2023.

⁸² Noma Tamale and Adebayo Majekolagbe, “A Brief on Debt and Climate Vulnerable Countries in Africa”, *Afronomicslaw*, November 2022, p3

⁸³ ICJ Advisory Opinion on State Obligations related to climate change, §140

⁸⁴ *Ibidem*.

primary rules in international law. Within the context of the climate change, the primary rule is the customary obligation to prevent significant harm to the environment beyond the frontiers of any country. That obligation was highlighted in the *Pulp Mills* case when the Court recognized that “[a] State is . . . obliged to use all the means at its disposal in order to avoid activities which take place in its territory, or in any area under its jurisdiction, causing significant damage to the environment of another State”⁸⁵. Consequently, as GHGs emissions violate the customary no harm rule, the secondary rules related to the violation of primary rules elaborated by the International Law Commission are justified in relation to the implementation of the CBDR principle within the African context.

According to the law of State Responsibility, the violation of primary obligations in international law involves secondary obligations, namely: It follows that from the Draft articles on Responsibility of States for Internationally Wrongful Acts by the International Law Commission (ILC) that international responsibility of a State which is entailed by an internationally wrongful act involves legal consequences (art.28). Among those consequences are the continued duty of performance (art.29), cessation and non –repetition (art.30).

Considering the context of African countries, the implementation of those prescriptions should be applied through a regional approach that takes into consideration the impact of climate change in each country. Article 31§2 of the ILC prescribes that “injury includes any damage, whether material or moral, caused by the internationally wrongful act of a State”. Furthermore, article 34 of the very same instrument prescribes that “Full reparation for the injury caused by the internationally wrongful act shall take the form of restitution, compensation and satisfaction, either singly or in combination”.

Considering the African context in which the plundering of national resources trapped the continent in a vicious economic circle characterized by permanent indebtedness and environmental vulnerability, which started during colonization and still continues today, the implementation of the CBDR with regard to continued duty of performance, cessation and non-repetition, as well as reparation, should take place within specific forms of cooperation with developed countries.

It follows that, the principle of fairness, the importance of which the Court has recognized within the framework of the CBDR principle, dictates that the continent, which will now have to do without an energy source whose exploitation has contributed to the prosperity of developed countries for nearly two centuries, and which possesses the resources capable of

⁸⁵ I.C.J. *Pulp Mills on the River Uruguay (Argentina v. Uruguay)*, Judgment, *Reports 2010* (I), p. 56, para. 101).

contributing to the resolution of a global problem, should be allowed more time to phase out from fossil fuels compared to developed countries, as most of their economies will be impacted by the process owing to high reliance of many of them to fossil fuels. Furthermore and most importantly, it should also be able to benefit from the resulting gains in the same way as others. In this respect, Article 21§3 of the African Charter on Human and Peoples Rights prescribes that “The free disposal of wealth and natural resources shall be exercised without prejudice to the obligation of promoting international economic cooperation based on mutual respect, equitable exchange and the principles of international law”. This then refers to systemic benefit. In other words, from an economic standpoint it concerns Africa's active upstream contribution to the ecological transition process. For Africa, this means moving from the status of a passive supplier of raw materials to that of an effective contributor to the ecological transition by creating added value in this global effort, on par with other continents⁸⁶. In addition to this economic dimension, there is also a moral dimension, as Africa is required to offset the considerable revenues generated by the exploitation of fossil fuel resources in the name of preserving the global climate system.

Within the framework of developed countries' obligations to developing countries, systemic change could take the form of a partnership for the energy transition. Article 21§5 of the African Charter on Human and Peoples Rights prescribes that “States parties to the present Charter shall undertake to eliminate all forms of foreign economic exploitation particularly that practiced by international monopolies so as to enable their peoples to fully benefit from the advantages derived from their national resources”. This would involve defining a framework for cooperation aimed at developing technologies necessary for the energy transition on the continent, as well as ensuring access to clean energy for a large portion of the population. Such a partnership would circumvent intellectual property barriers that limit the effectiveness of technology transfer from developed countries to developing countries and would create added value on the continent.

Such a partnership would first require a concerted regional strategy to guarantee its benefits. This involves strengthening governance provisions within the framework of the African Green Minerals Strategy, in other words, those minerals critical to the ecological transition. Considering that the goal is indeed to ensure that the added value in this ecological

⁸⁶ Bearing in mind that a just transition is ultimately a multifaceted new development policy. Among other things, it encompasses inclusivity and public participation, access to information, access to justice, transparency, accountability and effective respect for human rights, and the existence of appropriate institutions.

transition process is generated on the continent to meet regional demand⁸⁷, then the issue of the inclusivity of local populations and their right to be involved in managing the energy transition must be addressed. It is essential to ensure respect for the rights of local populations, particularly their right to free and informed consent for the exploitation of mineral resources on their land, as well as their effective participation in the exploitation of these resources and their substantial benefits⁸⁸. The ultimate aim is for access to energy to be considered not only as a commercial issue, but also, and above all, as a common good that contributes to the right to development.

In this respect, the AU's normative and institutional framework may serve as background for a transformative cooperation between Africa and developed countries in the implementation of the CBDR -RC principle. In our view, a comprehensive regional strategy can enable the realization of these aspirations. Article 21§4 of the African Charter prescribes that “ States parties to the present Charter shall individually and collectively exercise the right to free disposal of their wealth and natural resources with a view to strengthening African unity and solidarity”.The economic institutions established within the framework of the African Union provide a suitable opportunity for the creation and endogenous accumulation of wealth. To this end, it is therefore important to seize the opportunity offered by the African Continental Free Trade Area (AfCFTA) to build a genuine regional market capable of meeting the continent's demand for clean energy within the framework of the ecological transition. The AfCFTA aims, among others , to "promote and achieve inclusive and sustainable socio-economic development, gender equality, and the structural transformation of the States Parties,"⁸⁹ to "strengthen the competitiveness of the economies of the States Parties at the continental and global levels,"⁹⁰ and to "contribute to the free movement of capital and people and facilitate investment by building on initiatives and developments in the States Parties and the RECs."⁹¹.

⁸⁷The need for clean energy sources and cooking facilities, for example, has been identified as vital to the ecological transition on the continent. According to the aforementioned 2025 report by the Mo Ibrahim Foundation, approximately 600 million Africans lack access to clean energy.

⁸⁸ As things stand with current mining practices, local populations in the Global South, and in Africa in particular, find themselves at the bottom of the income ladder for the extractive industry. For example, the Democratic Republic of Congo holds three-quarters of the world's cobalt reserves. This mineral is essential for the operation of electric vehicles. One of the world's largest manufacturers of this type of vehicle, Tesla, has approximately 3 kg of cobalt in each of its vehicles (in the form of an electric battery). Tesla makes a profit of US\$3,150 on each vehicle sold, while the Congolese government receives only US\$10, and the miner who extracts the cobalt at the source of the supply chain sometimes receives a wage of no more than US\$7.

⁸⁹Per article 3 (e)

⁹⁰Per article 3 (f)

⁹¹ Per article 3 (c).

Furthermore, its Protocol on Trade in Goods aims to facilitate the free movement of goods while contributing to the continent's industrialization. Thus, according to the provisions of Article 2, the specific objective of this Protocol is to stimulate intra-African trade, among other things, through: "the development and promotion of value chains at the regional and continental levels,"⁹² as well as "the strengthening of socio-economic development, diversification, and industrialization in Africa."⁹³ This regulatory framework is therefore an asset for the development of an African industry capable of meeting the significant market demand within the context of the energy transition.

Additionally, within the framework of a genuine decolonization and restructuring of African trade, it would be necessary to establish a harmonized monetary policy. The stakes are immense, given that in the current international trade structure, no less than \$2 trillion are transferred from Global South—including Africa—to developed countries each year⁹⁴. Africa's monetary fragmentation, with its sub-regional and national currencies and numerous exchange rate regulations, makes it difficult to implement a coherent continental monetary policy aimed at preventing the outflow of foreign currency and guaranteeing sufficient foreign exchange reserves to ensure currency stability.

Therefore, it is important to accelerate the implementation of the African Union's monetary policy. Legally, some provisions to this effect are already in place. For example, the Protocol relating to the establishment of the African Monetary Fund (AMF) has already been adopted by the African Union, ratified by the National Assembly of Cameroon, where it is to be headquartered, and promulgated by the President of the Republic. Its objective is to "promote macroeconomic stability, shared sustainable monetary growth, and balanced development of the continent in order to facilitate the effective integration of African economies."⁹⁵ In addition to this Protocol, there is the one relating to the African Investment Bank (AIB). Its purpose is to "stimulate economic integration and development within the Union through the financing of development projects, in accordance with the Union's objectives."⁹⁶

Additionally, "the Bank also provides technical assistance to States Parties, as needed, for the study, preparation, and implementation of investment projects."⁹⁷ This presents an opportunity to be seized within the framework of implementing projects related to the energy

⁹² Per article 2 (e)

⁹³ Per article 2 (f)

⁹⁴ <https://www.aljazeera.com/opinions/2021/5/6/rich-countries-drained-152tn-from-the-global-south-since-1960>

⁹⁵ Protocol relating to the establishment of the African Monetary Fund, article 4§1.

⁹⁶ Protocol, relating to the African Investment Bank

⁹⁷ Ibidem, article 4§2

transition. Finally, the establishment of an African Central Bank (ACB) is also planned. This should be the culmination of a monetary and economic integration process initiated in 2014. Since money is the lifeblood of any endeavor, the systemic reversal of the nature of the relationship between Africa and the rest of the world requires upfront financing, which can be obtained through restorative justice measures related to climate change.

In the same vein, the issue of financial assistance under the CBDR-RC principle cannot ignore the debt question. Indeed, while in practice the effective aid provided by developed countries to developing countries is laborious and, moreover, insufficient, it is necessary to find ways to address this deficiency. This could be achieved by resolving the debt issue of African countries. This debt is at the very heart of their limited capacity to adapt to climate change, given the pressure it exerts on their ability to implement appropriate climate policies. As noted in the Mo Ibrahim Foundation's 2025 report, "Between 2014 and 2023, Africa's outstanding external public debt nearly doubled, rising from \$349.4 billion to \$690 billion, due to external shocks such as COVID-19, the collapse in commodity prices, and limited access to concessional financing."⁹⁸ From the ICJ perspective, « Participants made specific submissions on the scope of the obligation to co-operate through the provision of financial assistance, such as providing debt relief to developing parties. The Court notes that States are free to select the means of co-operating, as long as such means are consistent with the obligations of good faith and due diligence. The Court, therefore, does not see it as necessary to highlight one form of co-operation over another. The Court considers, however, that the principal forms of co-operation prescribed by the Paris Agreement are financial assistance, technology transfers and capacity-building. »⁹⁹. This stance of the Court is surprising given the link between the continent's debt and the extractivism practiced for over a century in Africa by countries with historical responsibility for climate change, and the resulting instability in commodity prices.

Despite the Court's avoidance of this issue, it is important to explore avenues for finding solutions to this thorny problem. In our view, the debt of African countries cannot be addressed without considering the issue of climate debt, namely the debt owed by countries with historical responsibility for anthropogenic greenhouse gas emissions to those less responsible and particularly vulnerable, or rather, "especially affected," to align with the spirit of the draft articles of the International Law Convention on International Wrongful Acts. Africa, falling into this latter category, given the disparity between its current contribution to

⁹⁸ Cf : Mo Ibrahim Foundation, *Faits et chiffres 2025 : Financer l'Afrique que nous voulons*, op.cit.

⁹⁹ ICJ, *Obligations of States in Respect of Climate Change*, 23rd of July 2025. § 262

anthropogenic greenhouse gas emissions and its particular vulnerability to climate change, is justified in feeling especially harmed by the consequences of climate change. It follows that, with regard to the provisions of Article 42(b) of the International Law Convention on International Wrongful Acts, African countries can invoke the responsibility of developed countries that have historically contributed the majority of anthropogenic greenhouse gas emissions

In all, there are therefore two types of debt. On the one hand, there is the debt that African countries owe to their multilateral and/or bilateral donors, particularly those of the former colonial power, due to the logic that has shaped and continues to shape its place in the global order. On the other hand, there is the debt that these same colonial powers, bearing historical responsibility for climate change, owe to African countries as a consequence of the development model it has chosen to implement for over a century and the resulting repercussions. The climate debt of developed countries is estimated at US\$193 trillion, of which US\$45 trillion is owed to sub-Saharan Africa¹⁰⁰. The ratio between the outstanding debt of African countries mentioned by the Mo Ibrahim Foundation and the climate debt owed to sub-Saharan African countries would thus be 690 billion dollars/45 trillion dollars, or 690/45000. It follows that the climate debt owed to sub-Saharan Africa alone would be enough to wipe out the entire debt of the continent, with sufficient margin to implement all the systemic reforms necessary at the regional level.

Given the CBDR -RC and the specific circumstances of each African country, the effective implementation of climate debt repayment could contribute not only to addressing climate change but also to supporting the systemic shift the continent needs to reverse its role in global trade by implementing regional reforms to make it more equitable. Returning to the issue of climate change and the legal consequences arising from the violation of a primary rule of international law, the International Law Commission (ILC) has outlined the response in Article 34, which states that "full reparation for the injury caused by an internationally wrongful act shall take the form of restitution, compensation and satisfaction, separately or jointly, in accordance with the provisions of this chapter." These regulations, implemented according to the specific context of each African country, coupled with rigorous governance that respects human rights, would then allow them to be actors capable of sharing in the long term the same responsibilities as developed countries in the fight against climate change, but also in relation to other forms of environmental threats.

¹⁰⁰Fanning, A. L., & Hickel, J., *Compensation for atmospheric appropriation*, LSE Research Online Documents on Economics, 119717. London School of Economics and Political Science, 2023.

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