

THE AfCHPR'S ADVISORY OPINION ON HUMAN RIGHTS AND CLIMATE CHANGE: PRELIMINARY REFLECTIONS ON ITS POTENTIAL CONTRIBUTION TO CLIMATE JUSTICE

DANIEL IGLESIAS MÁRQUEZ*

Abstract: African States contribute minimally to global greenhouse gas emissions but disproportionately experience the adverse effects of climate change, with profound consequences for human rights, sustainable development, and intergenerational equity. This article contextualises these disparities within the historical dynamics of fossil capitalism and an international legal framework characterised by enduring global inequalities and differentiated responsibilities. It assesses the limited integration of African States' priorities, circumstances, and normative perspectives in global climate governance and in the International Court of Justice's Advisory Opinion on climate change. The analysis further examines the African Human Rights System, particularly the African Commission on Human and Peoples' Rights and the African Court on Human and Peoples' Rights (AfCHPR), in establishing environmental standards for human rights protection in the context of climate change. Finally, the article analyses the potential contribution of the requested AfCHPR's Advisory Opinion on climate change to the development of standards on human rights, the protection of future generations, and corporate accountability in the context of climate change.

Keywords: Human rights, African Human Rights System, Climate justice, Africa, Intergenerational equity, Human rights-based climate litigation, Advisory Opinions, Corporate Accountability.

Summary

1. INTRODUCTION. 2. AFRICAN CONCERNS AND PERSPECTIVES IN THE ICJ'S ADVISORY OPINION ON CLIMATE CHANGE. 2.1. Human Rights: The Right to a Clean, Healthy, and Sustainable Environment. 2.2. Future Generations. 2.3. Corporate Climate Accountability. 3. ASSESSING THE INCLUSION OF AFRICAN CONCERNS IN THE ICJ'S ADVISORY OPINION ON CLIMATE CHANGE. 4. THE POTENTIAL OF THE AFCHPR'S ADVISORY OPINION ON THE OBLIGATIONS OF STATES WITH RESPECT TO THE CLIMATE CHANGE CRISIS. 4.1. Human Rights: The Right to a Clean, Healthy, and Sustainable Environment. 4.2. Future Generations. 4.3. Corporate Climate Accountability. 5. CONCLUDING REMARKS. 6. REFERENCES.

* Assistant Professor of Public International Law and International Relations at the University of La Laguna (Spain). Member of the Research Group on International Relations and International Law (GERD-UOC), within the Center for Research in Digital Transformation and Governance (UOC-DIGIT). This article has been developed within the framework of the following research projects: "State sovereignty over natural resources and the global race for strategic minerals for the energy transition: the basis for a sustainable and fair future?" (PID2023-146791NB-I00); "The concept of due diligence as a driver of change in sustainability: obligations of states and companies (DUEIL)" (PID2025-172430NB-I00); "Ecosocial Crisis and Corporate Power: The Strategic Recentralization of State Obligations" (CIGE/2026/65). ORCID: <https://orcid.org/0000-0003-2759-3064>. The research and completion of this article were finalised in May 2026, in the context of the ongoing process leading to the AfCHPR's Advisory Opinion on the obligations of States with respect to the climate change crisis.

1. INTRODUCTION

The Intergovernmental Panel on Climate Change (IPCC) has confirmed that “Africa is one of the lowest contributors to greenhouse gas emissions causing climate change” (Trisos et al., 2022, p. 1288). Nevertheless, scientific evidence demonstrates that the African continent faces disproportionate exposure and vulnerability to climate change impacts and includes several of the world’s most climate-vulnerable countries (AfDB, 2018, p. i.).

Although the impacts and magnitude of climate change vary across African States, the continent is experiencing rising average and extreme temperatures attributable to anthropogenic activity (WMO, 2025, pp. 8–11). This trend has intensified phenomena such as heat waves, prolonged droughts, and extreme precipitation events (Trisos et al., 2022, pp. 1290–1293). Several African States have recorded unprecedented high temperatures, while widespread and severe flooding has affected East African countries (WMO, 2024, pp. 10–13). Additionally, sea levels have increased due to ocean warming and the melting of glaciers, polar ice caps, and ice sheets (WMO, 2025, pp. 6–7).

Climate change in African States undermines the enjoyment of various human rights, including rights to water and sanitation, food, health, education, housing, an adequate standard of living, and development (Addaney et al., 2017, pp. 12–17). Scientific evidence demonstrates that extreme weather events—such as prolonged droughts, cyclones, and floods—deteriorate living conditions, cause agricultural losses, damage infrastructure, and force population displacement (WMO, 2025, p. 8). Rising temperatures, increased frequency of severe weather events, and the spread of vector-borne diseases further exacerbate health risks, particularly in vulnerable contexts. Ongoing ecosystem degradation and biodiversity loss also undermine the livelihoods and cultural practices of many communities, highlighting the connection between climate change, human rights, and sustainable development (Trisos et al., 2022, pp. 1132–1139).

The disproportionate impacts of climate change on African States and their human rights implications must be understood within the context of a historical model of accumulation associated with fossil capitalism (Altvater, 2007, pp. 39–43), whose dynamics have often been shaped and legitimised by international law. The development trajectories of Global North States relied on an intensive appropriation of natural and energy resources from the Global South, including African territories, externalising social and environmental costs and creating structural inequalities that persist today (Anghie, 2004, pp. 212–215). Consequently, although African States have contributed minimally to historical greenhouse gas (GHG) emissions, they disproportionately bear the adverse effects of climate change. This reality underscores the link between the continent’s current climate vulnerabilities, historical processes of economic domination, and an international legal framework that has frequently prioritised the carbon-intensive interests and growth patterns of the Global North over the protection of people, communities, and ecosystems (Atapattu and Gonzalez, 2025, pp. 610–614).

Since 1992, international climate change law has evolved without fully addressing the development needs and aspirations of Global South countries, particularly those in Africa

(Rajamani, 2008, p. 938). The United Nations Framework Convention on Climate Change (UNFCCC) and the Paris Agreement primarily reflect the priorities of developed countries in their principles and operational rules. As a result, the international climate change regime has been criticised for perpetuating structural asymmetries between the North and South by failing to address the unequal distribution of historical responsibilities (Mejía, 2010, pp. 14–18). Despite some progress, global climate governance continues to exhibit structural limitations that restrict its transformative potential regarding climate justice (Rajamani, 2006, pp. 176–180).

The international climate change regime has shown a limited capacity to address the needs of African States and, more broadly, those of the Global South. This limitation is largely attributable to the configuration of international climate negotiations, which remain structurally shaped by North–South tensions that have influenced priorities and the allocation of responsibilities and benefits (Najam et al., 2003, pp. 222–226). From the outset, the economic and geopolitical interests of the major emitters have occupied a central position. At the same time, the concerns of African States have frequently been marginalised (Mumma, 2000, 198–207), in a context characterised by profound asymmetries in access to information, technical capabilities, and financial resources, which have limited their capacity for effective advocacy (Bogott and van Wyk, 2015, pp. 51–53). Nevertheless, in recent years there has been a gradual strengthening of African collective action through the articulation of common positions within the framework of the African Union (AU) and the African Negotiators’ Group, to increase their influence and promote priority issues such as the recognition of historical responsibility, access to finance and technology transfer, as well as attention to adaptation and loss and damage (Roger and Belliethathan, 2016, pp. 94–98).

This engagement is also reflected in the proceedings before the International Court of Justice (ICJ) concerning the Advisory Opinion on climate change (ICJ, 2025), which have witnessed substantial participation by African States, as well as by regional organisations from the continent, through the submission of written observations and comments, as well as oral pleadings. This high level of participation is consistent with both the growing regional coordination around climate governance and the continent’s interest in contributing to the clarification of international climate change law from a perspective that highlights the structural asymmetries between the Global North and the Global South.

This article examines the potential contribution of the requested Advisory Opinion of the African Court on Human and Peoples’ Rights (AfCHPR or African Court) on climate change as a legal and normative turning point for both the African continent and global climate change governance. Accordingly, the central question addressed in this article is the extent to which the potential AfCHPR’s Advisory Opinion could shape the interpretation of States’ climate obligations by articulating a Global South perspective on climate justice and structural inequalities. To answer this question, the article adopts a doctrinal and comparative legal methodology based on the systematic analysis of primary legal sources and relevant international and regional jurisprudence.

An analytical approach is used to highlight the normative contributions of the African continent to the development of international climate law and to the protection of

THE AFCHPR'S ADVISORY OPINION ON HUMAN RIGHTS AND CLIMATE CHANGE:
PRELIMINARY REFLECTIONS ON ITS POTENTIAL CONTRIBUTION TO CLIMATE JUSTICE

human rights in the context of climate change. Section 2 first analyses the position of some African States in the advisory proceedings before the ICJ, focusing on their observations and comments regarding human rights, future generations, and corporate accountability in relation to climate change. Section 3 assesses the extent to which the ICJ's Advisory Opinion on Climate Change reflects the concerns expressed by African States and regional organisations during the advisory proceedings. Section 4 analyses the potential contribution of the requested AfCHPR's Advisory Opinion to the development of legal standards on human rights, future generations, and corporate accountability in the context of climate change, building on the analysis of the evolving jurisprudence of the African Human Rights System (AHRS). It further considers how the potential AfCHPR's Advisory Opinion may enrich the emerging judicial dialogue among international courts and tribunals by bringing a distinctive Global South perspective to questions of climate justice and historical inequality. Finally, Section 5 sets out the concluding remarks.

**2. AFRICAN CONCERNS AND PERSPECTIVES IN THE ICJ'S ADVISORY OPINION
ON CLIMATE CHANGE**

The International Court of Justice's Advisory Opinion on climate change was delivered in a context characterised by the increasing recourse to the advisory jurisdiction of international courts and tribunals as a mechanism for addressing highly complex global challenges (ICJ, 2025). Advisory opinions have increasingly emerged as a particularly suitable instrument for advancing climate justice in international law. Their relevance lies in the fact that they enable the examination of legal issues of general interest that transcend the procedural and jurisdictional limitations inherent in contentious litigation¹.

In recent years, several international courts and tribunals have increasingly relied on their advisory jurisdiction to clarify the scope of States' obligations in relation to climate change, as illustrated by the ICJ's Advisory Opinion, as well as those delivered by the International Tribunal for the Law of the Sea (ITLOS, 2024) and the Inter-American Court of Human Rights (IACtHR, 2025). Although these opinions do not give rise to legally binding obligations, they carry substantial interpretative authority insofar as they guide State conduct, elucidate key legal concepts, and foster greater coherence in the articulation of the multiple applicable regulatory regimes. In this regard, the normative clarification deriving from advisory opinions on climate change has "the potential to result in wide-scale application and impact" (Lupin & Nekura, 2025, p. 164), insofar as it provides a legal framework of reference that complements, rather than substitutes, multilateral climate negotiation processes.

From a substantive perspective, the transformative potential of these advisory opinions lies both in their capacity to strengthen the justiciability and enforceability of State obligations in future domestic and international climate litigation, and in their contribution to a gradual "change of consciousness" (Sands, 2016, pp. 19–20) concerning the characterisation of climate change as a matter of global public interest (Movilla Pateiro, 2025, pp. 39–44).

¹ For a discussion of the relevance of advisory opinions on climate change, see Tigre and Rocha (2025, pp. 1–15).

Indeed, these advisory opinions on climate change “contribute to advancing climate negotiations and promoting the adoption of more ambitious legal regimes” (Guerreiro Teixeira and Galvão Teles, 2025, p. 60) by clarifying States’ obligations, elucidating the legal risks of climate inaction, and reinforcing the need for more ambitious regulatory frameworks on mitigation, adaptation, and climate justice (Bodansky, 2023, pp. 188–190).

Without seeking to provide an exhaustive analysis, the ICJ’s Advisory Opinion on climate change constitutes a landmark development in that it offers a comprehensive interpretation of States’ obligations under international law in relation to climate change. The unanimous adoption of the Advisory Opinion, despite the separate opinions and declarations accompanying it, further underscores its institutional authority and confirms its significance within the emerging body of international climate jurisprudence. Against this backdrop, several aspects of the Advisory Opinion deserve particular attention.

First, the Court affirmed that the objective of limiting the increase in the global average temperature to 1.5°C, as set out in the Paris Agreement, operates as a binding standard requiring States to exercise due diligence in contributing collectively to its attainment, and further held that customary international law imposes binding obligations to prevent significant harm to the climate system, including through the regulation of GHG emissions and the conduct of private actors (ICJ, 2025, paras. 208–300). Second, the ICJ emphasised that both climate change treaties and general international law norms, including the duty of due diligence, require States not only to mitigate but also to adapt to the adverse effects of climate change in accordance with the best available science. Moreover, developed States bear additional obligations to provide financial assistance to developing countries in support of their adaptation efforts (ICJ, 2025, paras. 283–286).

Furthermore, the ICJ confirmed that certain climate-related obligations under international law are of an *erga omnes* character, implying that all States have a legal interest in their observance and may invoke responsibility for their breach, including through litigation before international courts where a jurisdictional basis exists (ICJ, 2025, paras. 439–443). The Court further stressed that acts of omission or insufficient regulatory action may constitute an internationally wrongful act attributable to the State, thereby triggering the legal consequences under the law of State responsibility, including cessation, assurances and guarantees of non-repetition, and reparation. The Court also acknowledged that advances in scientific evidence enable the attribution of emissions to specific States and, accordingly, allow affected States, as well as those holding a legal interest in the performance of such obligations, to call for international responsibility (ICJ, 2025, paras. 449–455).

African States and regional organisations participated actively in the advisory proceedings before the ICJ on climate change, reflecting the continent’s increasingly coordinated engagement in international climate governance. They stressed that Africa has the lowest per capita GHG emissions globally, despite being among the regions that bear the most severe and disproportionate consequences of climate change. This disparity between minimal responsibility for global GHG emissions and acute climate vulnerability reinforces

the centrality of climate justice, particularly in relation to human rights, sustainable development, and the protection of present and future generations.

African States and African organisations used the advisory proceedings to articulate, with legal precision and normative clarity, that climate change is not merely an environmental or economic concern, but a structural threat to human rights and to the sustainable development of the African continent. From this perspective, African observations and comments emphasised the need to integrate climate justice into the interpretation of international obligations, explicitly incorporating considerations of global equity, structural vulnerability, and common but differentiated responsibilities. The following sections examine the principal concerns, arguments, and positions advanced by African States in the advisory proceedings before the ICJ, with particular attention to three key areas: human rights, future generations, and corporate responsibility in relation to climate change.

2.1. Human Rights: The Right to a Clean, Healthy, and Sustainable Environment

The ICJ's Advisory Opinion constitutes an important step forward in articulating the relationship between climate change and human rights. Yet, it presents significant limitations in terms of its practical scope and transformative potential. Among its most notable contributions is the Court's affirmation that States are required to integrate their human rights obligations into their climate commitments and, vice versa, to take their climate and environmental obligations into account when fulfilling their human rights duties, thereby reinforcing an integrated normative approach (ICJ, 2025, para. 403). Likewise, the ICJ's Advisory Opinion contributes to consolidating the understanding that the impacts of climate change directly affect the enjoyment of a broad range of human rights, and that their protection requires proactive State measures, including mitigation, adaptation, and the regulation of private actors, in accordance with a more robust conception of State due diligence in climate matters. The Court also recognises the fundamental nature of the right to a clean, healthy, and sustainable environment as a prerequisite for the effective exercise of other human rights (ICJ, 2025, para. 393).

However, this recognition is articulated in relatively general terms and lacks sufficient specificity to be translated into clear operational standards. In particular, the Court refrains from defining the substantive content of State obligations with adequate precision, thereby limiting their effective implementation at the domestic level. Moreover, the absence of articulated criteria governing the attribution of responsibility and reparations in contexts of complex climate causation reduces its utility as an accountability framework, particularly for the most vulnerable States and communities. This is compounded by the limited attention afforded to structural inequalities between the Global North and Global South, which constrains its capacity to respond substantively to the demands of climate justice. At the same time, some analyses suggest that the ICJ's Advisory Opinion may nonetheless serve as an argumentative foundation for future legal claims grounded in human rights and climate justice (Wewerinke-Singh et al., 2025). Consequently, despite its contribution to strengthening the

nexus between climate change and human rights, the Court's interpretative caution diminishes the practical impact of the opinion on the effective protection of these rights.

As noted above, the African continent experiences disproportionate impacts of climate change, with direct consequences for the effective enjoyment of human rights. Indeed, the Republic of Kenya (2024, para. 5.52) forcefully argued that “GHG emissions from the Global North violate and impair human rights in the Global South, especially in Africa”. This premise underpins the position of the African Union (AU), which characterises climate change as a human rights crisis and affirms an intrinsic normative relationship whereby “a stable climate system is an essential condition for sustaining life on Earth. It logically follows that because human rights require States to take measures to protect human rights and because climate change impacts the enjoyment of human rights, then States are under a duty to protect the climate system under human rights law” (AU, 2024, para. 190).

Concerning the human rights affected by the impacts of climate change, the AU (2024, paras. 197–217), supported by the written observations and comments of other States such as Burkina Faso (2024, paras. 201–219), the Republic of Cameroon (2024, paras. 66–96), the Arab Republic of Egypt (2024, paras. 206–227), the Republic of Ghana (2024, paras. 3.34–3.51), the Republic of the Gambia (2024, paras. 3.28–3.29), and the Republic of Kenya (2024, paras. 5.54–5.80), among others, invoke a broad range of substantive rights, including the right to life, the right to health, the right to development, the right to culture, the rights to food and water, and the right to an adequate standard of living. However, particular emphasis is placed on the right to a clean, healthy, and sustainable environment. As Sierra Leone argues, this right “imposes obligations on all States—not just States Parties to existing multilateral environmental agreements—to respect, protect, and fulfil this right, as well as the duty to cooperate internationally to ensure its full realization and enjoyment” (Republic of Sierra Leone, 2024, para. 3.117).

For African States, the right to a healthy environment constitutes the foundational basis upon which all human rights rest in the context of climate change. Its articulation within the African context carries particular historical and normative significance. The AU notes that the African Charter on Human and Peoples' Rights (African Charter) was the first regional instrument to recognise, in Article 24, that “all peoples shall have the right to a generally satisfactory environment favourable to their development”². This provision explicitly links environmental protection to the right to development, reflecting a distinctive strand of African legal thought that conceives environmental sustainability not as a constraint, but as an enabling condition for progress and development. The content of this right entails positive obligations on States to “take reasonable and other measures to prevent pollution and ecological degradation, promote conservation, and secure ecologically sustainable development and use of natural resources” (Republic of Kenya, 2024, para. 5.74).

On this basis, African States project these obligations beyond a strictly territorial conception, advocating for an extraterritorial scope that challenges the traditional limits of State

² For an analysis of this provision, see Chenwi (2018).

THE AFCHPR'S ADVISORY OPINION ON HUMAN RIGHTS AND CLIMATE CHANGE:
PRELIMINARY REFLECTIONS ON ITS POTENTIAL CONTRIBUTION TO CLIMATE JUSTICE

jurisdiction. They invoke the IACtHR, according to which “the jurisdiction of a State extends not only to the individuals on its territory, but also to those on the territories of other States, if the activities taking place on the territory of the first State are affecting the enjoyment or fulfilment of their rights” (Burkina Faso, 2024, para. 193; see also Organisation of African, Caribbean, and Pacific States, 2024, para. 118). Although the existence of a causal link “between the act that originated in its territory and the infringement of the human rights of persons outside its territory” is required (AU, 2024, para. 206), African States emphasise that regulatory control over emission sources may amount to a form of effective control over GHG emissions.

Based on this, it is argued that Global North States, as the principal emitters and holders of the regulatory capacity to control such activities, incur international responsibility when they fail to adopt adequate mitigation measures, thereby affecting the enjoyment of human rights by populations located outside their territory. Thus, the emitting State exercises *de facto* control over the climatic conditions that render human life and dignity possible in other geographical contexts. The AU articulates this position explicitly, stating that “African States have very little control over the causes of climate change and cannot, without significant mitigation action by developed countries, secure a safe climate and sustainable environment for their citizens. As a result, the onus of human rights duties in relation to climate mitigation needs to be on developed countries, including, as appropriate, in an extraterritorial context” (AU, 2024, para. 196). Consistent with this position, it is argued that the concept of “effective control” should not be confined to physical presence over a territory but should extend to the regulatory and technical control exercised over the sources of harm. Along similar lines, Burkina Faso emphasises that “it can be concluded that the obligation to prevent transboundary environmental damage or harm is an obligation recognised by international environmental law, under which States may be held responsible for any significant damage caused to persons outside their borders by activities originating in their territory or under their effective control or authority” (Burkina Faso, 2024, para. 103).

Finally, the position of African States is anchored in the assertion that “all States are obligated under international human rights law [...] to undertake all measures to prevent the deleterious effects of human-induced climate change” (Republic of Sierra Leone, 2024, para. 3.118). However, an underlying structural tension constrains the effectiveness of these claims, insofar as their realisation remains conditioned by an international legal order that frequently privileges the sovereignty of emitting States over the vulnerability of affected States. In this context, African States call for a reconfiguration of international law in the spirit of climate justice, whereby Global North States assume responsibility for addressing accumulated climate debt, not only by strengthening mitigation efforts but also by fulfilling their obligations to provide adequate and predictable climate finance, facilitate technology transfer and capacity building. This, in their view, requires moving beyond mitigation commitments to encompass obligations relating to adequate and predictable climate finance, technology transfer, capacity building, and the provision of effective remedies for climate related harm.

Within this broader framework, African States increasingly regard the emerging international regime on Loss and Damage as a key legal and institutional mechanism through

which historical responsibility and climate justice may be operationalised. As reflected in the written statements submitted before the ICJ, several African States contend that irreversible climate-related losses suffered by vulnerable countries cannot be adequately addressed through adaptation alone and therefore require dedicated financial arrangements, compensation mechanisms, and other forms of reparation grounded in historical responsibility and international solidarity (AU, 2024; Burkina Faso, 2024; Democratic Republic of the Congo, 2024). Accordingly, the operationalisation of Loss and Damage is presented not merely as a matter of international cooperation, but as an essential component of States' obligations to remedy the human rights' consequences of climate change. From this perspective, transboundary harm resulting from GHG emissions constitutes not merely an environmental concern, but a systemic violation of the human rights of those who have contributed least to the climate crisis, thereby reinforcing the legal imperative to operationalise climate justice through effective reparative mechanisms.

2.2. Future Generations

Scholars argue that the climate emergency constitutes a profound challenge of distributive justice, insofar as the accumulation of GHGs by present generations threatens the stability of the Earth system and the satisfaction of the basic needs of future generations. In this sense, intergenerational equity has evolved into an operative normative principle requiring the transcendence of political dynamics predominantly oriented toward the immediate interests of present generations, to prevent the burden of mitigation and environmental harm from being unfairly transferred to those who will live in the future (de Armenteras Cabot, 2021, pp. 5–12). Accordingly, States are understood to act as trustees of a common heritage, acknowledging that future generations hold legally protectable rights and interests that must constrain present State conduct (Brown Weiss, 2025, pp. 345–351).

These considerations are notably reflected in the ICJ's Advisory Opinion on climate change, in which intergenerational equity is incorporated as a relevant interpretative criterion for State obligations. In particular, the Court stated that "intergenerational equity is an expression of the idea that present generations are trustees of humanity tasked with preserving dignified living conditions and transmitting them to future generations" (ICJ, 2025, para. 156), emphasising that States must have "due regard for the interests of future generations and the long-term implications of conduct" when designing and implementing their climate policies (ICJ, 2025, para. 157). Likewise, the ICJ's Advisory Opinion recognises that the protection of the climate system constitutes an obligation that explicitly extends "for present and future generations" (ICJ, 2025, para. 273), thereby integrating this temporal dimension into the core of international obligations. However, the Court does not establish intergenerational equity as an autonomous source of obligations, but rather as a hermeneutic principle guiding the interpretation of pre-existing norms on prevention, due diligence, and cooperation, particularly within the framework of the UNFCCC and the Paris Agreement (Díaz-Cruces et al., 2026, pp. 15–23). This approach reinforces its legal relevance, although it circumscribes its transformative potential, insofar as it does not

THE AFCHPR'S ADVISORY OPINION ON HUMAN RIGHTS AND CLIMATE CHANGE:
PRELIMINARY REFLECTIONS ON ITS POTENTIAL CONTRIBUTION TO CLIMATE JUSTICE

generate new obligations *ex nihilo* but rather enhances the enforceability of existing ones through a more long-term-oriented interpretative lens.

African States have adopted a proactive and coordinated approach in the advisory proceedings before the ICJ, arguing that climate change entails obligations under international human rights law, particularly about intergenerational equity. Burkina Faso maintains that intergenerational equity constitutes a norm of contemporary international law that requires present generations to take into account the interests of future generations (Burkina Faso, 2024, paras. 81–83). The Democratic Republic of the Congo (DRC) argues that such protection is both an ethical and legal imperative, stating that “States are under an international obligation to ensure respect for the human rights of future generations, on an equal footing with the rights of present generations” (Democratic Republic of the Congo, 2024, para. 161).

Kenya, citing the IPCC, underscores the disproportionate vulnerability of children and future generations to risks such as malnutrition and heat stress, noting that “children aged ten or younger in the year 2020 are projected to experience a nearly four-fold increase in extreme events under 1.5°C of global warming by 2100” (Republic of Kenya, 2024, p. 50). This nexus is translated into due diligence obligations, which The Gambia conceptualises as a duty of conduct requiring the assessment of long-term risks. The Gambia argues that “the Court should recognise that the due diligence obligation to protect the climate system from GHG emissions is owed to both present and future generations” (Republic of The Gambia, 2024, para. 4.32). For its part, Cameroon introduces an innovative dimension by linking climate finance to the rights of future generations and to the requirements of good governance. By arguing that there is “a necessary link between these obligations and the rights of people and of future generations” (Republic of Cameroon, 2024, para. 116), the management of climate resources is framed as an obligation legally conditioned by human rights standards, rather than as a purely technical or discretionary matter.

Finally, the AU also places the protection of future generations at the core of climate-related obligations, conceiving intergenerational equity as an essential component of State due diligence. It states that “the principle of intergenerational equity requires the fair allocation of emission reduction burdens over time, dictating that present generations forego some advantages for the benefit of future generations,” in line with the requirement that States “should protect the climate system for the benefit of present and future generations of humankind” (AU, 2024, para. 116). Likewise, it cautions that climate inaction generates irreversible risks, since “by delaying the adoption of necessary measures [...] States are creating imminent risks” that “will bar children and future generations from living in a healthy and sustainable environment” (AU, 2024, para. 119). Thus, it affirms that States “are under a due diligence duty to take future generations [...] into account” in the design and implementation of their climate policies (AU, 2024, para. 121).

2.3. Corporate Climate Accountability

The disproportionate historical contribution of certain transnational corporations to global emissions, as reflected in the Carbon Majors³, which are responsible for more than 70% of GHG emissions since the Industrial Revolution, has underscored the structural limitations of the international climate change regime, which remains predominantly State-centric (Iglesias Márquez, 2020, pp. 92–100). Indeed, some transnational corporations generate volumes of GHG emissions that exceed those of numerous African States, highlighting the need to hold corporate actors accountable for climate impacts within the international human rights framework.

In this context, the ICJ’s Advisory Opinion provides an important clarification by reaffirming that, under international law, the primary obligations to prevent climate-related harm rest with States. Accordingly, corporate climate accountability is addressed through the State’s duty to exercise due diligence, including adopting regulatory measures governing corporate conduct. The Court therefore holds that States are required to exercise due diligence to prevent significant harm to the climate system by adopting “regulatory mitigation mechanisms designed to achieve deep, rapid, and sustained reductions in GHG emissions” and ensuring that such measures “must regulate the conduct of public and private operators within the States’ jurisdiction or control” (ICJ, 2025, para. 282). Thus, although the ICJ recognises, to a certain extent, the State’s obligation to regulate private activities harmful to the climate, it refrains from imposing direct international obligations on companies, thereby maintaining the predominantly State-centred approach that characterises contemporary international law.

It also emphasises that a State may incur international responsibility where “it has failed to exercise due diligence by not taking the necessary regulatory and legislative measures to limit the quantity of emissions caused by private actors under its jurisdiction” (ICJ, 2025, para. 428). As McVey and Savaresi (2025) observe, this construction reinforces a notion of climate liability in which “the wrongful act is not the emissions of GHGs, but failure to regulate,” thereby shifting the focus from direct corporate conduct to State regulatory omission. In general terms, this suggests that States must not only reduce their own emissions but may also be held accountable for those generated by companies operating under their jurisdiction.

Therefore, the ICJ adopts a cautious approach concerning the recognition of an autonomous role for corporations in contributing to the climate crisis. As van Asselt (2025) notes, while the ICJ’s Advisory Opinion implicitly acknowledges that the activities of private actors are relevant in assessing compliance with State obligations —“States have an obligation to regulate the GHG emissions of private actors, and to ensure those regulations are implemented and enforced.” It does not go so far as to establish that corporations are directly subject to international

³ The Carbon Majors refer to the largest multinational corporations and state-owned enterprises engaged in the extraction and production of crude oil, natural gas, coal, and cement, whose cumulative historical production since 1854 has been responsible for the majority of global cumulative carbon dioxide (CO₂) and methane emissions. See Heede (2014).

THE AFCHPR'S ADVISORY OPINION ON HUMAN RIGHTS AND CLIMATE CHANGE:
PRELIMINARY REFLECTIONS ON ITS POTENTIAL CONTRIBUTION TO CLIMATE JUSTICE

climate obligations. This restraint contrasts with more progressive developments in other fora, such as the IACtHR, as well as with an emerging judicial practice that increasingly recognises corporate responsibilities within the human rights framework.

In this regard, the position of African States assumes particular significance by proposing a more demanding reinterpretation of due diligence, understood not as a programmatic standard, but as an operational and binding obligation requiring States to effectively monitor corporate activities, especially those with the highest climate impact. Thus, by articulating State obligations in terms of active oversight, stringent regulation, and accountability *vis-à-vis* private actors, this position helps bridge existing regulatory gaps and strengthen the integration between international climate change law, international human rights law, and the emerging framework of corporate responsibility. At the same time, this approach points towards the consolidation of a system of shared responsibilities between States and corporations, in which the protection of the climate system is no longer conceived exclusively as a State obligation but is progressively extended to economic actors with the greatest capacity to influence the climate crisis.

The positions of Burkina Faso and the DRC reinforce the State's obligation to protect human rights against climate impacts arising from business activities. The positions of African States converge in affirming that States have a duty to regulate and control the conduct of private actors, including corporations, to prevent human rights violations linked to climate change. However, they place additional emphasis on the operational content of the due diligence obligation, framing it as a particularly stringent standard that requires States to deploy all available means to prevent harm caused by private operators, as well as to refrain from adopting measures that facilitate or incentivize GHG emissions by third parties, including the granting of licences or subsidies (Burkina Faso, 2024, paras. 182, 320). The DRC further elaborates on the legal dimension of attribution, arguing that a State may incur international responsibility where it fails to exercise due diligence in regulating the activities of companies under its jurisdiction, including where such activities cause transboundary harm. It emphasises that the private character of the actor cannot, in itself, preclude the international responsibility of the State (Democratic Republic of the Congo, 2024, paras. 180–181).

Egypt and The Gambia emphasise the central role of State oversight over business activities in the context of climate change. Egypt stresses that the duty of due diligence entails not only the adoption of regulatory frameworks, but also “the exercise of administrative control applicable to public and private operators” (Arab Republic of Egypt, 2024, para. 115), which translates into an obligation to “regulate the conduct of and to punish private entities [...] for their polluting activities” (Arab Republic of Egypt, 2024, para. 116), noting that regulatory gaps allow companies to “continue business as usual in emitting GHGs” (Arab Republic of Egypt, 2024, para. 247). For its part, The Gambia, invoking the principle of do no harm, insists that this requires States to use “all the means at their disposal” to prevent environmental harm, which necessarily includes the activities of private actors under their jurisdiction, over whom they must exercise “a certain level of vigilance in their enforcement and [...] administrative control” (Republic of The Gambia, 2024, paras. 3.12–3.13).

Likewise, African States maintain that the State's obligation to protect human rights against climate impacts arising from business activities extends extraterritorially, requiring States to adopt measures to "prevent and redress infringements [...] that occur outside their territories due to the activities of private actors" (Republic of The Gambia, 2024, para. 208). For example, Namibia asserts that such obligations include "the regulation of the activities of transnational corporations [...] including in their supply chain" (Republic of Namibia, 2024, para. 149), reflecting a growing emphasis on global value chains and the transnational effects of corporate activity.

Finally, the AU warns that "failure to regulate or mitigate the emissions of private actors can result in human rights violations" (AU, 2024, para. 196), thereby framing State inaction as a potential breach of international obligations. At the same time, while reaffirming that the primary obligation to address climate change rests with States, it also notes that "the private sector, including multinational companies, share the responsibility to respect human rights" (AU, 2024, para. 196). This contributes to the emergence of a more integrated system of shared obligations and responsibilities between States and private actors in addressing climate change.

3. ASSESSING THE INCLUSION OF AFRICAN CONCERNS IN THE ICJ'S ADVISORY OPINION ON CLIMATE CHANGE

The participation of African States in the advisory proceedings before the ICJ constituted a coordinated effort to reframe States' climate obligations from a climate justice perspective. The observations and comments submitted by African States sought to prompt the Court to recognise the historical and structural roots of the climate crisis, particularly the inequalities arising from colonial legacies and prevailing models of industrial development. The ICJ accepted some of these arguments by acknowledging that developing countries have contributed minimally to global GHG emissions, despite bearing a disproportionately severe share of its impacts. Thus, the ICJ's Advisory Opinion partially reflects long-standing demands advanced by African States in relation to climate justice.

Despite this diplomatic acknowledgement, the technical outcome reflects what Dehm (2025) describes as an "evasion of historical responsibility". The Court incorporated IPCC data acknowledging that developed countries contributed 57% of cumulative emissions compared to 0.4% from the Least Developed Countries (ICJ, 2025, para. 80). However, this factual recognition did not translate into obligations capable of adequately addressing demands for decolonial reparations. By refraining from specifying the temporal scope of the wrongfulness of past emissions, the ICJ effectively shields major emitters, thereby diluting the legal force of claims advanced by African States regarding historical damages and obscuring the extent to which colonial patterns continue to shape contemporary climate injustices (Dehm, 2025). This broader understanding of historical responsibility is also reflected in the Ghana-led United Nations General Assembly Resolution 80/250 (2026), recognising the transatlantic slave trade and the chattel enslavement of Africans as the "gravest crime against humanity", which illustrates the growing willingness of the

THE AFCHPR'S ADVISORY OPINION ON HUMAN RIGHTS AND CLIMATE CHANGE:
PRELIMINARY REFLECTIONS ON ITS POTENTIAL CONTRIBUTION TO CLIMATE JUSTICE

international community to acknowledge the enduring legal consequences of historical injustices. The Advisory Opinion, however, adopts a markedly more restrained approach to the treatment of historical responsibility, particularly with respect to its temporal dimension.

The disconnection between scientific evidence and the determination of historical responsibility is particularly evident in the neutralisation of the African States' position through the selective management of legal temporality. According to Dehm (2025), the ICJ deliberately avoided addressing the causal link between colonialism and environmental degradation, systematically omitting the term "colonialism" from its final reasoning. In this way, the ICJ transforms a demand for restitution generated by centuries of extraction and vulnerability into a mere matter of prospective technical cooperation. By refusing to identify the moment at which historical emissions began to breach international law, the Court effectively shields the economic sovereignty of industrialised States, leaving African States without a clear legal basis to claim reparations for the harm already materialised in their territories as a legacy of that unacknowledged past.

The opinions of the African judges Julia Sebutinde, Abdulqawi Ahmed Yusuf, and Dire Tladi constitute a significant technical and ethical endorsement, revealing a stance that substantially reinforces the historical demands of African States, while also criticising the ICJ's excessive caution in failing to translate these aspirations into fully operational obligations. While the ICJ's Advisory Opinion provides a general framework, these judges argue that the Court missed a historic opportunity to integrate the material realities of the Global South into the core of contemporary international law, warning that this omission may contribute to the perpetuation of systemic forms of injustice.

Judge Yusuf presents one of the most incisive critiques of the ICJ's tendency to treat all States as identical subjects in the context of the climate crisis, arguing that the Court resorts to a formal equality that obscures historical and material asymmetries. His Separate Opinion demonstrates that the ICJ not only adopted an excessively abstract approach but also neglected the human, intergenerational, and material dimensions of climate change, acknowledging that its conclusions "fail to respond properly and adequately to the questions posed [...] [and] fail to [...] address the realities on which those questions are based and the scientific findings [...] which inspired them" (Yusuf, 2025, para. 1). This omission is particularly significant in relation to human rights and future generations, given that the question posed expressly required consideration of the consequences for "peoples and individuals of the present and future generations affected by the adverse effects of climate change" (Yusuf, 2025, para. 3), a dimension that, according to the judge, was left without concrete legal effect.

It also addresses the lack of State regulatory action against major emitters, noting that the ICJ failed to rule on "the failure of gross GHG-emitting States to take appropriate action [...] including through regulations on fossil fuel production, fossil fuel consumption, and the granting of subsidies or exploration licenses" (Yusuf, 2025, para. 40). His position constitutes a direct challenge to judicial formalism, warning that the adoption of a purported legal neutrality produces a fiction of equality that "is rooted in extreme formalism and

completely detached from the empirical realities and the scientific findings” (Yusuf, 2025, para. 8), thereby consolidating a critique that converges with the longstanding demands of African States in favour of substantive climate justice.

Similarly, Vice President Sebutinde’s Separate Opinion emphasises that the ICJ’s Advisory Opinion “falls short in fully addressing the questions posed by the General Assembly” and, in particular, “lacks comprehensive and clear answers [...] regarding the legal implications of climate change for present and future generations” (Sebutinde, 2025, para. 1), highlighting a substantive omission in the protection of the rights of future generations. This criticism is reinforced when she asserts that the ICJ has “glossed over these important aspects of the request and does not go far enough in addressing them in answering question (a)” (Sebutinde, 2025, para. 3). This shortcoming also extends to the human rights dimension of climate obligations, for, as she emphasises, “the legal obligations owed by polluting States are owed not only to ‘other States’ but also towards ‘[p]eoples and individuals of the present and future generations’” (Sebutinde, 2025, para. 6), including specific communities whose very existence is threatened by climate change. Sebutinde formulates a robust concept of climate obligations by arguing that “States have a legal obligation both to present and future generations not to render planet Earth unliveable [...]” (Sebutinde, 2025, para. 7), explicitly linking the protection of the climate system to an intergenerational legal duty that transcends the classical State-centred approach. Regarding non-State actors, although the judge does not develop an autonomous regime of corporate accountability, she “emphasises the responsibility of States and non-State actors to consider the long-term impacts of their actions and policies” (Sebutinde, 2025, para. 7), thereby opening a normative space for the inclusion of private actors within the architecture of climate responsibilities.

Finally, in his Declaration, Judge Tladi adopts a more nuanced approach, albeit not one free of structural criticism, combining recognition of significant progress with observations on conceptual ambiguities and systemic limitations. On the subject of human rights, he notes that “the Court proceeds to speak unambiguously of a right to a clean and healthy environment,” and that this right is “essential for the enjoyment of other human rights” (Tladi, 2025, para. 26). However, Judge Tladi (2025, para. 26) identifies a certain ambivalence in its final formulation, insofar as the ICJ describes it simultaneously as “a precondition for the enjoyment of many human rights” and as a right “inherent in the enjoyment of other human rights”, which may be interpreted as an oscillation between its autonomous recognition and its instrumental character.

Concerning future generations, it frames the climate crisis in existential terms, emphasising that it constitutes “a threat to ‘human well-being and planetary health’” and that there is “a rapidly closing window of opportunity to secure a liveable and sustainable future for all” (Tladi, 2025, para. 1), thereby implicitly reinforcing the need for more demanding and verifiable obligations. This imperative is reflected in its interpretation of the Paris Agreement, where Judge Tladi rejects any margin for absolute discretion by asserting that nationally determined contributions must be “objectively capable of contributing toward the temperature goal [...] of limiting global warming to 1.5°C above pre-industrial levels” and that, therefore, “cannot be regarded as discretionary” (Tladi, 2025, para. 17).

THE AFCHPR'S ADVISORY OPINION ON HUMAN RIGHTS AND CLIMATE CHANGE:
PRELIMINARY REFLECTIONS ON ITS POTENTIAL CONTRIBUTION TO CLIMATE JUSTICE

His most incisive criticism, however, is directed at the ICJ's jurisprudential consistency, noting that, in the face of previous contradictions regarding *erga omnes* obligations, the Court "has chosen to cast a veil over itself and to proceed as if all were well in the world" (Tladi, 2025, para. 37), revealing a lack of doctrinal clarity that may undermine the progressive development of international law. Judge Tladi introduces a structural reflection on the limits of judicialized international law itself, noting that "no number of advisory opinions, no matter how robust or thoughtful, can save the planet from the ongoing climate crisis" (Tladi, 2025, para. 38), thus emphasising that the effectiveness of these legal constructs will ultimately depend on broader political and economic decisions in which non-State actors also play a role.

**4. THE POTENTIAL OF THE AfCHPR'S ADVISORY OPINION ON THE OBLIGATIONS
OF STATES WITH RESPECT TO THE CLIMATE CHANGE CRISIS**

Under the AHRS, both the African Commission on Human and Peoples' Rights (ACHPR) and AfCHPR exercise advisory jurisdiction, enabling them to contribute to the interpretation and normative development of regional human rights instruments. In the case of the ACHPR, this competence is embedded in its general mandate to promote and protect the rights recognised in the African Charter, empowering it to issue opinions, make recommendations, and provide advisory guidance to States and to the organs of the then Organisation of African Unity. However, the ACHPR's advisory jurisdiction has been exercised only sparingly, with only one advisory opinion having been adopted to date, in 2007, concerning the United Nations Declaration on the Rights of Indigenous Peoples⁴.

The AfCHPR, by contrast, possesses a formally broader and legally more structured advisory jurisdiction (Van der Mei, 2005, pp. 27–46). In accordance with Article 4(1) of its Protocol, the AfCHPR may issue advisory opinions on legal questions relating to the African Charter or any other relevant international human rights instrument. However, practice reveals a limited degree of development. To date, the number of advisory proceedings initiated has remained small, and the Court has only exceptionally engaged with substantive advisory questions⁵, which has attracted doctrinal criticism regarding the limited use of this mechanism (Odinkalu, 2023, pp. 368–372).

⁴ See ACHPR, *Advisory Opinion of the African Commission on Human and Peoples' Rights on the United Nations Declaration on the Rights of Indigenous Peoples*, May 2007.

⁵ See *Advisory Opinion No. 002/2013 on the Standing of the African Committee of Experts on the Rights and Welfare of the Child before the African Court on Human and Peoples' Rights*, Requested by the African Committee of Experts on the Rights and Welfare of the Child, December 5, 2014; *Advisory Opinion No. 001/2018 on the compatibility of vagrancy laws with the African Charter on Human and Peoples' Rights and other human rights instruments applicable in Africa*, requested by the Pan-African Lawyers Union (PALU), December 4, 2020; *Advisory Opinion No. 001/2020, On the right to participate in the government of one's country in the context of an election held during a public health emergency or a pandemic, such as the COVID-19 crisis*, requested by the Pan-African Lawyers Union (PALU), July 16, 2021; *Advisory Opinion No. 001/2021, On the application of the principle of regional rotation in the election of the bureau of the Pan-African Parliament (PAP)*, requested by PAP, July 16, 2021. This practice points to an advisory function whose potential remains largely unexplored, despite its capacity to contribute to the progressive interpretation and harmonisation of human rights standards in Africa. See Mpunga-Biayi (2026).

AfCHPR's advisory jurisdiction may be invoked by a broad range of eligible actors, including AU Member States, AU bodies, and African organisations recognised by the AU. This broad category of admissible applicants constitutes a distinctive feature of the AfCHPR, insofar as it allows, at least in principle, for the participation of civil society organisations in the exercise of its advisory function. The possibility for non-governmental organisations, particularly those with a local presence and direct knowledge of the impacts of climate change on vulnerable communities, to submit requests for advisory opinions opens a significant space for the progressive development of international law (Lupin and Nekura, 2025, pp. 156–163). However, this potential is substantially constrained by restrictive standing requirements, as only organisations holding observer status with the AU or those with formalised cooperation agreements may access the AfCHPR. In practice, most requests submitted by non-governmental organisations have been rejected, with only very few exceptions, because of the Court's restrictive interpretation of admissibility requirements for access to its advisory jurisdiction (Advisory Opinion No. 001/2018 and Advisory Opinion No. 001/2020). Consequently, only a small number of organisations with formal institutional links have been able to engage with the Court in this context, notably including the Pan African Lawyers Union (PALU).

Against this backdrop of a growing proliferation of advisory proceedings on climate-related issues, in May 2025, PALU, in collaboration with various African civil society organisations, submitted a request for an advisory opinion to the AfCHPR concerning States' obligations in relation to the climate change crisis. The petition invites the Court to determine the scope of the positive obligations of African States under the African Charter⁶, as well as to clarify their normative content in light of other relevant international and regional instruments. These include treaties within the United Nations system, such as the UNFCCC, the Kyoto Protocol, and the Paris Agreement, as well as relevant African instruments, such as the Constitutive Act of the AU and the Kampala Convention. This approach reflects an integrative interpretive strategy aimed at systematising climate obligations within the framework of international human rights law (PALU, 2025, para. 90).

⁶ Among the issues to be addressed are (a) the Court's jurisdiction over African States' human and peoples' rights obligations regarding the climate emergency. (b) The interpretation and application of customary and treaty law concerning State obligations on climate change. (c) Specific State human rights obligations toward past, present, and future generations affected by climate change. (d) Positive obligations of States to protect vulnerable populations, including environmental human rights defenders, indigenous communities, women, children, the elderly, and people with disabilities. (e) Applicable obligations concerning a just, transparent, equitable, and accountable transition. (f) Applicable obligations in implementing adaptation, resilience, and mitigation measures. (g) Applicable obligations concerning compensation for loss, damage, and reparations. (h) Responsibilities of African States regarding violations by third parties (international monopolies, multinational corporations) operating within their jurisdiction. These entities contribute significantly to emissions, and States have obligations under the Charter (Article 21) and international law to regulate and monitor their activities. The importance of Environmental Impact Assessments (EIAs) in regulating third-party activities is highlighted. (i) Obligations of African States concerning traditional emitters (historically high-emitting countries), including advocating for climate justice, demanding climate finance, seeking compensation for loss and damage, and promoting equitable burden-sharing. (j) The application of the duty of care principle for States and potentially corporations in addressing climate change impacts.

THE AFCHPR'S ADVISORY OPINION ON HUMAN RIGHTS AND CLIMATE CHANGE:
PRELIMINARY REFLECTIONS ON ITS POTENTIAL CONTRIBUTION TO CLIMATE JUSTICE

The AfCHPR's Advisory Opinion could play a particularly significant role in addressing gaps in the ICJ's Advisory Opinion, especially by incorporating a human rights-centred perspective and African regional realities. Indeed, the request marks a turning point for African jurisprudence, in that it not only calls on the African Court to clarify State obligations under an instrument characterised by its broad and inclusive approach, but also to “set the tone for how climate change is addressed within a regional legal architecture that centres on collective rights and intergenerational justice” (Afogo et al., 2025).

Should the AfCHPR issue an Advisory Opinion, it has the potential to become part of the emerging judicial dialogue through which international courts and tribunals, despite their distinct jurisdictions and mandates, progressively align their approaches to common questions of international climate law. As the experience of the ICJ, ITLOS and the IACtHR demonstrates, such interaction contributes to a more coherent and integrated understanding of States' climate obligations. In this way, the eventual AfCHPR's Advisory Opinion could provide interpretative criteria and more specific standards regarding human rights, intergenerational justice, corporate accountability, and loss and damage, thereby contributing to the enrichment of global normative development on climate change from a Global South perspective.

4.1. Human Rights: The Right to a Clean, Healthy, and Sustainable Environment

As mentioned above, the ICJ's Advisory Opinion takes a significant step by holding that the right to a clean, healthy, and sustainable environment is “inherent in the enjoyment of other human rights” and “essential for the enjoyment of other human rights” (ICJ, 2025, para. 393). However, as Heri (2025) observes, this formulation remains deliberately open-ended and does not fully specify its content or its status as an autonomous norm. Thus, the potential AfCHPR's Advisory Opinion presents a unique opportunity to specify the normative content of the right to a satisfactory environment based on the jurisprudence of the African system itself, thereby complementing other standards from the Global South, particularly those developed within the framework of the Inter-American Human Rights System⁷.

The landmark decision of the African Commission in *Social and Economic Rights Action Centre (SERAC) and the Centre for Economic and Social Rights (CESR) v. Nigeria* (SERAC case) constitutes a foundational starting point, as it developed both the substantive and procedural dimensions of the right recognised in Article 24 of the African Charter (ACHPR, 2001). In the *SERAC case*, the ACHPR also laid the groundwork for a structural link between the exploitation of natural resources, environmental degradation, and human rights violations. In that decision, the ACHPR affirmed that States are obliged to “refrain from directly threatening the health and environment of their citizens” and “to take reasonable measures to prevent pollution and ecological degradation” (ACHPR, 2001, paras. 52–53), thereby establishing a due diligence standard that encompasses protection against serious environmental harm.

⁷ See IACtHR's Advisory opinion on the Environment and Human Rights (2017).

From a procedural perspective, the ACHPR also specified that States must ensure that environmental and social impact assessments are conducted and made public, provide “information to those communities exposed to hazardous materials and activities,” and guarantee effective opportunities for participation in decision-making processes (ACHPR, 2001, para. 53). Furthermore, the ACHPR held that “humanly unacceptable” levels of “pollution and environmental degradation” may constitute a violation of the right to life (ACHPR, 2001, para. 67).

This position of the ACHPR has subsequently been reaffirmed and further developed by the AfCHPR in *LIDHO and Others v. Côte d’Ivoire*, in which a violation of the right to a satisfactory environment was found (AfCHPR, 2023). In that judgment, delivered in September 2023, the AfCHPR issued its first ruling concerning environmental harm arising from the dumping of toxic waste, thereby consolidating the justiciability of Article 24 of the African Charter and advancing the delineation of State obligations in environmental matters.

In this decision, the AfCHPR expressly relied on the *SERAC case* to clarify the scope of State obligations under Article 24 of the African Charter (AfCHPR, 2023, para. 179), while also incorporating relevant international standards, such as the definition of the right to a healthy environment contained in General Comment No. 14 of the CESCR, which includes “the prevention and reduction of the population’s exposure to harmful substances” (CESCR, 2000, para. 15). Likewise, the AfCHPR invoked Article 2 of the Algiers Convention to underscore the State’s duty to ensure the conservation and sustainable use of natural resources in accordance with scientific criteria (AfCHPR, 2023, para. 181). Based on this integrated legal framework, the Court concluded that the State was required to “act not only to prevent the dumping of the waste [...] but also to ensure full and effective decontamination” (AfCHPR, 2023, para. 183), finding a violation of Article 24 for failing to adopt “appropriate legal, administrative, and other measures” or to proceed with the effective clean-up of the contaminated sites (AfCHPR, 2023, paras. 184–186), thereby reinforcing a more rigorous understanding of environmental obligations grounded in due diligence and the prevention of harm.

Although the jurisprudence of the ACHPR remains relatively limited, it has reinforced the enforceability of Article 24 of the African Charter through the decisions of its two principal bodies, the ACHPR and the AfCHPR⁸. The African Commission has consistently interpreted this provision as giving rise to positive, non-programmatic State obligations, including duties to respect, protect, and fulfil the right to a healthy environment, manifested in the prevention of environmental harm and the adoption of appropriate regulatory and

⁸ The decisions of the African Commission and the African Court are also beginning to shape domestic environmental and climate adjudication across Africa. This influence can be observed in national cases concerning the protection of environmental rights, corporate accountability for environmental harm, and States’ environmental and climate obligations, including *Gbemre v. Shell Petroleum Development Company of Nigeria Ltd.* before the Federal High Court of Nigeria, *Centre for Oil Pollution Watch v. Nigerian National Petroleum Corporation* before the Supreme Court of Nigeria, *Mbabazi and Others v. Attorney General and National Environmental Management Authority* before the High Court of Uganda, and *Centre for Environmental Rights v. Minister of Environmental Affairs* before the High Court of South Africa.

institutional measures. For its part, the AfCHPR has helped to reinforce this approach by recognising the justiciability of environmental rights and their connection to other rights under the Charter, thereby consolidating their binding nature. Within this framework, both bodies have expanded the scope of Article 24 of the African Charter to cover situations of severe environmental degradation, implicitly including risks associated with climate change.

This development in African jurisprudence contributes to the protection of human rights in the context of climate change by requiring States to adopt prevention, mitigation, and adaptation measures in response to its impacts. By recognising the interdependence between the environment and fundamental rights, the AHRS reinforces the obligation to act with due diligence in the face of risks affecting rights such as life and health, thereby consolidating legal standards applicable to climate governance from a human rights perspective.

4.2. Future Generations

The potential AfCHPR's Advisory Opinion also represents an opportunity to consolidate an intergenerational approach to the protection of human rights in the face of the climate crisis through a systematic interpretation of the African *corpus juris*. In this regard, constitutional developments in some African States offer relevant interpretative context, as they expressly recognise environmental protection for the benefit of present and future generations, thereby establishing State obligations with a clear temporal dimension. Thus, Article 42 of the Constitution of Kenya provides that "Every person has the right to a clean and healthy environment [...] to have the environment protected for the benefit of present and future generations...", while Article 35 of the Constitution of Niger provides that "the State has the obligation to protect the environment in the interest of present and future generations".

Although these constitutional provisions do not in themselves establish a uniform regional standard, they illustrate an emerging interpretative approach that the AfCHPR may take into account when interpreting the African Charter. This is consistent with the practice of regional human rights courts, which have drawn on domestic constitutional developments as relevant contextual elements for the evolutionary interpretation of human rights treaties. Against this background, the AfCHPR could integrate the principle of intergenerational equity as an interpretative standard considering the cumulative and deferred effects of climate change.

In this context, the link between the protection of future generations and children's rights acquires specific normative coherence within the AHRS. Although these are not equivalent categories, their connection is justified insofar as children constitute the group most directly exposed to the prolonged and cumulative effects of environmental degradation and climate change, which introduces a temporal dimension inherent to the protection of their rights. Within the AHRS, the principle of the best interests of the child operates as a reinforced normative criterion (Boshoff and Damtew, 2019, p. 134), requiring that "In all actions concerning the child [...] the best interests of the child shall be the primary consideration" (Article 4(1) of the African Charter on the Rights and Welfare of the Child). This formulation supports the argument that any State policy or practice that compromises

future environmental or climate conditions is incompatible with this standard, insofar as it structurally affects the development, health, and well-being of children, thereby extending legal protection to future generations.

This intertemporal dimension has been progressively affirmed in the practice of African human rights bodies. In the *Talibés case*, the African Committee of Experts on the Rights and Welfare of the Child (ACERWC) affirmed that the right to development includes “the right to live in a safe and clean environment” (ACERWC, 2014, para. 42). Likewise, in the *Nubian Descent case*, it held that the realisation of children’s rights “is not a matter to be relegated to a tomorrow, but an issue that requires proactive and immediate attention and action” (ACERWC, 2011, para. 33), underscoring the urgency of State responses to structural risks. Similarly, in the *SOS-Esclaves case*, the Committee noted that States must “put in place a child rights governance system that ensures the visibility, advancement, and realisation of all children’s rights” (ACERWC, 2015). Within this framework, the requested Advisory Opinion could consolidate an interpretation according to which climate inaction violates not only present rights but also those of future generations, by structurally compromising their living conditions, thereby integrating intergenerational justice into the core of the AHRS.

4.3. Corporate Climate Accountability

In the AHRS, with respect to Pillar I of the United Nations Guiding Principles on Business and Human Rights (UNGPs), it is recognised that the primary obligation of States is the duty to protect individuals from human rights violations committed by third parties, including business enterprises. This duty requires States to protect individuals from abuses perpetrated by non-State actors, which is particularly significant in contexts where business activities, including those linked to GHG emissions, generate adverse impacts on human rights.

The case law of the ACHPR has established a high standard of due diligence, holding that even where the State is not the direct perpetrator of the violation, “a government cannot absolve itself of responsibility when it failed to prevent the violation and took no action to investigate it” (ACHPR, 1995, para. 22). This standard has been further developed by the AfCHPR, which has specified that States must adopt “appropriate measures to protect persons against deprivation of life by [...] foreign companies operating in their territory or in other areas under their jurisdiction,” extending this obligation to activities with foreseeable impacts even beyond the State’s territory (AfCHPR, 2023, para. 150). Thus, the duty to protect assumes a particularly broad scope, requiring States to establish regulatory frameworks and effective oversight mechanisms for business activities (O’Neil et al., 2026, pp. 11–15), especially in sectors with high environmental and climate impacts.

Furthermore, in relation to Pillar II of the UNGPs, the AHRS features a distinctive characteristic that allows for the extension of corporate responsibility to respect human rights based on the concept of individual duties enshrined in the African Charter (Jackson, 2025). The ACHPR has developed an interpretation that extends these duties to companies, noting that Article 27(2) imposes the obligation to exercise rights “with due regard to the rights of others”. On this basis, the ACHPR has affirmed that “[w]hile States are the primary obligation bearers under the African Charter, it is also legally recognised that corporations,

THE AFCHPR'S ADVISORY OPINION ON HUMAN RIGHTS AND CLIMATE CHANGE:
PRELIMINARY REFLECTIONS ON ITS POTENTIAL CONTRIBUTION TO CLIMATE JUSTICE

particularly multinational ones, have obligations towards right holders,” thereby preventing “the creation of a human rights vacuum in which such entities operate without observing human rights” (ACHPR, 2018, para. 56). Within this framework, a standard has been established requiring corporations to “ensure that their actions or operations do not result in or trigger the occurrence of harm or the curtailment or deprivation of the rights guaranteed under the African Charter” (ACHPR, 2018, para. 57) and to continuously ensure compliance with international standards on human rights, labour, and the environment.

While State responsibility continues to occupy a central place, the AHRs has progressively recognised the direct involvement of companies in human rights violations. In landmark cases such as *SERAC v. Nigeria* and *IHRDA v. DRC*, the ACHPR (2016, para. 154) concluded that the States had breached the African Charter by failing adequately to regulate, monitor, or prevent corporate abuses linked to the extractive industries, going so far as to find that State authorities had “condoned and facilitated these violations”. These decisions demonstrate not only a strengthened interpretation of States’ obligations of protection and due diligence, but also a growing willingness on the part of the ACHPR to extend the African Charter towards an indirect horizontal application with respect to corporations implicated in human rights violations.

This approach has been reinforced by recent case law from the AfCHPR, particularly in *LIDHO and Others v. Côte d’Ivoire*, in which it was stated that “even though the responsibility [...] to respect the obligations of international law is incumbent primarily on States, it is also true that this responsibility is incumbent on companies, notably multinational companies” (AfCHPR, 2023, para. 142). In this decision, the AfCHPR incorporates the standards of Pillar II of the UNGPs, establishing that corporate responsibility entails the adoption of prevention and remediation policies, as well as due diligence processes: “Such a responsibility requires enterprises to commit themselves to public policies on prevention and remediation, due diligence in the continuous identification of the consequences of their activities, and [...] procedures aimed at resolving problems caused by their actions” (AfCHPR, 2023, para. 142).

These developments take on particular relevance in the context of climate change, where the interplay between corporate responsibility, human rights, and environmental protection calls for overcoming the limitations of the State-centric model that has historically characterised the international climate change regime. The evolution of African jurisprudence supports the argument that companies, especially those with high GHG emissions, must conduct their activities with due regard to the rights of others, collective security, morality, and the common interest. This, in turn, implies adopting effective measures for mitigation, adaptation, and the prevention of climate-related harm, within the framework of a model of shared climate responsibility between States and companies consistent with international human rights standards.

In this context, a potential AfCHPR’s Advisory Opinion on human rights and climate change could significantly contribute to establishing more stringent standards of corporate accountability, acknowledging the limitations of a paradigm focused exclusively on State

responsibility *vis-à-vis* transnational corporations whose contributions to climate change sometimes exceed that of numerous African States. Similarly, the AfCHPR could strengthen corporate accountability mechanisms by promoting regulatory adjustments that allow parent companies to be held accountable for the activities of their subsidiaries and corporate chains, thereby opening new avenues for transnational climate litigation against corporate actors.

5. CONCLUDING REMARKS

Advisory opinions on climate change issued by international courts and tribunals have become a significant instrument in the evolution of global climate governance, insofar as they enable the formulation of general interpretative standards without the procedural and adversarial constraints inherent in contentious litigation. They may also be understood as a space of interpretative openness that allows for the incorporation of perspectives within global climate governance, particularly those of the Global South, which is disproportionately affected by the impacts of climate change. Specifically, African individuals and peoples are disproportionately affected in the enjoyment of their human rights within a context characterised by structural asymmetries that combine low historical responsibility for GHG emissions with high climate vulnerability, thereby deepening inequalities in the distribution of burdens, risks, and adaptive capacities in response to the global climate crisis.

The ICJ's Advisory Opinion on climate change highlights a still limited incorporation of Global South perspectives in the configuration of the international legal regime on climate change. Despite the active participation of African States in the advisory proceedings, their submissions concerning structural vulnerability, historical inequality, and differentiated responsibility have not been fully integrated into the Court's legal reasoning. This shortcoming is particularly significant given that Africa, despite being the continent least responsible for historical GHG emissions, is among the most exposed to climate change impacts and faces limited adaptive capacity as well as restricted access to climate finance and reparations mechanisms. However, these structural asymmetries are not sufficiently reflected in the ICJ's reasoning. Consequently, the ICJ's Advisory Opinion reveals a gap between the formal participation of African States in the proceedings and the substantive incorporation of their concerns into the shaping of international climate law, particularly concerning climate justice, differentiated responsibility, and the recognition of structural vulnerability as a legally relevant factor.

Against this backdrop, an important window of opportunity emerges within the AHRS to redefine States' climate obligations and to strengthen the protection of human rights in the context of the climate crisis. To date, climate litigation within the AHRS remains virtually non-existent. Nevertheless, the system has already developed norms that are highly relevant to such disputes, in particular the enhanced protection of vulnerable groups such as Indigenous peoples, refugees, and children, who are among those most exposed to the impacts of climate change. This is complemented by the strong protection of socio-economic rights, the substantive and procedural development of the right to a satisfactory environment, and the close interrelationship

THE AFCHPR'S ADVISORY OPINION ON HUMAN RIGHTS AND CLIMATE CHANGE:
PRELIMINARY REFLECTIONS ON ITS POTENTIAL CONTRIBUTION TO CLIMATE JUSTICE

between children's rights. This normative framework, together with the evolutionary interpretation of treaties as living instruments, provides a particularly fertile legal basis for future climate claims, in a context in which African human rights bodies have recognised that climate change can seriously undermine the realisation of human rights on the continent.

The potential AfCHPR's Advisory Opinion on human rights and climate change constitutes a legal and normative turning point for the region, offering an opportunity to clarify and further develop States' obligations under the African Charter in relation to climate change from a comprehensive human rights perspective. In a context of intensifying climate crisis across Africa, with disproportionate impacts on vulnerable communities, ecosystems, and living conditions, the AfCHPR could not only consolidate standards on the right to a healthy environment, but also reinforce the protection of socio-economic rights, the intergenerational dimension of human rights through the protection of future generations, and the scope of the State's duty of due diligence *vis-à-vis* non-State actors, including a progressive clarification of corporate responsibility in contexts of climate harm. This contribution would enable a more systematic incorporation of Global South perspectives into the international legal architecture of climate change, fostering a more inclusive and balanced approach to climate justice and reinforcing the centrality of human rights as a normative cornerstone. Moreover, its eventual development could enrich the judicial dialogue with other international and regional jurisdictions, contributing to greater interpretative coherence in the protection of human rights in the face of the climate crisis.

6. REFERENCES

- ACERWC (2011). *IHRDA and Open Society Justice Initiative v. Kenya*, 22 March 2011.
- ACERWC (2014). *The Centre for Human Rights (University of Pretoria) and La Rencontre Africaine pour la Défense des Droits de l'Homme v. Government of Senegal*, 15 April 2014.
- ACERWC (2015). *Minority Rights Group International and SOS-Esclaves v. The Republic of Mauritania*, 15 December 2015.
- ACHPR (1995). *Commission nationale des droits de l'Homme et des libertés v. Chad*, 11 October 1995.
- ACHPR (2001). *Social and Economic Rights Action Center (SERAC) and the Centre for Economic and Social Rights (CESR) v. Nigeria*, 27 October 2001.
- ACHPR (2007). *Advisory Opinion of the African Commission on Human and Peoples' Rights on the United Nations Declaration on the Rights of Indigenous Peoples*, May 2007.
- ACHPR (2016). *IHRDA and Others v. Democratic Republic of Congo*, June 2016, para. 154.
- ACHPR (2018). *State Reporting Guidelines and Principles on Articles 21 and 24 of the African Charter relating to Extractive Industries, Human Rights and the Environment*, adopted at the 62nd Ordinary Session of the African Commission on Human and Peoples' Rights, 25 April–9 May 2018.

- ADDANEY, M. et al. (2017). 'The Climate Change and Human Rights Nexus in Africa', *Amsterdam Law Forum*, 9(3), pp. 5-28. <https://doi.org/10.37974/alf.304>.
- AfCHPR (2023). *LIDHO and Others v. Côte d'Ivoire*, 5 September 2023, 041/2016.
- AfDB (2018). *Gap Analysis Report: African Nationally Determined Contributions (NDCs)*. Abidjan: AfDB.
- AFOGO, N.O. et al. (2025). 'Defining Climate Justice in the African Human Rights System: On the Climate Advisory Opinion Request to the African Court on Human and Peoples' Rights', *VerfBlog*, 2 July 2025. (Accessed: 30 April 2026). Available at: <https://verfassungsblog.de/defining-climate-justice-in-the-african-human-rights-system/>
- AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS (1995). *Commission nationale des droits de l'Homme et des libertés v. Chad*, 11 October 1995.
- AFRICAN COMMITTEE OF EXPERTS ON THE RIGHTS AND WELFARE OF THE CHILD (2014). *The Centre for Human Rights (University of Pretoria) and La Rencontre Africaine pour la Défense des Droits de l'Homme v. Government of Senegal*, 15 April 2014.
- AFRICAN COMMITTEE OF EXPERTS ON THE RIGHTS AND WELFARE OF THE CHILD (2011). *IHRDA and Open Society Justice Initiative v. Kenya*, 22 March 2011.
- AFRICAN COMMITTEE OF EXPERTS ON THE RIGHTS AND WELFARE OF THE CHILD (2015). *Minority Rights Group International and SOS-Esclaves v. The Republic of Mauritania*, 15 December 2015.
- ALTVATER, E. (2007). 'The Social and Natural Environment of Fossil Capitalism', *Socialist Register*, 43, pp. 37-59. <https://socialistregister.com/index.php/srv/article/view/5857>.
- ANGHIE, A. (2004). *Imperialism, Sovereignty and the Making of International Law*. Cambridge: Cambridge University Press.
- ARAB REPUBLIC OF EGYPT (2024). *Written Statement of the Arab Republic of Egypt*, 22 March 2024.
- ATAPATTU, S. and GONZALEZ, C.G. (2025). 'Climate change', in ANGHIE, A. (ed.) *Research Handbook on Third World Approaches to International Law (TWAIL)*. Cheltenham: Edward Elgar, pp. 609-621. <https://doi.org/10.4337/9781789901528.00059>.
- AU (2024). *Written Statement of the African Union*, 22 March 2024.
- BODANSKY, D. (2023). 'Advisory Opinions on Climate Change: Some Preliminary Questions', *RECIEL*, 32, pp. 185-192. <https://doi.org/10.1111/reel.12497>.
- BOGOTT, N. and VAN WYK, L.-A. (2015). 'Zooming In On Africa In The International Climate Negotiations', in LUTHER, S. (ed.) *Klimawandel. Politische Implikationen und soziale Verwerfungen*. Munich: Hanns-Seidel-Stiftung, pp. 49-57.

THE AFCHPR'S ADVISORY OPINION ON HUMAN RIGHTS AND CLIMATE CHANGE:
PRELIMINARY REFLECTIONS ON ITS POTENTIAL CONTRIBUTION TO CLIMATE JUSTICE

- BOSHOF, E. and DAMTEW, S.G. (2019). 'Children's right to sustainable development under the African human rights framework', *African Human Rights Yearbook*, 3, pp. 119–141. <http://doi.org/10.29053/2523-1367/2019/v3a6>.
- BROWN WEISS, E. (2025). *In Fairness to Future Generations: International Law, Common Patrimony, and Intergenerational Equity*. Leiden: Brill/Nijhoff.
- CESCR (2000). *General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12 of the International Covenant on Economic, Social and Cultural Rights)*, 11 August 2000.
- CHENWI, L. (2018). 'The right to a satisfactory, healthy, and sustainable environment in the African regional human rights system', in KNOX, J.H. and PEJAN, R. (eds.) *The Human Right to a Healthy Environment*. Cambridge: Cambridge University Press, pp. 59-85. <http://doi.org/10.1017/9781108367530.004>.
- DE ARMENTERAS CABOT, M. (2021). 'Generaciones futuras y política a largo plazo: un estudio sobre la Ley para el Bienestar de las Generaciones Futuras de Gales', *Revista Catalana de Dret Ambiental*, 12(1), pp. 1-27. <https://doi.org/10.17345/rcda3070>.
- DEHM, J. (2025). 'The Evasion of Historical Responsibility? Colonialism, Temporality and Reparative Justice in the ICJ's Climate Advisory Opinion', *Völkerrechtsblog*, 4 September 2025. (Accessed: 30 April 2026). Available at: <https://voelkerrechtsblog.org/the-evasion-of-historical-responsibility-colonialism-temporality-and-reparative-justice-in-the-icjs-climate-advisory-opinion/>
- DEMOCRATIC REPUBLIC OF THE CONGO (2024). *Written Statement of the Democratic Republic of the Congo*, 4 March 2024.
- DÍAZ-CRUCES, E. et al. (2026). 'Intergenerational Equity in International Climate Law as a Legal Criterion for the Interpretation of State Climate Obligations According to the ICJ', *Laws*, 15(1), pp. 1-28. <https://doi.org/10.3390/laws15010010>.
- GUERREIRO TEIXEIRA, R. and GALVÃO TELES, P. (2025). 'Advisory Opinions and the Development of International Law: An Opportunity for Climate Change Law?', in TIGRE, M.A. and ROCHA, A. (eds.) *The Role of Advisory Opinions in International Law in the Context of the Climate Crisis*. Leiden: Brill/Nijhoff, pp. 41-60. https://doi.org/10.1163/9789004730618_003.
- HEEDE, R. (2014). 'Tracing anthropogenic carbon dioxide and methane emissions to fossil fuel and cement producers, 1854–2010', *Climatic Change*, 122, pp. 229-241. <https://doi.org/10.1007/s10584-013-0986-y>.
- HERI, C. (2025). 'Human Rights in the ICJ's Climate Opinion: A Comparative Evaluation', *Climate Law. A Sabine Center Blog*, 1 August 2025. (Accessed: 30 April 2026). Available at: <https://blogs.law.columbia.edu/climatechange/2025/08/01/human-rights-in-the-icjs-climate-opinion-a-comparative-evaluation/>

- IACtHR (2017). *The Environment and Human Rights (State obligations in relation to the environment in the context of the protection and guarantee of the rights to life and to personal integrity – interpretation and scope of Articles 4(1) and 5(1) of the American Convention on Human Rights)*, Advisory Opinion OC-23/17, 15 November 2017, Series A No. 23.
- IACtHR (2025). *The Climate Emergency and Human Rights (Interpretation and scope of Articles 1(1), 2, 4(1), 5(1), 8, 11(2), 13, 17(1), 19, 21, 22, 23, 25 and 26 of the American Convention on Human Rights; 1, 2, 3, 6, 7, 9, 10, 11, 12, 13, 14, 15, 16, 17 and 18 of the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights “Protocol of San Salvador,” and I, II, IV, V, VI, VII, VIII, XI, XII, XIII, XIV, XVI, XVIII, XX, XXIII, and XXVII of the American Declaration of the Rights and Duties of Man)*, Advisory Opinion AO-32/25 of 29 May 2025, Series A No. 32.
- ICJ (2025). *Obligations of States in respect of Climate Change*, Advisory Opinion, 23 July 2025.
- IGLESIAS MÁRQUEZ, D. (2020). ‘Empresas, derechos humanos y el régimen internacional del cambio climático: la configuración de las obligaciones climáticas para las empresas’, *Anuario Mexicano de Derecho Internacional*, 20, pp. 85-134. <https://doi.org/10.22201/ij.24487872e.2020.20.14472>.
- ITLOS (2024). *Request for an Advisory Opinion submitted by The Commission of Small Island States on Climate Change and International Law*, List of Cases No. 31, Advisory Opinion, 21 May 2024.
- JACKSON, E. (2025). ‘Could the Road from Arusha Lead to London?’, *Verfassungsblog*, 10 November 2025. (Accessed: 30 April 2026). Available at: <https://voelkerrechtsblog.org/could-the-road-from-arusha-lead-to-london/>
- JACKSON, M. and PADDEU, F. (2026). ‘Erga omnes and erga omnes partes obligations in the International Court of Justice’s Climate Change Advisory Opinion’, *Journal of Environmental Law*, pp. 1-11. <https://doi.org/10.1093/jel/eqag007>.
- LUPIN, D. and NEKURA, R. (2025). ‘An Advisory Opinion on Human Rights and Climate Change in the African Regional Human Rights System’, in TIGRE, M.A. and ROCHA, A. (eds.) *The Role of Advisory Opinions in International Law in the Context of the Climate Crisis*. Leiden: Brill/Nijhoff, pp. 142-171. https://doi.org/10.1163/9789004730618_007.
- MCVEY, M. and SAVARESI, A. (2025). ‘The ICJ Advisory Opinion on Climate Change: A Business and Human Rights Perspective’, *OpinioJuris*, 4 August 2025. (Accessed: 30 April 2026). Available at: <https://opiniojuris.org/2025/08/04/the-icj-advisory-opinion-on-climate-change-a-business-and-human-rights-perspective/>
- MEJÍA, D.A. (2010). ‘The evolution of the climate change regime: Beyond a North-South divide?’, *ICIP Working Papers*, 6, pp. 1-51.

THE AFCHPR'S ADVISORY OPINION ON HUMAN RIGHTS AND CLIMATE CHANGE:
PRELIMINARY REFLECTIONS ON ITS POTENTIAL CONTRIBUTION TO CLIMATE JUSTICE

- MOVILLA PATEIRO, L. (2025). 'The rediscovery of advisory opinions of the International Court of Justice as a tool for international public interest litigation', *Spanish Yearbook of International Law*, 29, pp. 31-55. <https://doi.org/10.36151/SYBIL.29.03>.
- MPUNGA-BIAYI, P. (2026). 'The Advisory Function of the African Court on Human and Peoples' Rights', *Human Rights Quarterly*, 48(3), pp. 441-476. doi.org/10.1353/hrq.2026.a997256.
- MUMMA, D.A. (2000). 'The Poverty of Africa's Position at the Climate Change Convention Negotiations', *UCLA Journal of Environmental Law and Policy*, 19(1), pp. 181-209. <https://doi.org/10.5070/15191019220>.
- NAJAM, A. et al. (2003). 'Climate negotiations beyond Kyoto: Developing countries concerns and interests', *Climate Policy*, 3(3), pp. 221-231. [https://doi.org/10.1016/S1469-3062\(03\)00057-3](https://doi.org/10.1016/S1469-3062(03)00057-3).
- O'NEIL, A. et al. (2026). 'Greening Human Rights in Africa: The African Court and the Environmental Accountability of States and Corporations', *Laws*, 15(22), pp. 1-27. <https://doi.org/10.3390/laws15020022>.
- ODINKALU, C.A. (2023). 'Advice without Consent? Assessing the Advisory Jurisdiction of the African Court on Human and Peoples' Rights', *Human Rights Quarterly*, 45(3), pp. 365-405. <https://doi.org/10.1353/hrq.2023.a903333>.
- ORGANISATION OF AFRICAN, CARIBBEAN AND PACIFIC STATES (2024). *Written Statement of the Organisation of African Caribbean and Pacific States*, 22 March 2024.
- PALU (2025). *Request for Advisory Opinion No. 001/2025: Obligations of States with respect to the Climate Change Crisis*, 2 May 2025.
- RAJAMANI, L. (2006). *Differential Treatment in International Environmental Law*. Oxford: Oxford University Press. [doi:10.1093/acprof:oso/9780199280704.001.0001](https://doi.org/10.1093/acprof:oso/9780199280704.001.0001).
- RAJAMANI, L. (2008). 'From Berlin to Bali and beyond: Killing Kyoto softly?', *International and Comparative Law Quarterly*, 57(4), pp. 909-939. <https://doi.org/10.1093/acprof:oso/9780199280704.001.0001>.
- REPUBLIC OF CAMEROON (2024). *Written Statement of the Republic of Cameroon*, 7 August 2024.
- REPUBLIC OF GHANA (2024). *Written Comments of the Republic of Ghana*, 15 August 2024.
- REPUBLIC OF KENYA (2024). *Written Statement of the Republic of Kenya*, 22 March 2024.
- REPUBLIC OF NAMIBIA (2024). *Written Statement of the Republic of Namibia*, 19 March 2024.
- REPUBLIC OF SIERRA LEONE (2024). *Written Statement of the Republic of Sierra Leone*, 15 March 2024.
- REPUBLIC OF THE GAMBIA (2024). *Written Comments of the Republic of the Gambia*, 15 August 2024.

- ROGER, C. and BELLIETHATHAN, S. (2016). 'Africa in the global climate change negotiations', *International Environmental Agreements: Politics, Law and Economics*, 16, pp. 91-108. <https://doi.org/10.1007/s10784-014-9244-7>.
- SANDS, P. (2016). 'Climate Change and the Rule of Law: Adjudicating the Future in International Law', *Journal of Environmental Law*, 28, pp. 19-35. <https://doi.org/10.1093/jel/eqw005>.
- SEBUTINDE, J. (2025). *Separate Opinion of Vice-President Julia Sebutinde*.
- TIGRE, M.A. and ROCHA, A. (eds.) (2025). *The Role of Advisory Opinions in International Law in the Context of the Climate Crisis*. Leiden: Brill/Nijhoff. <https://doi.org/10.1163/9789004730618>.
- TLADI, D. (2025). *Declaration of Judge Dire Tladi*.
- TRISOS, C.H. et al. (2022). 'Africa', in PÖRTNER, H.-O. et al. (eds.) *Climate Change 2022: Impacts, Adaptation and Vulnerability. Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*. Cambridge: Cambridge University Press, pp. 1285-1455. <https://doi.org/10.1017/9781009325844.011>.
- VAN ASSELT, H. (2025). 'The Private Life of the ICJ Advisory Opinion on Climate Change', *Völkerrechtsblog*, 15 August 2025. (Accessed: 30 April 2026). Available at: <https://voelkerrechtsblog.org/the-private-life-of-the-icj-advisory-opinion-on-climate-change/>
- VAN DER MEI, A.P. (2005). 'The Advisory Jurisdiction of the African Court on Human and Peoples' Rights', *African Human Rights Law Journal*, 5(1), pp. 27-46. <https://www.ahrlj.up.ac.za/van-der-mei-a-p>.
- WEWERINKE-SINGH, M. et al. (2025). 'Climate Justice at the ICJ: Human Rights Implications of the Advisory Opinion', *GNHRE*, 30 August 2025. (Accessed: 30 April 2026). Available at: <https://gnhre.org/2025/08/30/climate-justice-at-the-icj-human-rights-implications-of-the-advisory-opinion/>
- WMO (2024). *State of the Climate in Africa 2023*. Geneva: WMO.
- WMO (2025). *State of the Climate in Africa 2024*. Geneva: WMO.
- YUSUF, A.A. (2025). *Separate Opinion of Judge Abdulqawi Ahmed Yusuf*.

Received: 15th May 2026

Accepted: 3rd September 2026

