CENTER for INTERNATIONAL
ENVIRONMENTAL LAW

Written Observations of the Center for International Environmental Law (CIEL) in the matter of Request for Advisory Opinion No. 001/2025 on the Obligations of States with Respect to the Climate Change Crisis before the African Court on Human and Peoples' Rights

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CIEL's Interests and Expertise

The Center for International Environmental Law (CIEL) uses the power of law to protect the environment, promote human rights, and advance a just and sustainable society. Since 1989, CIEL has been a leader in the development of international environmental and human rights law, including with respect to climate change and the interlinkages between human rights and climate policies.

CIEL has submitted third-party interventions and amicus curiae briefs in numerous cases concerning human rights, climate change, and the environment, before national, regional, and international courts and arbitral tribunals, including, among others: the International Court of Justice, the International Tribunal for the Law of the Sea, the Inter-American Court of Human Rights, the Inter-American Commission on Human Rights, the European Court of Human Rights, the United States Supreme Court and U.S. Courts of Appeals, panels of the International Centre for Settlement of Investment Disputes, and national human rights institutions. CIEL's climate and energy work focuses on, *inter alia*: securing a full and equitable phase out of fossil fuels, and countering speculative or harmful climate interventions and offset-based climate mitigation measures; advancing climate reparations; protecting human rights for present and future generations, in particular the right to a clean, healthy and sustainable environment; and promoting the rights of environmental human rights defenders. CIEL made legal submissions in each of the previous climate advisory proceedings before other international courts — the International Tribunal for the Law of the Sea, the Inter-American Court of Human Rights, and the International Court of Justice – and in the ICJ proceedings, supported multiple States in their written and oral pleadings.

CIEL holds consultative status with the UN Economic and Social Council (ECOSOC), is accredited to the UN Environmental Programme (UNEP), registered with the Organization of American States (OAS), and enjoys observer status with the Council of Europe's Ad Hoc Multidisciplinary Group on Environment (GME), and with the UN Framework Convention on Climate Change (UNFCCC).

I. Introduction & Summary of Argument

1. The Center for International Environmental Law (CIEL) respectfully submits this brief in response to the invitation from the African Court on Human and Peoples' Rights ("Court") to file observations on the "Request by the Pan African Lawyers Union for an Advisory Opinion on the Obligations of States with Respect to the Climate Change Crisis," dated 4 September 2025 [Reference AFCHPR/ADV.OP/001/2025/003] ("Request").

2. Drawing on international and comparative human rights and environmental law – in particular the advisory opinions on climate change issued by the International Tribunal for the Law of the Sea (ITLOS), the Inter-American Court of Human Rights (IACtHR), and the International Court of Justice (ICJ) – this submission summarizes key aspects of the judicial consensus emerging from international and regional courts, national high courts, and authoritative human rights bodies, regarding the climate obligations of States. The legal conclusions outlined below form a foundation on which this Court may build in addressing the Request, thereby strengthening and supplementing the existing jurisprudence in light of the specificities of the African human rights system and the experiences of African peoples and States.

3. This Court's consideration of the Request comes at a moment of escalating planetary and geopolitical crises, when the role of the judiciary in upholding and strengthening the rule of law is of outsized importance. It also comes on the heels of historic breakthroughs in climate law. Chief among them was the unprecedented mobilization and alignment among States representing the majority world in the ICJ proceedings, who demanded climate justice. The court answered their call with a unanimous decision confirming that climate duties rooted in multiple sources of international law require climate action and accountability.

4. This Court has an opportunity to fill critical gaps in the emerging global judicial consensus on climate obligations under international law. It also has an imperative to address certain circumstances and challenges particular to the African continent, in view of its recent history of colonization, of which the climate crisis is a continuing manifestation. As the Intergovernmental Panel on Climate Change (IPCC) has recognized, "ongoing patterns of inequity such as colonialism" underlie the disproportionate vulnerability of some peoples and ecosystems to climate change.[1]

5. Nowhere is it more apparent that the climate crisis is a human rights crisis than on the African continent. Despite having contributed the least cumulatively to the greenhouse gas (GHG) emissions warming the planet, African populations are among those most exposed to the adverse impacts of climate change. From temperature and sea level rise, to droughts, floods, and other extreme weather events, the continent has experienced widespread and severe losses and damages, taking a toll on life, health, livelihoods, economies and cultures, exacerbating poverty and inequality, and precipitating biodiversity loss. These multi-dimensional harms are only slated to increase as global temperatures mount. At present levels of warming, some impacts are already

[1] IPCC, *Climate Change 2022: Impacts, Adaptation, and Vulnerability*, Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change (H.-O. Pörtner, et. al eds., Cambridge University Press, 2022), Summary for Policymakers, para. B.2.4 [hereinafter IPCC, AR6, WGII: Summary for Policymakers].

irreversible or are approaching irreversibility, and every additional increment of temperature rise intensifies concurrent hazards.[2]

6. In this context, human rights law is *the* critical legal framework for understanding climate obligations in Africa. At the root of climate change is not carbon, but conduct – human action and inaction that has harmed and is harming the climate system. Human rights law, as a lens for understanding State obligations in the face of the climate crisis, focuses not on greenhouse gas accounting but on State and corporate accountability. Over decades, human rights law has evolved to confront various threats from public and private actors, including technological developments and environmental degradation. It is therefore well equipped to address climate change, the causes of which are known and the harmful consequences of which are not just foreseeable, but increasingly manifest.

7. While the African Charter on Human and Peoples' Rights and other human rights laws constitute the most directly applicable sources with respect to the questions before this Court, they should be interpreted harmoniously with States' concurrent obligations under other sources of customary and treaty law. Articles 60 and 61 of the Charter, read together with Articles 3 and 7 of the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of the African Court, permit the Court to consider relevant sources of international law in interpreting the Charter. Informed by those provisions, as well as the principle of systemic integration[3] and this Court's own jurisprudence,[4] this brief relies on relevant international human rights instruments, customary international law, and general principles of law to elucidate the scope and content of human rights obligations in relation to climate change.

8. The absence of a dedicated focus in this brief on the climate treaties – the United Nations Framework Convention on Climate Change (UNFCCC), Kyoto Protocol, and the Paris Agreement – and other environmental conventions does not suggest their irrelevance or inapplicability to States' climate obligations, including in Africa. Rather, this submission

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[2] Intergovernmental Panel on Climate Change (IPCC), 2023: Summary for Policymakers, in, *Climate Change 2023: Synthesis Report. A Report of the Intergovernmental Panel on Climate Change. Contribution of Working Groups I, II and III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change* [Core Writing Team, H. Lee and J. Romero (eds.), 2023], para. B.1 [hereinafter IPCC, AR6, Synthesis Report: Summary for Policymakers].

[3] Vienna Convention on the Law of Treaties, May 23, 1969, 1155 U.N.T.S 331 (entered into force Jan. 27, 1980), art. 31(3)(c); International Law Commission, *Fragmentation of International Law: Difficulties Arising from the Diversification and Expansion of International Law*, Report of the Study Group finalized by Martti Koskenniemi, U.N. Doc A/CN.4/L.682 and Add.1 (Apr. 13, 2006), paras. 410-423. https://legal.un.org/ilc/documentation/english/a_cn4_l682.pdf [hereinafter ILC, *Fragmentation of International Law: Difficulties Arising from the Diversification and Expansion of International Law*]; *Obligations of States in Respect of Climate Change, Advisory Opinion*, 2025 I.C.J. (July 23), para. 311 [hereinafter *ICJ Climate Change Advisory Opinion*].

[4] It is relevant that whether expressly framed as such or not, the African Court on Human and Peoples' Rights (ACtHPR) reparations jurisprudence has reflected core norms of the law of State responsibility, including the obligation to make full reparation for injury caused by internationally wrongful acts and forms of reparation. *See, e.g.*, *Konaté v. Burkina Faso*, Judgment on Reparations, App. No. 004/2013 (June 3, 2016), para. 15, https://www.worldcourts.com/acthpr/eng/decisions/2016.06.03_Konate_v_Burkina_Faso.pdf; *Mtikila v. Tanzania*, Ruling on Reparations, App. No. 011/2011 (2011), para 27, https://www.worldcourts.com/acthpr/eng/decisions/2014.06.13_Mtikila_v_Tanzania.pdf ("One of the fundamental principles of contemporary international law on State responsibility, that constitutes a customary norm of international law, is that, any violation of an international obligation that has caused harm entails the obligation to provide adequate reparation…").

deliberately emphasizes other sources, particularly human rights law and customary international law, to highlight the paramount importance of human rights in shaping climate duties. In doing so, it reflects the African Court's consistently intersectional approach to environmental protection and human rights. At the same time, this focus is without prejudice to the continued applicability of climate treaties and other bodies of law. As recognized by the International Court of Justice, an analysis centered on particular legal frameworks does not exclude the operation of other relevant legal regimes in specific instances.[5] Likewise, the focus of this brief on comparative international human rights law and jurisprudence reflects no judgment about the applicability of other sources of law to the questions before the Court.

9. CIEL's observations will principally address questions (a), (b), (d), (e), and (f) in paragraph 93 of the Request. Through this submission, CIEL presents international and comparative law sources, reading African jurisprudence harmoniously with those sources, to offer insights and implications for this Court's interpretation of the scope and content of African States' human rights obligations in relation to climate change. The particular focus of this submission on the right to a healthy environment, fossil fuels, speculative climate technologies, defender rights, and reparations, reflects issues on which CIEL has particular expertise, and areas where this Court could significantly clarify the content of legal obligations under human rights law.

10. These observations first discuss the settled science on the causes and consequences of climate change, which confirms that climate change is a human-caused, fossil fuel-driven, human rights crisis, resulting chiefly from the conduct of identifiable State and corporate actors over time, and disproportionately harming populations who are among those least responsible for it and with the fewest resources to respond. In the sections that follow, we discuss: the duty to protect human rights, including the right to a healthy environment, triggered by the manifest and foreseeable impacts of climate harm on human rights; the duty to exercise stringent due diligence in carrying out those obligations, taking all necessary and appropriate measures to prevent the risk of harm at source, in line with best available science; the duty to phase out fossil fuels and to prioritize measures capable of averting harm over speculative, ineffective, and risky interventions; obligations to guarantee the rights of environmental and human rights defenders, as rightsholders pivotal to prevention and remediation of climate harm; and the duty to ensure full reparation for harm arising from human rights violations, including the obligations of African States both to guarantee access to effective remedy domestically, for harms arising from climate change, and to pursue reparations from responsible State and corporate polluters internationally, vindicating their populations' right to reparation. The key arguments of each section are outlined below.

11. **Sections II-III (paras. 20-42):** There is widespread consensus among judicial and scientific authorities that climate change affects the full range of human rights and gives rise to obligations under human rights law to respect and protect rights from the foreseeable violations inflicted by the adverse impacts of the crisis. Ample and mounting evidence of the impacts of climate change on human rights triggers longstanding obligations on the part of States to use all means at their disposal to prevent the conduct giving rise to the harm, and to take all necessary and appropriate measures to protect against and mitigate further adverse effects.

12. **Section IV (paras. 43-71)**: In view of the gravity of climate harm, the due diligence required of States to satisfy their obligations of prevention and protection is stringent and may become more

[5] *ICJ Climate Change Advisory Opinion*, para. 173.

demanding over time as science and technology evolve. The measures expected of States, however, will be differentiated based on their present capabilities and historical responsibilities. The applicable standard derives from customary international law as well as human rights law. Moreover, evolving interpretations of the duty to prevent significant harm to the climate recognize that, given its gravity, conduct leading to irreversible harm gives rise not merely to a heightened standard of due diligence, but to a peremptory bar making it impermissible under any circumstances. The IACtHR has deemed the prohibition on conduct causing irreversible environmental harm *jus cogens*, establishing a non-derogable outer limit within which States must exercise their due diligence. This Court has an opportunity to affirm that finding under African human rights law, clarify the scope of prohibited conduct, and expound on the consequences of this characterization for African States' regulatory and remediation obligations with respect to the causes and consequences of climate change.

13. **Section V (paras. 72-82):** The measures States undertake to prevent, mitigate, and remediate climate harm must be informed by the best available science, including relevant local, traditional and Indigenous knowledge. Multiple sources of law recognize that responses to the climate crisis must be grounded in science and objectively capable of avoiding the activities that are the source of harm to the climate system and mitigating its adverse effects.

14. **Section VI (paras. 83-113)**: Settled science irrefutably demonstrates that effective prevention and minimization of climate harm and its adverse consequences for human rights requires the phaseout of fossil fuels – absolute and rapid reductions in the production and use of fossil fuels, not merely attenuation of their effects. While the specific measures that satisfy each State's obligations with regard to the phaseout of existing fossil fuel activities will depend on that State's historical responsibilities, capabilities, and resources, halting fossil fuel expansion is a preventive measure available to and required of all States.

15. The duties of prevention and precaution therefore require States to prioritize available measures known to reduce GHGs at their source – eliminating insofar as possible the conduct posing a risk to the climate system –over speculative, ineffective, or risky measures that aim merely to attenuate its effects. Certain responses to the climate crisis, including carbon offsets – many of which are being proposed for production in Africa – and geoengineering technologies, could compound Africa's vulnerability to climate impacts and pose additional threats to human rights and the environment. To the extent that these approaches delay effective climate mitigation measures that reduce GHGs at their source disproportionately harm African States and populations already suffering climate harm. And to the extent that some proposed interventions would unleash yet unpredictable, potentially irreversible, and ultimately ungovernable impacts on the climate system, the consequences for African States and peoples at heightened exposure to climate variability could be catastrophic. States have a duty under human rights law to refrain from, protect against, and not facilitate other countries' reliance on or deployment of such technologies, and to cooperate with other States in protecting human rights and the climate system from those impacts.

16. **Section VII (paras. 114-127):** The right to development inheres in peoples and protects the rights of present and future generations to self-determination, including the freedom to set their economic, social, and cultural development trajectories. Climate change poses a fundamental threat to those rights. As such, phasing out the fossil fuels driving that threat does not set back, but instead enables fulfilment of the right to development. Consistent with their express treaty-

based obligations under the UNFCCC and Paris Agreement, and customary duties to cooperate, developed countries must provide support (financial, technological, and capacity-building) to developing countries to ensure justice and equity in climate action, including the phaseout of fossil fuels.

17. **Section VIII (paras. 128-139):** International human rights law requires States to guarantee the rights of environmental human rights defenders, who are not only frequently on the frontlines of climate destruction, but also at the forefront of climate solutions. Their work is essential to the realization of the right to a healthy environment, and effective reparation of climate harm, including guarantees of non-recurrence, to which they may be entitled. Protection of defenders' rights to physical integrity, access, and expression, among others, requires State to monitoring and documentation of abuses, to inform the design and implementation of effective structural response measures, including prohibition, investigation, and prosecution of abuses, such as the misuse of legal process for Strategic Lawsuits Against Public Participation (SLAPPs).

18. **Section IX (paras. 140-204):** In the face of mounting climate harm, Africa cannot continue to bear disproportionate burdens of a climate crisis it has played little role in creating. Pursuant to their obligations to protect and ensure the rights of their populations, African States have an imperative to seek reparations from those States and corporate polluters whose outsized historical and ongoing contributions to climate change have caused actual and foreseeable harm. Such reparations entail cessation of wrongful, climate-destructive conduct and effective remediation of the resultant injuries. They also must ensure that climate-destructive conduct within their jurisdiction and control ceases, that injured parties have access to meaningful redress, and responsible actors are held accountable. The complementary and mutually reinforcing regimes of human rights law, the law of State responsibility, and international liability inform the content of States' remediation obligations with regard to climate change.

19. CIEL respectfully submits that the African Court is uniquely positioned to elucidate several dimensions of human rights obligations regarding climate change that are of global relevance, but particular pertinence to African States, given their limited responsibility for the escalating crisis and their heightened exposure to its impacts.

    - First, this Court has been in the vanguard for decades when it comes to the intersection of human rights and the environment, addressing evolving threats; it should be no different with climate change. This advisory opinion can help advance understanding of the richness that human rights law has to offer as a lens for focusing on the underlying conduct driving harm, guiding climate action, and delivering accountability.

    - Second, it could clarify States' obligations with respect to the primary driver of this self-inflicted global problem — fossil fuel production and use — and why fulfillment of those duties advances the right to development.

    - Third, the Court could elaborate on the duty to prioritize measures proven capable of eliminating the source of climate harm, over speculative, ineffective, or risky technologies, including carbon offsets and geoengineering that instead aim at attenuating effects of climate change and threaten new damages to the environment and human rights.

- Finally, the Court could articulate the content of remediation obligations in Africa, and particularly what it means for African States to provide full remedy and reparation for climate harm that results largely from the conduct of other States and private actors outside African jurisdictions and control. Clarifying African States' duties to ensure access to justice and effective redress domestically, while pursuing their rights to reparations from polluters internationally, would go a significant way toward advancing climate justice.

II. Settled Science Shows Climate Change is a Self-Inflicted, Fossil Fuel-Driven, Human Rights Crisis

20. **The science on the causes and consequences of climate change is settled.** This section presents a sampling of the most relevant scientific facts on the drivers and impacts of the climate crisis, drawing primarily from the IPCC and the recent climate advisory opinions from other international courts.

21. **Climate change is a human-caused emergency, driven primarily by fossil fuels.** It is the result of cumulative emissions overtime of GHGs such as carbon dioxide (CO_2) and methane (CH_4), which trap heat in Earth's atmosphere.[6] Human activity, principally the production and combustion of oil, gas, and coal,[7] has increased the atmospheric concentration of GHGs to its highest level in at least 800,000 years.[8] In fact, most anthropogenic GHG emissions since the Industrial Revolution can be attributed to only 90 entities, known as the "Carbon Majors,"[9] many of which are fossil fuel companies from Global North and higher-income countries.[10] According to a recent report, just 32 fossil fuel companies were responsible for half the global CO_2 emissions in 2024.[11] Without effectively preventing, reducing, and controlling its primary cause — fossil fuel dependence — climate change will only worsen, increasing harm and the risk thereof to States, peoples, and individuals.

22. **Indeed, the alteration of the atmosphere by GHGs is already causing unprecedented climatic effects that present an existential threat to life on Earth.** According to the World Meteorological Organization (WMO), the past 11 years have been the hottest on record, with 2025 among the top three warmest years since observations began.[12] Across the globe, in addition to extreme temperatures, climate change has contributed to catastrophic wildfires, increased

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[6] IPCC, AR6, Synthesis Report: Summary for Policymakers, paras. A.1, A.1.2.

[7] IPCC, AR6, Synthesis Report: Summary for Policymakers, paras. A.1, A.1.4; IPCC, 2021: *Climate Change 2021: The Physical Science Basis*. *Contribution of Working Group I to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change,* (V. Masson-Delmotte et al (eds.), 2021), p. 676 [hereinafter IPCC, AR6, WGI].

[8] *Ibid*. *See also* IPCC, *2018: Global Warming of 1.5°C. An IPCC Special Report on the impacts of global warming of 1.5°C above pre-industrial levels and related global greenhouse gas emission pathways, in the context of strengthening the global response to the threat of climate change, sustainable development, and efforts to eradicate poverty* (V. Masson-Delmotte et al (eds.), 2018), Ch. 1, Box. 1.1 [hereinafter IPCC SR1.5].

[9] *Climate Emergency and Human Rights*, *Advisory Opinion AO-32/25 of May 29, 2025*, Inter-American Court of Human Rights (IACtHR), Series A No. 32 (May 2025), para. 54, https://www.corteidh.or.cr/docs/opiniones/seriea_32_en.pdf [hereinafter *IACtHR Advisory Opinion AO-32/25*].

[10] *See generally* Influence Map, *The Carbon Majors: 2024 Data Update* (2026), https://carbonmajors.org/briefing/Carbon-Majors-2024-Data-Update-35466.

[11] *Ibid* at pp. 2, 9.

[12] World Meteorological Organization (WMO), *State of the Global Climate 2025* (Mar. 23, 2026), p. 5, *available at* https://wmo.int/publication-series/state-of-global-climate/state-of-global-climate-2025.

hurricanes and typhoons, and droughts — along with ongoing impacts like melting ice sheets, sea level rise, increasing ocean temperatures, and ocean acidification.[13] According to the IPCC, the world's preeminent body on climate science, these effects will only intensify and worsen with every additional fraction of a degree of temperature rise.[14] In fact, the best available science shows that warming of 1.5℃ above pre-industrial levels is not safe for most people and ecosystems.[15] Scientists have issued increasingly dire warnings about the impacts of continued temperature rise, cautioning that any increase above 1.5℃, even if temporary, will cause further irreversible harm and catastrophic consequences for people and ecosystems.[16] Yet current government plans and projections would lead to global production levels of coal, oil, and gas 500%, 31%, and 92% higher — respectively — than the median 1.5ºC-con-sistent pathway.[17]

23. **Climate change is not only an environmental crisis, but one of the greatest human rights challenges facing the world.** The effects of climate change on human and non-human ecosystems — that science has unambiguously shown — have shaped the political[18] and legal landscape, demonstrating a global consensus that adverse climate impacts "constitute threats to and violation

[13] IPCC, AR6, Synthesis Report: Summary for Policymakers, paras. A.2-A.2.7, B.1.1, B.1.3-B.1.4, B.2, figs. SPM.1, SPM.4.
[14] IPCC, AR6, Synthesis Report: Summary for Policymakers, para. B.1.
[15] IPCC SR1.5, Technical Summary, p. 44 (The IPCC's Special Report on Warming of 1.5°C explicitly states that "warming of 1.5°C is not considered 'safe' for most nations, communities, ecosystems and sectors and poses significant risks to natural and human systems as compared to the current warming of 1°C (high confidence)," especially for "disadvantaged and vulnerable populations."); SR1.5, Ch. 5 ("Sustainable Development, Poverty Eradication and Reducing Inequalities"), p. 447; *ICJ Climate Change Advisory Opinion*, para. 83.
[16] IPCC, *Climate Change 2022: Impacts, Adaptation, and Vulnerability, Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change* (H.-O. Pörtner, et. al eds., Cambridge University Press, 2022), Summary for Policymakers, para. B.3 [hereinafter IPCC, AR6, WGII: Summary for Policymakers]; *see also* IPCC, AR6, WGII, at vii ("The assessment underscores the importance of limiting global warming to 1.5°C if we are to achieve a fair, equitable and sustainable world."); IPCC, AR6, WGII, Technical Summary, para. C.1.2.
[17] SEI, Climate Analytics, & IISD, *The Production Gap Report 2025* (2025), pp. 4-5, http://productiongap.org/2025report.
[18] Recognizing the threat of climate change and the harm it is causing to people and the environment, the U.N. General Assembly unanimously adopted the request for the ICJ's Advisory Opinion on States' obligations related to climate change. *See* U.N. General Assembly, *Request for an Advisory Opinion of the International Court of Justice on the Obligations of States in Respect of Climate Change*, U.N. Doc. A/77/L.58 (2023).

of human rights."[19] For nearly two decades, international human rights experts[20] and courts[21] have confirmed that climate change is unequivocally a human rights crisis. In their respective 2025 advisory opinions on States' duties with respect to climate change, the IACtHR and the ICJ both recognize that the degradation of the climate system impairs a range of human rights, including, *inter alia*, the rights to life; health; a clean, healthy, and sustainable environment; privacy and family life; and the right of access to food, water, and housing.[22] However, as the IACtHR points out, the threats posed by climate change "do not affect all human beings equally, nor are they distributed proportionately at the global level."[23] The ICJ agrees, citing the IPCC's conclusion that "vulnerable communities which have historically contributed the least to climate change [are] being 'disproportionately affected.' "[24] Thus, climate change and its accelerating impacts impair the enjoyment of all human rights, but do not affect the rights of all people — and peoples — equally. Rather, as a threat multiplier, the effects of climate change fall disproportionately on those already in situations of marginalization or vulnerability — often from countries that have historically contributed the least to the crisis — including women, children, future generations, and Indigenous Peoples.[25]

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[19] *ICJ Climate Change Advisory Opinion*, paras. 375, 376, 378, 403; *IACtHR Advisory Opinion AO-32/25*, para. 118.
[20] *See, e.g.,* U.N. General Assembly, *Resolution adopted by the General Assembly on the human right to a clean, healthy and sustainable environment*, U.N. Doc. A/RES/76/300 (July 28, 2022), p. 2 (acknowledging that climate impacts interfere with the enjoyment of the right to a clean, healthy, and sustainable environment and that environmental damage "has negative implications, both direct and indirect, for the effective enjoyment of all human rights") [hereinafter UNGA, Res. 76/300]; Human Rights Committee, *General Comment No. 36 (2018) on article 6 of the International Covenant on Civil and Political Rights, on the right to life*, U.N. Doc. CCPR/C/CG/36 (Sept. 19, 2019), para. 62 (recognizing that "[e]nvironmental degradation, climate change and unsustainable development constitute some of the most pressing and serious threats to the ability of present and future generations to enjoy the right to life") [hereinafter HRC General Comment No. 36]; Committee on the Rights of the Child, *General Comment No. 26 (2023) on children's rights and the environment,* U.N. Doc. CRC/C/GC/26 (Aug. 22, 2023), para. 8 [hereinafter CRC General Comment No. 26]; Joint Statement by the Committee on the Elimination of Discrimination Against Women, the Committee on Economic, Social and Cultural Rights, the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, the Committee on the Rights of the Child and the Committee on the Rights of Persons with Disabilities, Statement on "Human Rights and Climate Change," U.N. Doc. HRI/2019/1 (May 14, 2020, originally released Sept. 16, 2019), para. 5 [hereinafter UN Human Rights Treaty Bodies' joint statement on human rights and climate change]; Joint Statement of the United Nations Special Procedures Mandate Holders on the occasion of the 24th Conference of the Parties, "Climate Change and Human Rights" (Dec. 6, 2018), https://www.ohchr.org/en/statements/2018/12/joint-statement-united-nations-special-procedures-mandate-holdersoccasion-24th. Since 2008, the Human Rights Council has adopted more than ten resolutions on Human Rights and Climate Change highlighting the impacts of climate change on the realization of human rights. *See* U.N. Human Rights Office of the High Commissioner, Human Rights Council resolutions on human rights and climate change, https://www.ohchr.org/en/climate-change/human-rights-council-resolutions-human-rights-and-climate-change
[21] *See ICJ Climate Change Advisory Opinion*, paras. 73, 375, 376, 386, 403; *IACtHR Advisory Opinion AO-32/25*, paras. 90, 118, 377, 393-457; *Environment and Human Rights*, *Advisory Opinion OC-23/2017*, Inter-American Court of Human Rights (IACtHR) (2017), para. 47 [hereinafter *IACtHR Advisory Opinion OC-23/2017*].
[22] *ICJ Climate Change Advisory Opinion*, para. 393; *IACtHR Advisory Opinion AO-32/25*, paras. 234, 268, 394, 399, 403-05, 435-36.
[23] *IACtHR Advisory Opinion AO-32/25*, para. 98.
[24] *ICJ Climate Change Advisory Opinion*, para. 77.
[25] *ICJ Climate Change Advisory Opinion*, paras. 157, 382, 384; *IACtHR Advisory Opinion AO-32/25*, paras. 26, 223, 310-313, 596.

24. **Despite having contributed the least to the GHG emissions driving climate change, Africa is the continent most vulnerable to — and least positioned to cope with — its impacts.**[26] While consisting of 17% of the global population, Africans are responsible for only around 3-4% of annual GHG emissions.[27] Since the Industrial Revolution, the African continent has accounted for only 0.55% of cumulative emissions, a negligible contribution — particularly when compared to individual Global North nations like the U.S., which alone is responsible for 20% of all emissions since 1850.[28] Yet, as noted by the IPCC, "Africa is projected to bear an increasing proportion of the global exposed and vulnerable population at 2°C and 3°C of global warming."[29] In addition to being more exposed to sea level rise compared to other regions, Africa is disproportionately facing climate extremes, with climate-related hazards like extreme rainfall, drought, and flooding causing African economies to lose up to 5% of their gross domestic project (GDP) annually,[30] on top of causing widespread fatalities.[31] According to the WMO, some countries have also had to divert up to 9% of their budgets to respond to climate extremes, presenting additional challenges to poverty alleviation and hampering development.[32] The manifest and foreseeable impacts of the mounting climate crisis on human rights in Africa give rise to State obligations under human rights law.

III. Climate Impacts on Human Rights Trigger State Duties to Protect the Right to a Healthy Environment

25. This section elaborates on the climate crisis as a human rights crisis and States' corresponding duties to respect, protect, and fulfil human rights, including the right to a healthy environment, which is a precondition for the enjoyment of all rights. After expounding the substantive and procedural elements of the right to a healthy environment, it situates African jurisprudence on environmental rights in the climate context, drawing on other sources of international and comparative law.

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[26] IPCC, Climate Change 2022: *Impacts, Adaptation, and Vulnerability*, Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change, Chapter 9: Africa (H.-O. Pörtner, et. al eds., Cambridge University Press, 2022), p. 1289 [hereinafter IPCC, AR6, Ch. 9: Africa]; World Meteorological Organization, "Africa suffers disproportionately from climate change," (Sept. 4, 2023), https://wmo.int/media/news/africa-suffers-disproportionately-from-climate-change#:~:text=But%20it%20is%20the%20continent,change.%20Heatwaves%2C%20heavy%20rains%2C%20floods.

[27] Freddie Daley, "The Fossil Fuelled Fallacy: How the Dash for Gas in Africa Will Fail to Deliver Development," (Don't Gas Africa 2022), p. 10, https://dont-gas-africa.org/cop27-report [hereinafter Daley, "The Fossil Fuelled Fallacy"].

[28] Daley, "The Fossil Fuelled Fallacy," p. 10.

[29] IPCC, AR6, Ch. 9: Africa, 9.1.2, p. 1294.

[30] WMO, *State of the Climate in Africa 2024* (2025), p. 14, https://library.wmo.int/viewer/69495/download?file=WMO-1370-2025_en.pdf&type=pdf&navigator=1.

[31] WMO, *State of the Climate in Africa 2023* (2024), p. ii, https://library.wmo.int/viewer/69000/download?file=1360_State-of-the-Climate-in-Africa-2023_en.pdf&type=pdf&navigator=1.

[32] WMO, *State of the Climate in Africa 2023*, p. 17.

A. It is beyond dispute that climate change threatens human rights.

26. **International courts have affirmed that the adverse impacts of the climate crisis threaten and violate a wide range of human rights, such as the rights to life, health, and an adequate standard of living, as well as the rights to access water, food and housing.**[33] The enjoyment of rights to life, personal integrity, and health of present and future generations can be drastically compromised by the exposure to extreme climate events such as heatwaves, floods, droughts, and forest fires, as well as malnutrition and air pollution.[34] In addition to causing injuries and deaths, these events can lead to climate-related diseases, which include respiratory and cardiovascular conditions as well as food, vector, and water-borne diseases.[35] The adverse impacts of the climate crisis are impeding access to adequate food, water, clean air, housing, and livelihoods.[36] Frequent or prolonged droughts and reduced rainfall can decrease crop yields, leading to lower production and increased food insecurity.[37] The combined effects of more intense tropical storms, severe droughts, rising sea levels, and reduced rainfall due to climate change are posing a serious threat to water security, jeopardizing the guarantee of the right to access sufficient, safe, acceptable, physically accessible, and affordable water.[38] As well as jeopardizing physical health, the climate crisis is causing emotional anguish and creating new mental health conditions or compounding those already existing.[39]

27. **Climate-related events and their impacts are displacing people and forcing them to migrate, undermining their rights to freedom of residence and movement, as well as their right to private and family life.**[40] Involuntary climate mobility "can compound preexisting situations of vulnerability and factors of displacement, such as conflict, violence, poverty, food insecurity, or inequalities."[41] The impact of climate disruptions on the right to access and enjoy cultural heritage is significant. In addition to threatening cultural and natural heritage sites, climate disasters can result in "irrevocable losses of a sense of belonging,"[42] by erasing elements of collective identity, cultural practices, livelihoods, and territorial connections.

28. These and other impacts of climate change on human rights trigger States' and non-state actors' obligations and responsibilities under international human rights law, particularly to guarantee the right to a healthy environment, as a precondition for a "dignified existence."[43]

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[33] *ICJ Climate Change Advisory Opinion*, sect. F.
[34] *IACtHR Advisory Opinion AO-32/25*, para. 90.
[35] *IACtHR Advisory Opinion AO-32/25*, paras. 91, 397.
[36] *IACtHR Advisory Opinion AO-32/25*, para. 92.
[37] *IACtHR Advisory Opinion AO-32/25*, para. 93.
[38] *IACtHR Advisory Opinion AO-32/25*, para. 436.
[39] *IACtHR Advisory Opinion AO-32/25*, para. 92.
[40] *IACtHR Advisory Opinion AO-32/25*, para. 403.
[41] *IACtHR Advisory Opinion AO-32/25*, para. 416.
[42] *IACtHR Advisory Opinion AO-32/25*, para. 94.
[43] *IACtHR Advisory Opinion AO-32/25*, para. 90.

B. International law recognizes the right to a healthy environment, including the climate system, as a precondition for the enjoyment of human rights.

29. **International law and jurisprudence recognize the dependence of human rights on the environment.** As both the ICJ and the IACtHR affirmed in their advisory opinions on climate change, "protection of the environment is a precondition for the enjoyment of human rights."[44] A clean, healthy, and sustainable environment is crucial for the present and future habitability of the planet, making indisputable the interdependence of environmental protection and human rights protection.[45] This relationship, seminally memorialized in the 1972 Stockholm Declaration, has been reflected in numerous international instruments before and after.[46]

30. **The undeniable interdependence of people and the environment has led to the widespread recognition of the right to a healthy environment in domestic and international law.** Worldwide, 85% of U.N. Member States, 165 countries, have recognized the right to a healthy environment in their constitutions or national legislation, or through their ratification of international and regional treaties, including the African Charter,[47] the Arab Charter,[48] the San Salvador Protocol,[49] the Aarhus Convention,[50] and the Escazú Agreement.[51] The adoption of resolutions on the right to a healthy environment by the United Nations Human Rights Council in 2021 and the United Nations General Assembly in 2022 consolidated its status as an international human right.[52]

31. **The African system has been a pioneer in recognizing the link between human rights and the environment, and in codifying the right to a healthy environment.** The African Charter was the first regional human rights instrument to enshrine a binding and justiciable right to a general satisfactory environment,[53] which also has been referred to as "healthy,"[54] "clean and

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[44] *ICJ Climate Change Advisory Opinion*, paras. 373; *see also ibid.*, paras. 372-386, 393, 403; *IACtHR Advisory Opinion AO-32/25*, paras. 274, 377; *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion*, 1996 (I) I.C.J. Rep. 241 (July 8), para. 29 [hereinafter *Nuclear Weapons Advisory Opinion*].

[45] *ICJ Climate Change Advisory Opinion*, para. 144.

[46] *ICJ Climate Change Advisory Opinion*, paras. 51-52, 144, 388.

[47] African Charter on Peoples' and Human Rights, June 27, 1981, 1520 U.N.T.S. 217 (entered into force Oct. 21, 1986), art. 24.

[48] Arab Charter on Human Rights (adopted on May 22, 2004), art. 38.

[49] Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights: Protocol of San Salvador (adopted on Nov 17, 1988), art. 11.

[50] Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters ("Aarhus Convention"), adopted on June 25, 1998, art. 1.

[51] Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean, Mar. 4, 2018, 3398 U.N.T.S. 1 (entered into force Apr. 22, 2021), art. 1 [hereinafter Escazú Agreement].

[52] Human Rights Council, *Resolution 48/13, The human right to a clean, healthy and sustainable environment*, U.N. Doc. No. A/HRC/RES/48/13 (Oct. 8, 2021); UNGA, Res. 76/300.

[53] African Charter on Human and Peoples' Rights, art. 24 (stating "[a]ll peoples shall have the right to a general satisfactory environment favourable to their development").

[54] *Social and Economic Rights Action Center (SERAC) and Center for Economic and Social Rights (CESR) v. Nigeria*, Communication 155/96, African Commission on Human and Peoples' Rights (Oct. 26, 2001), para. 52 [hereinafter *SERAC and CESR v. Nigeria*].

safe,"[55] or "safe satisfactory"[56] environment. While analysing if an environmental treaty should be considered a human rights instrument, this Court has determined that provisions reflecting a "commitment by States to act in a manner that prevents harmful effects on the environment," are intrinsically connected to both individual and collective rights.[57] The Economic Community of West African States (ECOWAS) Court of Justice has affirmed the interdependence of the environment and human rights, stating that "the environment is essential to every human being. The quality of human life depends on the quality of the environment."[58]

32. **Other international courts have subsequently affirmed the right to a healthy environment.** In 2017, the IACtHR issued an advisory opinion concluding that the right to a healthy environment is a fundamental and autonomous right.[59] In July 2025, the ICJ added its imprimatur, unanimously recognizing in its advisory opinion on climate change that the right to a clean, healthy, and sustainable environment constitutes a binding, foundational norm of international law.[60]

33. **The right to a healthy environment encompasses both substantive and procedural elements.** Human rights institutions and experts have interpreted the right as protecting critical components of the environment,[61] such as clean air; safe and sufficient water and adequate sanitation; healthy and sustainably produced food; nontoxic environments; and healthy ecosystems and biodiversity.[62] Likewise, the right to a healthy environment encompasses procedural elements[63] — including access to information, public participation, and access to justice in environmental matters — which provide the means to exercise and enforce the substantive elements of the right.

34. **Recognizing that the climate is a critical component of the environment, international courts have interpreted the right to a healthy environment as requiring protection of the climate system.** The protection and maintenance of a safe climate is imperative to respect and protect the right to a clean, safe, and healthy environment.[64] Notably, in their 2025 advisory opinions, both the IACtHR and the ICJ underscored the link between climate-related harms and the obligation

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[55] *SERAC and CESR v. Nigeria*, para. 51.

[56] African Commission on Human and Peoples' Rights, *Resolution on Climate Change and Human Rights and the need to study Its impact in Africa*, ACHPR/Res.153 (XLVI)09 (Nov. 25, 2009).

[57] *Ligue Ivoirienne des Droits de L'Homme (LIDHO) and others v. Republic of Côte D'Ivoire*, African Court on Human and Peoples' Rights, App. No 041/2016, Judgment (Sept. 5, 2023), paras. 32-41, 37-38 [hereinafter *LIDHO and others v. Republic of Côte D'Ivoire*].

[58] *SERAP v. Federal Republic of Nigeria*, The Court of Justice of the Economic Community of West African States (ECOWAS), Judgment No. ECW/CCJ/JUD/18/12 (Dec. 14, 2012), para. 100 [hereinafter *SERAP v. Nigeria*].

[59] IACtHR, *Advisory Opinion OC-23/2017*.

[60] *ICJ Climate Change Advisory Opinion*, para. 393.

[61] *SERAP v. Nigeria*, para. 100.

[62] Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment (David R. Boyd), *Report of the Special Rapporteur on the human right to a clean, healthy and sustainable environment: Right to a healthy environment: good practices*, U.N. Doc. A/HRC/43/53 (Dec. 30, 2019), para. 2, https://docs.un.org/en/A/HRC/43/53 [hereinafter: *Right to a healthy environment: good practices*].

[63] David R. Boyd, *The Right to a Healthy Environment: A User's Guide* (2024), https://www.ohchr.org/sites/default/files/documents/issues/environment/srenvironment/activities/2024-04-22-stm-earth-day-sr-env.pdf.

[64] *ICJ Climate Change Advisory Opinion*, para. 403; *see also* U.N. Environment Programme, *The Right to a Healthy Environment in Practice: A Decade Before the Courts (2015-2025)* (2025) pp. 9-15, https://doi.org/10.59117/20.500.11822/48696 (discussing the trend in jurisprudence ranging from Pakistan to the United States to India, among others, expanding on the scope and content of the right to a healthy environment).

to protect the environment. The ICJ not only featured the right to a healthy environment as a source of State obligations under international human rights law in the context of the climate crisis, but clarified that "the duty to prevent significant harm to the environment [a customary duty to guide implementation of the right to a healthy environment] also applies to the climate system, which is an integral and vitally important part of the environment."[65]

35. **Recognizing climate protection as a substantive element of the right to a healthy environment, the IACtHR "derived from the right to a healthy environment … the right to a healthy climate** which protects the component of the environment that is directly affected in the context of the climate emergency, that is, the global climate system."[66]

C. States are obliged to respect, protect, and fulfil the right to a healthy environment, including the climate system.

36. **International law makes clear that to uphold human rights, including the right to a healthy environment and climate system, States must respect, protect, and fulfil human rights.**[67] Pursuant to this tripartite obligation, States must take measures to protect against conduct that causes climate change, pollution, and other forms of transboundary environmental harm, because of its actual and foreseeable consequences for human rights.[68]

37. **International courts recognize that upholding human rights obligations requires protecting the climate system through measures capable of preventing harm to the climate.** The ICJ affirmed that ensuring the effective protection of human rights requires protecting the climate system and that "States must take measures to protect the climate system and other parts of the environment. These measures may include, inter alia, taking mitigation and adaptation measures, with due account given to the protection of human rights, the adoption of standards and legislation, and the regulation of the activities of private actors. Under international human rights law, States are required to take necessary measures in this regard."[69] Similarly, the IACtHR affirmed that States have a duty to prevent "climate damage" and this includes taking action to mitigate GHG emissions through regulation, including of private actors, and monitoring implementation of that action.[70]

38. **African regional jurisprudence clarifies the content of the duties to respect, protect, and promote the right to a healthy environment.** The ECOWAS Court of Justice has specified that the right to a satisfactory environment must be understood in relation to Article 1 of the African

[65] *ICJ Climate Change Advisory Opinion*, para. 273.
[66] *IACtHR Advisory Opinion AO-32/25*, para. 297.
[67] *See ICJ Climate Change Advisory Opinion*, para. 371.
[68] *See, e.g.*, *IACtHR Advisory Opinion OC-23/17*, at paras. 141-142, 152; *Case of Indigenous Communities of the Lhaka Honhat Association v. Argentina*, Judgment, Inter-American Court of Human Rights (ser. C), (Feb. 6, 2020), paras. 207-208; *Marcelino Díaz Sánchez and others v. Mexico*, Precautionary Measures, Resolution, Inter-American Commission on Human Rights, H.R. No. 1498-18 (Apr. 23, 2019), paras. 24, 26, 27; HRC General Comment No. 36, para. 62; UN Human Rights Treaty Bodies' Joint Statement on Human Rights and Climate Change, para. 10; *see also* UN Special Rapporteurs on Human Rights and Climate Change (Ian Fry), Toxics and Human Rights (Marcos Orellana) and Human Rights and the Environment (David Boyd), amicus brief submitted to ITLOS in Case n.3, 2023.
[69] *ICJ Climate Change Advisory Opinion*, para. 403.
[70] *IACtHR Advisory Opinion AO-32/25*, paras. 296, 320-363.

Charter on Peoples' and Human Rights ("African Charter"),[71] which obliges States to "respect, protect, promote or fulfil [or implement]."[72] States owe this fourfold obligation under the African Charter,[73] which applies equally to all rights in the Charter.[74] Addressing the duty to respect a general satisfactory environment, the African Commission on Human and Peoples' Rights ("African Commission") has highlighted State obligations to "desist from directly threatening the health and environment of their citizens," as well as to adopt "largely noninterventionist conduct … [to refrain] from carrying out, sponsoring or tolerating any practice, policy or legal measures violating the integrity of the individual."[75] According to both the African Commission and the Court, the duty to protect a general satisfactory environment "imposes clear obligations upon a government (...) to take reasonable and other measures to prevent pollution and ecological degradation, to promote conservation, and to secure an ecologically sustainable development and use of natural resources."[76] Additionally, this Court has also pointed out that States are required to adopt and implement measures aimed at "ensuring accountability, with the effective reparation of the environmental damage suffered."[77] Promoting the right to a satisfactory environment under the African Charter requires States to "adopt measures to enhance people's awareness of [it],"[78] "ensure timely, accurate, accessible, and proactive disclosure of climate and environmental information, and to guarantee meaningful public participation and access to justice in environmental decision-making,"[79] including an "effective remedy" to those whose right to a satisfactory environment has been violated.[80]

39. **The obligation to protect encompasses the duty to prevent non-state actors, including corporations and private actors, from violating the right to a satisfactory environment.** The

[71] *SERAP v. Federal Republic of Nigeria*, paras. 98-99.
[72] African Charter on Peoples' and Human Rights, art. 1; *see also LIDHO and others v. Republic of Côte D'Ivoire*, paras. 131-132.
[73] The African Commission has adopted the approach of the UN and other regional and national bodies that States owe obligations under the ACHPR to "respect, protect, promote or fulfil" the rights. *See Abdel Hadi, Ali Radi & Others v. Republic of Sudan*, African Commission on Human and Peoples' Rights, Communication 368/09 (Nov. 5, 2013), para. 92; *Monim Elgak, Osman Hummeida and Amir Suliman (represented by FIDH & OMCT) v. Sudan*, African Commission on Human and Peoples' Rights, Communication 379/09 (Mar. 14, 2014), para. 141; *The Nubian Community in Kenya v. The Republic of Kenya*, African Commission on Human and Peoples' Rights, Communication 317/06 (Feb. 28, 2015), paras. 169-170. *See also INTERIGHTS, Institute for Human Rights and Development in Africa, and Association Mauritanienne des Droits de l'Homme v. Mauritania*, African Commission on Human and Peoples' Rights, Communication 373/06 (Mar. 3, 2010), para. 46; *Zimbabwe Human Rights NGO Forum v. Zimbabwe*, African Commission on Human and Peoples' Rights, Communication 245/02 (May 15, 2006), para. 150.
[74] African Commission on Human and Peoples' Rights, *Principles and Guidelines on the Implementation of Economic, Social and Cultural Rights in the African Charter on Human and Peoples' Rights* (Oct. 24, 2011), para. 4 [hereinafter *Principles and Guidelines on the Implementation of Economic, Social and Cultural Rights in the African Charter on Human and Peoples' Rights*]; *Dino Noca v. Democratic Republic of the Congo*, African Commission on Human and Peoples' Rights, Communication 286/2004 (Oct. 2012), para. 156.
[75] *SERAC and CESR v. Nigeria*, para. 52.
[76] *SERAC and CESR v. Nigeria*, para. 52; *Adou Kouame & 14 Ors v. Côte d'Ivoire*, The Court of Justice of the Economic Community of West African States (ECOWAS), Judgment No. ECW/CCJ/JUD/46/23 (Nov. 30, 2023), para. 196 [hereinafter *Adou Kouame v. Cote d' Ivoire*].
[77] *SERAP v. Nigeria*, para. 105.
[78] *Principles and Guidelines on the Implementation of Economic, Social and Cultural Rights in the African Charter on Human and Peoples' Rights*, para. 8.
[79] *Resolution on Access to Information and the Right to a Healthy Environment,* African Commission on Human and Peoples' Rights, ACHPR/Res.657(LXXXVI) 2026 (Mar. 9, 2026), para. 1.
[80] *Zimbabwe Human Rights NGO Forum v. Zimbabwe*, para. 171.

obligation to *protect* entails the duty of States to prevent violations of human rights[81] both by their agents or non-state actors. Under the African Charter, States have "the unconditional responsibility … to prevent all forms of violations of human and peoples' rights, including violations of human and peoples' rights by non-state actors,"[82] which require them to take action "even if the State or its agents are not the immediate cause of the violation."[83] Similarly, the IACtHR has stated the obligation to *protect* "extends beyond the relationship between State agents and the people subject to its jurisdiction, encompassing also the duty, in the private sphere, to prevent third parties from violating the protected rights."[84] Under the African Charter, non-state actors have been interpreted as including individuals suspected of terrorist activities, a "terrorist group,"[85] multi-national corporations, local companies, armed groups,[86] and private security contractors,[87] as well as individuals.[88] With respect to the right to a healthy environment, the African Commission, considering allegations against Nigeria for failing to protect the Ogoni population from harm caused by a foreign oil company, reaffirmed the State's duty to prevent pollution and ecological degradation perpetrated by private parties.[89]

40. **In the context of foreign exploitation, African States have an explicit duty to prevent corporations and private actors from violating human rights.** Under the African Charter, the duty of States to prevent corporations and private actors from violating human rights is heightened in the context of extractive activities by non-African companies. These industries have operated with impunity on the continent, causing destruction of the African environment and ecosystem[90], and therefore compromising not only the right of Africans to enjoy a healthy environment, but also their right to dispose of their wealth and natural resources, enshrined in the Article 21 of the Charter. It provides for the African States "to eliminate all forms of foreign exploitation particularly that practised by international monopolies so as to enable their peoples to fully benefit from the advantages derived from their national resources."[91] As stated by the African

[81] *IACtHR Advisory Opinion OC-23/2017*, para. 118.
[82] African Commission on Human and Peoples' Rights, *Resolution on the renewal of the mandate of the working group on extractive industries, environment and human rights violations in Africa*, ACHPR/Res. 253(LIV)2013 (Nov. 5, 2013), https://achpr.au.int/en/adopted-resolutions/253-resolution-renewal-mandate-working-group-extractive-indu.
[83] *Haregewoin Gebre-Sellaise & IHRDA (on behalf of former Dergue officials) v. Ethiopia*, African Commission on Human and Peoples' Rights, Communication 301/05 (Nov. 7, 2011), para. 130; *Institute for Human Rights and Development in Africa (on behalf of Esmaila Connateh & 13 others) v. Angola*, African Commission on Human and Peoples' Rights, Communication 292/04 (May 22, 2008), para. 83.
[84] *IACtHR Advisory Opinion AO-32/25*, para. 226.
[85] African Commission on Human and Peoples' Rights, *Principles and Guidelines on Human and Peoples' Rights while Countering Terrorism in Africa* (May 7, 2015) [hereinafter *Principles and Guidelines on Human and Peoples' Rights while Countering Terrorism in Africa*].
[86] *Principles and Guidelines on the Implementation of Economic, Social and Cultural Rights in the African Charter on Human and Peoples' Rights*, para 7.
[87] *Principles and Guidelines on Human and Peoples' Rights while Countering Terrorism in Africa*, p. 32.
[88] *Association of Victims of Post Electoral Violence & INTERIGHTS v. Cameroon*, African Commission on Human and Peoples' Rights, Communication 272/03 (Nov. 25, 2009), para. 88.
[89] *SERAC and CESR v. Nigeria*, paras. 52, 57-58.
[90] Uche Igwe and Uwafiokun Idemudia, "The Extractive Industry and Human Rights in Africa," *Energy Policy* (2022), https://www.sciencedirect.com/science/article/pii/S0301420722002860; *see also* African Commission on Human and Peoples' Rights, *Resolution on the renewal of the mandate of the working group on extractive industries, environment and human rights violations in Africa - ACHPR/Res.253(LIV) 2013* (Nov 5, 2013).
[91] African Charter on Human and Peoples' Rights, art. 21(5).

Commission, "the origin of this provision may be traced to colonialism, during which the human and material resources of Africa were largely exploited for the benefit of outside powers, creating tragedy for Africans themselves, depriving them of their birthright and alienating them from the land. The aftermath of colonial exploitation has left Africa's precious resources and people still vulnerable to foreign misappropriation."[92]

41. **In the light of the African Charter, the duty to prevent has an undeniable post-colonial context and "triggers an obligation on the part of the State Parties to protect their citizens from exploitation by external economic powers."**[93] This entails, on one hand, increased scrutiny and strict regulations, especially for non-African companies operating in Africa, and, on the other, a critical need to ensure that the major portion of the benefits gained from these operations is directed not only toward African nations, but also toward their peoples and groups. To this end, as noted by the African Commission, in any decisions relating to the "management" of wealth and natural resources, African States are required to ensure that "groups and communities, directly or through their representatives, are involved in decisions relating to the disposal of their wealth."[94]

42. The duty to guarantee the right to a healthy environment is firmly established under international and African jurisprudence. To understand what that duty requires of States in the face of climate harm, courts have looked to standards of due diligence under multiple sources of customary and conventional international human rights and environmental law.

IV. Customary International Law Informs the Due Diligence Required under Human Rights Law to Prevent Climate Harm and Protect Against its Impacts

43. **Human rights law and customary international law on the environment impose concurrent and mutually reinforcing duties to protect and prevent harm to the climate system.** The content of these duties — what is required to satisfy them — thus draws on and is informed by both bodies of law. Obligations derived from customary international law principles and norms inform and guide the implementation of the right to a healthy environment — including in the context of climate change.

44. **The ICJ has confirmed the importance of harmonious interpretation of States' climate obligations under multiple sources of law.** When implementing the right to a healthy environment, States are required to adhere to relevant principles and norms of customary international law, such as the duty to prevent significant environmental harm and the prohibition on causing irreversible environmental harm. The ICJ has articulated that "international human rights law, the climate change treaties and other relevant environmental treaties, as well as the

[92] *SERAC and CESR v. Nigeria*, para. 56.
[93] *Frente para a Libertação do Estado de Cabinda v. Angola*, African Commission on Human and Peoples' Rights, Communication 328/06 (Nov. 5, 2013), para. 129; *see also SERAC and CESR v. Nigeria*, paras. 57-58.
[94] *Frente para a Libertação do Estado de Cabinda v. Angola*, para. 129; *see also Centre for Minority Rights Development (Kenya) and Minority Rights Group (on behalf of Endorois Welfare Council) v. Kenya*, African Commission on Human and Peoples' Rights, Communication 276/03 (2009), para. 268.

relevant obligations under customary international law, inform each other."[95] Consequently, "States must consider their obligations under climate change treaties, other relevant environmental treaties, and customary international law when fulfilling their human rights commitments."[96] Furthermore, given the parallels between the duty to protect human rights from climate harm and the duty to prevent harm to the climate system, the standards regarding what due diligence requires to satisfy customary obligations inform the content of human rights due diligence.

45. **This section contains three parts and explores the content of the due diligence required under customary international law and international human rights law.** It first sets out the customary duty to prevent significant harm to the environment beyond State borders. It then clarifies the standard of due diligence required to satisfy that duty, drawing parallels with the due diligence standard under human rights law elaborating on the stringency of the due diligence required in the face of the climate emergency, addressing the need for States to do their utmost to regulate and control conduct that causes harm, and for measures to evolve with science, reflect differential State capacity, and ensure adequate assessment of environmental impacts. Finally, this section addresses evolving interpretations of what the duty to prevent significant harm to the environment requires in the context of the escalating planetary crisis, including the implications of the recognition that conduct causing irreversible environmental harm is subject to peremptory prohibition.

46. **Before turning to the duty to prevent significant harm to the environment and in particular, the content of due diligence, it is necessary to distinguish between two distinct layers of obligation under international law.** While much of the duty to prevent climate harm is governed by standards of due diligence, conduct leading to irreversible harm to the climate system can be subject to absolute prohibition. The IACtHR has recognized[97] that the prohibition on causing irreversible environmental harm has attained the status of a peremptory norm (*jus cogens*).[98] Unlike due diligence obligations, which require States to take all necessary and appropriate measures to prevent harm and avert violations of international law,[99] peremptory norms establish non-derogable limits: conduct that results in irreversible environmental harm is prohibited in all circumstances, irrespective of a State's level of care or effort. The due diligence obligations examined below therefore operate within this outer bound: they specify the measures States must take to prevent climate harm, while the *jus cogens* prohibition establishes conduct that is impermissible. Both layers are situated within the preventive principle.

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[95] *ICJ Climate Change Advisory Opinion*, para. 404.
[96] *ICJ Climate Change Advisory Opinion*, para. 404.
[97] *IACtHR Advisory Opinion AO-32/25*, sect. B.1.3
[98] Vienna Convention on the Law of Treaties, art. 53; International Law Commission, *Draft Conclusions on Peremptory Norms of General International Law* (jus cogens), *with commentaries*, U.N. Doc A/56/10 (2022), conclusions 2-3, [hereinafter ILC, *Draft Conclusions on Peremptory Norms, with commentaries*].
[99] Timo Koivurova and Krittika Singh, 'Due Diligence', Max Planck Encyclopedia of Public International Law (Oxford University Press), https://opil.ouplaw.com/display/10.1093/law:epil/9780199231690/law-9780199231690-e1034; *ICJ Climate Change Advisory Opinion*, paras. 135-138; *Case Concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia & Herzegovina v. Serbia & Montenegro)*, Judgment, 2007 I.C.J. 43 (Feb. 26), paras. 161, 430-431.

A. States have a duty to prevent significant harm to the environment, which includes harm to the climate system.

47. **The longstanding obligation under customary international law to prevent significant harm to the environment is fundamental to ensuring the right to a healthy environment and requires States to avoid activities that cause environmental damage beyond their borders.** To ensure the right to a satisfactory environment, including its climate component, States must prevent significant environmental harm. States' long-standing obligation under international law to prevent significant harm to the environment beyond their borders[100] acquires specific content in relation to the right to a healthy environment.[101] Starting with the Trail Smelter arbitration over eighty years ago,[102] the duty to prevent significant transboundary environmental harm has been reiterated in international declarations, including in the 1972 Stockholm Declaration[103] and 1992 Rio Declaration,[104] in numerous multilateral environmental agreements, including the UNFCCC,[105] and by international courts.[106] Every State has a duty "not to allow knowingly its territory to be used for acts contrary to the rights of other States,"[107] and must do what it can to not engage in or allow activities in its territory or an area under its jurisdiction and control that

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[100] *Nuclear Weapons Advisory Opinion*, para. 29 (affirming that "the general obligation of States to ensure that activities within their jurisdiction and control respect the environment of other States or of areas beyond national control is now part of the corpus of international law relating to the environment"); *see also ICJ Climate Change Advisory Opinion*, para. 272; *IACtHR Advisory Opinion 32/25*, para. 275.

[101] *IACtHR Advisory Opinion 32/25*, para. 275.

[102] *Trail Smelter Arbitration (U.S. v. Can.)*, 3 R.I.A.A. 1905 (1941), at 1905-82.

[103] Stockholm Declaration on the Human Environment, 11 I.L.M. 1416 (1972), principle 21 ("States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction") [hereinafter Stockholm Declaration].

[104] Rio Declaration on Environment and Development, 31 I.L.M. 874 (1992), principle 2 ("States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental and developmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction") [hereinafter Rio Declaration].

[105] United Nations Framework Convention on Climate Change, pmbl., May 9, 1992, 1771 U.N.T.S. 107 (entered into force Mar. 21, 1994), pmbl. [hereinafter UNFCCC]; *see also* Stockholm Convention on Persistent Organic Pollutants, May 22, 2001, 2256 U.N.T.S. 119 (entered into force May 17, 2004), pmbl.; United Nations Convention to Combat Desertification in Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa, June 17, 1994, 1954 U.N.T.S. 3 (entered into force Dec. 26, 1996), pmbl.; United Nations Convention on the Law of the Sea, Dec. 10, 1982, 1833 U.N.T.S. 3 (entered into force Nov. 16, 1994), art. 194(2) [hereinafter UNCLOS].

[106] *ICJ Climate Change Advisory Opinion*, paras. 134, 272-273; *Dispute over the Status and Use of the Waters of the Silala (Chile v. Bol.)*, Judgment, 2002 I.C.J. Rep. 614 (Dec. 1), para. 99; *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua) and Construction of a Road in Costa Rica along the San Juan River (Nicaragua v. Costa Rica)*, Judgment, 2015 I.C.J. Rep. 665 (Dec. 16), paras. 104, 118 [hereinafter *Costa Rica v. Nicar.*]; *Pulp Mills on the River Uruguay (Arg. v. Uru.)*, Judgment, 2010 I.C.J. 14 (Apr. 20), para. 101 [hereinafter *Pulp Mills*]; *Case Concerning the Gabčíkovo-Nagymaros Project (Hung. v. Slovk.)*, Judgement, 1997 I.C.J. 7 (Sept. 25), para. 53 [hereinafter *Gabčíkovo-Nagymaros Project*]; *Nuclear Weapons Advisory Opinion*, para. 29; *IACtHR Advisory Opinion OC-23/17*, paras. 95-103; Award in the Arbitration regarding the Iron Rhine ("Ijzeren Rijn") Railway between the Kingdom of Belgium and the Kingdom of the Netherlands, decision of 24 May 2005, UNRIAA, vol. XXVII, pp. 35–125, para. 222.

[107] *The Corfu Channel Case (U.K. v. Albania)*, Judgment of April 9th, 1949, I.C.J. Rep. 22; *see also Dispute over the Status and Use of the Waters of the Silala*, para. 99; *ICJ Climate Change Advisory Opinion*, para. 272.

will cause significant harm to another State or a shared resource.[108] States' right to exploit their own resources is limited by their duty not to knowingly cause "damage to the environment of other States or of areas beyond the limits of national jurisdiction."[109]

48. **This duty to prevent applies to harm to the climate system.[110]** Climate change, driven by cumulative GHG emissions principally from fossil fuel production and use, is transboundary environmental harm. As the IACtHR noted in its Climate Change Advisory Opinion, "the environmental damage that affects the climate system, or climate damage, is, by definition, transboundary damage because it does not remain within the territory of the State that contributes to its production; rather, and necessarily, it extends beyond its borders."[111] The ICJ affirmed that "the customary duty to prevent significant harm to the environment also applies with respect to the climate system"[112] as it is "an integral and vitally important part of the environment and which must be protected for present and future generations."[113]

49. **The fact that multiple States are responsible for climate change does not relieve any individual State of its duty to prevent activities within its jurisdiction and control from contributing to climate harm.** The existence of multiple, concurrent contributors to climate harm is not a bar to responsibility or remedy.[114] Put differently, "the diffuse and multifaceted nature of various forms of conduct which contribute to anthropogenic climate change does not preclude the application of the duty to prevent significant harm to the climate system and other parts of the environment."[115] Accordingly, the ICJ noted that the duty to prevent climate harm can and does apply to individual States, even though climate change is a consequence of activities taken over time by numerous States.[116] Moreover, while "individual States' historical and current contributions differ significantly," as the ICJ has observed, "it is scientifically possible to determine each State's total contribution to global emissions, taking into account both historical and current emissions."[117] Thus, the fact "that the risk associated with climate change is a consequence of a combination of activities by different States" does not mean no State can be held accountable or compelled to act. Rather, "States need to avert the risk through a co-ordinated and co-operative response,"[118] and each State bears corresponding duties to regulate and control activities that could cause such harm, and take other necessary preventive measures necessary, as detailed in the section below.

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[108] *See ICJ Climate Change Advisory Opinion*, para. 272; *Dispute over the Status and Use of the Waters of the Silala*, para. 99; *Costa Rica v. Nicar.*, paras. 104, 118; *Pulp Mills*, para. 101; *Gabčíkovo-Nagymaros Project*, para. 53; *Nuclear Weapons Advisory Opinion*, para. 29.
[109] Stockholm Declaration, principle 21; Rio Declaration, principle 2.
[110] *ICJ Climate Change Advisory Opinion*, paras. 134, 273.
[111] *IACtHR Advisory Opinion AO-32/25*, para. 295.
[112] *ICJ Climate Change Advisory Opinion*, para. 134; *see also ibid.* para. 409.
[113] *ICJ Climate Change Advisory Opinion*, para. 273.
[114] *ICJ Climate Change Advisory Opinion*, para. 430.
[115] *ICJ Climate Change Advisory Opinion*, para. 279.
[116] *ICJ Climate Change Advisory Opinion*, paras. 274-277.
[117] *ICJ Climate Change Advisory Opinion*, para. 429.
[118] *ICJ Climate Change Advisory Opinion*, para. 277.

B. The duties to prevent climate harm and to protect human rights from climate impacts require stringent due diligence.

50. **The binding obligations to prevent significant harm to the environment and to protect human rights from environmental degradation require States to use all the means at their disposal and take all necessary and appropriate measures to avoid the harmful conduct and address its adverse effects.** As the ICJ has clarified, the "duty to prevent significant environmental harm is an obligation to act with due diligence,"[119] which includes several elements. This section addresses those elements, examining the content of the due diligence required by the duties to prevent significant harm to the environment (including climate harm) and to protect human rights from the impacts of environmental harm (including climate harm), and the parallels between those standards of conduct.

51. **The due diligence required under the customary international law duty to prevent is similar to that required under international human rights law.** Although the principle of prevention in environmental matters was established within the framework of inter-state relations, the IACtHR has emphasized that "the obligations it imposes are similar to those arising from the general obligation to prevent human rights violations."[120]

I. Courts agree that due diligence requires effective regulation of public and private conduct, including enforcement, monitoring, and accountability mechanisms.

52. **Regional courts have elucidated the scope and normative content of the standard of due diligence in the context of human rights.**[121] In the African system, the obligation to ***protect*** requires States to "take every measure," including legislative, administrative, or other measures to give effect to and ensure the upholding of the rights.[122] The obligation to protect extends beyond merely enacting legislation. States are required to "ensure that vigilance and diligence are being applied and observed towards attaining concrete results."[123] In this sense, as understood by the ECOWAS Court of Justice, "the duty assigned by Article 24 to each State Party to the Charter is both an obligation of attitude and an obligation of result."[124]

53. **According to the African jurisprudence, the extent of the duty to prevent includes taking "all necessary"[125] and "'positive measures,"' encompassing regulation, monitoring, implementation enforcement and accountability.** As the African Commission has detailed, such measures include: (i) "regulating and monitoring the commercial and other activities of non-state actors that affect people's access to and equal enjoyment of (...) rights"; (ii) "ensuring the effective implementation of relevant legislation and programmes", and (iii) "provid[ing] remedies for such violations."[126] Notably, in seeking to protect the rights to a satisfactory environment and

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[119] *ICJ Climate Change Advisory Opinion*, para. 135.
[120] *IACtHR Advisory Opinion OC 32/25*, para. 276; *cf. IACtHR Advisory Opinion OC-23/17*, para. 133.
[121] *See IACtHR Advisory Opinion OC-23/17*, paras. 141-174; *IACtHR Advisory Opinion 32/25*, paras. 230-237.
[122] *SERAP v. Nigeria*, para. 101, 106.
[123] *SERAP v. Nigeria*, para. 101.
[124] *SERAP v. Nigeria*, para. 100.
[125] African Commission on Human and Peoples' Rights, *Resolution on the Human Rights Situation in Federal Republic of Nigeria*, ACHPR/Res.214(LI)2012 (May 2, 2012), para. 4.
[126] *Principles and Guidelines on the Implementation of Economic, Social and Cultural Rights in the African Charter on Human and Peoples' Rights*, para 7.

other associated rights under the African Charter, the duty to prevent further includes that States (iv) establish "independent monitoring and accountability mechanisms that ensure that human rights are justiciable **and extractive industries and investors legally accountable in the country hosting their activities and in the country of legal domicile**,"[127] (v) provide for and publicize environmental and social impact assessments "prior to any major industrial development,"[128] and (vi) monitor and provide information to communities exposed to hazardous materials and activities as well as ensure "meaningful opportunities for individuals … to participate in development decisions that affect their communities."[129]

54. **The IACtHR has likewise outlined minimum obligations related to preventing human rights violations resulting from environmental harm, including those caused by private actors**. These obligations include regulating, supervising and monitoring activities that could potentially cause such harm, requiring and approving environmental impact assessments (EIA), establishing contingency plans, mitigating situations in which environmental damage has occurred,[130] and investigating and holding accountable actors who cause or contribute to such harm.[131]

II. Multiple sources of international law confirm that climate change triggers a heightened standard of due diligence.

55. **Under the prevention principle, the requisite standard of due diligence must be commensurate with the risk of harm.**[132] Given the increasing gravity of climate impacts and the risk of further serious and irreversible harm, international courts agree that the applicable standard of due diligence is heightened in the context of climate change. ITLOS and the ICJ have referred to it as a "stringent" standard, in relation to climate obligations under the UN Convention on the Law of the Sea (UNCLOS) and customary international law[133] as well as under the UNFCCC and Paris Agreement,[134] while the IACtHR has called it an "enhanced"[135] standard in the context of climate change.

56. **While the precise formulation varies, due diligence standards under customary international law, human rights law, and the law of the sea all require States to do their utmost to prevent and protect against climate harm.** Under the longstanding transboundary

[127] *See* African Commission on Human and Peoples' Rights, *Resolution on a Human Rights-Based Approach to Natural Resources Governance*, ACHPR/Res.224(LI)2012 (May 2, 2012) [hereinafter ACHPR, *Resolution on a Human Rights-Based Approach to Natural Resources Governance*]; *see also SERAC and CESR v. Nigeria*, para. 54.
[128] *SERAC and CESR v. Nigeria*, para. 53; *see also* ACHPR, *Resolution on a Human Rights-Based Approach to Natural Resources Governance*.
[129] *SERAC and CESR v. Nigeria*, para. 53.
[130] *IACtHR Advisory Opinion 32/25*, para. 230.
[131] *IACtHR Advisory Opinion OC-23/2017*, para. 154.
[132] *ICJ Climate Change Advisory Opinion*, para. 275 ("[T]he degree of a given risk of harm is always an important element for the application of the due diligence standard: the higher the probability and the seriousness of possible harm, the more demanding the required standard of conduct.").
[133] *ICJ Climate Change Advisory Opinion*, para. 138; *Request for an Advisory Opinion Submitted by the Commission of Small Island States on Climate Change and International Law, Advisory Opinion*, International Tribunal for the Law of the Sea (ITLOS), No. 31 (May 21, 2024), paras. 241, 243, 248, 398-399 [hereinafter *ITLOS Climate Change Advisory Opinion*]
[134] *ICJ Climate Change Advisory Opinion*, paras. 246, 268.
[135] *IACtHR Advisory Opinion OC-32/25*, para. 233 ("States must act with enhanced due diligence to comply with the obligation of prevention arising from the obligation to guarantee the rights protected by the American Convention in the context of the climate emergency.").

harm principle, a State must use **all means at its disposal** to prevent significant harm to the environment, by avoiding activities under its jurisdiction and control that risk significant harm to the environment of other States or areas beyond national jurisdiction, including harm to the climate system.[136] Similarly, under the human rights duty to refrain from causing or contributing to, and to protect against, violations of human rights,[137] **States must take "all appropriate measures"**[138] to avert foreseeable threats to the realization of human rights, including climate degradation. Such measures include, inter alia, enacting legislative and administrative frameworks to minimize threats to the right to life.[139] Under the UNCLOS, States are required to take "**all necessary measures** to prevent, reduce and control marine pollution from any source, regardless of the specific sources of such pollution"[140] — an obligation that the ITLOS has held applies to GHG emissions as a form of marine pollution.[141]

57. **This exacting standard, which may become more demanding over time as risks increase and as science and technology develop, requires States to adopt and enforce measures capable of avoiding harm insofar as possible at its source.** To comply with the stringent due diligence requirement, States must take into account relevant international rules and standards,[142] including the duty to prevent harm, the precautionary approach or principle,[143] the need to conduct

[136] *ICJ Climate Change Advisory Opinion*, paras. 132, 281-282; *see also* Pulp Mills, para. 101 (stating that State is "obliged to use all the means at its disposal in order to avoid activities which take place in its territory, or in any area under its jurisdiction, causing significant damage to the environment of another State."); *Costa Rica v. Nicar.*, paras. 104, 118; *IACtHR Advisory Opinion OC-23/2017*, para. 97.

[137] HRC General Comment No. 36, paras. 7, 18, 21-22, 62 (in para. 62 stating "Implementation of the obligation to respect and ensure the right to life, and in particular life with dignity, depends, inter alia, on measures taken by States parties to preserve the environment and protect it against harm, pollution and climate change caused by public and private actors"); UN Human Rights Treaty Bodies' joint statement on human rights and climate change, para. 5 (stating "[f]ailure to take measures to prevent foreseeable human rights harm caused by climate change, or to regulate activities contributing to such harm, could constitute a violation of States' human rights obligations"); African Commission on Human and Peoples' Rights, *General Comment No. 3 on The African Charter on Human and Peoples' Rights: The Right to Life (Article 4)*, (2015), para. 3 (the Charter "envisages the protection of not only a life in a narrow sense, but of dignified life. This requires a broad interpretation of States' responsibilities to protect life."); Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment (David R. Boyd), *Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment*, U.N. Doc. A/74/161 (July 15, 2019), paras. 28, 62 [hereinafter Special Rapporteur on Human Rights and the Environment, Safe Climate Report].

[138] Human Rights Committee, *Daniel Billy v. Australia*, U.N. Doc. CCPR/C/135/D/3624/2019 (2019), para. 8.3 ("The Committee recalls that States parties should take all appropriate measures to address the general conditions in society that may give rise to direct threats to the right to life or prevent individuals from enjoying their right to life with dignity."); HRC General Comment No. 36, paras. 18, 62; *see also Kolyadenko and Others, v. Russia*, European Court of Human Rights, no. 17423/05 (2012), para. 216; *Öneryıldız v. Turkey [GC]*, European Court of Human Rights, no. 48939/99 (2004), para. 135.

[139] HRC General Comment No. 36, para. 62; *Kolyadenko and Others v. Russia*, para. 157 (citing *Öneryıldız v. Turkey [GC]*, at para. 89 and *Budayeva and Others v. Russia*, European Court of Human Rights, nos. 15339/02, 21166/02, 20058/02, 11673/02, 15343/02 (2008), para. 129).

[140] *ITLOS Climate Change Advisory Opinion*, para. 197 (referencing UNCLOS, art. 194(1)).

[141] *ITLOS Climate Change Advisory Opinion*, para. 197.

[142] *ICJ Climate Change Advisory Opinion*, paras. 287-289; *see also IACtHR Advisory Opinion AO-32/25*, para. 363 ("The Court also considers that, in compliance with the standard of enhanced due diligence, States must conduct a meticulous assessment of activities that could result in significant harm to the climate system before granting approval. In this regard, they should consider the best available science and knowledge, the mitigation strategy and target which they should have defined previously, and the irreversible nature of climate impacts. All of this to adopt the best prevention measures in relation to potential harm to the global climate system.").

[143] *ICJ Climate Change Advisory Opinion*, paras. 293-294.

environmental impact assessments,[144] and the duty to notify and consult in good faith with other States about potential adverse risks,[145] as well as assess readily available technology.[146] The conduct required by due diligence includes taking measures to mitigate GHG emissions, taking adaptation measures, and regulating both public and private actors.[147] In particular, States must take appropriate measures to avoid activities causing significant damage to the environment.[148] Moreover, States must use a "heightened degree of vigilance and prevention" not only to enact rules and measures, but also to enforce them.[149] The due diligence required "may also become more demanding" over time depending on new science or technological knowledge.[150]

58. **What measures will satisfy this heightened standard of due diligence will vary based on States' capacities, reflecting the principles of equity and differentiation, but the assessment is an objective one.** As the ICJ explained, the fact that the duty of a State is to use "all the means as its disposal" "implies that the capabilities of a State are a key factor, as reflected in the principle of common but differentiated responsibilities and respective capabilities, for the determination of the applicable standard of due diligence in a particular situation."[151] Although assessing what due diligence requires of a particular State necessitates an "*in concreto*" assessment, whether the appropriate due diligence was exercised is an objective determination.[152]

III. Applying that heightened standard in practice requires robust regulation and monitoring of conduct that contributes to climate harm.

59. **Ensuring the enjoyment of human rights requires protecting the climate system, which gives rise to a State obligation to regulate climate-destructive conduct of both public and private actors.**[153] If a State fails "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," it may be responsible for breaching international law, including human rights law.[154] To fulfil concurrent international duties, States should "adopt legislative and other measures to prevent human rights violations committed by public and private enterprises and, when these occur, investigate them, punish them, and guarantee redress for their consequences."[155] Thus, States must: (i) urge companies operating within their territory to implement effective measures to combat climate change and related impacts on human rights; (ii) implement legislation that requires businesses to conduct human rights and environmental due diligence and impact assessments; (iii) mandate that public and private businesses disclose GHG emissions across their

[144] *ICJ Climate Change Advisory Opinion*, paras. 295-298.
[145] *ICJ Climate Change Advisory Opinion*, para. 299.
[146] *ICJ Climate Change Advisory Opinion*, paras. 283-286.
[147] *ICJ Climate Change Advisory Opinion*, para. 282.
[148] *ICJ Climate Change Advisory Opinion*, paras. 281-282.
[149] *ICJ Climate Change Advisory Opinion*, para. 138; *see also Pulp Mills*, para. 197; *Responsibilities and obligations of States with respect to activities in the Area, Case no. 17, Advisory Opinion of February 1st, 2011*, ITLOS Rep. 2011 [hereinafter *ITLOS Seabed Chamber Advisory Opinion*], paras. 115, 239; International Law Commission, *Draft Articles on Prevention of Transboundary Harm from Hazardous Activities, with commentaries* (2001), article 2(c) & corresponding commentary, art. 3, cmt. para. 10.
[150] *ICJ Climate Change Advisory Opinion*, para. 284.
[151] *ICJ Climate Change Advisory Opinion*, para 290.
[152] *ICJ Climate Change Advisory Opinion,* para. 300.
[153] *ICJ Climate Change Advisory Opinion*, para. 403.
[154] *ICJ Climate Change Advisory Opinion*, para. 428.
[155] *IACtHR Advisory Opinion 32/25*, para. 345.

value chain in an accessible manner; and (iv) require companies to work to reduce their GHG emissions and establish climate mitigation targets across their operations.[156]

60. **Regulations should reflect private sector actors' differential contribution to risk and adverse impacts.** The IACtHR has noted that those who have contributed the most to the climate crisis have a greater responsibility to contribute to climate action.[157] Therefore, States must impose stricter obligations on companies "whose activities are major sources of GHG emissions."[158] Such obligations may include "tax burden, contributions to just transition plans and strategies, investment in education, and measures of adaptation or to measures to address loss and damage."[159] Additionally, when regulating, States must consider the unique situation of financial conglomerates and transnational corporations, as these parent companies should have legal responsibilities for the GHG emissions generated by their subsidiaries or companies in their control.[160]

61. **Corporate actors also "have obligations and responsibilities with respect to climate change, and [their] impacts (…) on human rights."**[161] In line with human rights law, "business enterprises should prevent their activities from causing or contributing to human rights violations, and must take measures to remedy any such violations."[162] The IACtHR affirms that private actors must provide transparent information related to their ownership structures, internal mitigation and energy transition plans, and any contracts involving public resources.[163] Furthermore, business enterprises are required to collaborate with governmental entities to address misinformation surrounding the causes and effects of climate change. In doing so, they must promote media and information literacy, while also ensuring that individuals have access to accurate and reliable climate data. This reinforces the fundamental right to receive accurate information.

62. **States have a duty to monitor and supervise the effective implementation and compliance with climate protection regulations, as well as ensure active transparency and accountability from both the public and private sectors, especially those in high-emitting industries.** In light of the enhanced due diligence standard, States are required to strictly monitor and control, "at the very least: exploration, extraction, transportation and processing of fossil fuels, cement manufacture, agro-industrial activities, and other inputs used in those activities."[164] States must also set up robust and independent mechanisms, whether judicial, quasi-judicial, or administrative, with sufficient resources and capacity to carry out adequate monitoring of the activities subject to oversight, monitor progress towards the State's national mitigation target, and make the necessary recommendations to ensure effective compliance.[165] These mechanisms must

[156] *IACtHR Advisory Opinion 32/25*, para. 347.
[157] *IACtHR Advisory Opinion 32/25*, para. 350.
[158] *IACtHR Advisory Opinion 32/25*, para. 350.
[159] *IACtHR Advisory Opinion 32/25*, para. 350.
[160] *IACtHR Advisory Opinion 32/25*, para. 350.
[161] *IACtHR Advisory Opinion 32/25*, para. 346 (quoting the Working Group on the issue of human rights and transnational corporations and other business enterprises, *Information Note on Climate Change and the Guiding Principles on Business and Human Rights* (June 2023), para. 5, https://www.ohchr.org/sites/default/files/documents/issues/business/workinggroupbusiness/Information-Note-Climate-Change-and-UNGPs.pdf).
[162] *IACtHR Advisory Opinion 32/25*, para 345.
[163] *IACtHR Advisory Opinion 32/25*, para. 516.
[164] *IACtHR Advisory Opinion 32/25*, para. 353.
[165] *IACtHR Advisory Opinion 32/25*, paras. 354-355.

also respect and guarantee the rights to access to information, participation, and justice of those involved in these processes.[166] Under the obligation to monitor, States are mandated to investigate, prosecute, and sanction business enterprises when their conduct infringes environmental protections, including those related to the mitigation target.[167] The obligation of prevention in relation to business-related activities also encompasses the need for States to address and punish corruption that undermines climate action.[168]

63. **Duties to prevent and protect extend extraterritorially, so due diligence must include measures capable of addressing impacts beyond borders, including cumulative and downstream effects.** Like the duty to prevent transboundary harm, which intrinsically concerns extraterritorial effects of conduct subject to a State's jurisdiction and control, State duties to respect and protect human rights have extraterritorial application. The duty to respect "requires States parties to refrain from interfering directly or indirectly with the enjoyment of the [] rights by persons outside their territories."[169] This duty applies to human rights violations caused by environmental degradation or harm, such as climate change, when a State has control over the source of that harm – such as emissions-generating activity.[170]

IV. Multiple courts agree that stringent due diligence requires environmental impact assessments to consider activities' cumulative and extraterritorial climate effects.

64. **Environmental impact assessments (EIAs) are "safeguard[s] against the potential socio-environmental impacts of a project or activity (...)."**[171] The African Commission has affirmed that States must "requir[e] and publici[ze] environmental and social impact studies prior to any major industrial development."[172] Similarly, the IACtHR has reiterated that whenever it is determined that a project or activity poses a significant risk of environmental harm, it is mandatory to conduct these assessments.[173]

65. **The ICJ and the IACtHR affirmed States' obligations to provide for and conduct EIAs with respect to "projects or activities that pose a risk of generating significant GHG emissions."**[174] This requirement applies to all undertakings within their jurisdiction or control.[175] To operationalize this obligation, the first duty of States is to identify, either "through an initial study, or by domestic regulations establishing the activities subject to this assessment," the

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[166] *IACtHR Advisory Opinion 32/25*, para. 354.
[167] *IACtHR Advisory Opinion 32/25*, para. 356.
[168] *IACtHR Advisory Opinion 32/25*, para. 357(a).
[169] *See* Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 24 (2017) on State Obligations Under the International Covenant on Economic, Social and Cultural Rights in the Context of Business Activities*, U.N. Doc. E/C.12/GC/24 (Aug. 10, 2017), para. 29; *see also* HRC General Comment No. 36, paras. 22, 63; Committee on the Elimination of Discrimination Against Women (CEDAW), *General Recommendation No. 34 (2016) on the Rights of Rural Women*, U.N. Doc. CEDAW/C/GC/34 (Mar. 7, 2016), para. 13; *IACtHR Advisory Opinion OC-23/17*, para. 101.
[170] *Chiara Saachi et al. v. Argentina*, Decision Comm. on Rights of the Child, No. 104/2019, U.N. Doc. CRC/C/88/D/104/2019 (decision adopted Sept. 22, 2021), para. 10.9.
[171] *IACtHR Advisory Opinion AO-32/25*, para. 358.
[172] *SERAC and CESR v. Nigeria*, para 53.
[173] *IACtHR Advisory Opinion AO-32/25*, para. 358. *Cf. IACtHR Advisory Opinion OC-23/17*, para. 157; *U'Wa Indigenous People and its members v. Colombia*, Inter-American Court of Human Rights, (July 4, 2024), para. 298.
[174] *IACtHR Advisory Opinion 32/25*, para. 359; *see also ICJ Climate Change Advisory Opinion*, para. 298.
[175] *IACtHR Advisory Opinion 32/25*, para. 359; *ICJ Climate Change Advisory Opinion*, para. 298.

projects and activities that require an EIA due to their potential to generate significant GHG emissions.[176] Once these projects or activities are identified, their respective EIAs "must compulsorily include a section that evaluates climate impact."[177]

66. **States are required to establish regulations governing EIAs for projects implemented by either the State or private actors,[178] but they do not have total discretion as international law sets out the minimum EIA standards for potentially climate-destructive activities**. These regulations must establish a clear framework that specifies, at a minimum: (i) a clear identification of the nature and size of the project, activities requiring assessment and the specific areas and aspects to be evaluated; (ii) the necessary steps and procedures for conducting the assessment; (iii) the specific roles and responsibilities of the various actors involved; (iv) an explanation on how the assessment will inform the approval process for proposed projects regarding climate impacts; and (v) a protocol for addressing any deviations from the prescribed EIA procedures.[179] Additionally, the EIA should be conducted by an independent entity with relevant technical expertise; done prior to the activity beginning, including conducting subsequent EIAs when there are new stages of a project, or the extension or modification of projects and activities; grounded in the best available science;[180] and conducted in a participatory manner, including respecting the rights of interested actors and Indigenous Peoples.[181] They should also include a contingency plan and measures to mitigate any possible harm to the climate system.[182]

C. The prohibition on irreversible environmental harm operates as a peremptory limit on climate-destructive conduct.

67. Evolving interpretations of the duty to prevent significant harm to the environment recognize that, given its gravity, where the harm at issue is irreversible, the prohibition takes on a peremptory nature. That means conduct causing irreversible harm to the climate or other parts of the environment triggers not merely a heightened standard of due diligence, but an absolute bar making it impermissible under any circumstances. As noted above, the IACtHR has clarified that the prohibition on conduct causing irreversible environmental harm has attained the status of a peremptory norm (*jus cogens*), "a norm from which no derogation is permitted."[183] **This Court may similarly affirm that the prohibition on causing irreversible harm to the environment, including the climate system, constitutes a peremptory norm (*jus cogens*) of international law.**

[176] *IACtHR Advisory Opinion 32/25*, para. 359.
[177] *IACtHR Advisory Opinion 32/25*, para. 359.
[178] *Cf. IACtHR Advisory Opinion OC-23/17*, para. 160; *U'Wa Indigenous People and its members v. Colombia*, paras. 296, 300-301.
[179] *IACtHR Advisory Opinion 32/25*, para. 361; *IACtHR Advisory Opinion OC-23/17*, para. 150.
[180] *IACtHR Advisory Opinion 32/25*, para. 362; ICJ Climate Change Advisory Opinion, para. 298.
[181] *IACtHR Advisory Opinion AO-32/25*, para. 362; *IACtHR Advisory Opinion OC-23/17*, paras. 166-169; *U'Wa Indigenous People and its members v. Colombia*, paras. 300-301.
[182] *IACtHR Advisory Opinion AO-32/25*, para. 362; *IACtHR Advisory Opinion OC-23/17*, paras. 170-173; *U'Wa Indigenous People and its members v. Colombia*, paras. 293, 300.
[183] *IACtHR Advisory Opinion 32/25*, para. 291.

68. This characterization has significant consequences. As a peremptory norm, the prohibition admits of no derogation and is not subject to balancing against competing interests.[184] Compliance cannot be satisfied by demonstrating that a State exercised due diligence; rather, conduct that foreseeably risks causing irreversible harm to the climate system is unlawful per se.

69. **In the context of climate change, where scientific evidence demonstrates the risk of tipping points,[185] severe ecosystem degradation and potential collapse,[186] and irreversible changes in Earth System processes,[187] the peremptory prohibition establishes an outer limit on permissible conduct.** States must not authorize, support, or fail to regulate activities that risk crossing thresholds of irreversible climate harm, including large-scale environmental destruction that irreversibly disrupts ecosystems, biodiversity, or the climate system and the balance necessary for life.[188]

70. **The *jus cogens* character of this prohibition also entails systemic consequences across the international legal order.** No treaty or domestic legal framework may validly justify or excuse conduct that leads to such harm. Nor can withdrawal from any environmental treaty or reservations and restrictive interpretations of those treaties absolve a State from their duty to refrain from and avert any conduct causing irreversible harm to the climate system. As reflected in the Vienna Convention on the Law of Treaties, the emergence of a peremptory norm renders void any treaty that conflicts with it,[189] and precludes the validity of future agreements permitting such conduct.[190] Correspondingly, all States have a legal interest in its protection, and all branches of government are required to give it full effect in law and practice.[191]

71. This Court has an opportunity to confirm the existence of such a *jus cogens* norm with regard to irreversible climate harm and elaborate on the scope of conduct that would trigger such a peremptory prohibition. Science is critical to identifying both the types of activities that are known to cause or contribute to irreversible environmental destruction and the measures that are effective in precluding it.

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[184] Vienna Convention on the Law of Treaties, art. 53; ILC, *Draft Conclusions on Peremptory Norms, with commentaries*, conclusions 2-3 and their accompanying commentary.

[185] *See, e.g.,* Tim Lenton et al., "Climate tipping points — too risky to bet against," *Nature* (Nov. 27, 2019), https://www.nature.com/articles/d41586-019-03595-0.

[186] IPCC, AR6, WGII: Summary for Policymakers, p. 9; Christopher Trisos et al., "The projected timing of abrupt ecological disruption from climate change," *Nature* (2020), https://www.nature.com/articles/s41586-020-2189-9.

[187] *See, e.g.,* IPCC, AR6, Synthesis Report: Summary for Policymakers, pp. 5, 18, 24; Johan Rockström et al., "Planetary boundaries: exploring the safe operating space for humanity," *Nature* (2009), https://www.stockholmresilience.org/download/18.8615c78125078c8d3380002197/1459560331662/ES-2009-3180.pdf.

[188] *IACtHR Advisory Opinion 32/25*, paras. 288-292. *IACtHR Advisory Opinion 32/25*, Concurring Opinion of Justices Rodrigo Mudrovitsch, Eduardo Ferrer Mac-Gregor & Ricardo C. Perez Manrique, para. 37-38.

[189] Vienna Convention on the Law of Treaties, art. 64.

[190] Vienna Convention on the Law of Treaties, art. 53.

[191] Notably, in its Advisory Opinion, the Inter-American Court highlights the critical importance of international cooperation in addressing conduct that contravenes the *jus cogens prohibition against conduct causing irreversible harm to the environment.* This emphasis, however, does not imply that such peremptory norms are limited solely to this obligation to cooperate. Rather, *jus cogens* norms must be integrated into domestic legal systems, necessitating States to prohibit actions or omissions that result in irreversible environmental harm. *See IACtHR Advisory Opinion 32/25*, paras. 294, 65-67.

V. To Satisfy Those Legal Obligations, Climate Measures Must Align with Best Available Science

72. This section consists of two subsections: (A) sets out the international law requirement that climate measures undertaken pursuant to a State's due diligence align with best available science; and, (B) elucidates the bases in international law for giving due regard to local, traditional, and Indigenous knowledge given its intrinsic value and the relationship between these communities and the Earth.

A. International law requires States to align their climate action with the best available science.

73. **International climate agreements are rooted in the best available science and explicitly recognize that the measures required of States to avoid dangerous interference with the climate system should evolve with advancements in scientific understanding.** Under the UNFCCC, States committed to "prevent dangerous anthropogenic interference with the climate system" and to review the adequacy of their commitments "in the light of the best available scientific information."[192] Under the Paris Agreement, which enjoys the near-universal ratification of 195 States,[193] States agreed on "the need for an effective and progressive response to the urgent threat of climate change on the basis of the best available scientific knowledge."[194] Additionally, States agreed to undertake mitigation measures in the form of "rapid reductions … in accordance with best available science."[195] National courts in various jurisdictions have interpreted "best available science" to include the latest research and observations from organizations such as the IPCC and the WMO, the UN Environment Programme (UNEP) and expert independent research institutes, peer-reviewed academic research, and evidence from national scientific or specialist bodies.[196]

74. **In addition to the climate treaties, a number of international environmental agreements require Parties to ground measures aimed at preventing and mitigating environmental harm in the best available science.** For example, UNCLOS expressly requires States to be guided by the "best scientific evidence available" in formulating measures for conserving living

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[192] UNFCCC, arts. 2, 4(2)(d).

[193] UNFCCC, *Paris Agreement - Status of Ratification*, https://unfccc.int/process/the-paris-agreement/status-of-ratification (last visited on Dec. 19, 2025).

[194] Paris Agreement to the United Nations Framework Convention on Climate Change, Dec. 12, 2015, 3156 U.N.T.S. (entered into force on Nov. 4, 2016), pmbl. [hereinafter Paris Agreement] (emphasis added).

[195] Paris Agreement, art. 4.1 (reaffirmed in the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement, 26th session, 31 October-13 November 2021, Glasgow Climate Pact, Decision 1/CMA.3, U.N. Doc. No. FCCC/PA/CMA/2021/10/Add.1).

[196] *The State of the Netherlands v Urgenda Foundation,* Supreme Court of the Netherlands, Judgment, ECLI:NL:HR:2019:2007 (Dec. 20, 2019) (Neth.), paras. 2.1, 4.1-4.8 [hereinafter *Urgenda* Supreme Court Case]; *Backsen and Others (German Family Farmers) v. Federal Republic of Germany*, Administrative Court of Berlin, Judgment, VG 10 K 412.18 (Oct. 31, 2019) (Ger.) pp. 19, 20, https://cdn.climatepolicyradar.org/navigator/DE-BE/2018/family-farmers-and-greenpeace-germany-v-germany_82fe063c02b99a1a34ec4663c37cf229.pdf (unofficial translation); *Neubauer et al v. Germany*, Bundesverfassungsgerichtshof (BverfG) (Federal Constitutional Court), 1 BvR 2656/18, 1 BvR 96/20, 1 BvR 78/20, 1 BvR 288/20, 1 BvR 96/20, 1 BvR 78/20 (March 24, 2021) (Ger.), pp. 18-24.

marine resources.[197] Part XII of that agreement includes requirements to use "recognized scientific methods" to "measure, evaluate, and analyse ... the risks or effects of pollution of the marine environment,"[198] and the ITLOS recognizes that due diligence measures must be guided by "new scientific knowledge."[199] Other environmental instruments that require relevant State conduct to be informed by the best available science include the Convention on Biological Diversity (CBD),[200] the Convention on Migratory Species,[201] and the Agreement on Marine Biological Diversity of Areas Beyond National Jurisdiction,[202] among others.

75. **International and comparative sources of human rights law recognize the critical role of the best available science both in informing State conduct in the face of foreseeable harm, and in ensuring the public's access to information necessary for the full and effective retaliation of fundamental rights.** The IACtHR and the European Court of Human Rights have recognized the need for States to rely upon the best available scientific data and technology in formulating measures to prevent and mitigate threats to human rights, including environmental harm.[203] According to the Committee on Economic, Social and Cultural Rights (CESCR), the right to science requires States to "align [...] government policies and programmes with the best available, generally accepted scientific evidence."[204] However, as human rights bodies make clear, this data is not for the exclusive use of States. Both the Universal Declaration of Human Rights and the International Covenant on Economic, Social, and Cultural Rights (ICESCR) provide that everyone has the right to share in scientific progress and its applications and benefits.[205] As

[197] UNCLOS, art. 61(2), art. 119.
[198] UNCLOS, art. 204.
[199] *ITLOS, Seabed Chamber Advisory Opinion*, para. 117.
[200] Convention on Biological Diversity, June 5, 1992, 1760 U.N.T.S. 79 (entered into force on Dec. 29, 1993), art. 12(c) (requiring States to "promote and cooperate in the use of scientific advances in biological diversity research in developing methods for conservation and sustainable use of biological resources")
[201] Convention on the Conservation of Migratory Species of Wild Animals, June 23, 1979, 1651 U.N.T.S. (entered into force on Nov. 1, 1983), art. III(2) (providing that the "best scientific evidence available" should inform decisions on whether to list a migratory species as endangered and thus subject to special protections under the Convention).
[202] Agreement under the United Nations Convention on the Law of the Sea on the Conservation and Sustainable Use of Marine Biological Diversity of Areas Beyond National Jurisdiction, June 19, 2023, UN Doc. A/CONF/232/2023/4 (entered into force on Jan. 17, 2026), arts. 7(i), 19(3), 24(3), 26(5), 31, 35, 37.
[203] *IACtHR Advisory Opinion OC-23/17*, para 172 (citing the International Law Commission, *Commentaries on the draft principles on the allocation of loss in the case of transboundary harm arising out of hazardous activities*, Yearbook of the International Law Commission 2006, vol. II, Part Two, U.N. Doc. A/61/10), Principle 5, paras. 1, 2 and 5); *see also e.g. Rees v. the United Kingdom*, European Court of Human Rights, Judgment, App. No.9532/81 (Oct. 17, 1986), para. 47; *Cossey v. The United Kingdom*, European Court of Human Rights, Judgment, App. No. 10843/84 (Sept. 27, 1990), para. 40; *Fretté v. France*, European Court of Human Rights, Judgment, App. No. 36515/97 (May 26, 2002), para. 42; *cf. Oluic v. Croatia*, European Court of Human Rights, Judgment, App. No. 61260/08 (Aug. 20, 2010), paras. 29-31. *See also Urgenda Supreme Court case*, para. 5.4.3 ("According to ECtHR case law, an interpretation and application of the ECHR must also take scientific insights and generally accepted standards into account.").
[204] Committee on Economic, Social and Cultural Rights, *General comment No. 25 (2020) on science and economic, social and cultural rights (article 15 (1) (b), (2), (3) and (4) of the International Covenant on Economic, Social and Cultural Rights)*, U.N. Doc. E/C.12/GC/25 (April 30, 2020), para. 52 [hereinafter CESCR General Comment No. 25]; *accord* Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes (Marcos Orellana), *Right to science in the context of toxic substances*, UN Doc. A/HRC/48/61 (July 26, 2021), para. 97.
[205] UN General Assembly, Universal Declaration of Human Rights, UN Doc. 217 A (III) (Dec. 10, 1948), art. 27(2); International Covenant on Economic, Social and Cultural Rights, Dec. 16, 1966, 993 U.N.T.S. 3 (entered into force on Jan. 3, 1976), art. 15(1)(b) [hereinafter ICESCR]; CESCR General Comment No. 25, paras. 52, 83.

CESCR elaborates, the right entails "access to scientific education and knowledge, the fair sharing of benefits of scientific progress, and the obligation to promote research that addresses priority needs, especially for people in vulnerable and marginalized situations."[206] The Human Rights Committee has similarly interpreted the freedoms of opinion and expression, enshrined in article 19 of the International Covenant on Civil and Political Rights (ICCPR), to "embrace[] a right of access to information held by public bodies," which must encompass up-to-date scientific data.[207] And as the Committee on the Rights of the Child (CRC) explains, "accurate and reliable environmental information," including in relation to climate harm, is a "crucial prerequisite for realizing the rights of children to express their views, to be heard and to effective remedy regarding environmental matters."[208] These and other U.N. human rights treaty bodies have relied on IPCC reports in clarifying States' duties to avert human rights harm in the context of the climate crisis.[209]

76. **In their respective climate advisory opinions, the ITLOS, the ICJ, and the IACtHR all ruled that States are duty-bound to take urgent measures to address climate change grounded in the best available science.** In its 2024 opinion, the ITLOS clarified that States' obligation under UNCLOS to take all necessary measures to prevent, reduce, and control pollution of the marine environment extends to pollution caused by anthropogenic GHG emissions.[210] According to the ITLOS, what constitutes "necessary measures" should be determined objectively, taking into account the best available science, as "found in the works of the Intergovernmental Panel on Climate Change which reflect the scientific consensus."[211] Also accepting IPCC reports as "comprehensive and authoritative restatements of the best available science about climate change," the ICJ's climate advisory opinion concludes that anthropogenic GHG emissions are causing significant harm to the climate system.[212] The seriousness of the threat mandates that States act with a stringent standard of due diligence,[213] though, the requisite standard, the ICJ observes, may become "more demanding in the light of new scientific or technological knowledge."[214] Accordingly, it is incumbent upon States to "actively pursue the scientific information necessary for them to assess the probability and seriousness of harm,"[215] and adjust their response accordingly.

77. **The IACtHR's climate advisory opinion not only affirms the need for States to apply the best available science in climate decision-making,[216] but also to ensure that rightholders "access the benefits of measures" grounded in this knowledge.** According to the IACtHR, knowledge that meets the criteria for the "best available science" is accurate, up-to-date,

[206] Committee on Economic, Social and Cultural Rights, *General comment No. 27 on economic, social and cultural rights and the environmental dimension of sustainable development*, U.N. Doc. E/C.12/GC/27 (Nov. 6, 2025), para. 75 [hereinafter CESCR General Comment No. 27].
[207] Human Rights Committee, *General Comment No. 34 on Article 19: Freedoms of opinion and expression*, U.N. Doc. CCPR/C/GC/34 (July 29, 2011), para. 18.
[208] CRC General Comment No. 26, para. 32.
[209] UN Human Rights Treaty Bodies' Joint Statement on Human Rights and Climate Change, paras. 2, 5, 6.
[210] *ITLOS Climate Change Advisory Opinion*, para. 179.
[211] *ITLOS Climate Change Advisory Opinion*, para. 208.
[212] *ICJ Climate Change Advisory Opinion*, para. 278.
[213] *ICJ Climate Change Advisory Opinion*, para. 347.
[214] *ICJ Climate Change Advisory Opinion*, para. 284.
[215] *ICJ Climate Change Advisory Opinion*, para. 283.
[216] *IACtHR Advisory Opinion AO-32/25*, para. 478.

rigorously peer-reviewed, transparent, verifiable, and reproducible.[217] States are obligated to utilize the best available science in the design and implementation of climate action,[218] which may become progressively more ambitious in light of new scientific knowledge.[219] Such knowledge, however, cannot be only accessible to governments, but publicly available. The IACtHR concludes that everyone has the right to science, which entails access "to the benefits of scientific and technological progress, as well as opportunities for them to contribute to scientific activity, without discrimination."[220] To develop this right, States are obligated to undertake, *inter alia*, the following: provide public education and report on major scientific discoveries; ensure the preservation, development, and dissemination of science and technology, including climate science; promote public participation; ensure that the benefits of science are physically and economically accessible to all; and ensure that technological advances do not disproportionately harm those in vulnerable situations.[221] Furthermore, States must cooperate internationally to promote the transfer and exchange of scientific knowledge and technology.[222]

78. **Ensuring that protective measures reflect the best available science is also consistent with the principle of progressive realization.[223]** The obligation to "progressively and constantly move towards the full realisation of economic, social and cultural rights,"[224] which this Court recognizes,[225] prohibits States from deliberately reducing the level of protection afforded a right. According to the Court, any regressive measure "which directly or indirectly marks a step backwards" in relation to a protected right is contrary to State duties.[226] The concept of progressive realization is also reflected in the Paris Agreement, in the context of States' climate commitments.[227] According to the ICJ, in practice this means that Parties to the UNFCCC should, among other things, ensure that their Nationally Determined Contributions (NDCs) become "more demanding over time."[228] Thus, in the face of rising threats of climate harm, a State's failure to increase — in accordance with the best available science — the level of ambition, diligence, and timeliness with which it implements climate action is retrogressive, and thereby inconsistent with international law.[229]

[217] *IACtHR Advisory Opinion AO-32/25*, para. 486.
[218] *IACtHR Advisory Opinion AO-32/25*, para. 236.
[219] *IACtHR Advisory Opinion AO-32/25*, para. 331.
[220] *IACtHR Advisory Opinion AO-32/25*, para. 473.
[221] *IACtHR Advisory Opinion AO-32/25*, para. 474.
[222] *IACtHR Advisory Opinion AO-32/25*, para. 475.
[223] Universal Declaration of Human Rights, art. 30; ICESCR, art. 2(1); CESCR, *General Comment No. 3 The Nature of States Parties' obligations (Art. 2, Para. 1, of the Covenant)*, U.N. Doc. E/1991/23 (Dec. 14, 1990), para. 9.
[224] *Principles and Guidelines on the Implementation of Economic, Social and Cultural Rights in the African Charter on Human and Peoples' Rights*, para. 13.
[225] *Sébastien Germain Marie Aikoué Ajavon v. Republic of Benin*, African Court on Human and Peoples' Rights, No. 062/2019 (Dec. 4, 2020), paras. 135-142.
[226] *Sébastien Germain Marie Aikoué Ajavon v. Republic of Benin*, para. 137.
[227] Paris Agreement, arts. 3, 4.3.
[228] *ICJ Climate Change Advisory Opinion*, para. 241.
[229] *IACtHR Advisory Opinion AO-32/25*, para. 222.

B. In aligning climate action with the best available science, States must give due regard to and integrate local, traditional, and Indigenous knowledge where relevant.

79. **International environmental law has long recognized the value of local, traditional, and Indigenous knowledge to environmental stewardship and management, and increasingly has done so in the context of mounting climate threats.** As early as the 1992 Earth Summit in Rio de Janeiro, States stressed that "Indigenous people and their communities…have a vital role in environmental management and development because of their knowledge and traditional practices."[230] Since the Rio Declaration, this position has gained widespread acceptance and is reflected in numerous authoritative sources of international environmental law. The Paris Agreement expressly acknowledges the crucial role of local, traditional, and Indigenous knowledge in climate adaptation measures."[231] The CBD and the U.N. Convention to Combat Desertification (UNCCD) likewise require States to respect and preserve ancestral knowledge and promote its application in confronting environmental threats and advancing sound ecological stewardship.[232] According to the UNCCD, incorporating local and traditional knowledge and practices is essential to combating desertification and mitigating the effects of drought — environmental phenomena that are becoming increasingly prevalent with changing climate patterns.[233] As both instruments agree, the use and application of such knowledge is only permissible with the participation and consent of the knowledge holders, with whom any benefits derived from the knowledge should be equitably shared.[234]

80. **International human rights law also recognizes the need to incorporate local, traditional, and Indigenous knowledge into environmental policies and climate action.** A number of U.N. treaty bodies have affirmed the critical contributions of these knowledge systems to science and technology and to the global scientific discourse, calling on States to take active measures for their protection and preservation. Denouncing the use of science "as an instrument of cultural imposition," CESCR's General Comment No. 25 obligates States to provide Indigenous Peoples with both the educational and technological means to participate in the "global intercultural dialogue for scientific progress."[235] The CRC has mandated States to engage meaningfully with Indigenous Peoples in responding to climate harm, "taking due account of and integrating concepts from Indigenous cultures and traditional knowledge in mitigation and adaptation measures."[236] At the same time, State and non-State actors should only "conduct research, take decisions or create policies relating to science that have an impact on indigenous peoples or when using their knowledge" if they have the knowledge holders' free, prior, and informed consent

[230] Rio Declaration, principle 22.
[231] Paris Agreement, art. 7(5) (stating that adaptation measures should be "guided by the best available science and, as appropriate, traditional knowledge, knowledge of indigenous peoples and local knowledge systems, with a view to integrating adaptation into relevant socioeconomic and environmental policies and actions, where appropriate. ").
[232] Convention on Biological Diversity, art. 8(j); United Nations Convention to Combat Desertification in Those Countries Experiencing Serious Drought and/or Desertification (UNCCD), Particularly in Africa, June 17, 1994, U.N. Doc. A/AC.241/15/Rev.7, art. 16(g) [hereinafter UNCCD].
[233] UNCCD, art. 16(g).
[234] Convention on Biological Diversity, art. 8(j); UNCCD, art. 16(g).
[235] CESCR General Comment No. 25, para. 40.
[236] CRC General Comment No. 26, para. 58.

(FPIC).[237] And as a critical starting point, States must regard and characterize Indigenous knowledge as indeed "scientific and technical," as U.N. Special Rapporteur Calí Tzay advocated, recognizing its intrinsic value rather than treating it as secondary to or less legitimate than "western" manifestations of scientific knowledge and data.[238]

81. **The IACtHR's climate advisory opinion affirms that local, traditional, and Indigenous knowledge systems can make "a valuable contribution to science and technology," and must be promoted, protected, and preserved.[239]** According to the IACtHR, "the right to science not only encompasses access to benefits obtained from science in the strict sense," but also to the benefits that may be derived from local, traditional, and Indigenous knowledge.[240] Observing that these knowledge systems hold the "greatest potential to contribute to climate change mitigation,"[241] the IACtHR underscores the need for their integration with the best available science and for the "joint production of climate knowledge between scientists and the custodians of such knowledge."[242] However, such exchanges must be equitable, symmetrical, and aimed at promoting mutual learning, rather than extractive in nature.[243] Furthermore, to ensure widespread and non-discriminatory access in accord with the right to science, States must ensure that available information on climate change and relevant strategies are disseminated in a way that is adapted to traditional, local, and Indigenous knowledge.[244]

82. **Recognizing the scientific and legal weight of local, traditional, and Indigenous knowledge — including in the context of climate litigation — is critical to making climate justice more accessible for communities and individuals in the Global South.** The IPCC has identified significant disparities in access to climate information across regions, emphasizing a need to "incorporate knowledge from diverse sources, contexts and information channels" in climate responses.[245] Relatedly, the IACtHR climate advisory opinion observes that regions highly vulnerable to the impacts of climate change are often those with less access to high-quality meteorological and climate information, including historical data.[246] This is indeed the case in much of the African continent.[247] According to the current U.N. Special Rapporteur on Climate Change and Human Rights, existing knowledge gaps are compounded by the fact that compilations of climate information tend to exclude Indigenous knowledge and local data, as well as consultations with the affected communities.[248] A lack of accessible information can especially

[237] CESCR General Comment No. 25, para. 40.
[238] Report of the Special Rapporteur on the rights of indigenous peoples (José Francisco Calí Tzay), *Indigenous women and the development, application, preservation and transmission of scientific and technical knowledge*, U.N. Doc. A/HRC/51/28 (Aug. 9, 2022), paras. 8-9.
[239] *IACtHR Advisory Opinion AO-32/25*, para. 483.
[240] *IACtHR Advisory Opinion AO-32/25*, para. 477.
[241] *IACtHR Advisory Opinion AO-32/25*, para. 479.
[242] *IACtHR Advisory Opinion AO-32/25*, para. 480.
[243] *IACtHR Advisory Opinion AO-32/25*, para. 480.
[244] *IACtHR Advisory Opinion AO-32/25*, para. 522.
[245] IPCC SR1.5, p. 76.
[246] *IACtHR Advisory Opinion AO-32/25*, para. 498.
[247] *See* Tufa Dinku, "Challenges with availability and quality of climate data in Africa," in *Extreme Hydrology and Climate Variability* (A. M. Melesse, W. Abtew, & G. Senay, eds. 2019); Tufa Dinku et al., *The Climate Data Tool: Enhancing Climate Services Across Africa*, Front. Clim. 3:787519 (2022).
[248] Report of the Special Rapporteur on the promotion and the protection of human rights in the context of climate change (Elisa Morgera), *Access to Information on Climate Change and Human Rights*, U.N. Doc. A/79/176 (July 18, 2024), paras. 25, 29.

prejudice victims of climate harm by preventing them from meeting evidentiary thresholds in court, obstructing their access to remedy and reparations. Thus, in affirming the value of local, traditional, and Indigenous knowledge to climate science, States should "facilitate paths for access to justice adapted to ancestral, indigenous and local knowledge and ways of life," as the IACtHR recommends.[249] This may entail, for example, advancing judicial recognition of the credibility and probative value of evidence derived from these knowledge systems and fostering their acceptance in climate litigation. Indeed, expanding the types of evidence accepted by courts will help overcome procedural hurdles that put climate justice out of reach of those in the most dire conditions, fostering equity and accountability.

VI. Best Available Science Shows Fossil Fuel Phaseout is Necessary to Prevent Climate Harm to Human Rights

83. **This section focuses on critical actions that States must take to comply with their duties to prevent climate harm, exercising requisite due diligence in line with best available science.** It affirms that the science is clear and preventing climate harm requires phasing out fossil fuels. It then outlines that this means States must act, in line with equity and their capabilities, to prevent fossil-fueled harm, including by ensuring no fossil fuel activities are approved without full consideration of their cumulative climate impacts. It subsequently explains why the duty to prevent and the precautionary principle require taking actions that are known to reduce and prevent harm at its source rather than relying on unproven measures or speculative technologies. It concludes by emphasizing that combatting climate disinformation is essential to aligning climate action with best available science.

A. Science leaves no doubt that preventing climate harm requires phasing out fossil fuels.

84. **The best available science on the causes and consequences of climate change is settled and makes clear what measures are necessary to satisfy States' due diligence obligations.** The extraction, production, and subsequent combustion and use of fossil fuels — along with activities that facilitate it, such as granting exploration licenses or public subsidies[250] – are the main drivers of the climate crisis, constituting the largest source of anthropogenic GHG emissions, which are warming the planet.[251] According to the IPCC, *existing* fossil fuel infrastructure will push the world past 1.5°C temperature rise (which is already not safe for most people and ecosystems), so expanding production or use of oil, gas, and coal would only exacerbate warming and make further irreversible impacts more likely.[252] Continued reliance on fossil fuels is therefore incompatible with the duty to prevent significant harm to the climate system and other parts of the environment, under customary international law and human rights law, as well as distinct

[249] *IACtHR Advisory Opinion AO-32/25*, para. 613.
[250] *ICJ Climate Change Advisory Opinion*, para. 427.
[251] *ICJ Climate Change Advisory Opinion*, paras. 72-87, 137 (citing the IPCC); *IACtHR Advisory Opinion AO-32/25*, para. 47.
[252] IPCC, AR6, Synthesis Report: Summary for Policymakers, para. B.5.

treaty obligations under UNFCCC and the Paris Agreement to limit warming to 1.5°C.[253] Protection of the climate system therefore necessitates fossil fuel phaseout.[254]

85. **Science also makes it possible to identify the actors and conduct responsible for fossil fuel emissions.** It is uncontested that developed countries, and private actors within their jurisdiction and control, are both the largest historical emitters of GHGs and the largest producers and financiers of fossil fuels.[255] State conduct that impairs the climate system, in breach of legal obligations, is not limited merely to actions that lead to the direct emissions of GHGs, but "encompasses the full range of human activities that contribute to climate change as a result of the emission of GHGs, including both consumption and production activities."[256] Therefore, State obligations relate to and encompass "all actions or omissions of States, and of non-State actors within their jurisdiction or effective control, that result in the climate system and other parts of the environment being adversely affected by anthropogenic GHG emissions."[257] As the ICJ has affirmed, there is no technical or legal bar to connecting specific conduct to climate harm and resultant injuries, and on that basis holding responsible parties to account.[258]

B. States must prevent harm to the climate system and human rights from fossil fuel activities, in line with equity and common but differentiated responsibilities and respective capabilities.

86. **Although States have contributed to climate change and experience its impacts to varying degrees,[259] all States have a duty to take necessary and effective measures to address their own acts and omissions, and those of actors within their jurisdiction and control, that perpetuate production and use of fossil fuels.** As the primary driver of climate change, and therefore, of resulting harm and risks to people and the environment, fossil fuel activity triggers States' duty to prevent climate harm and minimize its impacts on human rights.

87. **What measures satisfy each State's obligations with regard to a fossil fuel phaseout will depend on that State's historical responsibilities, capabilities, and resources.** As the ICJ said, a State's duty to use all means at its disposal implies that the capabilities of a State are a key factor in determining the diligence due in a particular situation, as reflected in the principle of common but differentiated responsibilities and respective capabilities (CBDR-RC).[260] This principle is enshrined in the UNFCCC as Parties must "protect the climate system for the benefit of present

[253] *ICJ Climate Change Advisory Opinion*, para. 224, 242.
[254] *ICJ Climate Change Advisory Opinion*, para. 427; *see also ICJ Climate Change Advisory Opinion*, Joint Declaration of Judges Bhandari and Cleveland, para. 10; *Leveraging the ICJ Climate Ruling at COP30 to Unlock Ambition and Advance Accountability: A Pocket Guide for Negotiators and Allies* (Nov. 2025), https://www.ciel.org/wpcontent/uploads/2025/10/COP30_ICJ_AO_Pocket_Guide_for_Negotiators_and_Allies.pdf.
[255] The African Union's Answers to the Questions from the Court (Dec. 20, 2024), ICJ, Obligations of States in respect of Climate Change, paras. 9, 21.
[256] *ICJ Climate Change Advisory Opinion*, para. 94.
[257] *ICJ Climate Change Advisory Opinion*, para. 95.
[258] *ICJ Climate Change Advisory Opinion*, paras. 429-431.
[259] *ICJ Climate Change Advisory Opinion*, para. 137.
[260] *ICJ Climate Change Advisory Opinion*, paras. 290-292.

and future generations of humankind, *on the basis of equity and in accordance with their common but differentiated responsibilities and respective capabilities*."[261]

88. **Accordingly, "developed" States that have contributed more to climate change over time, through their actions and inaction, and that have greater economic means must take more demanding measures to prevent fossil fueled-climate harm than those with lesser capabilities.**[262] Consistent with their express legal duties, "developed" States also must provide finance, technology, and capacity-building to "developing" countries for climate action, including support for a just and equitable transition away from fossil fuels, particularly for least developed countries (LDCs) and small island developing States (SIDS) that are highly dependent on fossil fuels.[263] Such a transition entails replacing fossil fuel production with other revenue streams, eliminating fossil fuel use across all sectors or meeting underlying needs through alternatives, and financing other associated transition costs.

89. **Halting fossil fuel expansion, however, is a preventive measure available to and required of all States**. While Global North developed countries bear more responsibility for the climate crisis and have obligations to act first and fastest to prevent harm to the environment and human rights, African States have the same due diligence obligations to do their utmost and take all necessary measures within their means to prevent harm.[264] As the ICJ recognized "the reference to available means and capabilities cannot justify undue delay or a general exemption from the obligation to exercise due diligence."[265] Differentiation is not an invitation for States to act with impunity. No State can disregard the reliable scientific evidence that increasing fossil fuel production and use risks causing significant harm, or delay cost-effective measures to prevent the harm – such as refraining from new fossil fuel projects.[266] That makes fossil fuel expansion presumptively contrary to legal duty, as new exploration activity or licenses for new fossil fuel infrastructure inevitably lead to the burning of fossil fuels. Thus, the unchecked proliferation of fossil fuels constitutes a breach of both conventional and customary obligations to protect the climate system from the significant harm that results from human-produced GHG emissions.

90. **States face legal consequences, including the duties of cessation and reparation, for such breaches, whether they result from the failure to adequately regulate fossil fuel activities or from engaging in, authorizing, or financing them.**[267] As the ICJ explains, "failure of a State to take appropriate action to protect the climate system from greenhouse gas (GHG) emissions – including through fossil fuel production, fossil fuel consumption, the granting of fossil fuel exploration licenses or the provision of fossil fuel subsidies – may constitute an internationally wrongful act which is attributable to that State."[268] As discussed in section V, States have a duty to regulate both public and private actors, including investor-owned fossil fuel companies and state-owned enterprises (SOEs) whose conduct may constitute State action.[269] Climate harm resulting from a State's failure to regulate or provision of support to private actors' polluting

[261] UNFCCC, art. 3(1); *see also* Paris Agreement, arts. 2(2), 4(4).
[262] *ICJ Climate Change Advisory Opinion,* paras. 290-292; UNFCCC, art. 3(1).
[263] *ICJ Climate Change Advisory Opinion,* paras. 217-218; UNFCCC, arts. 4.5, 4.8; Paris Agreement, arts. 4.5, 9.
[264] *ICJ Climate Change Advisory Opinion*, para. 292.
[265] *ICJ Climate Change Advisory Opinion,* para. 292.
[266] *ICJ Climate Change Advisory Opinion,* paras. 292-294.
[267] *ICJ Climate Change Advisory Opinion*, paras. 427-428.
[268] ICJ Climate Change Advisory Opinion, para. 427.
[269] *ICJ Climate Change Advisory Opinion*, paras. 282, 403, 427-428.

conduct, or from the operations of a SOE, may be attributed to the State, triggering State responsibility.[270]

91. At minimum, adequate regulation of fossil fuel activity requires full prior assessment of cumulative climate impacts, including from downstream emissions, before any authorization of activities or financing is approved.

92. **Given the transboundary nature of GHG emissions, fossil fuel related activities require EIAs with an explicit component that assesses their climate-related impacts across all phases regardless of where those impacts occur.**[271] Importantly, EIAs must assess the cumulative impact, including the downstream ("scope 3") or mid-stream emissions.[272] Because the vast majority of GHG emissions from fossil fuel activity stem from the eventual combustion and use of the extracted oil, gas, or coal, it is critical that EIAs for proposed fossil fuel activity adequately assess these downstream emissions regardless of where they ultimately materialize. Such downstream emissions are part of what are called "scope 3" emissions, which can include emissions from the entire lifecycle, such as supply chain, transportation, use, and disposal of products.[273] In the context of the fossil fuel industry, GHGs produced when extracted oil, gas, or coal is burned, as intended, can account for more than 90% of a fossil fuel company's overall emissions.[274] The emissions are thus the foreseeable, and indeed inevitable, consequence of extracting and producing fossil fuels, and must factor into the decision-making process concerning the proposed activity.

93. **International courts have underscored the need for EIAs to consider GHG emissions across all stages of proposed industrial activities.** The IACtHR climate advisory opinion affirms that businesses must assess the climate change-related impacts of their activities, including GHG emissions, "across the entire value chain."[275] The ICJ climate advisory opinion offered a similar conclusion, holding that "possible specific climate-related effects must be assessed…at the level of proposed individual activities, e.g. for the purpose of assessing their possible downstream effects."[276] In a Joint Declaration concurring with the ICJ's unanimous ruling, Judges Bhandari and Cleveland went a step further, finding that States are specifically required to assess GHG emissions that will foreseeably result from proposed fossil fuel activities — including production, licensing, and subsidy activities.[277] In a case challenging the licensing of new fossil fuel activity under human rights law, the European Court of Human Rights (ECtHR) cited to the ITLOS,

[270] *ICJ Climate Change Advisory Opinion*, paras. 427-428.
[271] *ICJ Climate Change Advisory Opinion*, para. 298; *IACtHR Advisory Opinion AO-32/25*, paras. 347-348.
[272] *ICJ Climate Change Advisory Opinion*, para. 298; *IACtHR Advisory Opinion AO-32/25*, paras. 347-348.
[273] *See* WBCSD & WRI, *The Greenhouse Gas Protocol Corporate Value Chain (Scope 3) Accounting and Reporting Standard* (2011), p. 25, https://ghgprotocol.org/sites/default/files/standards/Corporate-Value-Chain_Accounting-Reporing-Standard_041613_2.pdf (providing guidance on the categories of Scope 3 emissions).
[274] Carbon Majors Dataset, *Carbon Majors Readme* (2025), p. 5, https://carbonmajors.org/Downloads (last visited Jan. 19, 2026) (showing that, when calculating fossil fuel producers' emissions, emissions from the combustion of marketed products — which fall under Scope 3 — comprised nearly 90% of the total emissions tracked by the Carbon Majors database); UKEF, Climate Change Strategy 2021 to 2024 (Sept. 22, 2021), https://www.gov.uk/government/publications/uk-export-finance-climate-change-strategy_2021-to-2024/uk-export-finance-climate-change-strategy-2021-to-2024 (acknowledging that the "biggest greenhouse gas emissions impact is from [its] scope 3 emissions").
[275] *IACtHR Advisory Opinion 32/25*, para. 347.
[276] *ICJ Climate Change Advisory Opinion*, para. 298.
[277] *ICJ Climate Change Advisory Opinion*, Joint Declaration of Judges Bhandari and Cleveland, para. 15.

IACtHR, and ICJ AOs in support of the conclusion that, for fossil fuel production projects "the environmental impact assessment must include, at a minimum, a quantification of the GHG emissions anticipated to be produced (including the combustion emissions both within the country and abroad)."[278] Similarly, in a recent advisory opinion, the Court of the European Free Trade Association (EFTA) concluded that EIAs for proposed fossil fuel extraction should include "a reasoned estimate of the greenhouse gas emissions that are likely to result from the subsequent combustion of petroleum and natural gas extracted in the course of a project."[279]

94. **State practice and domestic case law reinforce the understanding that for an EIA to adequately assess the climate change impacts of fossil fuel activity, it should include all foreseeable emissions, including those generated downstream.** Australian courts, for instance, have held that EIAs undertaken for coal mines should factor in Scope 3 emissions as an indirect impact, including emissions generated through the transportation and combustion of coal from the mines.[280] In the United States, a federal court recognized that because the "[d]ownstream use of oil and gas, and the resulting GHG emissions" are the "reasonably foreseeable effects of oil and gas leasing,"[281] EIAs undertaken prior to the approval of lease sales should thus include "robust analyses" of these emissions.[282] After all, the sale of oil and gas leases — which opens the door to future oil and gas exploitation and production, and ultimate consumption — are the "legally relevant cause" of downstream emissions; the requisite EIAs are therefore "required to consider those emissions as indirect effects of oil and gas leasing."[283] Courts in South Africa,[284]

[278] *Greenpeace Nordic and others v. Norway*, European Court of Human Rights (ECtHR), no. 34068/21 (Oct. 28, 2025), para. 319; *ibid.* paras. 320-324 (discussing the advisory opinions).

[279] *Norwegian State v. Greenpeace Nordic, Nature and Youth Norway*, EFTA Court, E-18-24 (May 21, 2025), paras. 89, 99 ("It therefore does not appear to be unreasonably burdensome to require developers to provide a reasoned estimate of the greenhouse gas emissions that will arise from the subsequent combustion of the oil and natural gas extracted during a project such as the one at issue in the main proceedings. The EFTA Court further notes that such an estimate could, for example, consist of a probable emission range, depending on the use of the products in question, provided that the range in question takes into account the probable use. Such an approach may be appropriate, in particular where the developer is not responsible for determining the final end-use of the products, for example in cases where the products are exported and sold to third parties.") (translated to English by the author).

[280] *See Gray v. Minister for Planning* (2006), 152 LGERA 258 (Australia) (citing intergenerational equity considerations); *Gloucester Resources Limited v. Minister for Planning*, NSWLEC 7 (2019) (Australia), para. 490.

[281] *WildEarth Guardians v. Zinke*, 368 F. Supp. 3d 41 (D.D.C. 2019) (U.S.A), p. 73.

[282] *WildEarth Guardians v. Zinke*, p. 83; *see also Sierra Club v. Fed. Energy Regulatory Comm'n*, 827 F.3d 36 (D.C. Cir. 2016) (U.S.A.), p. 47 (finding that a pipeline authorization was a "legally relevant cause" of downstream GHG emissions from gas transported by the pipeline, and that the government's environmental assessment was therefore required to consider those emissions).

[283] *WildEarth Guardians v. Zinke*, p. 73 (citing *Wilderness Workshop*, 342 F.Supp.3d at 1155 ("[C]ombustion emissions are an indirect effect of an agency's decision to extract ... natural resources.").

[284] *Green Connection NPC and Natural Justice v Minister of Forestry, Fisheries and the Environment and Others,* Western Cape High Court, Case No. 5676/2024 (Aug. 13, 2025), paras. 130-157 ("Whilst it is correct that the specific activity for which the EA in this case is granted is exploration and not production, and that the former process will not always result in the latter process, the two processes are intertwined. There would be no point in conducting an exploration activity unless an entity hoped to proceed to the next phase of production. And it is not speculation to conclude that by the time such an entity applies for authorization to conduct the next phase, it is armed with information that places it at an advantage to proceed to the next phase."); *Sustaining the Wild Coast NPC and Others v. Minister of Mineral Resources and Energy and Others*, (6) SA 589 (ECMk) (South Africa) (2022) (upheld on appeal), paras. 120-25.

Guyana,[285] the U.K.,[286] and Canada,[287] among other countries, have likewise held that the impact assessments around fossil fuel projects should consider downstream emissions.

95. **Courts have also explicitly addressed the obligation to consider *extraterritorial* downstream emissions.[288]** National courts have held that EIAs must consider not only downstream emissions that are released within the territory of the State authorizing fossil fuel activity, but also those generated when activity within the territory leads to emissions abroad. For instance, a US court found that a government agency had acted "arbitrarily in excluding [GHG emissions generated from] foreign consumption from its emissions analysis" for an offshore oil and gas lease sale.[289] Similarly, in a 2025 decision, a Norwegian appellate court upheld a lower court's decision to invalidate three offshore oilfield development permits based on Norway's failure to assess the global climate impacts of the downstream use of the oil and gas produced from the fields and exported for overseas consumption.[290] Likewise, the UK Supreme Court held that in assessing planning applications for new oil and gas extraction wells, a local council should have considered global emissions from the inevitable and intended use of the produced fossil fuels, not just emissions from the drilling of the wells.[291] The court reasoned that GHG emissions from combustion activities are "manifestly" within the control of UK operators, as "the effect of the combustion emissions on climate does not depend on when or where the combustion takes place."[292]

96. **It is therefore imperative that prior to approving, undertaking, financing, or otherwise supporting fossil fuel production, a State must ensure that the requisite EIA processes account for and analyze the full scope of GHG emissions generated by the inevitable and intended use of the fossil fuels.** These emissions must be considered even if the actual combustion of the oil and gas occurs — and the resulting emissions materialize — extraterritorially, as they are foreseeable and causally linked to the State's authorization of production. Absent consideration of downstream emissions, the EIA would lack complete information on how the proposed project would degrade the atmosphere and global climate, impairing the State's ability to assess the activity's compatibility with its legal obligations or take

[285] "High Court dismisses action over Exxon's Hammerhead project but recognises EIA must cover indirect emissions," *Stabroek News* (Apr. 1, 2025), https://www.stabroeknews.com/2025/04/01/news/guyana/high-court-dismisses-action-over-exxons-hammerhead-project-but-recognises-eia-must-cover-indirect-emissions/ (while dismissing the underlying action challenging ExxonMobil's Hammerhead oil development, a high court in Guyana recognized that EIAs have to encompass Scope 3 emissions of GHGs).
[286] *R (on the application of Finch on behalf of the Weald Action Group) v Surrey County Council and others*, UKSC 20 (2024) (United Kingdom), para. 174.
[287] *Pembina Institute for Appropriate Development v. Canada* (2008), 2008 FC 302, 323 F.T.R. 297 (Canada).
[288] Henry EA, Climate change concerns lead court to overturn Mount Pleasant coal mine expansion, LSJ (July 25, 2025), https://lsj.com.au/articles/climate-change-concerns-lead-court-to-overturn-mount-pleasant-coal-mine-expansion; *Denman Aberdeen Muswellbrook Scone Healthy Environment Group Inc v. MACH Energy Australia Pty Ltd*, Australia Court of Appeals, NSWCA 163 (2025) (overturning the approval of a coal mine expansion after finding that the planning commission failed to consider the project's full GHG emissions, including Scope 3 emissions stemming from exported coal), https://cdn.climatepolicyradar.org/navigator/AU-NSW/2022/denman-aberdeen-muswellbrook-scone-healthy-environment-group-inc-damsheg-v-mach-energy-australia-pty-ltd_6dac6d867787c073bb7e5781913d17a4.pdf.
[289] *Friends of Earth v. Haaland*, 583 F. Supp. 3d 113 (D.D.C. 2022) (U.S.A.), p. 139.
[290] *Greenpeace Nordic and Nature & Youth v. Energy Ministry*, 24-036810ASD-BORG/02 (Nov. 14, 2025) (Nor.) (upholding Oslo Tingrett [OT] [Oslo District Court] 2024-01-18 Case No. 23-099330TVI-TOSL/05 (Nor.)).
[291] *R (on the application of Finch on behalf of the Weald Action Group)*, paras. 102-103.
[292] *R (on the application of Finch on behalf of the Weald Action Group)*, para. 103.

appropriate preventive measures. By the same token, at-risk States would lack the information necessary to anticipate and prepare measures to avert or mitigate the potential transboundary harm that could follow. Consistent with their legal duties, States must be prepared to deny or revoke permission for any activity that poses a significant risk of harm to the climate, including contribution to irreversible environmental damage.

97. **Where States face legal impediments to complying with their climate obligations, those barriers should be removed.** For example, Investor-State Dispute Settlement (ISDS), which allows foreign investors to sue States for compensation before arbitral tribunals, cannot be allowed to impede States' compliance with their climate obligations by making it prohibitive to regulate and phase out fossil fuels.[293] The *erga omnes* nature of States' obligations to protect the climate system[294] — the fact that they are owed to the international community as a whole and enforceable by all States — should mean that the corresponding duty to phase out fossil fuels cannot be overridden by a legal obligation owed to a select class of actors, such as foreign investors under international investment treaties.

C. Consistent with the prevention duty and the precautionary approach, States should prioritize measures capable of rapidly reducing fossil fuel emissions at source, not speculative and harmful climate interventions.

98. **International law contemplates that responses to climate change may themselves pose human rights and environmental risks.** The UNFCCC acknowledges possible "adverse effects of climate change and/or the impact of the implementation of response measures."[295] Both the IPCC[296] and human rights experts[297] have recognized that some measures taken in response to

[293] *See ICJ Climate Change Advisory Opinion*, Declaration of Judge Cleveland, paras. 21-22.
[294] *ICJ Climate Change Advisory Opinion*, paras. 440-446.
[295] UNFCCC, art. 4.8.
[296] IPCC, AR6, WGII: Summary for Policymakers, para. B.5.4 ("Risks arise from some responses that are intended to reduce the risks of climate change, including risks from maladaptation and adverse side effects of some emission reduction and carbon dioxide removal measures (high confidence).").
[297] Special Rapporteur on the promotion and protection of human rights in the context of climate change (Ian Fry), Report on the promotion and protection of human rights in the context of climate change, U.N. Doc. A/78/255 (July 28, 2023), para. 16 (asserting that "[n]ew mitigation technologies associated with atmospheric changes and geoengineering also have the potential for significant human rights impacts"); Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes (Marcos Orellana), The toxic impacts of some proposed climate change solutions, U.N. Doc. A/HRC/54/25, (July 13, 2023), para. 71 ("Climate engineering is "large-scale, deliberate intervention in the Earth system to counteract climate change". Such interventions are primarily considered as options to compensate for lagging international efforts to mitigate climate change. There is a lack of scientific certainty about the efficiency of climate-altering engineering technologies, such as solar radiation modification, and they can have a wide range of potential impacts on the effective enjoyment of human rights. Pinning humanity's hopes on future technologies should not be used to justify insufficient action to reduce greenhouse gas emissions and phase out fossil fuels"); Special Rapporteur on Human Rights and the Environment, Safe Climate Report, para. 83 ("Some proposed geoengineering strategies to mitigate climate change involve the large-scale manipulation of natural systems through measures such as fertilizing the oceans with iron, installing mirrors in outer space to reflect solar radiation, or shooting aerosols into the atmosphere (imitating the effects of large volcanic eruptions). These untested technological approaches could have massive impacts on human rights, severely disrupting ocean and terrestrial ecosystems, interfering with food production and harming biodiversity. These types of geoengineering strategies should not be used until their implications are much better understood".);

climate change pose risks to the environment and human rights. These risks underscore States' duties to "respect, promote and consider their respective obligations on human rights" when taking climate action,[298] as well as the duty to cooperate to protect human rights and the climate from those risks and impacts.[299] The UN Special Rapporteur on the right to a healthy environment recently acknowledged that "[t]he urgency to implement actions aligned with the best available science, respecting the human right to a healthy environment and other human rights, is undeniable," and that this was "particularly true as some climate actions, including maladaptation, greenwashing and geoengineering, are worsening the situation, threatening climate safety and thus a healthy environment."[300] As the ICJ explained, "technical co-operation and knowledge-sharing initiatives … serve to minimize the possibility that a particular adaptation or mitigation measure itself poses a risk of significant transboundary harm."[301]

99. **The precautionary principle, which is closely linked to the principle of prevention, is well-established under both international environmental and human rights law**.[302] Under the precautionary principle, States are required to act with caution in the face of uncertain and potentially harmful consequences of an activity. The precautionary principle provides that "[w]here there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation."[303] This principle has been incorporated into the UNFCCC[304] and adopted by international human rights bodies given that it is relevant to preventing human rights violations.[305]

100. **In its Advisory Opinion, the ICJ acknowledged the relevance of the precautionary approach for interpreting States' obligations related to climate change.[306]** The precautionary principle emphasizes that effective action to prevent harm should not be delayed due to scientific

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see also Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance (E. Tendayi Achiume), Report of the Special Rapporteur on Ecological crisis, climate justice and racial justice, U.N. Doc. A/77/549 (Oct. 25, 2022), para. 65 (noting that climate response measures potentially pose significant risks to human rights) [hereinafter Report of the Special Rapporteur on Ecological crisis, climate justice and racial justice].

[298] Paris Agreement, pmbl.

[299] *ICJ Climate Change Advisory Opinion*, paras. 140-142, 301-306.

[300] Special Rapporteur on the human right to a clean, healthy and sustainable environment (Astrid Puentes Riaño), Overview of the implementation of the human right to a clean, healthy and sustainable environment, U.N. Doc. A/79/270 (Aug. 2, 2024), para. 56.

[301] *ICJ Climate Advisory Opinion*, para 285.

[302] Rio Declaration, principle 15; Convention on Biological Diversity, arts. 8, 14; *Tătar v. Romania*, European Court of Human Rights, App. No. 67021/01 (Jan. 1, 2009), paras. 108-09; *IACtHR Advisory Opinion OC-23/17*, paras. 175-180.

[303] Rio Declaration, principle 15.

[304] UNFCCC, art. 3(3) ("The Parties should take precautionary measures to anticipate, prevent or minimize the causes of climate change and mitigate its adverse effects. Where there are threats of serious or irreversible damage, lack of full scientific certainty should not be used as a reason for postponing such measures, taking into account that policies and measures to deal with climate change should be cost-effective so as to ensure global benefits at the lowest possible cost. To achieve this, such policies and measures should take into account different socio-economic contexts, be comprehensive, cover all relevant sources, sinks and reservoirs of greenhouse gases and adaptation, and comprise all economic sectors.").

[305] *See* HRC General Comment No. 36, para. 62 (noting that States should "pay due regard to the precautionary approach."); *IACtHR Advisory Opinion OC-23/2017*, para. 180 (finding States must "act diligently to prevent harm" to human rights and "act with due caution to prevent possible damage").

[306] *ICJ Climate Change Advisory Opinion*, para. 180.

uncertainty regarding that harm. However, it does not mean that scientific uncertainty regarding the efficacy of a given action in preventing the harm, or its potential to pose further risks, should be ignored. When proven mitigation measures are readily available, resorting instead to speculative technologies is inconsistent with the principle of prevention itself. And when there are threats that these same technologies could cause serious and irreversible harm to the environment — directly and/or indirectly through their delay of effective measures to transition away from the fossil fuels driving climate change — precaution counsels against their use. Lack of full scientific certainty about the risk these technologies pose should not delay action to prevent it, including by restricting or prohibiting their use.

101. **The ICJ noted that States should not delay taking cost-effective measures to prevent harm in the face of serious or irreversible damage**.[307] Effective measures are those that are reasonably seen as capable of averting or mitigating risks of harm,[308] and what these effective or appropriate measures are may change over time as new scientific and technological knowledge becomes available.[309]

102. **States have a duty to prioritize available measures known to reduce GHGs at their source — chiefly, fossil fuel activity — eliminating as far as possible the conduct posing a risk to the climate system, not merely attenuating its effects**.[310] The relative primacy given to the preventive duty in the Court's opinion underscores the priority States must accord to measures that avoid the cause of climate harm at its source. Preventing the harm from occurring, namely by curtailing GHG-emitting activities, is paramount. In line with the duty to prevent and the precautionary approach, States are required to take urgent and known measures that present a lesser risk of human rights violations to effectively avert the risk of further climate change-induced harm (i.e. phasing out fossil fuels) rather than delayed action or reliance on speculative measures.[311] The ICJ notes that, where a risk can be addressed with readily available technologies, States are expected to use them, and when technologies pose further risks, States must employ them with prudence and caution, if at all.[312] The juxtaposition of these two standards effectively creates a hierarchy of mitigation measures under international law, in which proven approaches for reducing emissions at source must take precedence over speculative interventions whose efficacy is undemonstrated and whose risks remain unquantified.

103. **Any uncertainty about how future climate harm will manifest cannot delay use of proven and available measures.** Given the risks posed by the climate crisis, any uncertainty about where, how, or when climate change related harms will manifest cannot justify States

[307] *ICJ Climate Change Advisory Opinion*, para. 293.
[308] *Tătar v. România*, para. 108.
[309] *IACtHR Advisory Opinion OC-23/2017*, para. 142.
[310] *ICJ Climate Change Advisory Opinion*, paras. 81, 132, 137.
[311] *See, e.g.*, CRC General Comment No. 26, para. 98(e) (stating "When determining the appropriateness of their mitigation measures in accordance with the Convention, and also mindful of the need to prevent and address any potential adverse effects of those measures, States should take into account the following criteria … (e) Mitigation measures cannot rely on removing greenhouse gases from the atmosphere in the future through unproven technologies. States should prioritize rapid and effective emissions reductions now in order to support children's full enjoyment of their rights in the shortest possible period of time and to avoid irreversible damage to nature."); Advisory Committee to the Human Rights Council, *Impact of new technologies intended for climate protection on the enjoyment of human rights*, U.N. Doc. A/HRC/54/47 (Aug. 10, 2023), paras. 4, 29, https://docs.un.org/en/A/HRC/54/47 [hereinafter HRC Advisory Committee Report on New Climate Technologies].
[312] *ICJ Climate Change Advisory Opinion*, para. 286.

delaying the adoption of available measures that have a reasonable likelihood of reducing GHG emissions and therefore reducing the risks of environmental harm or human rights violations.[313] Given the incontrovertible evidence that climate change is already causing significant harm and is driven primarily by fossil fuels, no uncertainty can justify delaying measures that would reduce fossil fueled emissions or forgoing such measures in pursuit of unproven or risky alternatives. As the Committee on the Rights of the Child noted, ""[w]hen determining the appropriateness of their mitigation measures … States should take into account the following criteria … (e) Mitigation measures cannot rely on removing greenhouse gases from the atmosphere in the future through unproven technologies. States should prioritize rapid and effective emissions reductions now in order to support children's full enjoyment of their rights in the shortest possible period of time and to avoid irreversible damage to nature."[314]

104. **Reliance on speculative climate mitigation measures that pose serious environmental and human rights risks is not in line with the precautionary principle.** Potential risks of an activity cannot be disregarded under the duties of precaution and prevention.[315] Where a proposed intervention or technological response to climate change threatens irreparable harm or presents unmanageable risks to human rights and the environment, its use would be contrary to legal duties.

105. **Speculative approaches to climate mitigation include, among others, measures that have repeatedly been demonstrated ineffective at delivering claimed emissions reductions, such as carbon capture and storage (CCS), which purports to trap carbon dioxide from an emitting source before it enters the atmosphere,[316] and carbon offset credits, which studies**

[313] *Urgenda Supreme Court case*, paras. 5.3.2, 5.6.2 (holding that the State had a duty to act to address the risk of climate-induced harm even if it was uncertain whether the harm will occur); *Neubauer et al v. Germany*, paras. 229, 247 (reiterating that protecting the rights of future generations includes not delaying action especially given the irreversibility of climate change, and that precautionary measures must be taken to manage the anticipated future reduction burdens in accordance with respect for fundamental rights). *See also IACtHR Advisory Opinion AO-32/25*, para. 228.
[314] CRC, General Comment No. 26, para. 98(e).
[315] *ICJ Climate Change Advisory Opinion*, para. 294.
[316] IEA, Carbon Capture, Utilisation and Storage, https://www.iea.org/energy-system/carbon-capture-utilisation-and-storage; Bruce Robertson & Milad Mousavian, *The carbon capture crux: Lesson Learned* (Sept. 1, 2022), https://ieefa.org/resources/carbon-capture-crux-lessons-learned (highlighting the decades long failure of CCS); IPCC, AR6, Synthesis Report: Summary for Policymakers, fig. SPM.7 (demonstrating that CCS is among the highest cost and least effective in reducing emissions this decade).

indicate are often unverifiable,[317] impermanent,[318] and/or harmful[319] — as well as other technologies that have yet to be proven at scale and could introduce new risks, such as direct air capture (DAC), a form of carbon dioxide removal (CDR) that proposes to capture CO2 already in the atmosphere,[320] marine geoengineering,[321] and solar radiation management (SRM).[322] These technologies are not "readily available" as noted by the Human Rights Council Advisory Committee on new technologies intended for climate protection (Advisory Committee on NTCPs), which said "at their current stage in development NTCPs cannot be considered viable

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[317] *See, e.g.*, Dr. Martin Cames et al, *How additional is the Clean Development Mechanism? Analysis of the application of current tools and proposed alternatives*, Directorate-General for Climate Action, CLlMA.B.3/SERl2013/0026 (Mar. 2016), p. 11 ("Overall, our results suggest that 85% of the projects covered in this analysis and 73% of the potential 2013- 2020 Certified Emissions Reduction (CER) supply have a low likelihood that emissions reductions are additional and are not over-estimated."); *see also* Carbon Market Watch, *Carbon Markets 101: The Ultimate Guide to Global Offsetting Mechanisms* (2020), p. 4; Micah Macfarlane, "Assessing the State of the Voluntary Carbon Market in 2022," *Carbon Direct*, Blog (May 6, 2022); Heidi Blake, "The Great Cash-for-Carbon Hustle," *The New Yorker* (Oct. 16, 2023), https://www.newyorker.com/magazine/2023/10/23/the-great-cash-for-carbon-hustle; Benedict Probst et al, ETH Zurich, *Systematic review of the actual emissions reductions of carbon offset projects across all major sectors* [Working Paper] (2023), p. 12, https://www.research-collection.ethz.ch/bitstream/handle/20.500.11850/620307/230706_WP_full_vf.pdf?sequence=9&isAllowed=y. *See also* Josh Gabbatis et al, "In-depth Q&A: Can 'carbon offsets' help to tackle climate change?," *Carbon Brief* (Sept. 24, 2023), https://interactive.carbonbrief.org/carbon-offsets-2023.

[318] Lisa Song, "An Even More Inconvenient Truth: Why Carbon Credits For Forest Preservation May Be Worse than Nothing," *ProPublica* (May 22, 2019), https://features.propublica.org/brazil-carbon-offsets/inconvenient-truth-carbon-credits-dont-work-deforestation-redd-acre-cambodia/; Jutta Kill et al, FERN, *Trading carbon: How it works and why it is controversial* (Aug. 2010), p. 59; M. Carnes et al., *How additional is the Clean Development Mechanism?: Analysis of the application of current tools and proposed alternatives* (Mar. 2016); M. Castagné et al., Carbon Market Watch, Secours Catholique, CCFD-Terre Solidaire & IATP, *Carbon Markets and Agriculture: Why offsetting is putting us on the wrong track* (2020), p. 6; Winston ChoiSchagrin, "Wildfires are ravaging forests set aside to soak up greenhouse gases," *N.Y. Times* (Aug. 23, 2021). https://www.nytimes.com/2021/08/23/us/wildfires-carbon-offsets.html; Andrew Macintosh, et al, "Carbon credits are failing to help with climate change – here's why," Comment, *Nature* (Oct. 14, 2025).

[319] Daisy Dunne and Yanine Quiroz, "Mapped: The impacts of carbon-offset projects around the world," *Carbon Brief* (Nov. 8, 2023), https://interactive.carbonbrief.org/carbon-offsets-2023/mapped.html; Daniel Grossman, *Dam Lies: Despite Promises, an Indigenous Community's Land Is Flooded*, (Mar. 6, 2018), https://pulitzercenter.org/stories/dam-lies-despite-promises-indigenous-communitys-land-flooded; Interim Report of the Special Rapporteur on the Right to Food, U.N. Doc. A/70/287 (2015), paras. 68-69; J.P. Sarmiento Barletti and A. Larson, CIFOR, *Rights Abuse Allegations in the Context of REDD+ Readiness and Implementation: A Preliminary Review and Proposal for Moving Forward* (2017).

[320] *See* Center for International Environmental Law & Heinrich Boell Foundation, *IPCC Unsummarized: Unmasking Clear Warnings on Overshoot, Techno-fixes, and the Urgency of Climate Justice* (Apr. 21, 2022), pp. 26-30 (citing IPCC statements regarding the infeasibility of DAC and concerns about adverse impacts); IPCC AR6 WGIII, pp. 346-348, Ch. 12 ("Cross sectoral perspectives"), 12.3.1.1, pp. 1263, 1265-68 (discussing concerns that deployment of large-scale CDR could obstruct near-term emissions reduction efforts), Ch. 3 ("Mitigation Pathways Compatible with Long-term Goals"), p 348, Ch. 4 ("Water"), 4.7.6, p. 654.

[321] Center for International Environmental Law, *A Gathering Storm: How Marine Geoengineering Threatens All Ocean Basins* (Oct. 2025), https://www.ciel.org/reports/marine-geoengineering-global-ocean-threats/.

[322] *See* CIEL, *The Risks of Geoengineering: Accelerating Biodiversity Loss and Compounding Planetary Crises* (Oct. 2024), https://www.ciel.org/wp-content/uploads/2024/10/CIEL_briefing_The-Risks-of-Geoengineering_October2024.pdf (discussing the risks of solar radiation management as well as other proposed geoengineering and carbon dioxide removal technologies); Yacob Mulugetta, Dean Bhekumuzi Bhebhe & Niclas Hällström, "Solar Geoengineering is a Dangerous Distraction," Power Shift Africa, https://www.powershiftafrica.org/blogs/solar-geoengineering-is-a-dangerous-distraction; Ray Pierrehumbert & Michael Mann, "Some say we can 'solar-engineer' ourselves out of the climate crisis. Don't buy it," *The Guardian* (Apr. 22, 2021), https://www.theguardian.com/commentisfree/2021/apr/22/climate-crisis-emergency-earth-day; ;

mitigation or adaptation measures. Most geoengineering technologies remain unproven, unavailable, and unfeasible at scale."[323] In addition to being ineffective or non-existent, they are also expensive. The IPCC's sixth assessment report showed CCS to be one of the most expensive and least effective mitigation options.[324] Thus, these measures are not in line with the applicable stringent due diligence standard. Elaborating on the risks these technologies pose, the Advisory Committee added: "NTCPs interfere with the enjoyment of human rights and can cause physical, political and social risks to frontline communities, including Indigenous Peoples, and harm the environment. There is scientific uncertainty about their scalability and side effects and there exist less risky alternatives. It is urgent to underscore that, at present*, the development of any such technologies and policies to support them would not be in accordance with the protective standards of the human rights regime*."[325]

106. **These speculative measures pose not only a direct risk to the environment and human rights, but also an indirect risk when they enable continued production and use of fossil fuels or otherwise delay measures that reduce GHG pollution at source.** Failure to take the necessary measures to reduce GHG emissions in the near-term will lead to more climate harm, which disproportionately impacts African populations and States given their heightened vulnerability to adverse climate impacts**.** The Human Rights Council Advisory Committee on NTCPs (e.g. geoengineering) also recognized this potential noting that "climate engineering solutions pose risks, including moral hazard and delayed action, and are not presently feasible in terms of their accessibility and scalability."[326] The IPCC has warned that "[o]vershoot entails adverse impacts, some irreversible, and additional risks for human and natural systems, all growing with the magnitude and duration of overshoot."[327] Thus, far from mitigating adverse climate impacts, these technologies could lead to greater harms, and employing them is not in line with the duty to prevent harm or the precautionary principle.

107. **The proliferation of these speculative, ineffective measures and their associated risks is particularly threatening to African States, their populations and ecosystems.** For example, developers increasingly have looked to African States as a prime location for implementing carbon offset-generating projects,[328] many of which have had adverse impacts on human rights of the local population.[329] Additionally, experts have expressed concern that proponents of new

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[323] HRC Advisory Committee Report on New Climate Technologies, para. 10.
[324] IPCC, AR6, Synthesis Report: Summary for Policymakers, fig. SPM.7.
[325] HRC Advisory Committee Report on New Climate Technologies, para. 66 (emphasis added).
[326] HRC Advisory Committee Report on New Climate Technologies, para. 4.
[327] IPCC, AR6, Synthesis Report: Summary for Policymakers, para. B.7.
[328] *See, e.g.*, Patrick Greenfield, "The new 'scramble for Africa': how a UAE sheikh quietly made carbon deals for forests bigger than the UK," *The Guardian* (Nov. 30, 2023), https://www.theguardian.com/environment/2023/nov/30/the-new-scramble-for-africa-how-a-uae-sheikh-quietly-made-carbon-deals-for-forests-bigger-than-uk; World Economic Forum, "How sustainable finance can participate in Africa's land based carbon sequestration" (Aug. 29, 2025), https://www.weforum.org/stories/2025/08/africa-carbon-sustainable-finance/; Africa Climate Insights, "Carbon offsetting in Africa: Who Really Benefits?" (Mar. 17, 2025), https://africaclimateinsights.org/carbon-offsetting-in-africa-who-really-benefits/.
[329] *See generally* Linda Ngari, "Carbon Credits in the Congo Come at a Greater Cost than the Value They Capture – Part 1" (May 2025) https://pulitzercenter.org/stories/carbon-credits-congo-cost-capture-part-1; Linda Ngari, "Carbon Credits in the Congo: The Cost of Capture, Part 2" (May 2025) https://pulitzercenter.org/stories/carbon-credits-congo-cost-capture-part-2; SOMO, *Offsetting Human Rights: Sexual Abuse and Harassment at the Kasigau Corridor REDD+ Project in Kenya* (Nov. 2023) https://www.somo.nl/offsetting-human-rights/; Claire Marshall, "Kenya's Ogiek People Being Evicted for Carbon Credits – Lawyers," *BBC News* (Nov. 9, 2023),

speculative carbon dioxide removal and geoengineering technology may look to Africa as a "testing ground."[330] Experimentation, let alone full-scale deployment of these technologies risks unleashing yet uncalculated and potentially unmanageable irreversible impacts on the climate system, including seasonal rainfall patterns, ocean chemistry, and termination shock, among others, as well as impacts on food and water security.[331] African countries, populations, and environments are poised to suffer not only these direct harms if and when activities take place on the continent, but also indirect harms should these approaches delay effective climate mitigation measures that reduce GHGs at their source.

108. **Given the harms caused by these technologies, the difficulties of restoring a situation once harm has occurred, and the duty to prevent harm to the environment and people, the Advisory Committee on NTCPs stated that "[t]he precautionary principle has been and should be applied to geoengineering."[332]** The same committee noted that "[a]t this stage of their development, given the lack of sufficient knowledge of their risks and adverse impacts, it might be better to presume that all NTCPs are generally harmful to human rights and that their deployment would be contrary to the existing obligations of States."[333] National courts have also named the precautionary principle as one reason for striking down States' reliance on future measures that the courts deemed too speculative to justify delayed reliable near-term action[334] and have recognized the uncertainty that surrounds the feasibility or impact of certain technologies such as large-scale carbon dioxide removal.[335]

109. **States' climate action must be consistent with their concurrent obligations to present and future generations under human rights law and numerous environmental treaties relevant to the protection of the climate system, including the Convention on Biological Diversity, which has imposed a de facto moratorium on geoengineering.[336]**

110. **To satisfy their legal obligations under customary and treaty-based international law, all States, including African States, must take measures that do not lead to other environmental and human rights harms and that are capable of averting harm and the risk of harm from climate change.** That requires tackling fossil fuels rather than relying on

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https://www.bbc.com/news/world-africa-67352067; Ben R. Ole Koissaba, *Geothermal Energy and Indigenous Communities: The Olkaria Projects in Kenya,* (Heinrich Böll Stiftung European Union, Mar. 2018) https://eu.boell.org/sites/default/files/geothermal-energy-and-indigenous-communities-olkariaproject-kenya.pdf; Shiloh Fetzek, "Geothermal expansion and Maasai land conflicts in Kenya," *Climate Diplomacy* (Nov. 1, 2015), https://climate-diplomacy.org/magazine/geothermal-expansion-and-maasai-land-conflicts-kenya; Chris Lang, "15.2 Million Fake Carbon Credits Were Sold from the Kariba REDD Project According to Verra," *REDD-Monitor* (Oct. 2, 2025), https://reddmonitor.substack.com/p/152-million-fake-carbon-credits-were.

[330] Chukwumerije Okereke, "Opinion: My Continent is Not Your Giant Climate Laboratory," *N.Y. Times* (Apr. 18, 2023).

[331] *See* Okereke, "Opinion: My Continent is Not Your Giant Climate Laboratory;" CIEL, *The Risks of Geoengineering*; Kyle Volpi Hiebert, "Africa should brace itself for geoengineering," *ISS Africa* (Sept. 9, 2024), https://futures.issafrica.org/blog/2024/Africa-should-brace-itself-for-geoengineering.

[332] HRC Advisory Committee Report on New Climate Technologies, para. 36.

[333] HRC Advisory Committee Report on New Climate Technologies, para. 66.

[334] *Urgenda Supreme Court case*, para. 7.2.5.

[335] *Neubauer et al v. Germany*, paras. 222, 227; *Friends of the Irish Environment CLG v. the Government of Ireland*, Supreme Court of Ireland, Appeal No. 205/19 (July 31, 2020), paras. 3.4, 6.46-6.47; *see also Friends of the Earth Limited et al. v. Secretary of State for Business, Energy and Industrial Strategy*, England and Wales High Court of Justice - Administrative Court, Case no. CO/126/2022, CO/163/2022, CO/199/2022 (July 18, 2022), para. 250.

[336] *ICJ Climate Advisory Opinion*, paras. 317, 335.

speculative technologies or schemes that could cause their own harms as well as exacerbate the climate crisis. It also entails cooperating with other States and not allowing or facilitating their reliance on or engagement in the deployment of speculative, ineffective, and risky responses to the climate crisis. African States have been leaders in taking steps to prevent harm from speculative technologies, in particular solar geoengineering, including calling for a solar geoengineering non-use agreement.[337]

111. **The customary international law duty to cooperate for the protection of the environment[338] requires States to take effective collective and coordinated action to phase out fossil fuels, including through new treaty-based obligations when existing forms of cooperation no longer serve their purpose.**[339] Given that "[c]ooperation is not a matter of choice for States but a pressing need and a legal obligation,"[340] States must consider whether further collective action or a new legal instrument, such as a Fossil Fuel Treaty,[341] may be necessary to implement phaseout obligations.

D. In ensuring climate action is grounded in the best available science, States must also actively combat climate disinformation.

112. **International law obligates States to take active measures against disinformation, which can be especially harmful in the context of the climate crisis given the severity of the risks involved and the urgency for action.** As legal authorities have recognized, disinformation — false or misleading information spread for economic gain or to intentionally deceive[342] — poses a threat to democracy and the protection and realization of human rights.[343] Disinformation

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[337] African Ministerial Conference on the Environment, *Tripoli Declaration on environmental action in Africa: Reflecting on the past and imagining the future*, Doc. AMCEN/20/20 (July 21, 20250, paras. 35, 45 (in para. 35 "reaffirm[ing] our unequivocal rejection of stratospheric aerosol injection and other forms of solar geoengineering as unacceptable climate solutions, given their significant environmental, ethical and geopolitical risks" and in para. 45 "To call for the establishment of a solar-geoengineering non-use agreement and further call for a United Nations General Assembly resolution on the same."); African Ministerial Conference on the Environment, *Decision AMCEN/20/Dec.9: Africa's engagement at the seventh session of the United Nations Environment Assembly*, Doc. AMCEN/20/Dec.9 (July 31, 2025), para. 6; *see also* African Ministerial Conference on the Environment, *Report of the meeting of the nineteenth session of the African Ministerial Conference on the Environment: Decision 19/5: Climate Change*, Doc. AMCEN/19/6 (Aug. 17, 2023), para. 15 (expressing "concerns with the promotion of technologies, particularly solar radiation management, and to call for a global governance mechanism for non-use of solar radiation management"); Gilbert Nakweya, "End of UN solar geoengineering resolution is a win for Africa," *Nature* (June 4, 2024), https://www.nature.com/articles/d44148-024-00178-8 (highlighting that African States led opposition to it and promotion of the precautionary principle).

[338] *ICJ Climate Change Advisory Opinion*, paras. 141, 142.

[339] *ICJ Climate Change Advisory Opinion*, para. 307.

[340] *ICJ Climate Change Advisory Opinion*, para. 308.

[341] The Fossil Fuel Treaty Initiative, https://www.fossilfueltreaty.org/.

[342] Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression (Irene Khan), *Disinformation and freedom of expression*, U.N. Doc. A/HRC/47/25 (Apr. 13, 2021), para. 11 (drawing on the European Commission's definition of the term) [hereinafter *Disinformation and freedom of expression*].

[343] *See*, *e.g.*, *IACtHR Advisory Opinion AO-32/25*, paras. 89, 524, 526; CESCR General comment No. 25, para. 52; Human Rights Council, *Resolution 49/21: Role of States in countering the negative impact of disinformation on the enjoyment and realization of human rights*, U.N. Doc. A/HRC/RES/49/21 (Apr. 1, 2022); Report of the Secretary General, Countering disinformation for the promotion and protection of human rights and fundamental freedoms, U.N. Doc. No. A/77/287 (Aug. 12, 2022), para. 24; *Maastricht Principles on the Human Rights of Future Generations* (July 2023), https://www.rightsoffuturegenerations.org/.

directly violates the right to science and, when designed to target or harm specific groups, is contrary to the longstanding rights to non-discrimination and equal protection.[344] Disinformation about the causes and consequences of climate change — as well as responsive measures — can be especially dangerous by contributing to misperceptions about the scientific consensus and creating public confusion, thereby obstructing effective climate action.[345] Thus, in accordance with the conclusions of human rights treaty bodies, U.N. Special Rapporteurs, and other expert bodies, States are obligated both to refrain from deliberately misinforming the public on climate matters, and to counter climate disinformation and mitigate risks stemming from false content and narratives.[346] According to the IACtHR climate advisory opinion, States must act to prevent disinformation by refraining from disseminating information that lacks support in best available science or relevant local, traditional, or Indigenous knowledge.[347] In countering disinformation, States must respect freedom of expression and avoid censorship or disproportionate restrictions.[348]

113. **Non-state actors are likewise obligated to refrain from spreading climate disinformation and must be held legally responsible for intentionally misleading the public on climate matters.** According to the Joint Declaration on the Climate Crisis and Freedom of Expression — which was co-authored by the ACHPR Special Rapporteur on Freedom of Expression and Access to Information in Africa — the duty to refrain from climate disinformation and mitigate its risks extends to private actors, including corporations.[349] The IACtHR climate advisory opinion agrees, concluding that States and private actors share responsibility to ensure access to truthful, reliable climate information.[350] Fossil fuel companies in particular have a well-documented history of spreading decades of disinformation on climate change and the role of their products in driving the crisis,[351] and should thus be held accountable, as iterated by the UN Secretary General.[352] Such deceptive tactics continue today and warrant scrutiny. For instance, in October 2025, a French court found oil and gas major Total had misled consumers by presenting

[344] The obligation against discrimination is enshrined in numerous binding legal human rights treaties, including the African Charter, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights. African Charter on Human and Peoples' Rights, art. 28; International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171 (entered into force Mar. 28, 1979), art. 26 [hereinafter ICCPR]; ICESCR, art. 2.

[345] *IACtHR Advisory Opinion AO-32/25*, para. 524; UN Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, the Organization for Security and Co-operation in Europe (OSCE) Representative on Freedom of the Media, the Organization of American States (OAS) Special Rapporteur on Freedom of Expression, and the African Commission on Human and Peoples' Rights (ACHPR) Special Rapporteur on Freedom of Expression and Access to Information in Africa, *Joint Declaration on the Climate Crisis and Freedom of Expression* (2024) [hereinafter Joint Declaration on the Climate Crisis and Freedom of Expression]; Special Rapporteur on the promotion and protection of human rights in the context of climate change (Elisa Morgera), *The imperative of defossilizing our economies*, U.N. Doc. A/HRC/59/42 (May 15, 2025), para. 39 [hereinafter *The imperative of defossilizing our economies*].

[346] *See* CESCR General Comment No. 25, para. 52; CESCR General Comment No. 27, para. 75; CRC General Comment No. 26, para. 70; Joint Declaration on the Climate Crisis and Freedom of Expression; *The imperative of defossilizing our economies*, paras. 55(d), 73 (i).

[347] *IACtHR Advisory Opinion AO-32/25*, at para. 525.

[348] *IACtHR Advisory Opinion AO-32/25*, at para. 527.

[349] Joint Declaration on the Climate Crisis and Freedom of Expression.

[350] *IACtHR Advisory Opinion AO-32/25*, paras. 528-29. f

[351] *The imperative of defossilizing our economies*, paras. 37-41.

[352] Oliver Milman, "'Godfathers of climate chaos': UN chief urges global fossil-fuel advertising ban," *BBC* (June 5, 2024), http://theguardian.com/environment/article/2024/jun/05/antonio-guterres-un-chief-fossil-fuels-advertising.

itself as a "major player in the energy transition" despite continuing to increase its production of and investments in fossil fuels.[353] In combating climate disinformation, States must guarantee enabling conditions for corporate accountability, including by ensuring that those fighting disinformation have access to legal remedy and are protected from risk of reprisal.[354]

VII. Fossil Fuel Phaseout Advances the Right to Development

114. Phasing out fossil fuels globally necessitates a fundamental shift in the global economic order and business as usual. Accordingly, it is imperative that it is done in a manner that is just and equitable in order to ensure the realization of human rights for present and future generations. The following section examines why the right to development, far from justifying continued production and use of fossil fuels, requires their phaseout. It then points out that the duty to cooperate requires developed countries to provide support (financial, technological, and capacity-building) to developing countries to ensure justice and equity in climate action.

A. Reducing reliance on fossil fuel production and use is required by the right to development and other human rights.

115. **The right to development has long been understood to protect the freedom of peoples and individuals to determine their economic, social, and cultural development trajectories.**

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[353] *Greenpeace France and Others v. TotalEnergies SE and TotalEnergies Electricité et Gaz France*, Tribunal Judiciaire de Paris, N° RG 22/02955 N° Portalis 352J-W-B7G-CWJK L (Oct. 23, 2025), para. 197(1) (translated from French to English by author), *available at* https://cdn.climatepolicyradar.org/navigator/FRA/2022/greenpeace-france-and-others-v-totalenergies-se-and-totalenergies-electricite-et-gaz-france_302e94aa56c08f8ca52d8c7eccb75958.pdf. *See also Lawyers for Climate Action, et al. v. Firstgas Group*, Advertising Standards Authority Complaints Board Decision (July 6, 2021) (N.Z.) (finding advertisements by energy company FirstGas suggesting the company was moving towards producing "zero carbon" gas to be unsubstantiated and misleading, and ordering those advertisements to be removed), *available at* https://cdn.climatepolicyradar.org/navigator/NZL/2021/lawyers-for-climate-action-complaint-to-the-advertising-standards-board_a7588994983ab359c02bbb419c633107.pdf. In 2023, an environmental organization filed a claim in the Federal Court of Australia alleging that EnergyAustralia engaged in misleading conduct in advertising its fossil fuel-generated electricity as carbon neutral. In 2025, the parties reached a settlement under which EnergyAustralia acknowledged that carbon offsets do not negate the environmental harm caused by greenhouse gas emissions, issued an apology to its customers, removed all marketing related to its "Go Neutral" products from its websites, and discontinued those products. "EnergyAustralia apologises over claims of 'greenwashing' with Go Neutral products," *ABC News* (May 18, 2025), https://www.abc.net.au/news/2025-05-19/energy-australia-apologises-in-settlement-in-greenwashing-case/105308684; EnergyAustralia, Press Statement, "Go Neutral Litigation – EnergyAustralia acknowledges issues with "offsetting" and moves away from carbon offsets for its residential customer products," (May 19, 2025), https://www.energyaustralia.com.au/about-us/media/news/go-neutral-litigation-energyaustralia-acknowledges-issues-offsetting-and-moves.

[354] In recent years, a number of U.S. courts have allowed cases against fossil fuel companies alleging disinformation to advance. The following are among those currently pending: *State of Maine v. BP*, No. 2:25-cv-00001-NT (D. Me.) (Sept. 29, 2025) (U.S.A.) (case alleging that the defendant companies knowingly concealed and failed to warn the public about the catastrophic effects of fossil fuel consumption on Maine's citizens, economy, and environment); *County of Multnomah v. Exxon Mobil Corp.*, No. 3:23-cv-01213-YY (D. Or.) (June 10, 2024) (U.S.A.) (case against major fossil fuel companies and industry enablers alleging decades of climate deception and misrepresentation of the harms caused by the combustion of fossil fuels); *City & County of Honolulu v. Sunoco LP,* No. SCAP-22-0000429 (Haw.) (July 29, 2025) (U.S.A.) (appellate decision affirming denial of defendant fossil fuel companies' motions to dismiss in case by city and county of Honolulu, Hawaii, alleging that the companies misled the public about the climate impacts of their products).

Since the esteemed Senegalese jurist Judge Keba M'Bay first articulated the right in 1972,[355] the right to development has been championed by African States,[356] culminating in the adoption of the U.N. Declaration on the Right to Development in 1986. As the Declaration establishes, "[t]he human person is the central subject of development and should be the active participant and beneficiary of the right to development."[357] While the declaration provides that a State has both the right and duty to "formulate appropriate national development policies," these policies must be aimed at improving the wellbeing of its entire population and all individuals, and guided by their meaningful participation.[358] The Organization of African Unity (OAU) — predecessor to the African Union (AU) — went even further, identifying man as the "objective and *supreme* beneficiary of development."[359] The OAU concluded that, accordingly, "there is a need to entrench the human dimension in all policies seeking the economic development of our countries."[360] **The African Charter, the only legally-binding international treaty to expressly enshrine the right to development as an autonomous right, likewise identifies "peoples" as the intended beneficiaries and States as duty-bearers responsible for ensuring its exercise.[361]**

116. **To guarantee peoples' right to development pursuant to Article 22 of the African Charter and international law, States must center equity and self-determination.** Article 1 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) recognizes the ability of peoples to "*freely* pursue their economic, social and cultural development" as a critical aspect of their well-established right to self-determination.[362] Similarly, the jurisprudence of the African human rights system underscores that processes for determining development priorities and strategies must be inclusive and participatory. For instance, the African Commission on Human and Peoples' Rights affirmed that "recognising the right to development requires fulfilling five main criteria: it must be equitable, non-discriminatory, participatory, accountable, and transparent, with equity and choice as important, overarching themes."[363] As the Commission held, it is not enough for a State to merely administer aid to its populace; "the result of development should be empowerment" of peoples, as evidenced by an increase in their "capabilities and choices."[364] Likewise emphasizing the importance of agency, this Court found a violation of Article 22 when a State did not ensure Indigenous peoples active participation in the social and economic programs affecting them.[365] States therefore cannot impose top-down

[355] Moussa Samb, Fundamental Issues and Practical Challenges of Human Rights in the Context of the African Union, 15 Ann. Surv. Int'l & Compar. L. 61, 72 (2009), *available at* https://digitalcommons.law.ggu.edu/cgi/viewcontent.cgi?article=1128&context=annlsurvey.
[356] Rachel Murray, "Article 22: Right to Development" in *The African Charter on Human and Peoples' Rights: A Commentary*, (Oxford University Press, 2019), pp. 521-523 [hereinafter Murray, "Article 22: Right to Development"].
[357] U.N. General Assembly, *United Nations Declaration on the Right to Development*, U.N. Doc. A/RES/41/128 (Dec. 4, 1986), art. 2(1) [hereinafter *United Nations Declaration on the Right to Development*].
[358] *United Nations Declaration on the Right to Development*, art. 2(3).
[359] Organization for African Unity, Declarations and Resolutions adopted by the Thirtieth Ordinary Session of the Assembly of Heads of State and Government, *Declaration of Social Developmen*t, AHG/Decl.5 (June 13-15, 1994), https://au.int/web/sites/default/files/decisions/9539-1994_ahg_res_228-233_xxx_e.pdf.
[360] *Ibid.*
[361] African Charter on Human and Peoples' Rights, art. 22.
[362] ICESCR, art. 1(1).
[363] *Centre for Minority Rights Development (Kenya) and Minority Rights Group (on behalf of Endorois Welfare Council) v. Kenya*, para. 277.
[364] *Ibid.* at para. 283.
[365] *African Commission on Human and Peoples' Rights v. Kenya*, Decision, No. 006/2012 (May 26, 2017), para. 210.

policies that restrict or imperil human rights under the pretext of advancing the country's development.[366] Guaranteeing the right means creating enabling conditions for the full realization of all other civil, political, economic, social, and cultural rights, with the right to self-determination front and center.

117. **The climate crisis jeopardizes the effective realization of the right to development by restricting peoples' self-determination and compounding inequities.** As the IPCC makes unequivocally clear, "[t]here is a rapidly closing window of opportunity to secure a liveable and sustainable future for all."[367] Current levels of warming are already unleashing "widespread adverse impacts and related losses and damages to nature and people (*high confidence*)," disproportionately affecting people in already vulnerable situations "who have historically contributed the least to current climate change (*high confidence*)."[368] As rising temperatures lead to more irreversible losses to human and natural systems, individuals and communities will face increasing challenges to the exercise of basic rights. According to the IACtHR, "growing food insecurity, the economic downturn, migrations, water scarcity, and extreme weather events…create a challenge for *democracy*"[369] — which the African Commission has identified as essential to ensure the right to development.[370] Indeed, "[a]s a threat multiplier, climate change also exacerbates underlying factors of conflict, exercises pressure on public finances, aggravates resource inequalities, and increases political and social tensions."[371]

118. **Younger and future generations — who will live more of their lives than today's adults in the future when climate change is projected to worsen — will be especially burdened by these impacts**. In addition to irreversible harm imperiling everything from food and water security to the territorial integrity of entire nations, these generations will bear more restrictions on their freedom if a lack of climate action today forces more radical emissions reduction measures in the future to avoid catastrophe.[372] Courts around the world have cited this discriminatory, inequitable impact on younger and future generations to mandate more ambitious climate mitigation measures from States in the near term.[373]

119. **While the most catastrophic impacts of climate change have yet to materialize, the planetary crisis is already creating severe developmental challenges in the Global South.** During the ICJ's climate advisory opinion proceeding, numerous State intervenors — including

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[366] *Accord* Study of the Expert Mechanism on the Rights of Indigenous Peoples, *Free, prior and informed consent: a human rights-based approach*, U.N. Doc. A/HRC/39/62 (Aug. 10, 2018), para. 38 (quoting S. James Anaya and Sergio Puig, "Mitigating State sovereignty: the duty to consult with indigenous peoples," *University of Toronto L. J.*, v. 67 no. 4 (Fall 2017)).

[367] IPCC, AR6, Synthesis Report: Summary for Policymakers, para. C.1.

[368] IPCC, AR6, Synthesis Report: Summary for Policymakers, para. A.2.

[369] *IACtHR Advisory Opinion AO-32/25*, para. 97 (emphasis added).

[370] Murray, "Article 22: Right to Development," p. 525.

[371] *IACtHR Advisory Opinion AO-32/25*, para. 461.

[372] *Neubauer et al v. Germany*, paras. 192-193.

[373] *See*, *e.g.*, *Neubauer et al v. Germany*, paras. 229, 247; *Mathur v. Her Majesty the Queen in Right of Ontario*, Ontario Superior Court of Justice, 2020 ONSC 6918 (Nov. 12, 2020) (Can.), paras. 180, 187; *Urgenda v. The State of the Netherlands*, District Court of the Hague, C/09/456689 / HA ZA 13-1396 (June 24, 2015) (Neth.), para. 4.76 (finding that "the [Dutch] State, in choosing measures [to combat climate change], will also have to take account of the fact that the costs are to be distributed reasonably between the current and future generations," in a decision that was subsequently upheld by the Supreme Court of the Netherlands).

South Africa,[374] Bangladesh,[375] the Melanesian Spearhead Group,[376] and Sierra Leone[377] — detailed how the destructive impacts of climate change are already depriving peoples and individual rightsholders of the ability to subsist, and perpetuating poverty and inequality. According to Sierra Leone, "[c]limate change interferes with the right to development" and "has the potential to undo the development progress achieved over the past years," as its adverse effects directly undermines economic, social, cultural, and political development.[378] Additionally, States pointed to resource constraints in countries faced with unfolding climate harm, who have no choice but to redirect already limited funds from addressing development needs, such as "crucial social programs,"[379] to urgently-needed adaptation measures. Climate change thus undermines both the ability of individuals and communities to freely choose their own development priorities and strategies, and the ability of States to "create the opportunities and environment conducive to the enjoyment of [this] right."[380]

120. **Phasing out fossil fuel production and use, as the chief driver of anthropogenic climate change, is essential to guaranteeing the right to development.** As discussed above, there is no question that fossil fuels are the overwhelming cause of the anthropogenic GHG emissions driving global temperature rise. Taking ambitious measures in the near term to transition away from oil, gas, and coal dependency is thus necessary to avoid the most catastrophic impacts of climate change and their attendant implications for the exercise of fundamental human rights, including the right to development. While some States may insist that fossil fuel production is necessary for the economic development of their countries, it is important to remember that "[d]evelopment is first and foremost a change of the quality of life and not only an economic growth required at all costs, particularly in the blind repression of individuals and peoples. It means the full development of every man in his community, in the way freely chosen by the latter."[381] A State therefore cannot justify fossil fuel expansion on the basis of generating revenue if such economic incentives come at the cost of the rights and dignity of citizens, including those most exposed to climate change impacts and/or to the direct environmental harms associated with fossil fuel extraction, discussed below.

121. **In addition to accelerating the climate emergency, fossil fuel production directly undermines development by driving conflict, economic instability, environmental degradation, and public health crises.** Fossil fuel dependence is associated with both internal and interstate violence and conflict, with systematic evidence showing that "petrostates

[374] Written Statement Submitted by the Government of the Republic of South Africa (Mar. 22, 2024), ICJ, Obligations of States in respect of Climate Change, para. 26.
[375] Written Statement of the People's Republic of Bangladesh (Mar. 22, 2024), ICJ, Obligations of States in respect of Climate Change, para. 122.
[376] Written Statement of the Melanesian Spearhead Group (MSG) (Mar. 22, 2024), ICJ, Obligations of States in respect of Climate Change, para. 37.
[377] Written Statement of the Republic of Sierra Leone (Mar. 15, 2024), ICJ, Obligations of States in respect of Climate Change, para. 3.105.
[378] *Ibid.*
[379] Written Statement of the Republic of Sierra Leone (Mar. 15, 2024), ICJ, Obligations of States in respect of Climate Change, para. 3.105.
[380] *Open Society Justice Initiative v. Côte d'Ivoire*, African Commission on Human and Peoples' Rights, Communication 318/06 (May 27, 2016), para. 183.
[381] Murray, "Article 22: Right to Development," p. 528 (citing Address delivered by Leopold Sedar Senghor, President of the Republic of Senegal, Address delivered at the opening of the Meeting of African Experts preparing the draft African Charter in Dakar, Senegal 28 November to 8 December 1979).

are…more likely to engage in interstate warfare."[382] The current war in Iran provides a timely and tragic reminder of the growing geopolitical and security risks of global reliance on fossil fuels. When the closure of a single fossil fuel transit chokepoint leads to global economic upheaval, the inherent vulnerability of the fossil economy is laid bare.

122. **The volatility of the "deteriorating"[383] fossil fuel industry also risks economic losses and indebtedness in already low-income countries,[384] as well as vulnerability to the energy transition.[385]** In Africa, approximately 71% of fossil fuel projects are at risk of becoming stranded, i.e. losing their economic value before costs can be recouped.[386] What's more, 31% of forecast fossil fuel production in Africa is set to take place in seven countries with little or no existing oil and gas extraction: Mozambique, Tanzania, Mauritania, South Africa, Senegal, Uganda, and Ethiopia.[387] For such "new entrants" to the sector, a lack of supporting infrastructure and regulatory frameworks, combined with challenging geologies, increases the costs associated with the projects.[388] What's more, due to generous tax relief and incentives offered to fossil fuel companies to draw in foreign investment, many newcomer producing States cannot expect to see revenues until years after operations begin[389] — assuming they do not become stranded, of which there is a high probability.[390] And because developing countries often accumulate enormous debt to build new fossil fuel infrastructure, they are essentially "locked" into relying on these uncertain future revenues for repayment.[391] What's more, market volatility can increase national debt when prices drop, creating a vicious cycle where rising debt intensifies reliance on fossil fuel revenues,

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[382] Sidney Michelini, "A Comprehensive Framework for the Relationship Between Organized Violence and Climate Change," *Geopolitics* (2025), pp. 19-20, https://doi.org/10.1080/14650045.2025.2556673.

[383] Jordan Blum, "The global oil and gas industry is 'deteriorating,' says top credit ratings agency," *Fortune* (June 11, 2025), https://fortune.com/2025/06/11/global-oil-industry-deteriorating-credit-ratings-agency/.

[384] *See*, *e.g.*, Daley, "The Fossil Fuelled Fallacy," p. 21 (noting that in Africa in particular, "[t]he relatively higher production costs of African fossil fuel projects mean that these assets will become stranded sooner, as fossil fuel majors pivot towards lower-cost extraction sites that are already operational."); Nnimmo Bassey & Anabela Lemos, "Africa's Fossil-Fuel Trap," *Foreign Affairs* (Feb. 17, 2022), https://www.foreignaffairs.com/africa/africas-fossil-fuel-trap; Tess Woolfenden, "The Debt-Fossil Fuel Trap: Why Debt Is a Barrier to Fossil Fuel Phase-out and What We Can Do about It," *Debt Justice* (July 2023) (explaining that because developing countries often accumulate enormous debt to build new fossil fuel infrastructure, they are essentially "locked" into relying on these uncertain future revenues for repayment).

[385] Michelini, "A Comprehensive Framework for the Relationship Between Organized Violence and Climate Change," p. 19.

[386] Bassey & Lemos, "Africa's Fossil-Fuel Trap."

[387] Bronwen Tucker & Nikki Reisch, "The Sky's Limit Africa: The Case for a Just Energy Transition from Fossil Fuel Production in Africa" (Oil Change International, Oilwatch Africa, Africa Coal Network, 350Africa.org, Health of Mother Earth Foundation, WoMin African Alliance, Center for International Environment Law, October 2021), p. 7, https://oilchange.org/wp-content/uploads/2021/10/Skys-Limit-Africa-Report-2021.pdf.

[388] Tucker & Reisch, "The Sky's Limit Africa: The Case for a Just Energy Transition from Fossil Fuel Production in Africa," p. 7; Power Shift Africa, "Still Banking on Fossil Fuels: How the African Development Bank (AfDB) Continues to Invest in Fossil Fuels at a Cost to All Africans" (2024), p. 15, https://re-course.org/wp-content/uploads/2024/05/StillBankingOnFossilFuels.pdf.

[389] Daley, "The Fossil Fuelled Fallacy," p. 21.

[390] Daley, "The Fossil Fuelled Fallacy," p. 21 (noting that in Africa in particular, "[t]he relatively higher production costs of African fossil fuel projects mean that these assets will become stranded sooner, as fossil fuel majors pivot towards lower-cost extraction sites that are already operational.").

[391] *See generally* Tess Woolfenden, "The Debt-Fossil Fuel Trap: Why Debt Is a Barrier to Fossil Fuel Phase-out and What We Can Do About It" (Debt Justice, July 2023), https://debtjustice.org.uk/wp-content/uploads/2023/08/Debt-fossil-fuel-trap-report-2023.pdf.

obstructing sustainable development and the transition to renewable energy sources.[392] In fact, "high dependence on fossil fuel revenues makes these states particularly *vulnerable* to the energy transition, as declining demand could trigger severe fiscal contractions."[393]

123. **States locked into fossil fuel-based economies are not only at risk of being left behind in the global energy transition, but are burdened with myriad environmental and health externalities**. The loss of ecosystems and habitats to fossil fuel extraction drives biodiversity loss, which in turn has severe adverse effects on food security and nutrition; water quality, availability, and accessibility; and human health.[394] Across all of its phases — including extraction, processing, transport, and combustion — fossil fuel development releases toxic pollutants harmful to "every stage of [human] life, from fetal development to old age."[395] In fact, exposure to fossil fuel pollution can harm every part of the body and has been linked to numerous health problems, including low birth weight, childhood cancer, asthma, neurological disorders, cardiovascular disease, and premature death.[396] In Nigeria, for instance, where oil and gas accounts for 93% of the State's revenue,[397] oil spills have contaminated the drinking water of the Ogoni people with benzene, a known carcinogen, at levels over 900 times above the World Health Organization (WHO) guideline.[398] Regular oil spills along pipelines in the country area also statistically correlated with increasing infant mortality by 38.3 deaths per 1000 children, double the average,[399] while gas flaring in the Niger Delta, which has poisoned the local water supply, is also associated with localized incidents of harmful acid rain.[400]

124. **Fossil fuel production that prioritizes short-term profits for foreign companies at the expense of African peoples' human rights is directly contrary to the right to development and to the African Charter.** The right to development as enshrined in Article 22, along with "the right of all peoples to freely dispose of their wealth and natural resources" (Article 21),[401] is intended to belong exclusively to African peoples and individuals. According to the African Commission, "[t]hese rights consist in ensuring that the material wealth of the countries are not exploited by aliens to no or little benefit to the African countries."[402] Indeed, the Commission has interpreted Article 21 to require States to hold their peoples' wealth and natural resources in trust,

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[392] Woolfenden, at p. 16.
[393] Michelini, "A Comprehensive Framework for the Relationship Between Organized Violence and Climate Change," p. 19 (emphasis added).
[394] Shaye Wolf et al., "Scientists' Warning on Fossil Fuels," *Oxford Open Climate Change*, 2025, 5(1), kgaf011, p. 9, https://doi.org/10.1093/oxfclm/kgaf011.
[395] Global Climate & Health Alliance, *Cradle to Grave: The Health Toll of Fossil Fuels and the Imperative for a Just Transition* (2025), p. Xiv, https://climateandhealthalliance.org/wp-content/uploads/2025/09/C2G-Report-low-_res-English.pdf.
[396] *Ibid.*
[397] Daisy Dunne, Carbon Brief, "The Carbon Brief Profile: Nigeria," https://www.carbonbrief.org/the-carbon-brief-profile-nigeria/.
[398] United Nations Environment Programme, *Environmental Assessment of Ogoniland* (2011), p. 11, https://wedocs.unep.org/items/a1f5690c-5501-4a08-bdc7-6548590fa48c.
[399] Anna Bruederle & Roland Hodler, "Effect of oil spills on infant mortality in Nigeria," *The Proceedings of the National Academy of Science* (2019), p. 5467, https://doi.org/10.1073/pnas.1818303116.
[400] *See generally* John Kanayochukwu Nduka et al., "Impact of Oil and Gas Activities on Acidity of Rain and Surface Water of Niger Delta, Nigeria: An Environmental and Public Health Review," J. Environ. Prot. 7 (2016), https://doi.org/10.4236/jep.2016.74051.
[401] African Charter on Human and Peoples' Rights, art. 20.
[402] African Commission on Human and Peoples Rights, Guidelines for National Periodic Reports (Apr. 14, 1989), pp. 13-14.

"ensuring natural resources stewardship *with*, and *for the interest of*, the population."[403] Thus, fossil fuel projects in African countries that enrich the companies involved – whether foreign or State-owned – while exposing local peoples and individuals to climate harm, environmental degradation, and dispossession from their land and resources, are inherently at odds with the African Charter. Accordingly, these projects should be among the first to be phased out.

B. Under the climate treaties, developing States in Africa are entitled to receive support for climate action from developed countries.

125. A fundamental principle of international law is the duty to cooperate and this duty is also manifested in the climate treaties themselves.[404] One of the central tenets of the UNFCCC and Paris Agreement, and an example of the duty to cooperate, is that the developed countries most responsible for the climate crisis must provide means of implementation — finance,[405] technology transfer,[406] capacity-building[407] — to developing countries for mitigation and adaptation.

126. **The provision of finance from developed to developing countries for mitigation and adaptation is a legally binding obligation contained in the climate treaties.**[408] Developed States have an obligation to provide finance to developing States for climate action including fossil fuel phaseout. Thus, African States have a right to demand climate finance from historical emitters to support adaptation and mitigation efforts, noting that this financial support is crucial for African States to transition to low-carbon economies. Moreover, developed States also owe reparation and remedy to those harmed (see section IX below). Holding the largest cumulative emitters accountable for their historic emissions and contribution to the climate crisis both by requiring payment of climate finance and reparations is foundational to realizing climate justice.

127. **Climate finance provided to African States has been woefully inadequate.** While neither the UNFCCC nor Paris Agreement specify the level of finance to be provided to individual States or collectively, the ICJ noted that developed countries must implement this obligation by providing a level of finance that is capable of meeting the mitigation and adaptation goals contained in Article 2 of the Paris Agreement, including keeping temperature rise to below 1.5°C.[409] To date, finance provided by developed countries, particularly to African States has been woefully inadequate. For example, in 2021-2022, African States only received 3.3% of global climate finance.[410] Adaptation finance is especially lacking.[411] Thus, to protect people and

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[403] ACHPR, *Resolution on a Human Rights-Based Approach to Natural Resources Governance*, ACHPR/Res.224(LI)2012 (May 02, 2012).
[404] *ICJ Climate Change Advisory Opinion*, paras. 140,183.
[405] UNFCCC, arts. 4(3), 4(4); Paris Agreement, arts. 4(5), 9(1); *see also ICJ Climate Change Advisory Opinion*, paras. 215, 216, 260-270.
[406] UNFCCC, art. 4(5); Paris Agreement, arts. 10(2), 10(6); *see also ICJ Climate Change Advisory Opinion*, paras. 215, 216, 260-270.
[407] Paris Agreement, arts. 11(1), 11(3).
[408] *ICJ Climate Change Advisory Opinion*, para. 264.
[409] *ICJ Climate Change Advisory Opinion*, at para. 265.
[410] Climate Policy Initiative, *Landscape of Climate Finance in Africa 2024* (Oct. 2024), p. 11 https://www.climatepolicyinitiative.org/publication/landscape-of-climate-finance-in-africa-2024/.
[411] Victoria Schneider, "Experts say wealthy nations owe Africa double its climate climate adaptation needs," *Mongabay* (Nov. 21, 2025), https://news.mongabay.com/2025/11/experts-say-wealthy-nations-owe-africa-double-its-climate-adaptation-needs/.

their environment, African States can and should be demanding more grants-based finance from the developed countries who have caused the problem and should hold them accountable.

VIII. Rights Defenders are at the Center of the Climate Crisis and Climate Solutions.

128. States cannot effectively fulfil the above-outlined climate obligations without guaranteeing the rights of environmental and human rights defenders. Defenders' entitlement to respect and protection is inherent in their personhood and does not depend on whether their work helps States fulfil their climate obligations. But as rightsholders often on the frontlines of climate destruction, defenders are frequently pivotal to effective prevention of harm to the climate system and effective remedy and reparation of such harm, including guarantees of non-recurrence, which they themselves may be owed. This section details the obligations of States to protect environmental human rights defenders, the data necessary to adequately do that, and the imperative of ending criminalization of defenders including by preventing strategic lawsuits against public participation (SLAPPs).

A. To effectively protect the right to a healthy environment in the climate crisis, States must protect environmental defenders and guarantee their rights and work.

129. **Environmental defenders play a critical role in combating climate change.** They preserve the health of ecosystems, promote rights-based solutions, hold polluters accountable, and mobilize and organize when the environment is under threat. They are fundamental allies of democracy, and their work is undeniably essential to the safeguarding of rights, including the right to a healthy environment. Acknowledging the vital role of human rights defenders, the IACtHR has formally recognized the right to defend rights, including environmental rights, as an autonomous right.[412] Defenders' work takes on greater importance in the climate emergency, due to "the urgency, gravity, and complexity of the measures required to address it."[413] States, therefore, have a "special duty of protection"[414] with respect to defenders, encompassing not only persons, but groups and organizations that promote and defend human rights.[415]

130. The African Commission has pointed out that defenders' work and rights are protected under several provisions of the African Charter.[416] In accordance with a comprehensive articulation from relevant international legal sources by the IACtHR in its advisory opinion on climate change, three general obligations to States flow from the "special duty to protect defenders."[417]

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[412] *IACtHR Advisory Opinion AO-32/25*, para. 561.
[413] *IACtHR Advisory Opinion AO-32/25*, para. 563.
[414] *IACtHR Advisory Opinion AO-32/25*, para. 566.
[415] Escazú Agreement, art. 9.1.
[416] *See, e.g.* African Charter on Human and Peoples' Rights, arts. 2, 6, 9, 10, 11, 24.
[417] These three general obligations reflect the normative content of Article 9 of the Escazú Agreement, which is further expanded upon in its Implementation Guide. *See* Economic Commission for Latin America and the Caribbean (ECLAC), *Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters*

131. **First, States must recognize, promote, and guarantee defenders' rights, including rights of personal integrity and access critical to the exercise of expressive rights.** Doing so requires States to take all necessary measures — legal, judicial and administrative — to protect and enhance the ability of defenders to exercise all their fundamental rights, especially those that are crucial due to the nature of their work, including the rights to life, personal integrity, freedom of opinion and expression, peaceful assembly and association, and free movement. Notably, States must ensure defenders' ability to exercise their access rights, given the fundamental importance to the defense of the environment of the right to request, obtain, and disseminate information, the right to participate, and the right to access justice. This obligation entails that States must both refrain from violating human rights and also protect individuals and groups against human rights abuses by third parties.[418]

132. **Second, States are obliged to guarantee a safe and enabling environment in which defenders can act freely, without threats, restrictions, or risks to their lives**. This is an obligation of a general, structural, and systemic nature that compels States to, among other actions, fight against impunity; provide a conducive legal, institutional, and administrative framework; secure strong, independent, and effective national human rights institutions; ensure that 'non-State actors' respect and support the work of defenders; establish, in consultation with defenders, effective protection and early warning programmes; provide adequate training for security officers and law enforcement officials; publicly acknowledge the contributions of human rights defenders to society; and ensure that their work is not criminalized or stigmatized.[419]

133. **Third, States have a duty to investigate and punish attacks, threats, or intimidation that defenders may suffer in the exercise of their work and, eventually, redress any damage that may have been caused.**[420] The IACtHR emphasizes that States are required to apply enhanced due diligence to investigate, prosecute, and punish crimes committed against them.[421] This includes guaranteeing impartial, timely, and effective justice; exploring all relevant lines of investigation; and investigating, *ex officio*, not only lethal attacks against environmental

in Latin America and the Caribbean: implementation guide, LC/TS.2021/221/Rev.2 (2023), pp. 177-190 [hereinafter Escazú Agreement Implementation Guide].

[418] *See* Escazú Agreement Implementation Guide, pp. 185-86.

[419] The scope of the obligation to ensure a safe and enabling environment for human rights defenders has been determined in countless reports of United Nations Special Rapporteurs and of the Office of the United Nations High Commissioner for Human Rights (OHCHR). *See* Human Rights Council, *Report of the Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya*, U.N. Doc. A/HRC/25/55 (Dec. 23, 2013); U.N. Secretary General, *Situation of human rights defenders*, U.N. Doc. A/71/281 (Aug. 3, 2016); Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment (John H. Knox), *Human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment*, U.N. Doc. A/73/188 (July 19, 2018); Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment (John H. Knox), *Framework Principles on Human Rights and the Environment*, U.N. Doc. A/HRC/37/59 (Jan. 24, 2018), principle 4 ("States should provide a safe and enabling environment in which individuals, groups and organs of society that work on human rights or environmental issues can operate free from threats, harassment, intimidation and violence"); Human Rights Council, *Practical recommendations for the creation and maintenance of a safe and enabling environment for civil society, based on good practices and lessons learned: report of the United Nations High Commissioner for Human Rights*, U.N. Doc. A/HRC/32/20 (Apr. 11, 2016); Escazú Agreement Implementation Guide, pp. 182-184.

[420] *IACtHR Advisory Opinion AO-32/25*, para. 566.

[421] *IACtHR Advisory Opinion AO-32/25*, para. 581.

defenders, but also non-lethal conduct such as threats, defamation, and harassment.[422] Investigations must take an intersectional perspective and consider the special risks faced by women, Indigenous, Afro-descendant, and peasant environmental defenders.[423] Additionally, States must adopt structural measures to strengthen institutional capacity in combating patterns of impunity in cases of violence and harassment against environmental defenders.[424]

B. To effectively protect environmental defenders, States must assess their situations across the continent and adopt adequate measures based on an intersectional perspective.

134. **The deficiency of data concerning the threats faced by and the killings of environmental defenders in Africa is a significant concern.** Civil society in Africa has highlighted that, despite the continent being viewed as a rapidly expanding hub for extractive projects, there is 'poor emphasis' on the conditions surrounding African defenders.[425] The UN Special Rapporteur on the situation of human rights defenders, discussing the lack of differentiated records, has noted that "States are not recording in a disaggregated manner the types of violence and other violations that affect human rights defenders."[426] This information gap hinders the ability of States to assess the situation of individuals, groups, and organizations defending the environment, as well as the understanding of the magnitude of the issue and identification of patterns, thereby impeding the implementation of appropriate measures to ensure they can operate freely and safely. Moreover, such circumstances could contribute to a climate of impunity and increased violence against defenders, especially those who are particularly vulnerable to heightened forms of violence, such as women, Indigenous, and peasant environmental defenders, as well as those working in isolated, remote, and rural contexts.[427] Notably, these particular groups of defenders, facing specific and elevated risks, are often the same populations disproportionately affected by climate change. These overlapping layers of vulnerability are not coincidental. As the most impoverished, racially marginalized, and unequal regions globally are at heightened risk of experiencing the harshest consequences of climate change, the communities find themselves with no viable option but to defend their territories and livelihoods.[428]

135. **To rectify the information gap and ensure a sound basis for implementing effective measures to guarantee defenders' rights, States must compile and maintain up-to-date, disaggregated data on defender abuses.** Such data should include, *inter alia*, the verified cases of murders, kidnappings, forced disappearances, arbitrary detentions, torture, and other harmful

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[422] *IACtHR Advisory Opinion AO-32/25*, paras. 582-584.
[423] *IACtHR Advisory Opinion AO-32/25*, para. 585.
[424] *IACtHR Advisory Opinion AO-32/25*, para. 586.
[425] Claire Martens, "Reflecting on African Environmental Defenders in 2024" (Oct. 1, 2024), https://naturaljustice.org/reflecting-on-african-environmental-defenders-in-2024/.
[426] U.N. Secretary General, *Situation of human rights defenders*, U.N. Doc. A/74/159 (July 15, 2019), para. 60.
[427] Special Rapporteur on the situation of human rights defenders (Mary Lawlor), *Out of sight: human rights defenders working in isolated, remote and rural contexts*, U.N. Doc. A/HRC/58/53 (Jan. 3, 2025).
[428] Global Witness, *Defending tomorrow* (July 29, 2020), pp. 13-19 https://gw.hacdn.io/media/documents/Defending_Tomorrow_EN_high_res_-_July_2020.pdf; U.N. Secretary General, *Tipping points: human rights defenders, climate change and a just transition*, U.N. Doc. A/80/114 (July 4, 2025), para. 85, 86, 89, 90

acts against environmental defenders. This data should consider socioeconomic factors such as gender, age, sex, and ethnicity. Further, States must design and implement policies and strategies that address the structural causes of violence against environmental defenders and prevent future incidents of violence and intimidation. These policies and strategies must involve the participation of defenders, consider the varying impacts of violence based on intersectional and structural factors of discrimination, and integrate the existing practices and other experiences and community-based initiatives and self-protection strategies. Lastly, they must adopt appropriate measures to promote the recognition and protection of the right to defend environmental human rights in all areas of the State and among the general population.[429]

C. States are obliged to combat the "overall climate of criminalization" against defenders, including judicial harassment through strategic lawsuits against public participation (SLAPPs).

136. **Globally, defenders face an "overall climate of criminalization," characterized by multiple forms of judicial harassment, arbitrary detentions, disproportionate sentences, and the misuse of the law to restrict their work.[430] Africa is no exception.**

137. **Criminalization has been employed to suppress peaceful activism against new fossil fuel infrastructure in the Global South.** A notable example is in Uganda, where human rights defenders have faced charges for protesting the East Africa Crude Oil Pipeline (EACOP). Protests, led mainly by students, women, and affected community members, have been ongoing for several years. As of December 2024, 129 individuals had reportedly been arrested for their peaceful opposition, facing charges such as public nuisance and incitement to violence.[431] Furthermore, the use of Strategic Lawsuits Against Public Participation (SLAPPs) — an abusive litigation tactic that aims to suppress participation and speech on matters of public interest, intimidate defenders and/or exhaust their resources — has increased in the continent, undermining public discourse. Research by the Business and Human Rights Centre indicates that around 8.5% of global SLAPP cases from 2015 to mid-2021 originated in Africa, predominantly from South Africa.[432]

138. **States must adopt anti-SLAPP measures and protections to prevent abuse of legal process by State or non-State actors.** Understanding that the use of SLAPPs compromises several human rights in the climate crisis context, particularly the right to a healthy

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[429] *IACtHR Advisory Opinion AO-32/25*, para. 575.
[430] *IACtHR Advisory Opinion AO-32/25*, para. 570.
[431] U.N. Secretary General, *Tipping points: human rights defenders, climate change and a just transition*, U.N. Doc. A/80/114 (July 4, 2025), para. 54. *See also,* International Federation for Human Rights, *Uganda: Arbitrary arrest and pre-trial detention of eight environmental rights defenders* (Jan. 26, 2026) https://www.fidh.org/en/issues/human-rights-defenders/uganda-arbitrary-arrest-and-pre-trial-detention-of-eight
[432] Business & Human Rights Resource Center, *SLAPPed but not silenced: defending human rights in the face of legal risks* (June 2021), p. 7, https://media.business-humanrights.org/media/documents/2021_SLAPPs_Briefing_EN_v657.pdf; *see also* International Senior Lawyers Project, *Guidance on Strategic Lawsuits Against Public Participation (SLAPP) Defence in Southern Africa* (2025), para. 31 https://islp.org/wp-content/uploads/2025/05/FINAL-WEBSITE-VERSION-Defending-SLAPPs-Guidance-for-Southern-Africa.pdf [hereinafter ISLP, *Guidance on Strategic Lawsuits Against Public Participation (SLAPP) Defence in Southern Africa*]; *see generally* Climate Rights International, *Q&A: Strategic Litigation Against Public Participation (SLAPP)* (July 2025) https://cri.org/qa-strategic-litigation-against-public-participation/.

environment.[433] "The OHCHR [has] stress[ed] that States shall not only refrain from engaging in abusive lawsuits but also take positive measures to ensure that third parties do not use SLAPPs as tools to silence those exerting legitimately their rights to freedom of opinion and expression as well as freedom of peaceful assembly and association."[434] To ensure the protection of human rights defenders against SLAPPs, it is imperative for States to implement comprehensive anti-SLAPP legislation that is broad in scope and covers all claims related to public participation on matters of public interest. As the OHCHR has laid out, this legislation must equip courts to: (i) "dismiss abusive legal proceedings on their own initiative or at the request of the SLAPP target, contingent upon a determination that the proceedings are indeed abusive; (ii) "ensure an accelerated procedure for hearing the application to dismiss, during which the main proceedings should be stayed;" (iii) compensate SLAPPs victims along with the imposition of effective, proportionate, and dissuasive penalties on the SLAPP pursuer; and (iv) deter and remedy the misuse of multiple coordinated cross-border legal actions. In the absence of such legislation, States must, at a minimum, (v) ensure that judges can dismiss SLAPPs through abuse of process provisions.[435] Additionally, States are compelled to adopt "complementary measures to monitor and raise awareness on SLAPPs; financially and psychologically support victims of SLAPPs, including by providing legal aid; [and] train judges, prosecutors and lawyers to identify and deter" this kind of lawsuit.[436]

139. Defenders sit at the intersection of the climate crisis and its solutions, and States' obligations toward them straddle their primary duties of conduct and their secondary obligations of remediation under international law. It is to the content of those remediation obligations that this brief turns in the next section.

IX. States Must Ensure Effective Remediation of Climate Harm, and Advance the Right to Reparation

140. **In the face of accelerating and devastating climate harm, the imperative for reparatory justice could not be more urgent.** The AU has endorsed 2026-2036 as the "Decade of Reparations," building on its declaration of 2025 as the "Year of Justice for Africans and People of African Descent through Reparations."[437] The Court should affirm that Africa cannot continue to shoulder disproportionate burdens for a climate crisis it has played little role in creating. Major polluters have long possessed clear knowledge of the principal drivers and foreseeable consequences of climate change, and under international and regional law have binding legal obligations to cease climate-destructive conduct and to provide effective remedy

[433] *IACtHR Advisory Opinion AO-32/25*, para. 568.
[434] ISLP, *Guidance on Strategic Lawsuits Against Public Participation (SLAPP) Defence in Southern Africa*, p. 4.
[435] United Nations Human Rights Office of the High Commissioner, *The impact of SLAPPs on human rights & how to respond*, pp. 4-5, https://www.ohchr.org/sites/default/files/documents/publications/briefer-the-impact-slapps-hr-how-resond.pdf [hereinafter OHCHR, *The impact of SLAPPs on human rights & how to respond*].
[436] OHCHR, *The impact of SLAPPs on human rights & how to respond*, p.5.
[437] African Union, *Decisions of the Executive Council, Forty-Seventh Ordinary Session, 10–11 July 2025, Malabo, Equatorial Guinea,* EX.CL/Dec.1310–1322(XLVII) (July 10-11, 2025), para. 6, ,https://au.int/sites/default/files/decisions/46018-EX_CL_DEC_1310_-_1322_XLVII_E_.pdf; African Union, *Decision on Building a United Front to Advance the Cause of Justice and the Payment of Reparations to Africans (in Implementation of the Assembly Decision Assembly/AU/Dec.847(XXXVI))*, Assembly/AU/Dec.884(XXXVII), (Feb. 17-18, 2024), https://au.int/sites/default/files/decisions/44015-ASSEMBLY_AU_DEC_866_-_902_XXXVII_E.pdf.

and reparation for the harms they have caused or contributed to. These obligations fall in particular on those States and corporate actors whose outsized historical and ongoing contributions to climate change have caused foreseeable harm. At the same time, African States must act to the fullest extent feasible, using maximum available resources, to protect the rights of their populations in the face of climate-related harm and ensure meaningful redress.

141. **This section addresses question (e) before the Court, namely the extent to which States bear human rights obligations to compensate for loss and damage and to provide reparation.** It comprises four sub-sections addressing: (i) the contextual interpretation of State duties in relation to climate-destructive conduct; (ii) the sources of international law governing State remediation obligations; (iii) the measures required to fulfil those obligations, including access to justice and forms of relief; and (iv) the duty to mobilize resources and pursue reparations, including at the international level.

A. The Court should construe the scope and content of State duties in relation to climate-destructive conduct with due regard to Africa's social, political, and historical context.

142. **Primary responsibility for the climate crisis lies with a small group of historical polluters**. A small group of industrialized regions, particularly North America and Europe, are responsible for a disproportionately large share of cumulative CO_2 emissions since 1850, far exceeding their share of the global population,[438] while Africa contributed only a marginal share of cumulative emissions.[439] Yet as affirmed by the IPCC, African States, despite these negligible contributions to the climate crisis, disproportionately suffer many of its most devastating impacts (see para. 24 of this brief), critically affecting a wide range of civil and political, as well as economic, social, and cultural rights, across the continent. Primary responsibility for the climate crisis lies with a small group of high-income, historically high-emitting States. Since at least the 1960s, those States knew or should have known that their fossil fuel-driven emissions were causing significant transboundary harm yet failed to take adequate measures in response, and in many instances continued to engage in or even expand climate-destructive conduct that worsened the harm.[440]

143. **The continuum of colonial extraction and systemic inequalities shapes climate injustice**. Climate justice requires a reckoning with historical responsibility, including recognition that States are not situated equally with respect to responsibility for climate harm. Notably, "historical responsibility for climate change is radically shifted when colonial rule is taken into account," with Africa's already marginal share of historical emissions falling from

[438] IPCC, AR6, WG III: Summary for Policymakers, para. B.3, fig. SPM.2.

[439] Data based on "territorial emissions, meaning the emissions produced within a country's borders." See, Our World in Data, *Share of Global Cumulative CO_2 Emissions* (2025), https://ourworldindata.org/grapher/share-of-cumulative-co2?country=~OWID_AFR.

[440] CIEL Written Statement on Legal Consequences, para. 84, https://www.ciel.org/wp-content/uploads/2024/02/Amicus-Brief-ICJ-Defining-States-Climate-Obligations-Reparations-Climate-Harm.pdf; Naomi Oreskes, "Expert Opinion on Historical Knowledge and Awareness, in Government Circles, of the Effects of Fossil Fuel Combustion as the Cause of Climate Change" (29 Jan. 2024), pp. 6-13, *reproduced in* Written Statement of Vanuatu, Exhibit D, Advisory Proceedings before the International Court of Justice, https://www.icj-cij.org/sites/default/files/case-related/187/187-20240321-wri-06-01-en.pdf.

6.9% to 5.2% when colonial-era emissions are correctly attributed to the administering colonial powers rather than colonized territories.[441]

144. **Colonial practices, even those dating back more than a century, continue to shape contemporary exposure to climate impacts and the manner in which such impacts materialize as violations of human rights**.[442] In its sixth assessment report, the IPCC recognized the role of colonialism as a driver of the climate crisis.[443] As former UN Special Rapporteur E. Tendayi Achiume notes in her 2022 report on contemporary forms of racism, racial discrimination, xenophobia, and related intolerance, "the nations least capable of mitigating and responding to ecological crisis have been rendered so both by histories of colonial domination, and in the postcolonial era by externally neoliberal and other economic policies. In the global North, racially and ethnically marginalized groups are similarly on the front lines."[444] She has demonstrated that the global extractivism economy, historically premised on racial domination and resource plunder, continues to impose disproportionate environmental burdens on formerly colonized peoples.[445] This pattern is further reinforced by multinational fossil fuel and extractive corporations, which continue to dominate resource extraction in Africa[446] while driving new oil and gas expansion incompatible with 1.5°C pathways,[447] shifting the environmental and social harms of extraction onto local communities, and entrenching climate vulnerability on the continent.[448] These structural dynamics persist through debt injustice,[449] unequal trade relations, and extractive development models, constraining fiscal space for adaptation and compelling African States to confront mounting climate impacts under conditions of chronic resource scarcity. This understanding of climate harm as embedded in a longer historical continuum of colonial extraction and racialized dispossession has been further developed in recent scholarship,

[441] Simon Evans & Verner Viisainen, "Revealed: How colonial rule radically shifts historical responsibility for climate change," *Carbon Brief* (Nov. 26, 2023), https://www.carbonbrief.org/revealed-how-colonial-rule-radically-shifts-historical-responsibility-for-climate-change/.

[442] Amnesty International, "Madagascar: Authorities fail to protect and assist Antandroy people displaced by climate-exacerbated droughts – new report" (July 30, 2025), https://www.amnesty.org/en/latest/news/2025/07/madagascar-authorities-fail-to-protect-and-assist-antandroy-people-displaced-by-climate-exacerbated-droughts-new-report/; Nciko wa Nciko & Samrawit Getaneh, "True climate justice demands a reckoning with colonialism," *Al Jazeera* (Nov. 19, 2025), https://www.aljazeera.com/opinions/2025/11/19/true-climate-justice-demands-a-reckoning-with-colonialism

[443] *See* IPCC, AR6, WGII, Summary for Policymakers, para. B.2.

[444] *Report of the Special Rapporteur on Ecological crisis, climate justice and racial justice*, para. 15.

[445] Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance (Tendayi Achiume), *Global extractivism and racial equality*, U.N. Doc. A/HRC/41/54 (May 14, 2019), paras. 42; *Report of the Special Rapporteur on Ecological crisis, climate justice and racial justice*, paras. 4, 14.

[446] Tucker & Reisch, "The Sky's Limit Africa: The Case for a Just Energy Transition from Fossil Fuel Production in Africa," pp. 5, 17-18.

[447] International Energy Association (IEA), *Net Zero by 2050: A Roadmap for the Global Energy Sector* (Oct. 2021), p. 21.

[448] Tucker & Reisch, "The Sky's Limit Africa: The Case for a Just Energy Transition from Fossil Fuel Production in Africa," pp. 16, 24-25.

[449] For example, Mozambique received an IMF Rapid Credit Facility loan after Cyclone Idai, one of the deadliest climate-linked disasters in the region, adding to unsustainable debt rather than providing grant-based relief. *See,* International Monetary Fund, "IMF Executive Board Approves US$118.2 Million Rapid Credit Facility Assistance to the Republic of Mozambique in the Wake of Cyclone Idai," Press Release No. 19/121 (19 April 2019); Debt Justice, "IMF Loan to Mozambique Following Cyclone Idai 'Shocking Indictment of International Community'" (23 April 2019).

which situates climate reparations within a broader Pan-African context grounded in structural justice and historical responsibility.[450]

145. **There is substantial empirical evidence demonstrating that climate-related harms,** including both economic and non-economic loss and damage — such as loss of life, health, housing, cultural heritage, territorial integrity, and ways of life — **have cascading effects on the enjoyment of economic, social, and cultural rights.** According to one estimate, climate change has already reduced African GDP per capita by an estimated 13.6% since 1991,[451] with some countries experiencing losses up to 15% of GDP per-capita growth.[452] As argued by economist Fadhel Kaboub, external debt is a structural instrument of neo-colonial extraction that locks African states into climate-vulnerable, import-dependent economies, rendering debt cancellation a necessary first step of climate reparations, a prerequisite for sovereign, just, and climate-resilient development pathways.[453]

146. **International climate negotiations have likewise been shaped by structural power asymmetries** and the lack of effective accountability mechanisms for historically high-emitting States, resulting in "compromises that benefit politically powerful States – including former colonial powers – at the expense of global South States"[... who have] no effective, reliable means of holding global North States accountable for failing to meet their climate obligations or to provide reparations for historical and ongoing climate injustice.[454]

147. **This marked disparity in responsibility for the climate crisis shapes the understanding of States' legal obligations for its grave and escalating consequences**. The asymmetry rooted in the continuum of colonial extraction and systemic inequalities should be the starting point for interpreting State reparatory obligations in relation to climate change. A principled legal approach must distinguish between the vast majority of African States, whose emissions are negligible, and the small number of States and corporations, particularly in the Global North, whose historic and cumulative emissions have disproportionately contributed to the crisis.[455] Reparations must also be understood as part of a historical redress process

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[450] Patrick Toussaint and Krishnee Appadoo, 'Climate Reparations and the Continuing Legacies of Colonial Harm: Developing a Pan-African Research and Policy Agenda' (2025) 9 *African Human Rights Yearbook* 593.
[451] IPCC, AR6, WGII, Ch. 9: Africa, p. 1385
[452] Florent Baarsch et al., "The Impact of Climate Change on Incomes and Convergence in Africa," *World Development*, v. 126 (2020), p.7, https://www.sciencedirect.com/science/article/abs/pii/S0305750X1930347X?via%3Dihub
[453] *See, e.g.*, Fadhel Kaboub, "Africa's Path towards Resilience and Sovereignty: the Real Wakanda is within Reach," *Tax Justice Network* (Mar. 30, 2021), https://taxjustice.net/2021/03/30/africas-path-towards-resilience-and-sovereignty-the-real-wakanda-is-within-reach/ (diagnosing external debt as a "quagmire" and "financial neocolonial extractive mechanisms" that reproduce structural dependence, and arguing that "Debt cancellation and reparations (both financial and in-kind technology transfers) are the first step in an economic, social, and ecological restorative justice process" and a "pre-requisite" for restoring African monetary sovereignty.); Fadhel Kaboub, "Climate finance & Climate reparations," *Transnational Institute* (Dec. 10, 2024), https://www.tni.org/en/article/climate-finance-climate-reparations (describing external debt as a core obstacle to a just transition, and stating that climate reparations "should be paid in three categories… [including that] it needs cancellation of climate-related debts, not debt rescheduling…," as a means to create fiscal space for "climate resilience and adaptation").
[454] *Report of the Special Rapporteur on Ecological crisis, climate justice and racial justice*, para. 73.
[455] *See, for example, ICJ Climate Change Advisory Opinion*, Separate Opinion of Vice-President Sebutinde, para 5.

necessitated by the colonial and racialized divides between those responsible for and those harmed by the climate crisis.[456]

148. **Reparations are a form of restorative justice**. As affirmed by the IACtHR in its climate advisory opinion, States cannot discharge their climate obligations without addressing the structural conditions that give rise to and entrench climate harm.[457] Reparation measures must therefore seek to transform the conditions that caused or exacerbated climate vulnerability including structural inequalities, extractive development models, and territorial exclusion.[458] For climate harm to be genuinely repaired, alongside accountability for major polluters, structural systems of oppression rooted in colonial dynamics and extractive political economies must be confronted and alternative models centered, models grounded in "solidarity, cooperation, mutualism, and participatory economies, which value… the mutual well-being of people and nature." [459]

149. While African States have clear substantive and procedural obligations to protect their populations against violations of human rights resulting from the adverse effects of climate change and their drivers, in line with international legal obligations, **States and corporate actors that have disproportionately contributed to climate change must lead in the provision of reparations to African States and their people**. This responsibility includes ceasing climate-destructive conduct and providing full reparation for environmental harm caused by foreseeable and preventable conduct. Africa's political, social, and historical context — marked by colonial dispossession, structural inequality, and disproportionate climate harm — shapes not only the urgency of reparations but the content of State duties under international law, including the duty to provide reparations commensurate with both historical responsibility and contemporary harms.

B. Relevant wrongful conduct and equity considerations inform the content of State remediation obligations.

150. **Two overarching issues** frame the application of the governing law: the **conduct** giving rise to breaches of international obligations and the resulting right to a remedy; and the question of **equity,** each of which is briefly examined below.

I. Relevant conduct – conduct as to which States have obligations and therefore as to which they may be in breach of their obligations

151. **Relevant conduct, namely specific activities or lack thereof, attributable to States, capable of engaging their legal responsibility, must be clearly defined**. This determines which acts or omissions may constitute a breach of legal obligations in the climate context and thereby give rise to reparatory duties. Clarifying both the material scope (what types of conduct are covered) and the temporal scope (over what period responsibility may arise) is therefore **essential**

[456] Written Statement of the Organisation of African Caribbean and Pacific States (OACPS) (Mar. 22, 2024), ICJ, Obligations of States in respect of Climate Change, para. 167 [hereinafter OACPS Written Statement].
[457] *IACtHR Advisory Opinion AO-32/25*, paras. 205, 369.
[458] *Climate Justice and Human Rights: Legal Standards and Tools from the Inter-American Court's Advisory Opinion 32/25* (2025), p. 94, https://www.ciel.org/reports/inter-american-court-climate-ao-legal-tools/.
[459] ESCR-Net, "Our Demands for Debt, Care, and Climate Justice," https://www.escr-net.org/resources/our-demands-for-debt-care-and-climate-justice/.

to establishing when responsibility is engaged and whether affected parties may obtain redress.

152. In its climate advisory opinion, the ICJ defined **the material scope of the relevant conduct** — that is, the conduct that may contribute to harm to the climate system, in breach of international obligations — in exceptional breadth. The Court found "the relevant conduct…is not limited to conduct that, itself, directly results in GHG emissions, but rather comprises all actions or omissions of States which result in the climate system and other parts of the environment being adversely affected by anthropogenic GHG emissions,"[460] clarifying further that the internationally wrongful act constitutes the breach of conventional and customary obligations in relation to climate change.[461] The Court considered that the material scope of relevant conduct encompasses "the full range of human activities that contribute to climate change as a result of the emission of GHGs, including both consumption and production activities"[462] and was clear that "[f]ailure of a State to take appropriate action to protect the climate system from GHG emissions — including through fossil fuel production, fossil fuel consumption, the granting of fossil fuel exploration licences or the provision of fossil fuel subsidies — may constitute an internationally wrongful act…" triggering legal consequences.[463] The ICJ also affirmed that relevant conduct includes acts and omissions in relation to non-State actors such as corporations.

153. In terms of **temporal scope,** the ICJ climate advisory opinion references emissions data "between 1850 and 2019,"[464] clarifying that "it is the sum of all activities that contribute to anthropogenic GHG emissions over time, not any specific emitting activity, which produces the risk of significant harm."[465] Moreover, as the Organisation of African Caribbean and Pacific States (OACPS) has noted, "[t]he disproportionate share of the contribution of certain developed countries to the atmospheric GHG emissions becomes more dramatic when emissions from colonial territories are attributed to the colonial powers that controlled them. Since those territories were not self-governing and were administered by colonial powers, the latter must bear the responsibility for the emission of greenhouse gases from such territories during that period."[466] The obligation to prevent is triggered when the harm is reasonably foreseeable, not merely when it is certain or already manifest, as it is now in the case of climate change-related harm.[467] Thus, when a State's actual contributions to GHG emissions were enough to cause significant harm, and it had at least some level of foresight or knowledge of that harm or risk thereof, then its conduct in enabling and failing to prevent such emissions becomes a breach of international law in force at the time, including human rights law.[468] Precisely when a State became aware of the risk of transboundary harm to the climate from greenhouse gas emissions varies from country to country, and will ultimately be a question of fact.

[460] *ICJ Climate Change Advisory Opinion*, para. 94.
[461] *ICJ Climate Change Advisory Opinion*, paras. 405, 407.
[462] *ICJ Climate Change Advisory Opinion*, para. 94.
[463] *ICJ Climate Change Advisory Opinion*, para. 427.
[464] *ICJ Climate Change Advisory Opinion*, para. 80.
[465] *ICJ Climate Change Advisory Opinion*, para. 277.
[466] OACPS Written Statement, para. 41.
[467] *ICJ Climate Change Advisory Opinion*, para. 274.
[468] CIEL Written Statement on Legal Consequences, para. 83.

154. **Ample evidence nevertheless indicates that States (and corporations[469]) began to understand the drivers of climate change and the extent of impacts far more than half a century ago.**[470] Evidence has shown that some countries, principally industrialized States, were aware of the risk of adverse impacts to the climate from the emission of GHGs, principally from fossil fuels, since at least the middle of the 20th century.[471] By approximately 1960, some States, and by no later than 1992, *all* States across the world were in possession of requisite knowledge regarding the causes and consequences of climate change to have an obligation to prevent its adverse effects, by taking measures to avoid the activities causing climate change and the risk thereof.[472] Since then, the scientific evidence in relation to climate change has only grown, and rendered State inaction, or active perpetuation of the causes of climate change, more and more of an egregious violation of their legal duties.

II. Equity and Common But Differentiated Responsibilities and National Capacities

155. **Equity and CBDR inform State responsibility for climate harm**. All States have responsibilities to address climate harm. The principle of common but differentiated responsibilities and respective capabilities, considered a "manifestation of the principle of equity"[473] has been delineated as reflecting "the need to distribute equitably the burdens of the obligations in respect of climate change, taking into account, inter alia, States' historical and current contributions to cumulative GHG emissions, and their different current capabilities and national circumstances, including their economic and social development.[474] These principles must also guide how responsibility is determined. In fact, it could be argued that equity is already built into how responsibility is apportioned in relation to harm caused with the conduct of each

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[469] Benjamin Franta, "Early Oil Industry Knowledge of CO_2 and Global Warming," *Nature Climate Change* 8 (Nov. 2018), pp. 1024-26, https://www.nature.com/articles/s41558-018-0349-9; Geoffrey Supran, Stefan Rahmstorf & Naomi Oreskes, "Assessing ExxonMobil's global warming projections," *Science* 379:6628 (Jan. 13, 2023), https://www.science.org/doi/10.1126/science.abk0063; Memorandum from James F. Black, Scientific Advisor, Exxon Products Research Division, to F. G. Turpin, Vice President, Exxon research and Engineering Co. (Jun. 6, 1978), https://insideclimatenews.org/wp-content/uploads/2015/09/James-Black-1977-Presentation.pdf; Richard Heede, *The Evolution of Corporate Accountability for Climate Change*, in César Rodríguez-Garavito (ed.), *Litigating the Climate Emergency* (Cambridge University Press 2022), p. 243.

[470] Oreskes, "Expert Opinion on Historical Knowledge and Awareness, in Government Circles, of the Effects of Fossil Fuel Combustion as the Cause of Climate Change," pp. 6-13; CIEL Written Statement on Legal Consequences, para. 84, https://www.ciel.org/wp-content/uploads/2024/02/Amicus-Brief-ICJ-Defining-States-Climate-Obligations-Reparations-Climate-Harm.pdf;

[471] CIEL Written Statement on Legal Consequences, paras. 84-88, https://www.ciel.org/wp-content/uploads/2024/02/Amicus-Brief-ICJ-Defining-States-Climate-Obligations-Reparations-Climate-Harm.pdf

[472] On foreseeability, the Committee on the Rights of the Child has noted: "[R]egarding the issue of foreseeability, the Committee notes the authors' uncontested argument that the State party has known about the harmful effects of its contributions to climate change for decades and that it signed both the United Nations Framework Convention on Climate Change in 1992 and the Paris Agreement in 2016. In the light of existing scientific evidence showing the impact of the cumulative effect of carbon emissions on the enjoyment of human rights, including rights under the Convention, the Committee considers that the potential harm of the State party's acts or omissions regarding the carbon emissions originating in its territory was reasonably foreseeable to the State party." *Chiara Saachi et al. v. Argentina*, Decision, Committee on the Rights of the Child, No. 104/2019, U.N. Doc. CRC/C/88/D/104/2019 (decision adopted Sept. 22, 2021), para. 10.11 [hereinafter *Chiara Saachi et al. v. Argentina*]. *See also* L. Delta Merner, "From Research to Action: The Growing Impact of Attribution Science," *The Equation* (Mar. 7, 2023), https://blog.ucsusa.org/delta-merner/from-research-to-action-the-growing-impact-of-attribution-science/ (noting that "The study of climate attribution began to be more widely accepted in the 1990s").

[473] *ICJ Climate Change Advisory Opinion*, para. 151.

[474] *ICJ Climate Change Advisory Opinion*, para 148.

individual wrongdoer taken into account.[475] Equity must be foregrounded in such assessments including taking into account colonial histories. Responsibility for reparations can and must be proportionate to historic contributions to the harm.

156. **Human rights bodies have expressly treated CBDR as an equity-grounded interpretation of climate obligations.**[476] In a recent instance, the IACHR has affirmed[477] that States must take appropriate measures to *remedy* the resulting damages, informed by a CBDR approach in the context of climate action, noting that "...for the effective protection of human rights, States must take appropriate measures to mitigate greenhouse gases, implement adaptation measures and **remedy the resulting damages**…As with economic, social, and cultural rights, environmental rights, in the context of climate change, must be guaranteed to the maximum of the resources available to the State in order to progressively achieve their full effectiveness by all appropriate means."(bolding added)[478] This equity lens must apply across applicable legal frameworks in relation to States' remedial obligations in relation to climate change.

C. Multiple and complementary legal regimes govern remediation of climate harm.

157. **Fundamental to law's ability to deliver justice is the core legal tenet, *ubi jus, ibi remedium*, meaning that where there is a right, there must be a remedy.**[479] The right to remedy and reparation as a consequence of harm suffered is a foundational component in international law, entailing a corresponding obligation on the part of the wrongdoer to provide such remedy and reparation. As has been authoritatively and consistently affirmed,[480] there are multiple and complementary norms under international law, the breach of which triggers remediation duties in relation to climate harm. The recent climate advisory opinions from the ICJ and IACtHR further strengthen the bases for remedy and reparation for climate harm.[481]

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[475] *See, e.g.*, *Urgenda Supreme Court case*, para. 5.7.6.

[476] *See* Office of the United Nations High Commissioner for Human Rights (OHCHR), *Understanding Human Rights and Climate Change: Key Messages on Human Rights and Climate Change* (2015), p. 10 (describing "equitable climate action" as action taken "in accordance with [States'] common but differentiated responsibilities and respective capabilities"); OHCHR, *Fact Sheet No. 38: Frequently Asked Questions on Human Rights and Climate Change*, p. 63 (explaining that common but differentiated responsibilities and respective capabilities is "central" to the climate regime and linking it to equity, the right to development and protection of those most affected).

[477] Inter-American Commission on Human Rights, *Climate Emergency: Scope of Inter-American Human Rights Obligations*, Resolution No. 3/2021 (2021), para. 15, https://www.oas.org/en/iachr/decisions/pdf/2021/resolucion_3-21_ENG.pdf.

[478] *Climate Emergency: Scope of Inter-American Human Rights Obligations*, Resolution No. 3/2021, para. 15.

[479] William Blackstone, *Commentaries On The Laws Of England* 23 (1768).

[480] Written Statement by the Center for International Environmental Law (CIEL): Memorandum on Legal Consequences for States of Internationally Wrongful Acts Causing Harm to the Climate System (Mar. 20, 2024), Part 1, https://www.ciel.org/wp-content/uploads/2024/02/Amicus-Brief-ICJ-Defining-States-Climate-Obligations-Reparations-Climate-Harm.pdf [hereinafter CIEL Written Statement on Legal Consequences].

[481] *ICJ Climate Change Advisory Opinion*, Section V; *IACtHR Advisory Opinion AO-32/25*, paras. 556-59. This broader shift towards accountability to address historical wrongs is further reinforced by the Africa-led recent United Nations General Assembly resolution which declares slavery and the slave trade as the gravest crime against humanity, explicitly affirms reparations as a pathway for remedying historical injustice and strengthens the broader normative basis for claims grounded in historical responsibility. See, U.N. General Assembly, Declaration of the Trafficking of Enslaved Africans and Racialized Chattel Enslavement of Africans as the Gravest Crime against Humanity, U.N. Doc. A/RES/80/250 (Mar. 25, 2026), https://digitallibrary.un.org/record/4106660?ln=en

158. **The subsequent paragraphs will examine the primary and distinct legal regimes applicable to addressing State and non-State remediation obligations in relation to climate change,** considering in particular, human rights law, the law of State responsibility, and the complementary regime governing international liability to redress injuries arising arising out of acts not prohibited by international law. There will also be arguments set forth to demonstrate that the international climate treaties and their mechanisms in no way constitute a bar to remedy and reparation under international law in the context of climate change.

I. Under human rights law, States have obligations to provide remedy and reparation to peoples and individuals for human rights violations due to the climate crisis.

159. **The right to remedy is guaranteed under human rights law at the international, regional and national levels**, and States have corresponding obligations to make reparation to individuals[482] and peoples,[483] whose rights have been violated. This right to remedy extends to present and future generations, with special attention to the needs of those most affected by climate change, applying domestically and extraterritorially.[484]

160. **The right to remedy under international law applies in the climate context**. The remedial obligations of States under human rights law apply in the context of human rights violations due to climate change.[485] Notably, the Committee on Economic, Social and Cultural Rights, in interpreting the International Covenant on Economic, Social and Cultural Rights in its General Comment 27, has clarified "States parties are obliged to …. provide reparation for the adverse impacts of climate change."[486] The IACtHR in its 2025 climate advisory opinion affirmed that the right to a healthy climate, as part of the broader right to a healthy environment,

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[482] *See, e.g.*, Universal Declaration of Human Rights, art. 8; ICCPR, art. 2; U.N. Office of the High Commissioner for Human Rights, *Guiding Principles on Business and Human Rights*, U.N. Doc. HR/PUB/11/04 (2011), principle 25 [hereinafter UNGP]. *See also* Human Rights Committee, *General Comment No. 31: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant: International Covenant on Civil and Political Rights*, U.N. Doc. CCPR/C/21/Rev.1/Add.13 (May 26, 2004), para. 16; *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*, G.A. Res. 60/147 (Dec. 15, 2005) [hereinafter *UN Basic Principles and Guidelines on the Right to a Remedy and Reparation*]; *Maastricht Principles on the Human Rights of Future Generations*, para. 30; Center for International Environmental Law (CIEL), *Remedy and Reparations for Climate Harm: the Human Rights Case* (Nov. 2024), p. 4 (explaining that "Under international human rights law, communities and individuals who have experienced or are experiencing human rights violations are entitled to access to effective remedies. This human right is recognized by a large number of human rights treaties and instruments, including but not limited to the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the American Convention on Human Rights, the European Convention on Human Rights, and the African Charter on Human and Peoples' Rights. Ensuring that individuals and Peoples whose rights have been violated obtain full reparation is fundamental to the obligation to provide remedy.") [hereinafter CIEL, *Remedy and Reparations for Climate Harm: the Human Rights Case*].

[483] United Nations Declaration on the Rights of Indigenous Peoples, G.A. Res. 61/295 (Sept. 13, 2007), art. 28 [hereinafter UNDRIP].

[484] *See, e.g.*, Maastricht Principles on the Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights (2013); *Maastricht Principles on the Human Rights of Future Generations*, Chapter VI.

[485] Many UN, regional, and national human rights institutions have further elaborated on the right to remedy in the context of climate harm in relation to their specific mandates and granted compensation and other forms of reparations in this context- *see, for example*, Center for International Environmental Law, "Remedy and Reparations for Climate Harm: The Human Rights Case" (November 2024), p. 5, https://www.ciel.org/wp-content/uploads/2024/11/Remedy-and-Reperations-for-Climate-Harm_CIEL_Report_2024.pdf.

[486] CESCR General Comment No. 27, para. 16; *see also* CESCR General Comment No. 27, para. 87.

collectively held by present and future generations and individually essential to the enjoyment of all human rights, triggers State responsibility for climate-related harm and requires integral reparation for both collective and individual violations.[487] In addition to international responsibility, the Court also made clear States' obligations to provide domestic remedies, ensuring access to justice.[488] In *SERAC & CESR v. Nigeria*, the African Commission on Human and Peoples' Rights authoritatively recognized that, when environmental harm — now understood to include climate-related harm — breaches Charter rights such as Article 24 (right to a "general satisfactory environment favourable to their development"), African States must provide effective remedies, including compensation and restorative measures, under the African Charter.[489] In *The African Commission on Human and Peoples' Rights v Kenya* (App. 006/2012), the Court required titling of ancestral lands, and substantial moral and material damages for environmental and cultural rights violations.[490]

161. **Human rights law, including in the climate context, provides for remedy and reparation of 'moral' or 'non-material impacts' of human rights violations, as well as material injury.** Moral injury, often called "non-economic loss and damage," which manifests pervasively across the African continent,[491] may include negative effects on human health and mobility and the loss of life, community networks, access to territories, Indigenous and local knowledge, societal, cultural, and spiritual identity and biodiversity. Redressing such harms cannot be achieved through financial compensation alone and requires measures tailored to the needs and perceptions of justice of those most affected.

162. **The right to remedy and corresponding State obligations, including in relation to climate harm, have both substantive and procedural dimensions.** The substantive dimension of the right to an effective remedy requires States to provide adequate redress, which can take, and may require, multiple forms, including: (i) restitution, (ii) compensation, (iii) rehabilitation,[492] (iv) measures of satisfaction, and (v) guarantees of non-repetition.[493] The procedural dimension of the right to remedy requires remedial mechanisms to be accessible to complainants and capable of providing suitable, effective, and prompt remedy,[494] access to information, and inclusive and meaningful public participation in all relevant planning and decision-making processes.[495] Mechanisms for monitoring implementation must also be

[487] *IACtHR Advisory Opinion AO-32/25*, paras. 302-03.
[488] *IACtHR Advisory Opinion AO-32/25*, paras. 556.
[489] *SERAC v. Nigeria*, para, 46, sec. Holding, point 3.
[490] *African Commission on Human and Peoples' Rights v Kenya* (Ogiek), African Court on Human and Peoples' Rights, App. 006/2012, Merits & Reparations (23 June, 2022).
[491] *See* IPCC, AR6, WGII, ch. 8; Ritu Bharadwaj & Tom Mitchell (IIED), *Living in the shadow of loss and damage: uncovering non-economic impacts* (Nov. 2023), https://www.iied.org/sites/default/files/pdfs/2023-11/21891iied.pdf; UNFCCC, *Non-Economic Losses: Featuring loss of territory and habitability, ecosystem services and biodiversity, and cultural heritage* (2024), https://unfccc.int/sites/default/files/resource/nels_paper_2024.pdf.
[492] Rehabilitation includes, for example, medical and psychological care as well as legal and social services. *UN Basic Principles and Guidelines on the Right to a Remedy and Reparation*, para. 21.
[493] *ICJ Climate Change Advisory Opinion*, para. 445; *IACtHR Advisory Opinion AO-32/25*, para. 556; *see also UN Basic Principles and Guidelines on the Right to a Remedy and Reparation*, paras. 18, 23.
[494] *UN Basic Principles and Guidelines on the Right to a Remedy and Reparation*, para. 2 (b)(c).
[495] CESCR General Comment No. 27, para. 13 ("Given the interdependent and indivisible nature of all human rights, States Parties must ensure the full enjoyment of procedural guarantees in environmental matters, including those concerning climate change mitigation, adaptation and reparation, access to information, inclusive and meaningful

established.[496] Notably, reparations must be "...intersectional, culturally relevant, and transformative; designed using the best available science; and incorporating affected communities as active subjects of law." [497]

163. **Human rights standards require States to ensure substantive equality, and to prevent and redress intersectional discrimination occurring in the context of the climate crisis, including in relation to reparatory measures.** Targeted attention and tailored redress are often vital to realizing the human rights of diverse right-holders who often experience intersecting forms of marginalization in the context of climate change impacts and consequent redress.[498] This includes, for instance, the adoption of temporary special measures to repair harm experienced by the most marginalized individuals and communities to ensure their access to what they need in a timely manner.[499] The IACtHR climate advisory opinion has acknowledged the differentiated impacts of climate change on women, girls, Indigenous Peoples, persons with disabilities, and other historically discriminated groups are exacerbated by structural conditions such as poverty, inequality, or gender-based violence,[500] and found that these impacts "are often invisible if gender and intersectionality approaches are not incorporated into reparation policies."[501] In the specific context of climate reparations, CEDAW has affirmed the need for an intersectional approach in light of women in all their diversity.[502] In, fact CEDAW has clarified that "intersectionality is a basic concept for understanding the scope of the general obligations of States parties..." [503] — an approach likewise taken by other UN treaty bodies.[504]

164. **To effectively address the climate crisis, corporate accountability is essential.** Among the original 90 Carbon Majors, only around six are headquartered in African states, together

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public participation in all relevant planning and decision-making processes, and access to justice and effective remedies.")

[496] *IACtHR Advisory Opinion AO-32/25*, para. 559.

[497] *Climate Justice and Human Rights: Legal Standards and Tools from the Inter-American Court's Advisory Opinion 32/25*, p. 92-97 (discussing the right to integral reparation); *See also IACtHR Advisory Opinion AO-32/25*, paras. 535, 558, 559.

[498] CIEL Written Statement on Legal Consequences, para. 152, footnote 374; CRC General Comment No. 26, para. 89 (stating that "remedial mechanisms should consider the specific vulnerabilities of children to the effects of environmental degradation, including the possible irreversibility and lifelong nature of the harm."); European Disability Forum, "Mapping Disability Inclusive Climate Action in Europe" (November 2024), https://www.edf-feph.org/content/uploads/2024/11/EDF-Report_-Mapping-Disability-Inclusive-Climate-Action-in-Europe.docx

[499] See, for example, UN CEDAW Committee, General Recommendation 37 on Gender-related dimensions of disaster risk education in the context of climate change, 2018 (CEDAW/C/GC/37), para 30.

[500] *IACtHR Advisory Opinion AO-32/25*, paras. 593-595, 614-618.

[501] *Climate Justice and Human Rights: Legal Standards and Tools from the Inter-American Court's Advisory Opinion 32/25*, p. 95.

[502] Committee on the Elimination of All Forms of Discrimination Against Women (CEDAW), *General recommendation no. 37 (2018) on the gender-related dimensions of disaster risk reduction in the context of climate change*, U.N. Doc. CEDAW/C/GC/37 (Mar. 13, 2018), para. 37 [hereinafter CEDAW General Recommendation 37].

[503] Committee on the Elimination of All Forms of Discrimination Against Women (CEDAW), *General recommendation No. 28 on the core obligations of States parties under article 2 of the Convention on the Elimination of All Forms of Discrimination against Women*, U.N. Doc. CEDAW/C/GC/28 (Dec. 16, 2010), para. 18 [hereinafter CEDAW General Recommendation No. 28].

[504] *See, for example,* Committee on the Elimination of Racial Discrimination, *General recommendation No. 32 on the meaning and scope of special measures in the International Convention on the Elimination of All Forms Racial Discrimination*, U.N. Doc. CERD/C/GC/32 (Sept. 24, 2009), para. 7; Committee on the Rights of Persons with Disabilities, *General Comment 3 on women and girls with disabilities*, U.N. Doc. CRPD/C/GC/3 (2016), paras. 4, 16.

accounting for roughly 2% of cumulative Carbon Majors emissions.[505] While the harms of fossil fuel use manifest on the African continent, responsibility for the bulk of historical emissions from climate destructive corporate conduct, and thus for related climate harms, lies with corporations headquartered outside Africa. A number of corporations continued such conduct despite long-standing knowledge of the climate impacts of their activities,[506] while major emitting States, often the home States of those corporations, also possessed or ought to have possessed such knowledge.[507] International law, including human rights law is clear: States must adequately regulate corporations under their jurisdiction, domestically and extraterritorially, including by ensuring they prevent and remedy climate harm.[508] This is in line with the polluter pays principle, which dictates that States must ensure corporate climate polluters pay their share of prevention and remediation costs.

165. **The polluter pays principle, in its canonical form in Principle 16 of the Rio Declaration, states that polluters should "internalize" the costs of their pollution to the environment and society.[509]** The IACtHR has affirmed that States must impose differentiated obligations on the most polluting companies, including "putting into practice the polluter pays principle".[510] This approach reflects the logic of the polluter pays principle, under which those most responsible for environmental harm should bear a greater share of the burden of remediation. Such obligations may require "tax burden, contributions to just transition plans and strategies, investment in education, and measures of adaptation or to measures to address loss and damage."[511] Importantly, these measures should not only be "focused on current or future actions (e.g., a tax on current and future production of fossil fuels) but should also be based on historical emissions. For example, measures could include States cooperating to establish international

[505] Richard Heede, *Carbon Majors: Accounting for Carbon & Methane Emissions, 1854–2010*, Climate Accountability Institute (2014), pp. 14–20 (dataset assigning cumulative industrial CO_2 and CH_4 emissions to ninety "Carbon Majors," with African-headquartered entities—Sonatrach, Libya NOC, NNPC, EGPC, Sonangol, and Sasol—collectively accounting for approximately 2.1% of cumulative emissions).

[506] Center for International Environmental Law, "Smoke and Fumes: The Legal and Evidentiary Basis for Holding Big Oil Accountable for the Climate Crisis" (2017), https://www.ciel.org/wp-content/uploads/2019/01/Smoke-Fumes.pdf (hereinafer CIEL, Smokes and Fumes)

[507] CIEL Written Statement on Legal Consequences, para. 88.

[508] CESCR General Comment No. 27, para. 12 ("While businesses can contribute to human rights and sustainable development, certain activities – such as fossil fuel extraction and use, large-scale mining, deforestation, and other practices leading to resource depletion and pollution – can significantly undermine the enjoyment of Covenant rights. States parties must adopt legislative, administrative, educational and other appropriate measures to ensure effective protection against business-related violations of Covenant rights, including by establishing regulatory frameworks to oversee and monitor business activities. Effective mechanisms must also be in place to ensure accountability and provide redress to victims of business-related human rights abuse.In addition, States parties should have a legal framework to require business entities to exercise human rights and environmental due diligence to identify, monitor, prevent, mitigate, and remedy adverse environmental impacts on Covenant rights arising from their decisions, operations and value chains.").

[509] Rio Declaration, Principle 16. On polluter pays, *see also* OECD, *Recommendation of the Council on Guiding Principles concerning International Economic Aspects of Environmental Policies* (2025) https://legalinstruments.oecd.org/public/doc/4/4.en.pdf; OECD, *The Polluter Pays Principle: Definition, Analysis, Implementation* (1975), https://www.oecd.org/content/dam/oecd/en/publications/reports/1975/01/the-polluter-pays-principle_g1gh8f8f/9789264044845-en.pdf; Alan Boyle, *Polluter Pays*, Oxford Public International Law, https://opil.ouplaw.com/display/10.1093/law:epil/9780199231690/law-9780199231690-e1602.

[510] *IACtHR Advisory Opinion AO-32/25*, para. 350.

[511] *IACtHR Advisory Opinion AO-32/25*, para. 350.

financing mechanisms, such as a fossil fuel levy or a global climate pollution tax, which can secure contributions from polluters to repair climate-related human rights violations."[512] Reduction of harm is a core element of the polluter pays principle; the principle in no way should be interpreted as a license to pay to continue polluting.[513]

166. **Corporations also have stand-alone legal duties to remediate climate harm for which they are responsible.** The IACtHR affirmed in its climate advisory opinion that corporate responsibility in the area of human rights is applicable.[514] The stand-alone duties of corporations have also been confirmed by the Commission of Human Rights of the Philippines in its landmark final report on the Philippines National Inquiry on Climate Change, in which they focused on the climate responsibilities of Carbon Major companies.[515]

167. These duties are not limited to corporations that directly contribute to GHG emissions. **Business enterprises that facilitate and finance GHG-intensive business activities, such as banks and insurance companies, also have individual responsibilities to respect and redress human rights** under the UN Guiding Principles on Business and Human Rights (UNGPs).[516] According to the UN Working Group on Business and Human Rights, to fulfill their human rights responsibilities in the context of climate change, corporations should "provide for effective access to remedies for rightsholders in relation to all climate change related impacts on human rights and the environment" and should ensure that these remedies "are responsive to multiple vulnerabilities, intersectional discriminations and marginalization experienced by individuals and communities such as children, women, Indigenous Peoples, and persons with disabilities."[517]

II. Under the law of State responsibility, breaches of international obligations can trigger legal obligations of States to remedy and repair climate harm.

168. **Redress, including for climate harm, is rooted in the law of State responsibility**. The law of State responsibility, like human rights law, is foundational to the international legal order. The International Law Commission's Articles on Responsibility of States for Internationally Wrongful Acts[518] (hereinafter, ILC Articles on State Responsibility) are widely accepted as a codification of customary international law, and the principles laid out therein are well established

[512] CIEL, *Remedy and Reparations for Climate Harm: the Human Rights Case*, p. 11.
[513] Read together, the polluter-pays principle and the right to an effective remedy should encompass the duty of cessation, requiring that polluters, and the States responsible for regulating them, halt the harmful conduct as an essential component of reparation and the guarantee of non-repetition. Rio Declaration, principle 16 ("the polluter should, in principle, bear the cost of pollution," including prevention and control).
[514] *IACtHR Advisory Opinion AO-32/25*, paras. 346, 350.
[515] Commission on Human Rights of the Philippines, *National Inquiry on Climate Change: Report* (2022), https://www.ciel.org/wp-content/uploads/2023/02/CHRP-NICC-Report-2022.pdf.
[516] John G. Ruggie, "Comments on Thun Group of Banks Discussion Paper on the Implications of UN Guiding Principles 13 & 17 in a Corporate and Investment Banking Context" (21 February 2017), https://media.business-humanrights.org/media/documents/files/documents/Thun_Final.pdf; UNGP, principle 22.
[517] United Nations Working Group on the issue of human rights and transnational corporations and other business enterprises, "Information Note on Climate Change and the Guiding Principles on Business and Human Rights" (June 2023), paras 23 and 24 (c), https://media.business-humanrights.org/media/documents/Information-Note-Climate-Change-and-UNGPs.pdf
[518] International Law Commission, *Articles on Responsibility of States for Internationally Wrongful Acts*, *with commentaries*, U.N. Doc A/56/10 (2001) [hereinafter ILC, *Articles on State Responsibility, with commentaries*].

and routinely utilized in jurisdictions worldwide.[519] Notably, this Court has relied explicitly on the ILC Draft Articles on State Responsibility in granting reparations.[520] It has now been clarified by multiple international tribunals that the responsibility of States for climate harm is to be determined by applying the well-established rules on State responsibility under customary international law." [521]

169. **Duties in relation to climate reparations are shaped by the interplay between the law of State responsibility and human rights**. The law of State responsibility and human rights law are deeply intertwined as complementary and mutually reinforcing sources of law in relation to remediation obligations in relation to the climate crisis. The relevance of the law of State responsibility to human rights obligations has been widely acknowledged by international human rights bodies and relied upon for the interpretation of human rights treaties. As clarified across recent advisory opinions, namely the IACtHR and the ICJ, climate impacts that impair the enjoyment of protected human rights engage States' obligations under human rights treaties and simultaneously trigger the general law of State responsibility, including duties of prevention, cooperation, cessation, and reparation. The general law of State responsibility can thus be understood as "providing a structure through which redress for human rights violations can be obtained by States on behalf of the victims of the violation, or directly by victims themselves."[522]

170. Furthermore, **an act or omission of a State that can be attributed to it which breaches its international obligations under human rights law carries consequences both under the law of State responsibility and also directly under the law of human rights.** As stated in the ILC Articles on State Responsibility, the responsibility of a State for the breach of an international obligation that is owed to a non-State entity (person or persons) may give rise to recourse by those injured parties outside of the law of State responsibility (without a State intervening): "This is true, for example, under human rights treaties which provide a right of petition to a court or some other body for individuals affected."[523] Effective remedy under human rights law is not supplanted by the the reparatory duties of a State under the law of State responsibility. The law

[519] Many ICJ cases cite to the ILC Articles on State Responsibility as authoritative sources, without discussion of their status in international law. Other cases note that specific provisions in the Articles reflect customary international law (CIL). *See, e.g.*, *Certain Iranian Assets (Iran v. U.S.),* Judgment, 2023 I.C.J. No. 164 (Mar. 30), para. 226 (stating that Article 30 reflects CIL); *Armed Activities on the Territory of the Congo (Dem. Rep. Congo v. Uganda)*, Reparations, Judgment, 2022 I.C.J. 13 (Feb. 9), para. 70 (stating that Article 31 reflects CIL); *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia)*, Judgement, 2015 I.C.J. No. 118, (Feb. 3), para. 128 (stating that Article 3 reflects CIL); *Case Concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia & Herzegovina v. Serbia & Montenegro)*, Judgment, 2007 I.C.J. 43 (Feb. 26), paras. 385, 398, 401, 407 (describing the ILC Articles on State Responsibility as reflecting customary international law (CIL)); *see also* ILC, *Articles on State Responsibility, with commentaries*, Part II, General Principles, cmt. para. 1 ("[T]he rules and institutions of State responsibility are significant for the maintenance of respect for international law and for the achievement of the goals which States advance through law-making at the international level.").

[520] See, for example, Beneficiaries of late Norbert Zongo & Others v Burkina Faso Reparations Judgment (Application No. 013/2011- 5 June 2015), paras 20, 21 and 34.

[521] *See, ICJ Climate Change Advisory Opinion*, para. 420; *IACtHR Advisory Opinion AO-32/25,* paras. 302-303; *ITLOS Climate Change Advisory Opinion*, para. 223.

[522] Margaretha Wewerinke-Singh, "State Responsibility for Human Rights Violations Associated with Climate Change," in Sébastien Duyck, Sébastien Jodoin, and Alyssa Johl (eds), *Routledge Handbook of Human Rights and Climate Governance* (Routledge 2018), p. 76.

[523] ILC, Articles on State Responsibility, with commentaries, art. 33, cmt. para. 4.

of State responsibility does not displace the accrual of rights to a non-State actor arising from a State's breach of international obligations.[524]

171. **When States engage in attributable climate destructive conduct in breach of international obligations, including human rights obligations, this may trigger the entire panoply of legal consequences provided for under the law of State responsibility** (which parallel those under human rights law): cessation of harmful conduct, assurances of non-repetition, and the provision of full reparation. The duty of performance also applies in this context, namely the responsible State must continue fulfilling its obligations despite the breach.[525] Given that the obligation to halt irreversible harm under the right to a healthy environment has been characterized as a *jus cogens* norm[526] while climate obligations overall have been characterized as having *erga omnes* nature,[527] this "triggers the application of the regime of aggravated responsibility."[528] Redress in the context of aggravated responsibility includes cooperation among States to bring the breach to an end, and also includes States not recognizing as lawful a situation created by a serious breach nor rendering aid or assistance in maintaining that situation.[529] In the climate context, such understanding has implications for State duties to refrain from financing or authorizing continued fossil fuel activities or from enabling and assisting with speculative technologies and other climate interventions that serve to entrench fossil fuel reliance, or that delay or divert efforts to curb fossil fuel production and use.

172. **With regard to seeking climate recourse under the law of State responsibility, international law is clear: there is no prima facie technical or scientific bar.**[530] Attribution is straightforward: a State is responsible for its organs' conduct and for that of private actors if it fails to exercise due diligence in regulating them. Although GHG emissions are cumulative, each State's contribution can be scientifically determined, allowing multiple injured States to invoke responsibility.[531]

III. The regime of international liability can apply to redress injuries arising out of acts not prohibited by international law.

173. While human rights law and the law of State responsibility serve as the core complementary frameworks guiding remedy and reparation in relation to climate change, **States may be liable in certain circumstances for climate-related injuries arising out of acts not prohibited by international law.** The legal regime governing such liability is codified by the ILC's *Draft Articles on the Prevention of Transboundary Harm from Hazardous Activities* (2001) and the *Draft Principles on the Allocation of Loss in the Case of Transboundary Harm Arising Out of Hazardous Activities* (2006). The corresponding commentaries to these Draft Articles note that the ILC explicitly considers these codified rules to accord with the polluter-pays principle.[532]

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[524] ILC, Articles on State Responsibility, with commentaries, art. 33(2).
[525] *ICJ Climate Change Advisory Opinion*, para. 446.
[526] *IACtHR Advisory Opinion AO-32/25*, sect. B.1.3
[527] *ICJ Climate Change Advisory Opinion*, para. 440.
[528] OACPS written statement, para. 191.
[529] ILC, Articles on State Responsibility, with commentaries, art. 41.
[530] *ICJ Climate Change Advisory Opinion*, paras. 429-433, 435-438.
[531] *ICJ Climate Change Advisory Opinion*, paras. 429-430.
[532] Attila Tanzi, *Liability for Lawful Acts*, Oxford Public International Law (Jan. 2021), https://opil.ouplaw.com/display/10.1093/law:epil/9780199231690/law-9780199231690-

The regime provides that an act or omission of a State that causes injury, even though the act or omission is not contrary to international law, can still incur liability. For instance, a State engaging in a hazardous activity that is not prohibited, but causes injury, may be held liable for any damage resulting from that activity. In such instances, the State or States affected may demand damages or the cessation of the harmful activity (or omission) without establishing that the conduct was prohibited.[533]

174. **With respect to the applicability of the law of international liability to climate change,** Judge Yusuf has outlined in his separate opinion to the ICJ climate advisory opinion, **the imposition of liability for permitted (or at least not prohibited) conduct is "necessary and important" because of the urgency and scale of climate change.** To address the climate crisis, Judge Yousef suggested that the entire spectrum of relevant applicable law should be "fully involved" and considered, in order to craft meaningful legal solutions. This is particularly "necessary and important" for States and peoples that are most affected by the climate crisis.[534] Judge Yusuf, quoting Professor Sompong Sucharitkul, observed that: "*The bottom line for international liability is that a State is liable for the harmful effects of activities under its control or within its jurisdiction . . . The law of international liability, which disregards wrongfulness, also opens the way for international law to evolve and develop its proscriptive rules.*"[535] For example, where the harmful consequences of climate change stem from activities now understood to be hazardous, such as the large-scale combustion of fossil fuels, and some of that activity predated the existence of a preventive duty or its prohibition, the regime suggests that liability may nonetheless attach for States that exercised control over, or derived benefit from, such harmful conduct (or omission).

IV. International climate agreements and mechanisms thereunder present no bar to and do not constitute substitution for reparation of climate-related injury.

175. While the international climate treaties, including **the UNFCCC and the Paris Agreement,** do not provide for liability and compensation for climate harm, **these treaties do not define or limit remedy and reparations in the context of climate change.** States have concurrent remediation obligations under international law, including under the law of State responsibility and human rights law.

176. **The ICJ climate advisory opinion has affirmed that the international climate agreements and the mechanisms thereunder do not exclude other rules of international law, including the law of State responsibility,**[536] concluding that "responsibility …in relation to the loss and damage associated with the adverse effects of climate change, is to be determined by

e1065?d=%2F10.1093%2Flaw%3Aepil%2F9780199231690%2Flaw-9780199231690-e1065&p=emailAeqnr1b1AIXhA&print.

[533] International Law Commission (ILC), *Draft Articles on Prevention of Transboundary Harm from Hazardous Activities*, *with commentaries,* U.N. Doc A/56/10 (2001), art. 1, cmt. paras. 1-2, 4 [hereinafter ILC, *Draft Articles on Prevention of Transboundary Harm*].

[534] *ICJ Climate Change Advisory Opinion*, Separate Opinion of Judge Yusuf, paras. 43, 46-48 (stating in para. 43 "Indeed, the development of a distinct régime of international liability was driven by the recognition that the consequences of environmental harm may not be adequately addressed through the framework of State responsibility for internationally wrongful acts.").

[535] *ICJ Climate Change Advisory Opinion*, Separate Opinion of Judge Yusuf, para. 48.

[536] *ICJ Climate Change Advisory Opinion*, paras. 171, 415-19.

applying the well-established rules on State responsibility under customary international law."[537] The IACtHR AO also clarifies that the Loss and Damage Fund does not seek to ensure full reparation for loss and damage attributable to State conduct, and therefore does not substitute international obligations, including under human rights law, to provide reparation.[538]

D. Measures that States must take to satisfy their remediation obligations encompass access to justice, monetary and non-monetary relief, and structural solutions.

177. **To meet their obligations in relation to remedy and reparation, whether to other States, or to peoples and individuals, States must undertake certain measures in line with equity considerations.**[539] The following section briefly outlines some of those required measures. The list is not exhaustive by any means but merely illustrates certain types of measures necessary and capable of satisfying States' remediation obligations in the face of a climate emergency.

I. States should take appropriate measures to ensure access to justice in relation to remedy and reparations.

178. **Access to justice is an essential element of redress.** Procedural measures to ensure access to justice for peoples and individuals must be designed to remove the procedural, evidentiary, regulatory, social, or economic barriers that prevent or hinder access to justice, and adopt an intersectional approach.[540] This dimension of reparatory obligations applies to all States, and is

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[537] *ICJ Climate Change Advisory Opinion*, para. 420.

[538] *IACtHR Advisory Opinion AO-32/25*, paras. 198-203.

[539] In its broadest and most general signification, equity denotes "the spirit and the habit of fairness, justness, and right dealing which would regulate the intercourse of men with men." Equity, *Black's Law Dictionary*, https://thelawdictionary.org/equity/. In human rights law, equity is understood as rooted in principles such as realization of rights consistent with maximum available resources while in international environmental law, the concept is expressed in the principle of common but differentiated responsibilities and respective capacities.

[540] States must ensure substantive equality in the provision of reparations, as well as prevent and redress intersectional discrimination, both in terms of shaping the modalities of remediation and in relation to delivery. (On State obligations in relation substantive equality, UN CESCR has clarified that "[e]liminating discrimination in practice requires paying sufficient attention to groups of individuals which suffer historical or persistent prejudice instead of merely comparing the formal treatment of individuals in similar situations." [Comm. on Econ., Soc. and Cultural Rights, *General Comment No. 20- Non-Discrimination in Economic, Social and Cultural Rights*, U.N. Doc. E/C.12/GC/20 (July 2, 2009), para 8 (b), https://www.refworld.org/legal/general/cescr/2009/68520] International bodies have unequivocally clarified how climate change disproportionately impacts the marginalized. Right-holders experiencing intersecting forms of marginalization merit targeted attention and tailored remediation responses. The CEDAW Committee, for example, has recognized that "intersectionality is a basic concept for understanding the scope of the general obligations of States parties..." [Comm. on the Elimination of Discrimination against Women, *General Comment No. 28 on the Core Obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination Against Women*, U.N. Doc. CEDAW/C/GC/28 (2010), para 18, https://www.refworld.org/legal/general/cedaw/2010/77255] while the UN Committee on the Rights of Children has emphasized that, "[R]emedial mechanisms should consider the specific vulnerabilities of children to the effects of environmental degradation, including the possible irreversibility and lifelong nature of the harm." [Comm. on the Rights of the Child, *General Comment No. 26 (2023) on Children's Rights and the Environment with a Special Focus on Climate Change*, U.N. Doc. CRC/C/GC/26 (Aug. 22, 2023), para 89, https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2FC%2FGC%2F26&Lang=en])

one to which African States must give particular attention, within their maximum available resources.

179. **Flexibilization of evidentiary standards, in Africa and beyond, is critical to advance climate justice.** With respect to evidentiary standards, international law has been interpreted to require a 'sufficiently direct and certain causal link'[541] between the wrongful act and the injury in order to secure reparations, including in relation to climate harm. Recent advances in climate source and event attribution science increasingly allow researchers to pinpoint the role of climate change in extreme events[542] and slow-onset events. Critically, despite these important advancements, the burden of providing such causal evidence or its potential absence, should not be a barrier to justice for victims of harm, particularly for those in the most marginalized situations.[543] Significantly therefore the IACtHR climate advisory opinion has found that given the complexity of climate harm "direct proof of a causal link between GHG emissions and climate system degradation is not required; such a link may be presumed, facilitating the establishment of State responsibilities and advancing reparatory measures where appropriate."[544] The Court further clarified that legal provisions concerning "the admissibility, reliability and assessment of evidence should be interpreted flexibly to avoid them becoming unjustified procedural barriers for victims; particularly for those in a special situation of vulnerability in the context of the climate emergency. This calls for a detailed assessment of the possible asymmetries between the parties and the adoption of appropriate measures — such as the reversal of the burden of proof — that allow effective access to justice to be guaranteed."[545] This procedural flexibilization is in line with how the ICJ has relaxed the standard of causation in certain contentious cases such as in the Certain Activities and Armed Activities case in relation to the repair of environmental damage.[546] This Courts' reparations judgments in *African Commission v. Kenya* (*Ogiek*)[547] provides particularly relevant guidance in not requiring precise quantification of all harm suffered, but rather relying on an equitable assessment to grant reparations, in consultation with the affected community, and ordering measures to ensure implementation.

180. **With respect to standing, "regardless of the form of legal standing applied, States must facilitate access to justice for individuals and groups affected by climate change and insufficient state action**."[548] On collective standing in relation to climate remedy and reparations and intergenerational justice, the Committee on Economic, Social and Cultural Rights has underlined in its General Comment 27 that "States should also enable collective legal standing and access to justice, where appropriate, including those who act in the interests of future

[541] *ICJ Climate Change Advisory Opinion*, para. 436.
[542] IPCC, AR6, Synthesis Report: Summary for Policymakers, para. A.2.1.
[543] CIEL, *Remedy and Reparations for Climate Harm: the Human Rights Case*, p. 6.
[544] *Climate Justice and Human Rights: Legal Standards and Tools from the Inter-American Court's Advisory Opinion 32/25*, p. 14.
[545] *Climate Justice and Human Rights: Legal Standards and Tools from the Inter-American Court's Advisory Opinion 32/25*, p. 9.
[546] Certain Activities Carried Out by Nicaragua in the Border Area (*Costa Rica v. Nicar.*), Compensation, Judgment, 2018 I.C.J. 15 (Feb. 2), pp. 26-27, para. 35; *See also,* Oral Statement of Sierra Leone (Dec 5, 2024), ICJ, Obligations of States in respect of Climate Change, p. 30, para 35, https://www.icj-cij.org/sites/default/files/case-related/187/187-20241205-ora-01-00-bi.pdf; Oral Statement of Zambia (Dec 12, 2024), ICJ, Obligations of States in respect of Climate Change, p. 38, para 11, https://www.icj-cij.org/sites/default/files/case-related/187/187-20241212-ora-02-00-bi.pdf
[547] *African Commission on Human and Peoples' Rights v. Kenya (Ogiek)*, Reparations Judgment (2022).
[548] *IACtHR Advisory Opinion AO-32/25*, para. 550.

generations — such as youth representatives, guardians *ad litem,* or public interest organizations."[549]

181. Importantly, as affirmed by the Inter-American Court of Human Rights, **access to justice entails measures be differentiated, participatory, and transformative,** and based on the best available science and knowledge; guaranteeing the effective participation of affected individuals and communities,[550] and establishing mechanisms for monitoring implementation.[551]

II. States should take appropriate measures to provide full reparation.

182. The measures required for States to meet the obligation to provide full reparation is guided by well-established legal standards, and will be dependent on specific facts and appropriate to the injury suffered. As laid out previously, **reparations consist of: (i) restitution, (ii) compensation, (iii) rehabilitation,[552] (iv) measures of satisfaction, and (v) guarantees of non-repetition.** There can be measures that cut across categories and are structural in nature.

183. **As restitution most closely adheres to the general principle that the responsible State is bound to wipe out the legal and material consequences of its wrongful act by re-establishing the situation that would exist if that act had not been committed, it comes first among the forms of reparation.**[553] In terms of restitution, in the context of environmental harm, it may "prove difficult or unfeasible"[554] to restore victims to their original situation, such as through return to their place of residence or return of their property.[555] In certain contexts, restitution, at least to the extent feasible, could mean either restoring the actual situation where possible, for example, rebuilding destroyed infrastructure in case of a natural disaster or as affirmed by the recent climate advisory opinions, restoring ecosystems and biodiversity.[556] Restitution can also mean assisting victims in achieving a situation that is similar to the previous one, for example, planned relocation in the context of slow onset events that render an area inhabitable;[557] in the case of an "inundation of an island, … building an artificial island may repair at least some of the harm"[558] or restoring key environmental functions on which victims depend. Examples include guarantees of water protection and access to water and food, as ordered by the

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[549] CESCR General Comment No. 27, para 87.
[550] Margaretha Wewerinke-Singh, *State Responsibility for Human Rights Violations Associated with Climate Change* (2019), p. 83.
[551] *Climate Justice and Human Rights: Legal Standards and Tools from the Inter-American Court's Advisory Opinion 32/25*, p. 94.
[552] Rehabilitation includes, for example, medical and psychological care as well as legal and social services. *UN Basic Principles and Guidelines on the Right to a Remedy and Reparation*, para. 21.
[553] ILC, *Articles on State Responsibility, with commentaries*, art. 35.
[554] *ICJ Climate Change Advisory Opinion*, para 451.
[555] *See* Frank Haldemann, Thomas Unger & Valentina Cadelo, eds., *The United Nations Principles to Combat Impunity: A Commentary*, First edition, Oxford Commentaries on International Law (Oxford: Oxford University Press, 2018), principle 34 [hereinafter UN Principles to Combat Impunity: A Commentary].
[556] *IACtHR Advisory Opinion AO-32/25*, para. 558; *ICJ Climate Change Advisory Opinion*, para. 451.
[557] ILC, *Articles on State Responsibility, with commentaries*, art. 35; *see also* Center for International Environmental Law & Amnesty International, *Human Rights as a Compass for Operationalizing the Loss and Damage Fund: A Submission* (Feb. 2023), p. 6.
[558] Margaretha Wewerinke-Singh, *Remedies for Human Rights Violations Caused by Climate Change*, p. 240; *see also* John Vidal, "Artificial Island Could Be Solution for Rising Pacific Sea Levels," *The Guardian* (Sept. 8, 2011), https://www.theguardian.com/environment/blog/2011/sep/08/artificial-island-pacific-sea-levels.

IACtHR in its landmark *Lhaka Honhat Association v. Argentina* decision,[559] or collective land title, as awarded by the Court in the *Ogiek* decision. Preservation and continuation of sovereignty, statehood, territory, and maritime zones of SIDS and coastal States, who may lose their territory due to sea-level rise, can also constitute restitution.[560]

184. **One of the ways in which restitution can be viewed in the context of climate reparations is through the lens of unjust enrichment**, and States as well as individuals and communities may potentially be able to frame reparations claims or programs on the basis of this principle.[561] For instance, one of the forms of restitution that may be owed by States that have contributed the most to the climate crisis and have benefited enormously financially from the activities that have caused cumulative emissions — including through the profits of fossil fuel corporations and deforestation-driving agroindustrial enterprises headquartered in their countries — could be disgorgement of ill-gotten gains.

185. **When full *restitution* is not achievable given irreversible climate-induced damage, States must ensure *compensation* is accessible as a critical component of effective remedy.** Compensation, or monetary reparation, is the applicable means of reparation insofar as such damage is not made good by restitution.[562] Irreversible loss, and damage that cannot be repaired, are frequently a reality in climate change.[563] Providing compensation for both pecuniary harm[564]

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[559] *Case of the Indigenous Communities of the Lhaka Honhat (Our Land) Association v. Argentina*, Inter-American Court of Human Rights, Judgment, Merits, reparations and costs, (Feb. 6, 2020), paras. 332-333; *see also* Gino J. Naldi, "Reparations in the Practice of the African Commission on Human and Peoples' Rights," 14 Leiden Journal of International Law 682 (2001), p. 685.

[560] As argued by multiple States in the ICJ climate advisory oral proceedings. *See, for example,* Oral Statement of Jamaica (Dec 6, 2024), ICJ, Obligations of States in respect of Climate Change, p. 17, para 10, https://www.icj-cij.org/sites/default/files/case-related/187/187-20241206-ora-01-00-bi.pdf; Oral Statement of Sri Lanka (Dec 11, 2024), ICJ, Obligations of States in respect of Climate Change, p. 47, para 4, https://www.icj-cij.org/sites/default/files/case-related/187/187-20241211-ora-02-00-bi.pdf;

[561] There are nations and corporations which have gained enormously from acts and omissions worsening the climate crisis, *see* Noah S. Diffenbaugh & Marshall Burke, *Global warming has increased global economic inequality*, PNAS 116 (May 14, 2019), https://www.pnas.org/doi/10.1073/pnas.1816020116. While poorer countries with often negligible contributions to the climate crisis, have suffered disproportionately from the impacts. The gains continue to "accrue in the present," and the numbers are staggering. The oil and gas industry has delivered $2.8bn (£2.3bn) a day in pure profit for the last 50 years. Damian Carrington, "Revealed: oil sector's 'staggering' $3bn-a-day profits for last 50 years," *The Guardian* (July 21, 2022), https://www.theguardian.com/environment/2022/jul/21/revealed-oil-sectors-staggering-profits-last-50-years. Meanwhile climate change impacts have wiped out one-fifth of the wealth of the most climate vulnerable economies in the world in the last 2 decades. V20, *Climate Vulnerable Economic Loss Report: 2000-2019*, p. 3 (2022), https://www.v-20.org/wp-content/uploads/2022/06/Climate-Vulnerable-Economies-Loss-Report_June-14_compressed-1.pdf. While precise correlations are not always possible, it can be said that the structural drivers of the climate crisis, for example fossil fuel production and use, has unjustly enriched certain wealthy nations. Restitutionary remedy, "often termed "disgorgement of profit," is designed to strip a wrongdoer of ill-gotten gains. Unjust enrichment can be based on enrichment being obtained through wrongdoing, but may also apply when there is not wrong-doing. In fact at the national level, always relevant to consider in interpreting international law, this principle of unjust enrichment has formed the foundational basis for multiple climate cases. *See generally Sam Doyle and David Wright, 'Restitutionary Damages: The Unnecessary Remedy?' (2001) 25(1) Melbourne University Law Review https://www.austlii.edu.au/au/journals/MelbULawRw/2001/1.html*; Maytal Gilboa et al, "Climate Change as Unjust Enrichment," Georgetown Law Journal (forthcoming) (July 12, 2023), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4502750.

[562] ILC, *Draft Articles on State Responsibility, with commentaries*, art. 36.

[563] *See* IPCC, AR6, WGII, Summary for Policymakers, paras. SPM.B.1, SPM.B.1.2.

[564] ILC, *Draft Articles on State Responsibility, with commentaries*, art. 36 cmt. paras. 3-5.

(such as damages to goods and trade, including homes destroyed or damaged as a result of an extreme weather or the capacity to earn a living) and non-pecuniary harm[565] (including physical and psychological injuries, as well as moral damage such as individual pain or suffering) can be a critical component of remedy, as has been affirmed by courts over the last decades. For instance, in the *Corfu Channel* case, the responsible State compensated individuals from the injured State for non-pecuniary harm,[566] while in the *Ogiek* case, the Court awarded compensation for material and moral (or non-pecuniary) harm.[567]

186. While human rights law and the law of state responsibility envisage reparations following wrongful conduct, **in certain cases compensation can be awarded even in situations precluding wrongfulness,** as recognized in the *Gabcikovo-Nagymaros* case.[568] In fact, the ILC Draft Principles on the Allocation of Loss in the Case of Transboundary Harm Arising out of Hazardous Activities (2006) considers that even if the relevant State is considered to have fully complied with its prevention duties, acts and omissions may occur and have transboundary consequences that cause harm and serious loss to other States and their nationals; in such cases, there remains an entitlement to prompt and adequate compensation.[569]

187. **Compensation should not just draw on public resources.** In light of the general obligation of States to protect human rights and the "polluter pays principle," **States should adopt measures that seek to ensure those actors responsible for significant GHG emissions, such as fossil fuel or agroindustrial businesses,** cover costs of emissions reduction, adaptation costs, and remediation of climate change-related violations.

188. **States must also, as relevant, ensure non-compensatory forms of reparation, including *measures of satisfaction*, as well as functional, psychological, social, and vocational *rehabilitation*** which could involve holistic medical care, including "opportune, accessible, acceptable, quality, and culturally adapted medical care, which respects the autonomy of the individual, for diseases linked to or exacerbated by climate change",[570] as well as legal and social services. Satisfaction entails a broad category of reparations, applied in cases which cannot be redressed through restitution and compensation, often aiming to emphasize the wrongful nature of the harm, publicly and symbolically acknowledge suffering, and respect the dignity of those who have been harmed. The ICJ climate advisory opinion has affirmed that satisfaction could "take the form of expressions of regret, formal apologies, public acknowledgments or statements,

[565] ILC, *Draft Articles on State Responsibility, with commentaries*, art. 36, cmt. paras. 18-19; *see also* Douglass Cassel, "The Expanding Scope and Impact of Reparations Awarded by the Inter-American Court of Human Rights," in *Out of the Ashes: Reparations for Gross Violations of Human Rights*, M. Bossuyt et al. eds. (Intersentia, 2006).
[566] France-New Zealand Arbitration Tribunal, *Rainbow Warrior (N.Z. v. Fra.)*, 82 I.L.R. 500 (1990), paras.122-127.
[567] *African Commission on Human and Peoples' Rights v. Kenya,* p. 28; *see also LIDHO & Others v. Republic of Côte d'Ivoire*, p. 54.
[568] *Gabčíkovo-Nagymaros Project*, para. 151. *See also* ILC, *Draft Articles on State Responsibility, with commentaries*, ch. V.
[569] ILC, *Draft Principles on the Allocation of Loss in the Case of Transboundary Harm Arising Out of Hazardous Activities, with commentaries* (2006), General Commentary, paras. 2, 3 and 6, p. 59- 60, https://legal.un.org/ilc/texts/instruments/english/commentaries/9_10_2006.pdf (notably, this text is without prejudice to the relevant ILC rules of State responsibility).
[570] *IACtHR Advisory Opinion AO-32/25*, para. 558.

or education of the society about climate change."[571] For those who experience trauma from climate-induced losses of their cultural heritage and traditions,[572] measures of satisfaction, which aim to recognize wrong, acknowledge suffering, and respect the dignity of victims,[573] can partly restore what cannot be compensated by money.[574] Such measures can include the "disclosure of the truth and punishment of wrongdoers serve to address the structural causes of climate change and resulting human rights violations."[575]

189. **On cessation of wrongful conduct, States have a duty to take measures to stop the wrongful conduct.** The ICJ clarified this "may require a State to revoke all administrative, legislative and other measures that constitute an internationally wrongful act"[576] and "may also require States to employ all means at their disposal to reduce their GHG emissions and take other measures in a manner, and to the extent, that ensures compliance with their obligations."[577]

190. **Halting emissions requires curbing the primary drivers of climate change — fossil fuel and agroindustrial activity — at source and not relying on speculative technologies or future action in lieu of immediate, proven mitigation measures.** As affirmed by the ICJ climate advisory opinion, effective fossil fuel phase-out requires States curb production, consumption, licensing and subsidizing activities in relation to fossil fuels.[578] States must also ensure that their decisions on whether to advance a proposed activity within their territories or control are based on climate analyses that factor in all foreseeable emissions in their supply or value chain, regardless of where they occur.[579] Given the threat that the growing use of investor-State dispute

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[571] *ICJ Climate Change Advisory Opinion*, para. 455; ILC, *Draft Articles on State Responsibility, with commentaries*, at art. 37; CIEL & Amnesty, *Human Rights as a Compass for Operationalizing the Loss and Damage Fund: A Submission*, p. 6.

[572] Chie Sakakibara, "Our Home is Drowning: Inupiat Storytelling and Climate Change in Point Hope, Alaska," 98(4) Geographical Review 456 (2008), p. 471.

[573] In a more detailed way, these measures might include: a) the cessation of continuing violations, b) disclosure of truth, c) recovery of bodies, d) an official declaration to restore dignity, e) a public apology and acknowledgment of wrongdoing, e) sanctions of perpetrators, f) commemorations, or g) the inclusion of an account of the violations in educational material. *See* UN Principles to Combat Impunity: A Commentary, principle 34.

[574] UN General Assembly, *Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises*, UN Doc. No. A/72/162 (2017), para. 51, p.15, https://docs.un.org/en/A/72/162.

[575] Margaretha Wewerinke-Singh, *Remedies for Human Rights Violations Caused by Climate Change*, p. 242 (pointing out further that "While these forms of satisfaction have so far not been awarded in rights-based climate cases, the Inuit petition did invite the IACHR to hold a hearing to investigate the plaintiff's claims and prepare a report declaring the United States responsible for violation of its rights. The IACHR agreed to hold a hearing on the impacts of climate change on the enjoyment of human rights despite rejecting the petition.").

[576] ICJ Climate Change Advisory Opinion, para. 447

[577] ICJ Climate Change Advisory Opinion, para. 448.

[578] *See* International Energy Association (IEA), *Net Zero by 2050: A Roadmap for the Global Energy Sector* (Oct. 2021), p. 21; *see also* International Energy Agency, *Net Zero Roadmap: A Global Pathway to Keep the 1.5 °C Goal in Reach* (2023), p. 16; IPCC, Climate Change 2022: Mitigation of Climate Change. Contribution of Working Group III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change, Technical Summary, p. 85, 89 (P.R. Shukla et al, eds., 2022).

[579] National courts in numerous jurisdictions have recognized the imperative to consider both the direct and indirect GHG emissions of a proposed activity during the decision-making process. *See*, *e.g.*, *WildEarth Guardians v. Zinke*, 368 F.Supp.3d 41 (D.D.C. 2019) (U.S.A.) (consideration of downstream GHG emissions stemming from authorization of oil and gas leases); *Gray v. Minister for Planning*, 152 LGERA 258 (2006) (Australia) (consideration of burning coal as indirect impact of extraction, citing intergenerational equity concerns); *Gloucester Resources Limited v. Minister for Planning,* NSWLEC 7 (2019) (Australia), para. 490 (discussing the requirement to consider indirect

settlement (ISDS) mechanisms poses to States taking effective climate action,[580] in particular, to regulate and accelerate the phaseout of fossil fuels, States should refrain from entering into agreements with ISDS provisions, amend or terminate existing such agreements, and/or withdraw consent to ISDS.[581] They should also "review their existing trade and investment agreements, and also settlement mechanisms for litigation between investors and States to ensure they do not limit or restrict efforts relating to climate change and human rights."[582] Meanwhile, greater international cooperation in terms of climate finance and technology transfer is needed to realize greater mitigation ambition. Without means of implementation, full fossil fuel phase-out will remain out of reach particularly for some countries highly dependent on fossil fuels. Notably, the obligation of cessation "cannot be met through geoengineering or other speculative technologies" that create diversions from ceasing the unlawful conduct and involve further human rights risks.[583]

191. **In terms of guarantees of non-repetition,** "[w]here the violation results from a state's failure to prevent the negative human rights impacts of climate change, **the duty to offer appropriate assurances and guarantees of non-repetition could entail an obligation to adopt and implement enforceable legislation to protect human rights from future climate impacts**."[584] Moreover, States must not just regulate industrial activities that generate emissions and erode resilience, but also industry conduct that insulates those harmful activities from scrutiny and regulation.[585] This duty also reinforces procedural obligations to "provide information about

(Scope 3) GHG emissions in assessing the impacts of a fossil fuel project). *See also ICJ Climate Change Advisory Opinion*, para. 298.

[580] Increasingly, when host States take climate action that allegedly adversely affects a foreign investor's returns, investors are using ISDS proceedings to sue the State for compensation, before unaccountable, often confidential arbitration panels. *See* UNSR, *Paying polluters: the catastrophic consequences of investor-State dispute settlement for climate and environment action and human rights*, paras. 16, 21, 23; *see also* IISD, CIEL & ClientEarth, *Investor-State Dispute Settlement (ISDS) Mechanisms And The Right To A Clean, Healthy, And Sustainable Environment* (2023), pp. 1-2; Statement by UN experts on the 16th UN Conference on Trade and Development (UNCTAD), *States must prioritise human rights and planetary health in trade, investment and business regulation* (Oct. 21, 2025), https://www.ohchr.org/sites/default/files/documents/issues/environment/srenvironment/activities/2025-10-21-stm-sr-env.pdf.

[581] *See generally* UNSR, *Paying polluters: the catastrophic consequences of investor-State dispute settlement for climate and environment action and human rights*.

[582] *IACtHR Advisory Opinion AO-32/25*, para. 351.

[583] Written Statement Submitted by the Republic of Vanuatu (August 15, 2024), ICJ, Obligations of States in respect of Climate Change, para. 184, pp. 106-107, https://icj-web.leman.un-icc.cloud/sites/default/files/case-related/187/187-20240815-wri-11-00-en.pdf

[584] Margaretha Wewerinke-Singh, *Remedies for Human Rights Violations Caused by Climate Change*, 9(3) Climate Law (2019), p. 242 [hereinafter Margaretha Wewerinke-Singh, *Remedies for Human Rights Violations Caused by Climate Change*].

[585] According to the Working Group on the issue of human rights and transnational corporations and other business enterprises, the obligation of States under the Guiding Principles to protect against foreseeable impacts related to climate change, entails, *inter alia*, adopting "a range of regulations to discourage greenwashing and undue corporate influence in the political and regulatory sphere in this area." UN Working Group on Business and Human Rights, *Information Note on Climate Change and the Guiding Principles on Business and Human Rights* (June 2023), paras. 7-8. Also of relevance is that the United Nations' High-Level Expert Group on the Net Zero Emissions Commitments of Non-State Entities has urgently called for drawing a red line around greenwashing, emphasizing, *inter alia*, that non-state actors cannot claim to be net zero while continuing to build or invest in new fossil fuel supply, and cannot lobby to undermine ambitious government climate policies either directly or through trade associations or other bodies. The Group recommended States adopt clear, enforceable regulations to limit the potential for corporate greenwashing. *See* United Nations' High-Level Expert Group on the Net Zero Emissions Commitments of Non-State Entities, *Integrity Matters: Net Zero Commitments by Businesses, Financial Institutions, Cities and Regions* (2022).

the risks and consequences of climate change."[586] Guarantees of non-repetition must also be "addressed at reducing vulnerability, monitoring compliance with existing obligations, and enhancing the resilience of natural and human systems within the framework of sustainable development."[587]

192. Above and beyond the provision of reparatory measures as outlined above, **States should also consider redressing harm affecting States or individuals and communities in more structural ways.** This could be done, for example, by creating more fiscal space to address climate impacts, through ensuring measures relating to debt and tax justice.[588] The AU, for example, has argued for debt cancellation, or at least debt relief, as a suitable form of restitution, compensation, and satisfaction.[589] It has also been argued that the "vast range and depth of reparations needed to fully remedy historical and contemporary climate injustices will require further international law reform" and that States must work co-operatively to pursue these reforms. As Professor Achiume has powerfully stated: "To the extent that contemporary international legal principles present barriers to historical responsibility for climate change, the law must be decolonised or transformed..."[590] Meanwhile, States have a continuing duty to perform their obligations despite their breaches thereof.[591]

E. The Right to an Effective Remedy in relation to Climate Harm Requires African States to Mobilize All Available Resources and Pursue Reparations Externally.

193. While African States must give particular attention to obligations relating to access to justice, effective remedies, and the protection of rights guaranteed under the African Charter, **responsibility for climate-related harm, and the corresponding duty to provide remedies and reparations, lie principally with major historical and contemporary GHG emitters.** The obligation of African States to ensure access to justice for affected populations and to protect their rights includes a duty to seek and facilitate international assistance and cooperation. In addition, in order to vindicate the rights and interests of their populations, African States have a duty to take reasonable and appropriate measures, through diplomatic, judicial, and other lawful means, to pursue climate remedies and reparations. This obligation operates in furtherance of, and does not substitute for, the underlying liability of those responsible for climate-related harm.

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[586] Margaretha Wewerinke-Singh, *State Responsibility, Climate Change and Human Rights under International Law*, p. 136.
[587] *IACtHR Advisory Opinion AO-32/25*, para. 558.
[588] UNSR on climate change, Report on the promotion and protection of human rights in the context of climate change, paras. 92(g)(j); OHCHR, United Nations Human Rights Office of the High Commissioner, *Key Messages on Human Rights and Loss and Damage* (2023), messages 3-4, https://www.ohchr.org/sites/default/files/documents/issues/climatechange/information-materials/2023-key-messages-hr-loss-damage.pdf.
[589] Oral Statement of the African Union (Dec 6, 2024), ICJ, Obligations of States in respect of Climate Change, para. 30, p. 71, https://www.icj-cij.org/sites/default/files/case-related/187/187-20241206-ora-02-00-bi.pdf
[590] Oral Statement of Cook Islands (Dec 5, 2024), ICJ, Obligations of States in respect of Climate Change, paras. 19-20, p. 22, https://www.icj-cij.org/sites/default/files/case-related/187/187-20241205-ora-02-00-bi.pdf
[591] *ICJ Climate Change Advisory Opinion*, para. 446.

I. The Duty to Seek International Assistance Applies in relation to Climate-Related Harms, especially where National Response Capacities are Manifestly Exceeded.

194. Climate impacts increasingly surpass the adaptive and fiscal capacities of African States. The right to an effective remedy, including restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition, as well as ensuring access to justice, cannot be realized without adequate financial and technical resources. Where domestic means are insufficient whether due to climate vulnerability, debt distress, structural inequities, other factors or as in most cases, a combination of multiple factors, **international law obliges African States to seek external assistance and cooperation as an integral part of their duty to ensure remedies for their populations.**

195. **Under human rights treaties, such as ICESCR, obligations must be realized "individually and through international assistance and cooperation."**[592] Treaty bodies have repeatedly confirmed that the "maximum of available resources" includes those resources that can be obtained through international assistance, and that a State must demonstrate that it sought such support when domestic capacity is insufficient.[593]

196. General Comment No. 27 of the Committee on Economic, Social and Cultural Rights, affirms that where environmental degradation threatens Covenant rights, **States must take steps "individually and through international assistance and cooperation" to ensure mitigation, adaptation, and reparations for affected populations.**[594] When a State lacks resources to fulfil these obligations, it "should ask the international community for assistance," especially in disaster or climate-related contexts.[595] Regional instruments reinforce the same conclusion. The African Charter on the Rights and Welfare of the Child obliges States to ensure protection and humanitarian assistance in situations including "natural disaster," drawing on international cooperation where necessary.[596] Ensuring remedy and reparation following climate impacts falls squarely within this protective function. The ILC Draft Articles on the Protection of Persons in the Event of Disasters articulate a duty to seek assistance "to the extent that a disaster manifestly exceeds [a State's] national response capacity."[597] The commentary notes that this duty arises from both human rights obligations and the duty to cooperate.[598] In terms of national response capacity, including in relation to African countries, the Sendai Framework for Disaster Risk Reduction also acknowledges that disaster impacts may exceed national capacities and

[592] ICESCR, art. 2(1).
[593] CESCR, General Comment No. 3, para. 13; CESCR, General Comment No. 22, para. 37; CESCR, General Comment No. 27, para. 29; *see also* Convention on the Rights of the Child, G.A. Res. 44/25 (Nov. 20, 1989), art. 4.
[594] CESCR, General Comment No. 27, paras. 33–35.
[595] CESCR, General Comment No. 27, para. 29.
[596] African Charter on the Rights and Welfare of the Child (July 1990) (entered into force Nov. 29, 1999), art. 23.
[597] International Law Commission, *Draft Articles on the Protection of Persons in the Event of Disasters, with commentaries*, U.N. Doc. A/71/10 (2016), art. 11, https://legal.un.org/ilc/texts/instruments/english/commentaries/6_3_2016.pdf [hereinafter ILC, Draft Articles on Protection of Persons in the Event of Disasters, with commentaries].
[598] ILC, Draft Articles on Protection of Persons in the Event of Disasters, with commentaries, commentary to art. 11, paras. 1, 3, 4.

emphasizes the need for enhanced international cooperation and support to complement domestic responses.[599]

197. **Climate change constitutes a paradigmatic case where harms "manifestly exceed" national capacity.** Slow-onset events such as sea-level rise and droughts; rapid-onset disasters such as floods and cyclones; and the economic disruption they cause systematically erode the fiscal space necessary to provide domestic redress, especially in light of the gross inequities embedded in the international financial architecture. The ILC affirms that where international support is needed to fulfil human rights obligations, States must demonstrate they have sought that support.[600] Failure to seek external assistance would therefore constitute a breach of the duty to ensure effective remedies.

II. African States Have a Duty to Vindicate Their Populations' Right to Remedy by Pursuing Reparations from Historical Polluters including through Multilateral Arrangements.

198. **The duty to ensure remedies includes the duty to take all appropriate measures to secure reparations from responsible actors,** including through inter-State claims or diplomatic means.

199. **The ICJ has affirmed that States must cooperate to bring unlawful situations to an end, including through collective efforts, and that obligations *erga omnes partes* require States not to remain passive in the face of serious rights-violations**. States may be required to take positive steps, including efforts through international institutions, to secure compliance and ensure cessation.[601] Applied to climate change, where emissions by major historical polluters impair fundamental rights of African populations, this jurisprudence reinforces the necessity of cooperation to end serious rights violations. In this context, and read together with the duty to ensure effective remedies and to mobilize maximum available resources, this obligation may extend to taking reasonable steps to pursue reparations internationally, not merely as a matter of political discretion but as a logical implication of the duty to protect and fulfil rights.

200. **Under human rights law and the principle of equity, State responsibilities are differentiated** in that States with the requisite capabilities, are required to provide international assistance, including extraterritorially, for the realization of human rights.[602] African States therefore act consistently with equity when they seek reparation from those most responsible for global emissions. To refrain from doing so would risk leaving their populations without access to the remedies to which they are entitled.

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[599] *Sendai Framework for Disaster Risk Reduction 2015-2030* (Mar. 2015), paras. 41, 38, https://www.undrr.org/media/16176/download?startDownload=20260326.

[600] ILC, Draft Articles on Protection of Persons in the Event of Disasters, with commentaries, commentary to art. 11, para. 3.

[601] *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, 2004 I.C.J. (July 9), paras. 158–159; *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem*, Advisory Opinion, 2024 I.C.J. (July 19), paras. 273–279.

[602] *See* ICESCR, art. 2(1); Amnesty International, "Stop burning our rights! What governments and corporations must do to protect humanity from the climate crisis" (June 7, 2021), p. 24, https://www.amnesty.org/en/documents/pol30/3476/2021/en/.

201. While inter-State claims and diplomatic negotiations are pathways to secure remedy and reparation externally, **States may consider and cooperate towards the establishment of multilateral arrangements and funds to deliver climate reparations**. Direct provision of reparations from responsible States to affected States, peoples and individuals, including through national level reparation programs such as the proposed Climate Change Actions Welfare and Support Fund (CLAWS) in the Philippines,[603] represents one such approach. In parallel, domestic liability-based mechanisms also offer an emerging avenue. Recent legal developments such as climate superfund laws enacted in several United States federal states illustrate how strict liability frameworks could be used to recover adaptation costs from major fossil fuel actors based on their historical emissions, translating the polluter pays principle into operational cost recovery regimes.[604] In this regard, African States may also be required, as part of their duty to ensure effective remedies, to consider adopting analogous domestic measures, including legislation, levies, or taxes on entities within their jurisdiction or control that have contributed to climate harm. At the same time, careful consideration is required as to how such models could be adapted or replicated in ways that ensure equitable access to recovered funds, particularly for affected communities on the frontlines.[605]

202. **The ILC's 2006 Draft principles on the allocation of loss in the case of transboundary harm arising out of hazardous activities has expressly considered the establishment of international arrangements and funds if only global efforts can tackle a problem.**[606] In the last 70 years, numerous international arrangements and funds,[607] including, inter alia, the

[603] Greenpeace, "Landmark climate accountability law to make corporate polluters pay pushed in Congress," Press Release (Sept. 10, 2025), https://www.greenpeace.org/philippines/press/68529/landmark-climate-accountability-law-to-make-corporate-polluters-pay-pushed-in-congress/.

[604] Legislation adopted in Vermont, New York and Maryland in the United States. *See* Climate Superfund Cost Recovery Act, Vermont S 259 No 122 (May 30, 2024); Climate Change Superfund Act, New York A 3351-B / S 2129-B (Dec. 26, 2024); Responding to Emergency Needs from Extreme Weather (RENEW) Act of 2025, HB 128, Chapter 2 (2025 Special Session, Maryland General Assembly), enacted Dec. 16, 2025. At bill stage in several other US federal states, e.g., Polluters Pay Climate Superfund Act of 2025, Cal SB 684 (introduced Feb. 21, 2025); An Act establishing a climate change superfund, Mass S 588 and H 1014 (2025-2026 session); Climate Superfund Act, NJ S 2338 / A 3735 (introduced Jan. 13, 2026; carrying forward 2024-2025 bills S 3545 / A 4696); An Act to Establish a Climate Superfund Cost Recovery Program to Impose Penalties on Climate Polluters, Me LD 1870 / SP 740 (introduced May 1, 2025); An Act Concerning a Climate Change Superfund, Conn HB 5156 (introduced Feb. 11, 2026); Climate Change Superfund Act, Ill SB 2981 / HB 4773 (introduced Jan. 29 and Feb. 2, 2026, respectively); Climate Change Adaptation Cost Recovery Program, Haw SB 1652 (introduced Jan. 23, 2025; reintroduced Jan. 21, 2026); Climate Superfund Cost Recovery Program, Or SB 1541 (introduced in the 2026 regular session); Rhode Island Climate Superfund Act of 2026, RI S 2024 / H 7004 (introduced Jan. 7 and 9, 2026); Extreme Weather Relief Fund, Va SB 420 (2026 regular session); Climate Resiliency Fund Act, Tenn SB 702 / HB 716 (introduced 2025) and SB 2008 / HB 1850 (introduced 2026); Greenhouse Gas Pollution Superfund Act, Minn SF 4126 / HF 3945 (introduced Mar. 4, 2026).

[605] Adrián Martínez Blanco, Patrick Toussaint & José Rodríguez Orúe, "Who Benefits When Polluters Pay? Strict Liability, U.S. Climate Superfunds and the Future of Global Climate Reparations" (forthcoming in Adjudicating Reparation for Climate Harm: International and Comparative Perspectives (Edward Elgar Publishing)).

[606] ILC, *Draft principles on the allocation of loss in the case of transboundary harm arising out of hazardous activities, with commentaries*, principle 7.

[607] Also relevant: International Convention on Civil Liability for Bunker Oil Pollution Damage, Mar. 27, 2001, 40 I.L.M. 1493 (entered into force Nov. 21, 2008); International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, May 3, 1996, 35 I.L.M. 1406; Nagoya-Kuala Lumpur Supplementary Protocol, Oct. 15, 2010, UNEP/CBD/BS/COP-MOP/5/17, Report of the Fifth Meeting of the Conference of the Parties to the Convention on Biological Diversity Serving as the Meeting of the Parties to the Cartagena Protocol on Biosafety, Decision BS-V/11, 62-71.

comprehensive reparation programs for Holocaust survivors,[608] the United Nations Compensation Commission (UNCC) to process claims and pay compensation for losses and damage suffered as a result of Iraq's unlawful invasion and occupation of Kuwait in 1990-1991,[609] and the International Oil Pollution Compensation Funds (IOPC Funds),[610] which provides financial compensation for oil pollution damage, have been established to create legal frameworks for liability and compensation regarding human rights and environmental harm that can provide foundational guidance in relation to arrangements States could consider to deliver climate reparations. In fact, in his separate opinion to the ICJ climate advisory ruling, Judge Bhandari recommends the establishment of mechanisms such as claims commissions to systematically address the potentially vast number of claims, suggesting that the UN General Assembly consider establishing them, as they fall within its competence and are consistent with the broader legal architecture articulated in the unanimous advisory opinion.

203. **The Fund to Respond to Loss and Damage under the UNFCCC system is currently not rooted in an understanding of remedy or reparations**, and its present model of voluntary pledges without any obligation for countries to pay limits the Fund's ability to provide effective remedy.[611] However, if due to litigation or negotiations, for example, specific States or groups of States were to provide climate reparations, including through corporations being held accountable to pay their share of remediation costs, it could be a possibility to consider routing such redress measures via the Fund. This would depend on the Fund's further operationalization, how it will function in practice, and relevant modalities such as direct access for affected communities, and meaningful and effective participation of marginalized groups.

204. **There are a variety of means available to States to provide reparations, and while the precise nature of delivery will depend on the facts of a specific situation, reparations-related redress measures must be rooted in legal obligations, in particular human rights principles**, including by ensuring access to information, meaningful participation, and access to justice, and advancing substantive equality, and consider lessons from existing mechanisms. Experience with reparative efforts in other contexts of wide-scale harm can provide inspiration for the design and implementation of future mechanisms for climate reparations.[612]

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[608] Ariel Colonomos & Andrea Armstrong, "German Reparations to the Jews after World War II: A Turning Point in the History of Reparations," in Pablo de Greiff (ed.), *The Handbook of Reparations* (Oxford, 2006; online edn, Oxford Academic, May 1, 2006). *See also*, *No. 2137 Israel and Federal Republic of Germany Agreement* (with schedule, annexes, exchanges of letters and protocols), signed at Luxembourg on Sept. 10, 1952, https://treaties.un.org/doc/Publication/UNTS/Volume%20162/volume-162-I-2137-English.pdf.

[609] For more information, *see* United Nations, "Security Council Unanimously Adopts Resolution Confirming United Nations Compensation Commission Has Fulfilled Its Iraq-Kuwait Mandate," SC/14801 (Feb. 22, 2022), https://press.un.org/en/2022/sc14801.doc.htm.

[610] For more information *see* The International Oil Pollution Compensation Funds, https://iopcfunds.org/.

[611] Patrick Toussaint, "Loss and Damage, Climate Victims, and International Climate Law: Looking Back, Looking Forward" 13(1) *Transnational Environmental Law* (2024), pp. 134–159; *see also* Julia Dehm, "Climate change, 'slow violence' and the indefinite deferral of responsibility for 'loss and damage'" 29(2) *Griffith Law Review* (2020), pp. 220–252.

[612] Sonja Klinsky & Jasmina Brankovic, *The Global Climate Regime and Transitional Justice*, 1st edition (Routledge, 2018); Sonja Klinsky & Luke Moffet, "Operationalizing Loss and Damage Responses: Applying Lessons from Reparations Programs," working paper (2023), https://doi.org/10.17605/OSF.IO/YCZBP; CIEL, *Remedy and Reparations for Climate Harm: the Human Rights Case*.

X. Conclusion

205. For the foregoing reasons, CIEL respectfully submits that the climate crisis, as a foreseeable and preventable human rights crisis, driven primarily by fossil fuel production and use, engages the full scope of States' obligations under African and international law to respect, protect, and fulfil human rights, in particular the right to a healthy environment, including through stringent due diligence to prevent harm at source.

206. In light of Africa's minimal contribution to global emissions and its disproportionate exposure to climate impacts, conditions rooted in histories of colonial dispossession and structural inequality, the Court has a critical opportunity to clarify that these obligations require, *inter alia*, the full and equitable phaseout of fossil fuels to enable the realization of African peoples' right to development, the prioritization of measures grounded in best available science and demonstrably capable of averting harm, and the rejection of approaches that merely defer or displace it. The fact that other countries are the largest contributors does not absolve African States of their duties under international customary and conventional law. African States have a duty to act, in line with CBDR-RC and equity, including by ensuring that people under their jurisdiction, including environmental and human rights defenders, are protected. Effective protection may mean acting to hold other larger emitters accountable and not allowing them to use areas under the control of African States for activities that continue to harm the climate system.

207. Crucially, the Court should affirm that the duty to ensure effective remedy entails both domestic guarantees of access to justice and the pursuit of full reparation from those States and corporate actors whose conduct has materially contributed to the crisis, including cessation of wrongful acts and redress commensurate with the scale of harm. In doing so, the Court would not only give concrete expression to the African Charter in the context of climate change, read in light of other relevant and applicable legal regimes, but also advance a principled framework for climate justice grounded in human rights, capable of guiding State conduct within Africa and beyond.