



To: The Registrar, African Court on Human and Peoples' Rights

SUBJECT: REQUEST FOR ADVISORY OPINION NO. 001 OF 2025 IN THE MATTER OF A REQUEST BY THE PAN AFRICAN LAWYERS UNION (PALU) FOR AN ADVISORY OPINION ON THE OBLIGATIONS OF STATES WITH RESPECT TO THE CLIMATE CHANGE CRISIS

Pursuant to Practice Direction 25, Section V, Request and Invitation to Act as Amicus Curiae, Practice Directions of the Court, 2024, the Network of African National Human Rights Institutions (NANHRI) is transferring this submission in respect of the above Application. The Submission was prepared on behalf of NANHRI by Gilbert Sebihogo and Foluso Adegalu, with extensive support from Professor Sandra Fredman, Professor Rachel Murray, Freya Baetens, Rawletta Barrow, Gideon Basson, Meghan Campbell, Jinghe Fan, Ndjodi Ndeunyema, Mandisa Shandu, Aradhana Cherupara Vadakkethil, Justin Winchester, Alan Stein and Victoria Whitford

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IN THE AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS

REQUEST FOR ADVISORY OPINION NO. 001 OF 2025

**AMICUS CURIAE BY THE NETWORK OF AFRICAN NATIONAL HUMAN RIGHTS
INSTITUTIONS (NANHRI)**

**REQUEST FOR ADVISORY OPINION NO. 001 OF 2025 IN THE MATTER OF A REQUEST
BY THE PAN AFRICAN LAWYERS UNION (PALU) FOR AN ADVISORY OPINION ON THE
OBLIGATIONS OF STATES WITH RESPECT TO THE CLIMATE CHANGE CRISIS**

**(Made under Article 4 of the Protocol to the African Charter on Human and Peoples'
Rights on the Establishment of the African Court on Human and Peoples' Rights and
Rule 68 of the Rules of the African Court on Human and Peoples' Rights)**

27 March 2026

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A. Introduction

1. The Network of African National Human Rights Institutions (NANHRI) makes this submission pursuant to a letter dated 4 September 2025, from the African Court inviting the filing of observations in the Matter of a Request by the Pan African Lawyers Union (PALU) for an Advisory Opinion, Advisory Opinion No 001/2025.
2. NANHRI is a regional umbrella body that brings together national human rights institutions. Our 47 members are drawn from NHRIs across Africa. NANHRI has been in operation since 2007 and has a Memorandum of Understanding with the African Court.
3. This amicus curiae submission is informed by extensive consultations conducted by the NANHRI with its member institutions, and draws on written contributions received from National Human Rights Institutions of Botswana, Burundi, Côte d'Ivoire, Ethiopia, Guinea-Bissau, Kenya, Liberia, Morocco, Namibia, Nigeria, Algeria, Burkina Faso, South Africa, Togo, and Zimbabwe. These inputs reflect a diverse range of regional experiences and institutional perspectives and have been synthesised to ensure that the submission is grounded in the practical realities of human rights protection and climate-related challenges across the African continent.
4. At NANHRI's request, we have collaborated substantially with the Oxford Human Rights Hub, Bonavero Institute of Human Rights and the Children and Climate Initiative at the University of Oxford in preparing this submission. We gratefully acknowledge those involved in the drafting: Professor Sandra Fredman, Professor Rachel Murray, Freya Baetens, Rawletta Barrow, Gideon Basson, Meghan Campbell, Jinghe Fan, Ndjodi Ndeunyema, Mandisa Shandu, Aradhana Cherupara Vadekkethil, Justin Winchester, Alan Stein and Victoria Whitford.
5. Our submission is focused on: specific State human rights obligations towards past, present and future generations affected by climate change; the positive obligations of States to protect vulnerable populations, including environmental human rights defenders, indigenous communities, women, children, indigenous peoples and other communities, persons with disabilities, older persons, and environmental human rights defenders; and the role of NHRIs.

B. Climate change as a justiciable human rights issue

6. Climate change is defined as long-term shifts in temperatures, precipitation patterns, and the frequency and intensity of extreme weather events.¹ The continent is particularly vulnerable to the effects of climate change,² despite its contribution to for example greenhouse gas emissions being comparatively low.³
7. Climate change disproportionately affects people living in Africa, with climatic shifts causing severe and accelerating harm, including prolonged droughts, flooding, sea-level rise, crop failures, and the disruption of ecosystems essential to human life and livelihoods.⁴ These effects are no longer speculative future scenarios; they are currently generating widespread disruption across several regions of the continent, with scientific projections indicating that, in the absence of urgent and sustained intervention, their scale and severity will increase significantly.⁵ For many communities, particularly those reliant on rain-fed agriculture, pastoralism, coastal ecosystems, or fragile arid and semi-arid environments, the observed effects of climate instability have already resulted in loss of life and continue to threaten survival.⁶ These harms fall disproportionately on disadvantaged and marginalised groups, whose limited adaptive capacity and entrenched socio-economic inequalities heighten their exposure to climate-related mortality.
8. Climate change impacts on a number of rights in the African Charter, including the right to life, health, housing, food, water, development, participation, and a satisfactory environment.
9. Article 24 of the African Charter provides for the ‘right of a people to a general satisfactory environment favourable to their development’, and ‘environment’ has been broadly defined by the African Commission as ‘the natural surroundings

¹ Intergovernmental Panel on Climate Change, *Climate Change 2021: The Physical Science Basis. Contribution of Working Group I to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change* (Cambridge University Press 2021).

² : <https://wmo.int/publication-series/state-of-climate-africa-2023>. Intergovernmental Panel on Climate Change, Fourth Assessment Working Group II Report, 2007.

³ With the exception of South Africa, see W. Scholtz, ‘The promotion of regional environmental security and Africa’s common position on climate change’, 10 AHRLJ (2010) 1-25, at 2.

⁴ Resolution on Climate Change in Africa, ACHPR/Res.271, 12 May 2014. Intergovernmental Panel on Climate Change, ‘Chapter 9: Africa’ in *Climate Change 2022: Impacts, Adaptation and Vulnerability. Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change* (Cambridge University Press 2022).

⁵ Intergovernmental Panel on Climate Change, *Climate Change 2022: Impacts, Adaptation and Vulnerability. Summary for Policymakers. Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change* (Cambridge University Press 2022); Planetary Boundaries Science (PBScience), *Planetary Health Check 2025*, ed Niklas H Kitzmann and others (Potsdam Institute for Climate Impact Research 2025).

⁶ J Birkmann, E Liwenga, R Pandey, E Boyd, R Djalante, F Gemenne, W Leal Filho, PF Pinho, L Stringer, and D Wrathall (2022) ‘Poverty, Livelihoods and Sustainable Development’ in *Climate Change 2022: Impacts, Adaptation and Vulnerability. Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change* (Cambridge University Press, 2022) 1185.

including the soil, the flora and fauna, the air and water bodies as well as the living species in such water bodies on which people depend not only for their survival but also for the sustenance and improvement of their wellbeing'.⁷ The African Commission has stated that central to Article 24

'is the recognition of the importance of a clean and safe environment to the quality of life of people. As its terms make clear, what is guaranteed under Article 24 is not the right to an ideal environment that is completely unaffected or completely clean. It is rather an environment that is clean enough for a safe and secure life and development of individuals and people.'⁸

10. Consequently, climate change is not merely an environmental issue but a fundamental human and peoples' rights issue. States have duties towards individuals and peoples to ensure that climate change does not hamper their right to a general satisfactory environment.
11. The African Human Rights Bodies have consistently decided cases involving violations of Article 24. The African Commission has noted, in particular, that States should ensure that this right, as well as others in the African Charter, be given 'judicial enforcement' at the national level in line with their obligations under Article 1.⁹

C. Positive Obligations to Protect Vulnerable Populations

Obligations to protect

12. Under each of the rights in the African Charter there are obligations to respect, protect, promote and fulfil.¹⁰ These obligations flow from Article 1 of the African

⁷ State Reporting Guidelines And Principles On Articles 21 And 24 Of The African Charter Relating to Extractive Industries, Human Rights and the Environment, 7 May 2018, para 3. Communication 155/96, *Social and Economic Rights Action Center (SERAC) and Center for Economic and Social Rights (CESR) v. Nigeria* (2001)

⁸ Explanatory Note to the State Reporting Guidelines on the Contents and the Rights and Obligations under Articles 21 And 24 Of The African Charter, 7 May 2018, para 27.

⁹ State Reporting Guidelines And Principles On Articles 21 And 24 Of The African Charter Relating to Extractive Industries, Human Rights and the Environment, 7 May 2018, section III, Article 24, para b. Resolution on a Human Rights-Based Approach to Natural Resources Governance, ACHPR/Res.224, 2 May 2012. See also, in Nigeria, African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act 1983, which enables rights in the Charter to be enforceable in domestic courts.

¹⁰ E.g. Communication 155/96, *Social and Economic Rights Action Centre (SERAC) and Centre for Economic and Social Rights v Nigeria* 27 October 2001; Communication 245/02, *Zimbabwe Human Rights NGO Forum v Zimbabwe*, 15 May 2006, para 142-146; App No. 004//2011, *African Commission on Human and Peoples' Rights v Libya* Separate Opinion of Judge Fatsah Ouguergouz, 3 June 2016; App

Charter, which obliges States Parties to ‘recognise the rights, duties and freedoms enshrined in the Charter and shall undertake to adopt legislative or other measures to give effect to them.’

13. According to the African Commission, ‘[p]rotection generally entails the creation and maintenance of an atmosphere or framework of an effective interplay of laws and regulations so that individuals will be able to freely realize their rights and freedoms’.¹¹ Furthermore, relating to the right to health, States have a duty to protect ‘against environmental, industrial and occupational hazards, preventing air, land and water pollution and alleviating the adverse effects of urban development, industrialisation, and global warming on ecosystems, livelihood and food security’.¹²

14. The obligations of the State under Article 24, in particular, according to the ECOWAS Court of Justice, are expansive:

‘Article 24 of the Charter thus requires every State to take every measure to maintain the quality of the environment understood as an integrated whole, such that the state of the environment may satisfy the human beings who live there, and enhance their sustainable development. It is by examining the state of the environment and entirely objective factors, that one judges, by the result, whether the State has fulfilled this obligation. If the State is taking all the appropriate legislative, administrative and other measures, it must ensure that vigilance and diligence are being applied and observed towards attaining concrete results’.¹³

15. The African Commission has required States to ensure that

‘the environment should be used in a sustainable manner, which fulfills the needs of the present generation, without compromising the ability of future generations to meet their own needs. In this context sustainability is understood as encompassing all aspects of their lives and livelihoods, including identity, culture, religion and other aspects having regard to plurality of interests and the delicate balance that should be struck’.¹⁴

16. The legal requirements, according to the African Commission, are that ‘people are first and foremost entitled to protection from environmental degradation and pollution. This would entail that people are protected from activities having the effect of

041/2016, *Ligue Ivoirienne des Droits de l’Homme (LIDHO) v Côte d’Ivoire*, 7 December 2023, para 206, and Separate Opinion of Judge Blaise Tchikaya, paras 46-52.

¹¹ Communication 245/02 *Zimbabwe Human Rights NGO Forum v Zimbabwe*, para 152.

¹² Principles And Guidelines On The Implementation Of Economic, Social And Cultural Rights In The African Charter On Human And Peoples’ Rights, 24 October 2011, para 67(s).

¹³ ECOWAS Court of Justice, *SERAP v Federal Republic of Nigeria*, Judgment N° ECW/CCJ/JUD/18/12, 14 December 2012, para 101.

¹⁴ Explanatory Note to the State Reporting Guidelines on the Contents and the Rights and Obligations under Articles 21 And 24 Of The African Charter, 7 May 2018, para 27.

degrading or spoiling the soil, water, fauna and flora and the air of the physical environment'.¹⁵

17. Protection from environmental degradation or pollution entails that people are provided with the space (including the right to form community-based associations) and the necessary support not only to employ ecologically sustainable use of natural resources for their development but also to conserve their environment. People are also entitled to the enabling legal and institutional frameworks and technical provisions for engaging in awareness creation and capacity development works necessary both to help them avoid practices inimical to their environment and to pursue locally adaptable methods of conservation and improvement of their environment.¹⁶

18. They also need access to information 'on all aspects of exploration and extraction plans including the findings of such assessments ahead of the finalization of such plans'.¹⁷

19. It will not be sufficient to adopt legislation, it must be enforced and put into practice. Again, the ECOWAS Court of Justice held:

'This means that the adoption of the legislation, no matter how advanced it may be, or the creation of agencies inspired by the world's best models, as well as the allocation of financial resources in equitable amounts, may still fall short of compliance with international obligations in matters of environmental protection if these measures just remain on paper and are not accompanied by additional and concrete measures aimed at preventing the occurrence of damage or ensuring accountability, with the effective reparation of the environmental damage suffered'.¹⁸

20. Under the obligation to protect, States have been called upon to 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'.¹⁹ In conjunction with Article 9 of the African Charter, States should conduct environmental impact assessments, 'with the free and full participation of prospective affected people and having regard to indigenous knowledge and information as well as the needs of

¹⁵ Explanatory Note to the State Reporting Guidelines on the Contents and the Rights and Obligations under Articles 21 And 24 Of The African Charter, 7 May 2018, para 28.

¹⁶ Explanatory Note to the State Reporting Guidelines on the Contents and the Rights and Obligations under Articles 21 And 24 Of The African Charter, 7 May 2018, para 6.

¹⁷ State Reporting Guidelines And Principles On Articles 21 And 24 Of The African Charter Relating to Extractive Industries, Human Rights and the Environment, 7 May 2018, section III, para 26.

¹⁸ ECOWAS Court of Justice, *SERAP v Federal Republic of Nigeria*, Judgment N° ECW/CCJ/JUD/18/12, 14 December 2012, para 105.

¹⁹ Resolution on a Human Rights-Based Approach to Natural Resources Governance, ACHPR/Res.224, 2 May 2012.

vulnerable groups such as children, indigenous peoples, older persons and migrant workers'.²⁰ Domestic courts have upheld the rights of communities to participate in decision-making processes that affect their health and environment.²¹ Such assessments are already a common feature in many African countries.²²

21. Furthermore, under Article 24, when an environment is 'threatened', the duty to protect requires 'proper scientific monitoring and relevant corrective measures are undertaken by the State', and where there is despoliation or pollution, legislation and policy should set out how such harm is to be assessed, cleaned-up and those affected compensated.²³

22. The minimum core obligations of Article 16 include the creation of national development plans that are 'designed towards the realisation of a healthy environment that is conducive to the right to health, for example in matters relating to water resources management and sanitation'.²⁴ Furthermore, the combined effect of Articles 16 and 24 require the government:

'ordering or at least permitting independent scientific monitoring of threatened environments, requiring and publicising environmental and social impact studies prior to any major industrial development, undertaking appropriate monitoring and providing information to those communities exposed to hazardous materials and activities and providing meaningful opportunities for individuals to be heard and to participate in the development decisions affecting their communities'.²⁵

23. Obligations to ensure prior and informed consent of those affected underpin a number of rights in the African Charter. Such consultations should be substantive and rigorous, effective, inclusive and meaningful, and ensuring equal representation of women, ²⁶ including the ability to participate 'through traditional governance bodies'.²⁷ This obligation of participation applies to 'all decisions relating to the

²⁰ Explanatory Note to the State Reporting Guidelines on the Contents and the Rights and Obligations under Articles 21 And 24 Of The African Charter, 7 May 2018, para 23.

²¹ E.g. in Zimbabwe, *Marange Development Trust v. Zimbabwe Consolidated Diamond Company (Private) Limited and Environmental Management Agency* HC 902/17.

²² E.g. South Africa, see UN Economic Commission for Africa, Review of the Application of Environmental Impact Assessment in Selected African Countries, 2005. See also *BP Southern Africa (Pty) Ltd v MEC for Agriculture, Conservation, Environment and Land Affairs*, 2004, 5, SA 124 (SW).

²³ Explanatory Note to the State Reporting Guidelines on the Contents and the Rights and Obligations under Articles 21 And 24 Of The African Charter, 7 May 2018, para 50.

²⁴ Principles And Guidelines On The Implementation Of Economic, Social And Cultural Rights In The African Charter On Human And Peoples' Rights, para 67.

²⁵ Communication 155/96 Social and Economic Rights Action Center (SERAC) and Center for Economic and Social Rights (CESR) v Nigeria, 26 October 2001, para 54.

²⁶ State Reporting Guidelines And Principles On Articles 21 And 24 Of The African Charter Relating to Extractive Industries, Human Rights and the Environment, 7 May 2018, section III, para 26.

²⁷ State Reporting Guidelines And Principles On Articles 21 And 24 Of The African Charter Relating to Extractive Industries, Human Rights and the Environment, 7 May 2018, section III, para 26.

exploration and use of natural resources and decisions with consequences on the environment'.²⁸

24. Article 17(3) of the African Convention on the Conservation of Nature and Natural Resources, requires its State Parties to take measures 'to enable active participation by the local communities in the process of planning and management of natural resources upon which such communities depend with a view to creating local incentives for the conservation and sustainable use of such resources'.²⁹
25. Legal frameworks maintain narrow locus standi rules, making it difficult for affected individuals or communities to seek redress for climate-related harm.³⁰ Article 1 of the African Charter provides a right to remedy for violations of rights.³¹ Due diligence requires that 'sufficient' remedies be provided to 'and enforce[d]' for victims.³²
26. This is underscored by Article 21 of the African Charter, whereby the African Commission has required that States provide 'effective, well-resourced and technically equipped judicial and non-judicial mechanisms for receiving complaints and adjudicating disputes', which also permits companies to be sued.³³ Such a duty includes ensuring there are 'avenues for people to make oral or written submissions individually or collectively including through civil society organizations and ensuring that their concerns are properly taken onboard', as well as being able to take their grievances to court.³⁴

Obligations towards vulnerable populations

Principles of equality and intersectionality

²⁸ Explanatory Note to the State Reporting Guidelines on the Contents and the Rights and Obligations under Articles 21 And 24 Of The African Charter, 7 May 2018, para 6.

²⁹ Adopted by the 2nd Ordinary Session of the Assembly Maputo, Mozambique - 11 July 2003 Entered into force on 23 July 2016.

³⁰ See e.g. *Nigerian National Petroleum Company v. National Human Rights Commission*, CA/A/864/2018.

³¹ Explanatory Note to the State Reporting Guidelines on the Contents and the Rights and Obligations under Articles 21 And 24 Of The African Charter, 7 May 2018, para 15.

³² Communication 245/02 *Zimbabwe Human Rights NGO Forum v Zimbabwe*, 15 May 2006, para 89.

³³ Explanatory Note to the State Reporting Guidelines on the Contents and the Rights and Obligations under Articles 21 And 24 Of The African Charter, 7 May 2018, paras 16 and 49. See also e.g. in Communication No.364/2019, *Daniel Billy et al v Australia*, UN Doc.CCPR/C/135/D/3624/2019. See M Scheinin, International human rights obligations in relation to climate change, *Bonaverro Reports No.2/2025*, 26 March 2025, [Bonaverro Report](#), para 22.

³⁴ State Reporting Guidelines And Principles On Articles 21 And 24 Of The African Charter Relating to Extractive Industries, Human Rights and the Environment, 7 May 2018, para 26.

27. Climate change induced harms are not evenly distributed.³⁵ Disadvantaged and marginalised groups — such as women, children, indigenous peoples, persons with disabilities including persons with albinism, older persons, those living in poverty and residing in climate-exposed regions — bear the greatest burdens because their enjoyment of rights is already impeded by structural inequalities. Climate change thus functions as a risk multiplier. It intensifies food and water insecurity, exacerbates health vulnerabilities, displaces communities, and accelerates the degradation of ecosystems on which human life depends.³⁶
28. The Intergovernmental Panel on Climate Change (IPCC) describes vulnerability as the propensity to be adversely affected, determined by exposure, sensitivity, and adaptive capacity.³⁷ For disadvantaged groups, these components are shaped by disproportionate economic and non-economic losses from climate change, historical and continuing marginalisation, limited access to information or services, and exclusion from decision-making processes in climate action. Thus, from a human-rights perspective, climate change must be understood as a process that amplifies structural and intersectional discrimination, rendering climatic hazards into entrenched and deepening forms of disadvantage for groups already situated at the margins of social, cultural, economic, and political power.³⁸
29. There is an indispensable relationship between intra- and intergenerational equality within States' human rights obligations in the context of climate change.³⁹ Intragenerational obligations require States to address the inequalities that impede the fulfilment of the human rights of the present generations on the African continent to (1) meet their human rights obligations toward disadvantaged groups in the present generations, and (2) avoid transmitting these patterns of disadvantage to future generations. These patterns determine which groups face the greatest risks today and, if left unaddressed, they harden into long-term cycles of disadvantage that are replicated into the future and thus transmitted to future generations. Intergenerational obligations require States to (1) ensure that decisions taken today improve rather than compromise the ecological conditions necessary for future generations to realise their human rights, and in turn, (2) allow them to act as stewards within an intergenerational partnership for their descendants to realise their human rights.

³⁵ Lucas Chancel and Cornelia Mohren (eds), *Climate Inequality Report 2025. Climate Change: A Capital Challenge. Why Climate Policy Must Tackle Ownership* (World Inequality Lab Key Report 2025).

³⁶ Intergovernmental Panel on Climate Change, *Climate Change 2023: Synthesis Report. Summary for Policymakers. Contribution of Working Groups I, II and III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change* (IPCC 2023).

³⁷ Intergovernmental Panel on Climate Change, *Climate Change 2022: Impacts, Adaptation and Vulnerability* (n 1) Glossary, 2628–2629.

³⁸ *Joint Statement on Human Rights and Climate Change*, Committee on the Elimination of Discrimination against Women, Committee on Economic, Social and Cultural Rights, Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, Committee on the Rights of the Child and Committee on the Rights of Persons with Disabilities (14 May 2020) UN Doc HRI/2019/1, paras 2–10 and 13.

³⁹ Legal sources contained in future generations section below.

30. Intra- and intergenerational human rights obligations are thus mutually reinforcing. The rights of future generations cannot be secured unless the present generation confronts the inequalities that intensify harm for disadvantaged groups in the present. At the same time, the effective realisation of the rights of present generations requires long-term and multigenerational thinking in considering how present generations' decisions influence the ecological heritage and planetary integrity future generations will inherit. As is explained below, the steps that the present generation in Africa must take to ensure intergenerational burden-sharing — so that failures to significantly reduce, and over time eliminate, the root causes of climate change and environmental degradation, including greenhouse gas emissions and unsustainable patterns of production and consumption that deplete natural resources, are not unilaterally offloaded onto future generations — must not impose disproportionate burdens on disadvantaged groups within the present generation.
31. The African Charter and human rights treaties do not permit a generic and formal equality model of equal treatment or any other undifferentiated approach, particularly in the context of climate change. Substantive equality requires States to look beyond identical treatment and to consider how entrenched patterns of inequality, unequal power relations, and structural impediments to the enjoyment of human and peoples' rights shape the lived realities of disadvantaged groups in the escalating climate emergency. Substantive equality focuses attention on the real impacts of laws, policies, and practices, and requires differentiated measures that redress disadvantage, promote representation and participation, counter stigma and stereotyping, and remove the obstacles that impede the equal enjoyment of rights. The obligation to secure the effective enjoyment of rights therefore demands a substantive equality approach that prioritises groups whose exposure, sensitivity, and adaptive capacity are shaped by historical, ongoing, and emerging forms of disadvantage, as this submission sets out in the analysis that follows.
32. There is an emerging recognition of substantive equality in the African Court's own jurisprudence and in the practice of the African Commission and the African Committee of Experts on the Rights and Welfare of the Child (African Children's Committee), as well as with the more established recognition of substantive equality in international human-rights bodies and other regional human rights courts.
33. In its *General Comment No 6. on Article 7(d) of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa*, the African Commission define substantive equality as:⁴⁰

the form of equality that requires the adoption of measures that go beyond formal equality and seek to redress existing disadvantage; remove socio-economic and sociocultural impediments for equal enjoyment of rights; tackle

⁴⁰ African Commission, *General Comment No 6: On the Protocol to the African Charter on Human and Peoples' Right on the Rights of Women in Africa*, 27th EOS, 2020 [14] 11.

stigma, prejudice and violence; leading to the promotion of participation and achievement of structural change of social norms, culture and law.

34. The Commission further explains that substantive equality requires the rectification of 'the conditions that impede equal enjoyment of rights and enable disadvantaged members of society (women in the context of the Maputo Protocol) to enjoy their rights fully and on an equal basis with others.'⁴¹
35. The consequences of climate change are not evenly borne across the continent, and that adherence to a formal equality approach would solidify, rather than redress, deeply entrenched forms of inequality. This recognition provides an essential point of departure for establishing in the affirmative that States have positive obligations under the African Charter to protect vulnerable populations from the impacts of climate change. International law, including environmental and human-rights law, affirms that human-rights obligations must underpin climate action, as reflected in the Preamble to the Paris Agreement:⁴²

Acknowledging that climate change is a common concern of humankind, Parties should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights, the right to health, the rights of indigenous peoples, local communities, migrants, children, persons with disabilities and people in vulnerable situations and the right to development, as well as gender equality, empowerment of women and intergenerational equity.

36. This acknowledgement recognises that the interconnected planetary crises of climate change, environmental degradation, and biodiversity loss generate unequal and compounding harms that must be addressed through rights-based and differentiated responses. The cascading planetary crises most clearly manifest in their cumulative and disproportionate effects on climate-vulnerable groups. Although these crises affect everyone on the African continent, their impacts fall most heavily on disadvantaged and marginalised groups, whose lives and livelihoods are more tightly linked to the natural environment and who have fewer social and economic protections to cushion them from climate-related shocks. These groups bear the greatest burdens of climate disruption and ecological decline despite having contributed least to the greenhouse-gas emissions and unsustainable resource practices driving these crises.
37. The African Commission has made clear, in interpreting States' obligations under the African Charter, that States must urgently adopt and implement 'special measures of protection for vulnerable groups such as children, women, older persons and persons

⁴¹ Ibid, para 40.

⁴² Paris Agreement (adopted 12 December 2015, opened for signature 22 April 2016, entered into force 4 November 2016) UN Doc. FCCC/CP/2015/10/Add.1, Preamble, para 11 (Paris Agreement).

with disabilities, indigenous communities and other minorities as well as victims of natural disasters and conflict.⁴³

38. Judge Charlesworth, in her separate opinion in the *Advisory Opinion on the Obligations of States in respect of Climate Change* (2025) of the International Court of Justice (ICJ), expanded upon the ICJ's finding that 'climate vulnerable groups' are 'more severely affected by the impacts of climate change' and face 'greater risks and burdens'.⁴⁴ She held: 'The risks of harm are particularly high for sectors of the population that are already vulnerable or marginalized, not least because pre-existing inequalities and discrimination mean that these groups have reduced access to decision-making and resources.'⁴⁵ On this basis, she concluded that States' positive human rights obligations are triggered by the equality and non-discrimination guarantees in international human rights law, which 'entail that heightened attention must be paid to the situation of climate-vulnerable groups'.⁴⁶

39. The Inter-American Court of Human Rights (Inter-American Court) has similarly held, in its *Advisory Opinion on the Climate Emergency and Human Rights*, that the general positive human rights obligations of States find particular expression through equality and non-discrimination where 'differentiated obligations' are necessary to respond to the acute harms of disadvantaged groups in the context of the climate emergency.⁴⁷ The Court highlighted that the convergence of 'structural and intersectional factors of vulnerability increases the risk' of discrimination and gives rise to an entitlement to 'special protection'.⁴⁸ On this basis, the Court held that the 'inclusion of differentiated measures in all state actions is necessary to guarantee real equality in the enjoyment of rights in the context of the climate emergency'.⁴⁹ It held that when States fail to adopt the specific measures required by its positive obligations to safeguard such groups, they incur international responsibility.⁵⁰ This means that a State's omission to take the specific, differentiated measures required to protect climate-vulnerable groups amounts to a breach of its positive human rights obligations.

40. The African Charter's equality and non-discrimination guarantees accord special protection to disadvantaged groups. These guarantees, set out in Articles 2 and 3 and elaborated across the Charter's protocols and related instruments, require States not only to refrain from discrimination but also to adopt positive and differentiated measures to secure the effective and equal enjoyment of rights by disadvantaged and

⁴³ African Commission, Resolution on Climate Change and Human Rights in Africa, ACHPR/Res.342 (LVIII) 2016, 20 April 2016.

⁴⁴ International Court of Justice, 'Obligations of States in respect of Climate Change' (Advisory Opinion, 23 July 2025), Separate Opinion of Judge Charlesworth, para 13

⁴⁵ *ibid* para 23.

⁴⁶ *Ibid* paras 28-29

⁴⁷ Inter-American Court of Human Rights, *Advisory Opinion OC-32/25 on the Climate Emergency and Human Rights* (29 May 2025) Series A No 32., paras 588, 589-590

⁴⁸ *ibid* para 592.

⁴⁹ *ibid* para 596.

⁵⁰ *ibid* para 592.

marginalised groups. While non-discrimination and equality are central rights and principles of international human rights law, they hold a distinctive importance in the African human rights system. The Preamble emphasises the importance of the non-discrimination right specifically, and states:

Reaffirming the pledge they solemnly made in Article 2 of the said Charter to eradicate all forms of colonialism from Africa, to coordinate and intensify their cooperation and efforts to achieve a better life for the peoples of Africa and to promote international cooperation having due regard to the Charter of the United Nations. and the Universal Declaration of Human Rights[.]

41. The African Commission and African Court have both underscored that the non-discrimination and equality provisions reflect the African Charter’s ‘essential’ ‘spirit’,⁵¹ requiring ‘eradicating discrimination in all its guises’.⁵² Since climate change aggravates existing inequalities, it thus directly engages States’ positive obligations. The equality and non-discrimination provisions of the African Charter and related instruments therefore constitute the legal foundation for the protection of climate-vulnerable groups. This positive obligation of differentiated protection cannot be sufficiently instituted without acknowledging how these group-based disadvantages emanate from intersectional and structural features of discrimination in the climate change context.
42. Two forms of discrimination are central to guiding States’ positive obligations in the climate-change context: intersectional discrimination and systemic or structural discrimination. These forms of discrimination will help identify the groups who experience heightened climate-related risks and guide States’ differentiated positive obligations in response to them. While these forms of discrimination are not always explicitly named across African regional treaties and jurisprudence, their substance is well-established. Jurisprudence has endorsed an intersectional and structural understanding of discrimination and this should be extended to the climate-change context.
43. The Committee on Economic, Social and Cultural Rights has offered authoritative guidance on how intersectional and structural discrimination operate in the climate change context. *General Comment No. 27 (2025) on Economic, Social and Cultural Rights and the Environmental Dimensions of Sustainable Development* explains that:⁵³

‘While environmental degradation, including climate change, affects everyone, systemic inequalities, discrimination and historical exclusion from decision-

⁵¹ Communication 242/01, *Purohit v Gambia*, May 2003 para 49; *Request for Advisory Opinion by the Pan African Lawyers Union*, African Court (Advisory Opinion), (2020) para 68.

⁵² *Purohit*, *ibid.*

⁵³ Committee on Economic, Social and Cultural Rights, *General Comment No 27 (2025) on Economic, Social and Cultural Rights and the Environmental Dimension of Sustainable Development* (UN Doc. E/C.12/GC/27, 26 September 2025, Advance Unedited Version) [39]–[40]. Footnotes from original omitted.

making processes have led to disproportionately severe impacts on certain individuals and groups, often exacerbating existing inequalities, based on factors such as socio-economic status, race, colour, gender, disability, age, migratory status, sexual orientation and gender identity. Individuals and groups in vulnerable situations, particularly those who experience intersecting forms of disadvantage, face disproportionate harm and possess fewer resources to respond. States parties must identify and prioritize the needs of individuals and groups in vulnerable or marginalized situations, taking into account intersectionality. They must address structural and systemic discrimination and inequality, and safeguard such individuals and communities from human rights risks arising from both environmental harm and measures in response. In doing so, States parties must also take into account the rights of future generations to equal enjoyment of all human rights, and refrain from acts or omissions likely to result in or perpetuate discrimination against them.

Heavily polluting and hazardous facilities – including open-pit mines, smelters, petroleum refineries, chemical plants, coal-fired power stations, oil- and gas fields, steel plants, waste dumps, and hazardous waste incinerators – are often located in or near disadvantaged and marginalized communities. The principle of non-discrimination and equality requires States parties to address systemic patterns of marginalization and environmental injustices, particularly those linked to intersecting forms of discrimination, including racism and colonial legacies. This includes prioritizing mitigation, adaptation, remediation, reparation, and environmental restoration measures for communities that bear a disproportionate burden of exposure to pollution and toxic contamination’.

44. Intersectional discrimination captures situations where disadvantage arises from the interaction of multiple grounds of discrimination, producing harms that cannot be understood by reference to any single ground. Sex, gender, age, disability, race, ethnicity, indigeneity, economic status (fortune),⁵⁴ and other grounds intersect to create distinctive forms of disadvantage in the context of climate change, and this intersectional understanding is already embedded across the African human rights treaty frameworks. Structural or systemic discrimination refers to patterns of exclusion that arise not only from individual acts but from entrenched social, economic, cultural, and institutional arrangements that produce and reproduce unequal outcomes for particular groups.⁵⁵ These patterns are embedded in law, policy, custom, and the distribution of social, economic, and political power.⁵⁶ They persist over time and shape the conditions in which individuals and groups experience climate-related harms. Because these inequalities are embedded in the structure of society, they require structural responses from the State.

⁵⁴ African Commission, *General Comment No. 7: State Obligations under the African Charter in the Context of Private Provision of Social Services*, 72nd OS, 2022 [18].

⁵⁵ Committee on Economic, Social and Cultural Rights, *General Comment No. 20: Non-discrimination in economic, social and cultural rights (art 2, para 2) (2009) UN Doc. E/C12/GC/20* [12]

⁵⁶ *ibid.*

45. The African Commission has recognised intersectional discrimination across its jurisprudence. In its *Principles and Guidelines on the Implementation of Economic, Social and Cultural Rights in the African Charter*, the Commission defines intersectional discrimination to occur ‘when a person is subjected to discrimination on more than one ground at the same time, e.g. race and gender.’⁵⁷ It further states that the guarantees of equality and non-discrimination in the African Charter:⁵⁸

‘includes the adoption of special measures for the purpose of securing the adequate advancement of members of vulnerable and disadvantaged groups to enable their equal enjoyment of economic, social and cultural rights. This means that in some cases States will have to take temporary special measures in favour of these groups in order to reduce or suppress conditions that perpetuate discrimination and to realise substantive equality’.

46. In the context of *Extractive Industries, Human Rights and the Environment*, the African Commission indicates that Articles 21 (peoples’ right over their natural wealth and resources) and 24 (peoples’ right to a general satisfactory environment favourable to their development) of the African Charter are ‘premised on the principles of non-discrimination and equality, rights guaranteed under Article 2 of the African Charter’.⁵⁹ Importantly, the Commission provides guidance to States in stipulating:⁶⁰

‘the rights guaranteed in these articles [21 and 24] should be applied and operationalized with particular regard to the most marginalized and socio-economically excluded members of society, including most notably women, but also children, persons with disabilities and older persons. In the implementation of these rights, policy measures should aim at rectifying existing inequalities based on gender, ethnicity, religion and race and other similar grounds’.

47. In its decisions on communications, the African Commission has applied an intersectional and structural understanding of discrimination.⁶¹ The African Court has likewise employed an intersectional and structural awareness of discrimination.⁶²

⁵⁷ African Commission, *Principles and Guidelines on the Implementation of Economic, Social and Cultural Rights in The African Charter on Human and Peoples’ Rights*, para 1(l).

⁵⁸ *ibid* [11].

⁵⁹ African Commission, *State Reporting Guidelines and Principles on Articles 21 and 24 of the African Charter relating to Extractive Industries, Human Rights and the Environment* (2018), para 7.

⁶⁰ *ibid*.

⁶¹ *Purohit* paras 53-54. Communication 734/19, *J (represented by the Initiative for Strategic Litigation in Africa (ISLA) and the Kenya Legal and Ethical Issues Network on HIV & AIDS (KELIN)) v Namibia* (8 March 2024), para 199.

⁶² No.001/2018, Advisory Opinion, *The Compatibility Of Vagrancy Laws With The African Charter On Human And Peoples’ Rights And Other Human Rights Instruments Applicable In Africa*, 4 December 2020. App No.019/2018, *Centre for Human Rights and Others v Republic of Tanzania*, Judgment on merits and reparations, 5 February 2025, paras 119 and 147.

48. The ACERWC has explicitly recognised intersectional discrimination in the context of climate change. Its *Continental Study on Climate Change and Children's Rights in Africa (2024)* concludes that 'Climate change impacts are shaped by intersecting vulnerabilities and differences in, among others, sex, race, ethnicity, disability, geographical location, and socioeconomic status. Response to climate change should reflect intersectionality of the diverse identities of African children.'⁶³ The IPCC has indicated that the 'intersection of gender with race, class, ethnicity, sexuality, Indigenous identity, age, disability, income, migrant status, and geographical location often compounds vulnerability to climate change impacts (very high confidence), exacerbates inequity, and creates further injustice (high confidence).'⁶⁴ Judge Charlesworth highlighted in the ICJ Climate Change Advisory Opinion the importance of recognising that 'many people experience intersecting forms of discrimination' in the climate change context.⁶⁵
49. Intersectional and structural discrimination therefore provides a basis for requiring States to adopt differentiated and group-specific measures as part of their positive obligations.

Children

50. Climate change significantly limits children's ability to enjoy their rights and freedoms and children are among the most vulnerable to climate change. Children face heightened risks of illness, malnutrition, displacement, and educational disruption linked to climate-related hazards. Africa is home to the world's youngest population, with 40% under 15 years old, who are particularly vulnerable to climate change impacts.⁶⁶ UNICEF highlights that children across almost all African countries are exposed to severe climate impacts, including extreme heat, floods, droughts, and cyclones, which threaten their health, safety, and access to clean water, food, and education.⁶⁷ These conditions heighten risks and compound experiences already faced by children, of malnutrition, disease, displacement, and interrupted schooling, ultimately endangering their evolving capacities, full development, and mental and physical well-being long into their futures as adults.⁶⁸

⁶³ Page 69.

⁶⁴ *Climate Change 2022: Impacts, Adaptation and Vulnerability*, Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change, 37-118, page 53.

⁶⁵ Para 24.

⁶⁶ Intergovernmental Panel on Climate Change, 'How will climate change affect the lives of today's children tomorrow, if no immediate action is taken?' (2023) <<https://www.ipcc.ch/report/ar6/wg2/about/frequently-asked-questions/keyfaq3/>>

⁶⁷ UNICEF, 'Time to Act: African children in the climate change spotlight' (2023) <<https://www.unicef.org/esa/documents/time-to-act>> ACERWC, ACERWC Study On Climate Change & Children's Rights :In Africa A Continental Overview, 2024.

⁶⁸ See e.g. Botswana Environment Statistics: Digest Climate Change Digest 2021 published by Statistics Botswana.

51. Child-specific disaster protocols and strategies are partial: school safety, heat policies, safe WASH and learning continuity plans are uneven in many countries across the continent. The Commission Nationale des Droits Humains in Burkina Faso has documented violations of the rights of children exploited in gold mining sites: hazardous work, exposure to chemicals (mercury, cyanide), and lack of access to education and healthcare. These monitoring efforts highlight the link between artisanal mining, local environmental degradation, increased pollution risks, and climate impacts (deforestation, soil destabilisation).
52. The African Charter in Article 18(3) establishes the special protection afforded to children. Article 1 of the African Children’s Charter provides that States Parties have an obligation ‘to adopt such legislative or other measures as may be necessary to give effect to the provisions of this Charter.’ The African Committee of Experts on the Rights and Welfare of the Child (ACERWC) has affirmed that ensuring equal access to all rights per Article 3 of the African Children’s Charter ‘may require taking special measures in order to diminish or eliminate conditions that cause discrimination.’⁶⁹ Similarly, the ACERWC’s *Continental Study on Climate Change* underscores that, ‘it is marginalised children who bear a disproportionate burden of the consequences of inaction on the environment, a situation which infringes, among others, the principle of non-discrimination’.⁷⁰
53. The UN Committee on the Rights of the Child has also noted that environmental harms and climate change impacts have ‘a discriminatory effect on certain groups of children, especially Indigenous children, children belonging to minority groups, children with disabilities and children living in disaster-prone or climate-vulnerable environments.’⁷¹ Thus, the Committee requires that States collect disaggregated data ‘to identify the differential effects of environment-related harm on children and to better understand intersectionalities, paying special attention to groups of children who are most at risk, and to implement special measures and policies, as required.’⁷² Both the African Commission and the ACERWC affirm that the obligation to prevent discrimination in the enjoyment of rights is an immediate one.⁷³ But beyond this, in the particular context of children’s rights under the African Children’s Charter, the ACERWC emphasised that all rights in the African Children’s Charter are ‘equally important and must be implemented immediately’, stating that the Charter standards

⁶⁹ African Committee of Experts on the Rights and Welfare of Children, ‘General Comment No. 5 on State Party Obligations under the African Charter on the Rights and Welfare of the Child (Article 1) And Systems Strengthening For Child Protection’ [4.1].

⁷⁰ ACERWC, *ACERWC Study On Climate Change & Children’s Rights In Africa: A Continental Overview*, 2024

⁷¹ UNCRC, ‘General comment No. 26 (2023) on children’s rights and the environment, with a special focus on climate change’, para 14.

⁷² *ibid* para 15.

⁷³ African Commission, *Principles and Guidelines on the Implementation of Economic, Social and Cultural Rights in The African Charter on Human and Peoples’ Rights*, para 19; United Nations Committee on Economic, Social and Cultural Rights, ‘General Comment No.3: The Nature of States Parties’ Obligations’ [1].

'were set intentionally – they do not allow States to claim that they do not have any resources for the implementation of social and economic goods for the fulfilment of children's rights'.⁷⁴

54. The ACERWC has recognised that there is significance in the inclusion of the term 'welfare' in the African Children's Charter, such that 'protection of rights should lead to the wellbeing and welfare of children. In other words, the recognition of rights should be able to promote and improve the lived reality of children on the ground.'⁷⁵ States must therefore assess the specific circumstances of children in their jurisdictions to determine their particular needs and interests in the face of climate change. In its *Advisory Opinion on the Climate Change Emergency and Human Rights*, the Inter-American Court also directed States to ensure age-appropriate, safe and accessible mechanisms for children's views to be heard regularly and guarantee their direct and effective participation in the pertinent stages of the process for the design, adoption and implementation of decisions on climate change, which is particularly important in relation to legislation, policies, regulations, projects, public initiatives and administrative measures that could directly affect them.⁷⁶
55. In line with these obligations, *Resolution No. 18/2022 of the ACERWC Working Group on Children's Rights and Climate Change to Integrate a Child Rights-Based Approach into Climate Change Action (ACERWC Resolution on Climate Change)* requires States to incorporate a child-rights-based approach into all climate policies and programmes, to prioritise the needs of children most vulnerable to climate impacts (including girls, indigenous children and children with disabilities), and to allocate sufficient resources through child-sensitive budgeting to address climate-related risks across food, nutrition, water, sanitation, education and social protection sectors.
56. States Parties' positive obligations also flow from the obligation to guarantee the right to the best interests of the child. Children's best interests should be 'the primary consideration' for 'all actions concerning the child undertaken by any person or authority', as explicitly provided in Article 4 of the ACRWC and Article 3(1) of the United Nations Convention on the Rights of the Child (CRC). State Parties therefore have positive obligations to ensure that the best interests of the child are a primary consideration in all climate-related decisions, whether in the adoption, design, implementation or review of measures that may affect children, including those addressing environmental harm or climate change impacts.
57. As the Committee on the Rights of the Child has stated in its *General Comment No. 26 on Children's Rights and the Environment, with a Special Focus on Climate Change (2023)*, '[a] clean, healthy and sustainable environment is both a human right itself

⁷⁴ ACERWC General Comment No. 5, paras 3.4-3.6

⁷⁵ *Legal and Human Rights Centre and Centre for Reproductive Rights (on behalf of Tanzanian girls) v United Republic of Tanzania* (ACERWC, 2022) para 38.

⁷⁶ *Advisory Opinion on Climate Emergency and Human Rights*, para 601.

and necessary for the full enjoyment of a broad range of children's rights.⁷⁷ Thus, the best interests of the child must be assessed to ensure the full and effective enjoyment of all rights, including the right to a clean, healthy and sustainable environment.⁷⁸ The Committee on the Rights of the Child has also raised the principle of intergenerational equity and future generations in relation to children's right to be protected against climate change, noting that future generations of children who are constantly arriving are also entitled to protection of their rights to the maximum extent.⁷⁹ Thus, 'beyond their immediate obligations under the Convention with regard to the environment, States bear the responsibility for foreseeable environment-related threats', including the threats raised by climate change.⁸⁰

58. In *General Comment No. 5 on State Party Obligations under the African Children's Charter (Article 1) and Systems Strengthening for Child Protection*, the ACERWC confirms that the best interests standard encompasses short, medium, and long-term interests. It affirms that 'State actions which imperil the enjoyment of the rights of future generations of children (eg. allowing environmental degradation to take place, or inappropriate exploitation of natural resources) are regarded as violating the best interests of the child standard.' Both bodies therefore interpret the best interests principle as extending across time and as requiring States to prevent environmental harm that compromises the rights and welfare of present and future generations of children.

59. Under Article 5(2) of the African Children's Charter, States have a positive obligation 'to ensure, to the maximum extent possible, the survival, protection and development of the child.' Article 14(1) guarantees every child's right to 'the best attainable state of physical, mental and spiritual health.' The Committee on the Rights of the Child affirms that these rights, which are similarly protected under the CRC, include protection from climate-related harm and ensuring the environmental conditions necessary for a healthy life.⁸¹ The Committee's *General comment No. 26* emphasises the particular vulnerability of children to toxic pollutants due to the fact that this is a time of rapid development of the child's brain and body.⁸²

60. The ACERWC Working Group on Children's Rights and Climate Change warns that child hunger, exacerbated by climate-induced food insecurity, remains a major cause of child mortality in Africa. With 90% of African children not meeting minimum dietary standards and 60% lacking adequate meal frequency, climate change intensifies food scarcity through droughts, floods, and other shocks, threatening

⁷⁷ UNCRC, General comment No. 26, para 8.

⁷⁸ *Ibid*, para 17.

⁷⁹ *ibid* para 11.

⁸⁰ *ibid* para 11.

⁸¹ UNCRC, General comment No. 26, paras 20 and 43.

⁸² *General Comment 26* p 3 para 14.

millions with malnutrition and mortality.⁸³ States are therefore urged by the Working Group to develop and implement climate adaptation strategies that integrate nutrition, agriculture, food security, and health systems; ensure support for families in food-insecure regions; expand social protection and hunger-relief programmes; and make climate information accessible to affected communities and children.⁸⁴ These obligations reflect the *ACERWC Resolution on Climate Change*, which recommends that States adopt coordinated legislative, policy and institutional measures to address climate-related threats across critical sectors such as food and nutrition, water, health, and social protection.⁸⁵

61. Additionally, in its review of States' compliance with the African Children's Charter, the ACERWC has been making recommendations to States in line with these concerns. For example, the ACERWC has urged South Africa to integrate nutrition, health, and food security into climate adaptation strategies,⁸⁶ and strengthen resilience in areas vulnerable to food crises 'by increasing national capacity for alternative feeding, micronutrients, and models for alternative, climate-adapted crops, sustainable food systems, anticipatory action, and shock-response systems, among other things'.⁸⁷ It also called for community sensitisation on the risks of climate change to children's health.⁸⁸ Likewise, in its Concluding Observations on Zimbabwe, the ACERWC emphasised addressing malnutrition, child mortality, poor sanitation, and climate-related food insecurity, urging actions to reduce stunting, promote climate-resilient agriculture, improve feeding practices, and expand healthcare access and micronutrient supplementation.⁸⁹
62. Under Article 11(1) of the African Children's Charter, every child has the right to education. It specifically directs States Parties' positive obligations in Article 11(1)(d) to 'take measures to encourage regular attendance at schools and the reduction of drop-out rate' and (e) 'take special measures in respect of female, gifted and disadvantaged children, to ensure equal access to education for all sections of the community.' In *General Comment No. 9 on Education*, the ACERWC identifies '[e]merging and context-specific issues, mainly conflict, climate change and related hazards such as floods, heatwaves, droughts and typhoons' as major causes of

⁸³ ACERWC Working Group on Children's Rights and Climate Change, 'Statement of the African Committee of Experts on the Rights and Welfare of the Child Working Group on Climate Change and Children's Rights on the Africa Day for Food and Nutrition Security' (2022) 2.

⁸⁴ *ibid* 3.

⁸⁵ Recommendation III.

⁸⁶ ACERWC, 'Concluding Observations and Recommendations of the African Committee of Experts on the Rights and Welfare of the Child to the Government of the Republic Of South Africa on its Second Periodic Report on the Implementation of the African Charter on the Rights and Welfare of The Child' (2023) para 40(d).

⁸⁷ *ibid* para 40(e)

⁸⁸ *Ibid* para 40(g)

⁸⁹ ACERWC, 'Concluding Observations And Recommendations By The African Committee Of Experts On The Rights And Welfare Of The Child On The First Periodic Report Of The Republic Of Zimbabwe On The Status Of Implementation Of The African Charter On The Rights And Welfare Of The Child' (July 2024) para 15.

irregular attendance and school dropout that must be addressed. This interpretation confirms that climate harm is not peripheral to children's right to education but central to States Parties' positive obligations. The Committee on the Rights of the Child, in *General Comment No. 26 on Children's Rights and the Environment, with a Special Focus on Climate Change (2023)*, similarly emphasises that the right to education is negatively impacted by climate harm and environmental degradation, as climate impacts such as floods, droughts, and heatwaves can cause school closures, dropouts, and the destruction of educational facilities and play areas.⁹⁰

63. Article 11(2)(g) of the African Children's Charter requires that education promote respect for the environment and natural resources,⁹¹ which establishes a clear positive obligation for climate change education. In its *General Comment No. 9 on Education*, the ACERWC gives guidance to States Parties, stating:⁹²

'Article 11(2)(g) mandates State Parties to enact laws that would instruct schools to incorporate lessons from the basic education level on how to care for and protect the environment and natural resources. The lessons should aim to strengthen and accelerate locally relevant initiatives that are proactive, responsive and adaptive to address climate change risks and environmental shocks. Article 11(2)(g), necessitates the reform of the school curricula to incorporate comprehensive climate change and environmental education. Such reforms should aim to capacitate and increase children's literacy on environmental and climate related issues by fostering an understanding of the interdependence between human life, ecosystems, and biodiversity. This includes the integration of environmental health education into school programmes to raise children's awareness of the impact of environmental factors on health and wellbeing, and that climate change education should focus on country-specific climate impacts and necessary climate action. States must also ensure that children are equipped with the knowledge, values, and skills needed to promote the respect and preservation of the environment and natural resources and thereby to act as responsible of current and future generations'.

64. In line with Article 29(1)(e) of the CRC, which requires that education foster respect for the natural environment, States must ensure that all children receive an education that promotes environmental awareness and sustainability values, consistent with their duty under Article 28 to guarantee access to education.⁹³ Environmental education, as elaborated by the Committee on the Rights of the Child, should extend beyond formal schooling and include experiential learning, and further reflect

⁹⁰ UNCRC, General Comment No. 26, para 51.

⁹¹ African Charter on the Rights and Welfare of Children, Art 11(2)(g)

⁹² African Committee of Experts on the Rights and Welfare of the Child, *General Comment No. 9 on Article 11 of the African Charter on the Rights and Welfare of the Child on the Right to Education*, ACERWC/GC/9/25 (April 2025), para 35.

⁹³ *ibid* para 52

environmental values in the education and training of all professionals involved in education, encompassing teaching methods, technologies and approaches used in education.⁹⁴ States are further encouraged to promote environmentally friendly school infrastructure, such as facilities powered by renewable energy, equipped with edible gardens, and designed to reduce ecological footprints, thereby aligning education policy with environmental obligations.⁹⁵ Moreover, during and after climate-related events such as water scarcity, sandstorms, and heatwaves, States must ensure continued and safe access to education, particularly for children in remote or rural areas, by providing mobile schools, distance learning, or temporary facilities.⁹⁶ States Parties are required to prioritise disadvantaged groups for the climate-proofing and renovation of schools, ensure rapid resettlement of displaced populations so that schools are not used as shelters, and prevent schools from becoming targets during conflict-related climate emergencies.⁹⁷

65. Children's access to justice and effective remedies in the context of climate change engages States Parties positive obligations under the African Children's Charter and the CRC. *General Comment No. 26* of the Committee on the Rights of the Child stipulates that States must establish child-friendly access to justice pathways capable of addressing violations arising from environmental harm and climate change. These must include judicial, quasi-judicial and non-judicial mechanisms, as well as administrative avenues that are accessible, affordable, child-sensitive, and adapted to children's needs. The Committee emphasises that States must remove procedural, financial and informational barriers that prevent children from initiating proceedings, including through simplified complaint procedures, accessible information, legal aid, and mechanisms that accommodate children's evolving capacities. States must therefore adjust rules on standing so that children are able to bring claims on their own behalf, either directly or through representatives, and must empower national human rights institutions with explicit mandates to receive, investigate and address complaints from children in the context of environmental harm and climate change.

66. The ACERWC has indicated that children face barriers when seeking remedies, including lack of documentation, poverty, displacement, limited mobility, and dependence on adults who may themselves be unaware of legal processes or unwilling to pursue claims.⁹⁸ The ACERWC has stressed that child-friendly procedures must ensure legal assistance, safe reporting channels, and procedural accommodations for children with disabilities or those living in vulnerable circumstances.⁹⁹ The *ACERWC Resolution on Climate Change* has also urged States to conduct child-sensitive climate impact assessments, establish disaggregated data

⁹⁴ UNCRC, General Comment No. 26, para 54.

⁹⁵ *ibid* para 55.

⁹⁶ *ibid* para 56.

⁹⁷ *Ibid*.

⁹⁸ ACERWC, *Continental Study on Climate Change and Children's Rights in Africa* (2024), sections 4.3.13 and 4.4.4.1; ACERWC, *Guidelines on Child Participation* (2022), paras 94–98.

⁹⁹ *ibid*.

systems, and ensure child-sensitive budgeting that supports accessible accountability mechanisms. In its communications procedure and concluding observations, the Committee has consistently called on States to strengthen judicial and administrative bodies capable of addressing violations of children's rights linked to environmental harm and to ensure that remedies are prompt, effective, and grounded in the child's welfare.

67. The best interests of the child must guide all aspects of access to justice processes and the design of remedies in the climate change context. As clarified by both treaty bodies, the best interests of the child function as a substantive right, a rule of procedure, and an interpretive principle.¹⁰⁰ Accountability forums must therefore undertake a contextual evaluation of how climate-related harm affects children's rights and must recognise the unique barriers that children face in accessing justice. These barriers include financial dependence, limited legal literacy, and heightened exposure to reprisals or stigma when challenging powerful actors, including State or corporate entities responsible for climate change and environmental degradation.
68. For these reasons, the best-interests principle requires courts to interpret standing rules, evidentiary standards and procedural safeguards in a manner that enables, rather than restricts, children's access to justice. In many situations, collective proceedings will be the only realistic avenue through which children can vindicate their rights, especially where climate harms are widespread and diffuse. *General Comment No. 26* explicitly encourages collective complaints, such as class actions and public-interest litigation, to address systemic harm affecting large groups of children.
69. Together, the ACERWC and UN Committee on the Rights of the Child jurisprudence establishes that States must provide children with effective, child-sensitive remedies that respond to both individual and collective climate change harms.¹⁰¹ These include restitution, compensation, rehabilitation, guarantees of non-repetition, and structural orders aimed at addressing the systemic drivers of climate vulnerability. Remedies must be designed to ensure children's safety, dignity, participation, and agency, and must contribute to transforming the underlying inequalities that exacerbate the impacts of climate change on children. The *ACERWC Resolution on Climate Change* further directs States to establish child-sensitive monitoring, evaluation, and accountability mechanisms; mobilise adequate resources; and ensure meaningful participation of children in the oversight of climate-related decision-making.

¹⁰⁰ Committee on the Rights of the Child, 'General comment No 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art 3, para 1)' (29 May 2013) UN Doc CRC/C/GC/14, para 6; African Committee of Experts on the Rights and Welfare of Children, 'General Comment No. 5 on State Party Obligations under the African Charter on the Rights and Welfare of the Child (Article 1) And Systems Strengthening For Child Protection', pp 11–12; *Legal and Human Rights Centre and Centre for Reproductive Rights (on behalf of Tanzanian girls) v United Republic of Tanzania* (ACERWC, 2022), para 70.

¹⁰¹ ACERWC, *Continental Study on Climate Change and Children's Rights in Africa* (2024), section 4.4.4; UNCRC General Comment 26, paras 82–90 and 85 specifically.

Indigenous Peoples, Local and Traditional Communities

70. African indigenous peoples have contributed the least to global climate change, yet they experience many of its most severe impacts. Their collective physical and cultural survival is closely tied to ancestral lands, territories and resources that are increasingly threatened by erratic rainfall, prolonged drought, desertification, soil depletion, forest loss, and ecosystem collapse. Loss of grazing areas and forest resources undermines both their livelihoods and their cultural practices. The loss of traditional knowledge and practices due to environmental changes threatens not only livelihoods but also the cultural heritage of indigenous peoples, leading to a loss of identity. In Ethiopia, for example, climate-induced disasters have disrupted livelihoods, eroded resilience, and exposed women and girls in displacement camps to heightened risks of gender-based violence. In several countries, some communities are also displaced from ancestral lands due to conservation measures or commercial projects. Climate change therefore undermines not only their livelihoods but also the continuity of their governance systems, spiritual practices and traditional knowledge.¹⁰²
71. In addition, ‘traditional communities’, ‘local communities’ and groups living and working in rural, semi-rural or urban areas who engage or seek to engage in small-scale, family or community-based agricultural, pastoral, forestry, fishing or related work, and who depend directly on natural resources for their survival, face similar vulnerabilities.¹⁰³
72. Indigenous peoples and these communities remain sidelined in climate policy discussions.¹⁰⁴ Furthermore, indigenous women face unique challenges, including violence and exclusion from decision-making.¹⁰⁵
73. Despite the recognition of indigenous peoples and the applicability of Articles 19-24 to them by the African human rights bodies,¹⁰⁶ in many States there is no legal or policy framework recognising or protecting indigenous peoples other than, for instance, through constitutional provisions on non-discrimination and equality. Where there is some legal recognition of indigenous and traditional communities, for instance in South Africa, it is limited and incomplete, especially for certain groups.

¹⁰² Ademola Jegede, *The Climate Change Regulatory Framework and Indigenous Peoples’ Lands in Africa: Human Rights Implications* (Pretoria University Law Press 2016) 3.

¹⁰³ Adriana Bessa & Jérémie Gilbert ‘Indigenous Peoples and Traditional Local Communities in the UNDROP: Synergies and Challenges’ in M Alabrese et al (eds) *The United Nations’ Declaration on Peasants’ Rights*, Routledge, (2022) 32-46, 35.

¹⁰⁴ E.g. Tessema, S. T. (2024, March 15). *The Indigenous World 2024: Ethiopia*. International Work Group for Indigenous Affairs. <https://iwgia.org/en/ethiopia/5352-iw-2024-ethiopia.html>

¹⁰⁵ Kenya Protection of Traditional Knowledge, Genetic Resources and Expressions of Folklore Act 16 of 2016; AO Jegede and PL Mamphiswana, ‘Right to a healthy and sustainable environment’, in A Rudman, CN Musembi and TM Makuny, *The Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa: A Commentary*, PULP, 2023, 376-398, at 385-386.

¹⁰⁶ ACERWC, General Comment No. 9 on Education; Application No. 006/2012 *African Commission on Human and Peoples’ Rights v Republic of Kenya*, Judgment, 26 May 2017 (*Ogiek*).

74. Customary, communal land rights and marine resource use are inconsistently secured; free, prior and informed consent (FPIC) is not codified for climate-relevant projects; cultural heritage is at risk from coastal erosion lacks clear protection/relocation frameworks. Such challenges have been identified by the UN Human Rights Committee¹⁰⁷ and have long been recognised by the African human rights bodies.

75. Yet, indigenous and local communities possess vital knowledge systems that can inform sustainable adaptation strategies, as identified under Article 18(2)(c) of the Maputo Protocol. Traditional knowledge has been defined as ‘a set of cultural traditions, values, belief systems, and world views in any indigenous society that are imparted to the young generation by community elders’.¹⁰⁸ The AU Model Legislation for the Protection of the Rights of Local Communities, Farmers and Breeders, and for the Regulation of Access to Biological Resources also recognizes the ‘rights of communities over...their innovations, practices, knowledge and technologies acquired through generations’.¹⁰⁹ Small scale farmers, such as in Limpopo Province in South Africa, continue to practice climate-resilient farming techniques such as weather prediction via natural indicators (e.g., flowering of Acacia or the appearance of Venus), soil enrichment using crop residues and ash, crop diversification, and shifting planting seasons based on observed climatic patterns.

76. The African Commission’s climate resolutions¹¹⁰ have made the express connection between Articles 22 and 24 of the African Charter and the duties upon States in the UNFCCC and Paris Agreement, encouraging States to take urgent special measures to protect, amongst others, Indigenous Peoples and/or other communities from the impacts of climate change. Three positive obligations are identified as follows:

- The obligation of consultation, participation, and free, prior and informed consent
- The obligation to take reasonable and other measures to prevent pollution and ecological degradation, to promote conservation, and to

¹⁰⁷ E.g. in Communication No.364/2019, *Daniel Billy et al v Australia*, UN Doc.CCPR/C/135/D/3624/2019. See M Scheinen, International human rights obligations in relation to climate change, *Bonavero Reports* No.2/2025, 26 March 2025, [Bonavero Report](#), para 18.

¹⁰⁸ AO Jegede ‘African Union peace and security architecture: can the panel of the wise make a difference?’ (2009) 9 *African Human Rights Law Journal* 409. AO Jegede & A Masoga ‘Climate change adaptation and indigenous knowledge: prospecting African Union channels for influencing national policy’, 15(2) *Indilinga African Journal of Indigenous Knowledge Systems* (2016) 1.

¹⁰⁹ AU Model Legislation for the Protection of the Rights of Local Communities, Farmers and Breeders, and for the Regulation of Access to Biological Resources, 2000, section 16(3).

¹¹⁰ African Commission Resolution on Climate Change and Human Rights in Africa, ACHPR/Res.342(LVIII)2016, 20 April 2016; Resolution on Climate Change and Human Rights and the Need to Study Its Impact in Africa’, ACHPR/Res.153(XLVI)09, 25 November 200). See also Principles And Guidelines On The Implementation Of Economic, Social And Cultural Rights In The African Charter On Human And Peoples’ Rights, para 44.

secure an ecologically sustainable development and use of natural resources

- Heightened protection for Indigenous Peoples' and PLTC in the context of transition minerals and climate-related extractive pressures and displacements

77. The African Court in *Ogiek* clarified States' obligations to effectively consult with the relevant indigenous communities in accordance with their traditions and customs about development, conservation or investment projects on their ancestral land based on Articles 21 and 22 of the African Charter.¹¹¹

78. In *SERAC v. Nigeria*, the African Commission clarified that the right to a general satisfactory environment under Article 24 of the African Charter 'imposes clear obligations ... It requires the State to take reasonable and other measures to prevent pollution and ecological degradation, to promote conservation, and to secure an ecologically sustainable development and use of natural resources.'¹¹²

79. The African Commission in *Centre for Minority Rights Development (Kenya) & Minority Rights Group International on behalf of Endorois Welfare Council v Kenya (Endorois)* and *Minority Rights Group International & Environnement Ressources Naturelles et Développement on behalf of the Batwa of Kahuzi-Biega National Park v Democratic Republic of Congo (Batwa)* provides guidance on how land, natural resources and collective subsistence systems must be protected under the African Charter when dealing with Indigenous Peoples and PLTC in the context of climate change.¹¹³ The decisions are central because they conceptualise land and natural resources as the material basis of cultural continuity, livelihood systems, and collective survival. This framing is essential for understanding the heightened risks these groups face in the context of climate change, environmental degradation and transition-mineral extraction which give rise to States Parties positive obligations.

80. In *Endorois*, the Commission recognised that land constitutes the foundation for pastoralist and rural subsistence systems, including grazing cycles, salt licks, beekeeping, water sources, medicinal plants and religious practices. It held that these relationships were protected forms of property and cultural rights under Articles 14, 17, 21 and 22 of the African Charter. The Commission rejected narrow interpretations of "property" tied to formal title, affirming that the Endorois held a customary, collective and legally cognisable interest in their ancestral lands, and that the State violated the Charter by removing them without prior consultation, without free, prior and informed consent, and without adequate compensation. The Commission also

¹¹¹ *Ogiek*, paras 198, 202.

¹¹² Communication 155/96, *Social and Economic Rights Action Centre (SERAC) v Nigeria*, 27 October 2001, para 52.

¹¹³ *Ibid.* Communication 588/15 *Minority Rights Group International and Environnement Ressources Naturelles et Développement (on behalf of the Batwa of Kahuzi-Biega National Park, DRC) v. Democratic Republic of Congo (DRC)*, 13 May 2022

drew a direct link between collective land relations and broader developmental rights, finding that the exclusion of the *Endorois* from decision-making about tourism projects and conservation measures violated their right to development.

81. The Commission's 2022 *Batwa* decision further strengthens this line of reasoning. The Commission found multiple violations of the African Charter arising from the displacement of Batwa communities from the Kahuzi-Biega National Park, the denial of access to forest lands, violent evictions, lack of participation in park governance, destruction of homes and crops, and failure to demarcate or provide restitution for ancestral territories. The Commission held that these actions violated Articles 1, 2, 3, 4, 8, 14, 16, 17(1)–(3), 21, 22 and 24, and reaffirmed that collective land tenure is integral for the continuity of subsistence activities such as hunting, gathering and small-scale agriculture, as well as for the preservation of knowledge systems, rituals, and cultural practices tied to forests. The Commission held that 'as good stewards of the environment, measures to exclude the Batwa from their land may be harmful to the environment given the positive historical record of conservation of the Kahuzi-Biega forest by the Batwa.'¹¹⁴

82. Crucially, *Batwa* makes explicit that failure to recognise collective land relations and the displacement of rural communities constitutes structural discrimination. The Commission emphasised that Batwa communities face entrenched patterns of exclusion, marginalisation and dispossession because their subsistence systems, mobility patterns, and forest-based livelihoods fall outside dominant development governance models. The Commission stressed that these harms are not incidental but are produced by the failure of States to adapt legal frameworks to the particular subsistence systems and environmental relationships of rural communities. The Commission therefore required the State to restore access to ancestral forests, provide restitution or suitable redress, ensure participation in conservation governance, and adopt measures that guarantee the long-term survival of Batwa communities.

83. The African Commission's Working Group on Indigenous Populations/Communities and Minorities reports that Africa now accounts for a substantial share of alleged human-rights violations linked to transition-mineral projects.¹¹⁵ The rapid expansion of transition-mineral extraction across Africa has created significant risks for indigenous peoples and local and traditional communities. Transition minerals such as graphite, lithium, cobalt, nickel and manganese are central to global decarbonisation, yet their extraction has intensified disputes over land, displacement, environmental degradation, and the distribution of benefits. Persistent conflicts around community consent and environmental safeguards illustrate this trend. In Mozambique, the Balama graphite mine resumed exports in July 2025 only after community blockades and operational shutdowns, reflecting unresolved

¹¹⁴ Communication 588/15 *ibid.*

¹¹⁵ African Commission on Human and Peoples' Rights, *Intersessional Activity Report of Hon. Commissioner Dr. Litha Musyimi-Ogana, Chairperson of the Working Group on Indigenous Populations/Communities and Minorities in Africa, 85th Ordinary Session* (October 2025) paras 26–27.

grievances about access, disruption and displacement. In Namibia, lithium extraction projects have generated protests concerning opaque payments to traditional authorities and inadequate consultation with affected communities. These examples underscore a broader pattern: transition-mineral projects often proceed without meaningful participation, free, prior and informed consent, transparent decision-making or credible benefit-sharing. They also highlight the need for States to integrate robust safeguards into climate-transition policies to ensure that decarbonisation does not reproduce or intensify structural harms for indigenous and rural communities whose livelihoods, land relations and ecological systems are already threatened by the impacts of climate change.

84. These approaches are in line with jurisprudence from the Inter-American system and the United Nations treaty bodies. The Inter-American Court of Human Rights has articulated a coherent set of reinforced obligations for States in situations where environmental or climate harm affects vulnerable groups, including Indigenous Peoples, including the obligation upon States to prevent and regulate environmental and climate harm, including by reducing emissions, conducting climate-sensitive impact assessments, ensuring access to information and participation, and providing remedies, while giving heightened protection to vulnerable groups such as indigenous peoples.¹¹⁶ They have confirmed that environmental protection is integral to indigenous survival.¹¹⁷

85. The UN human rights treaty bodies have also developed a consistent approach to positive obligations in relation to communities whose subsistence depends on land and natural resources in the context of environmental degradation and climate change. In *Daniel Billy et al. v. Australia*,¹¹⁸ the UN Human Rights Committee found violations of Articles 17 (privacy and family life) and 27 (rights of minorities/Indigenous culture) of the International Covenant on Civil and Political Rights for failing to protect Torres Strait Islanders from climate harm.¹¹⁹ In *J.T. et al. v Finland*, the Committee on Economic, Social and Cultural Rights held that granting a mineral exploration permit and an ‘area reservation’ on the Indigenous Peoples of Sámi traditional territory without an adequate impact assessment and without a process aimed at FPIC violated Article 15(1)(a) (right to take part in cultural life), read alone and with Articles 1, 2(2) and 11 of the Covenant.¹²⁰ The Committee expressly situated the violations ‘in the context of ongoing climate change and the cumulative’ other

¹¹⁶ Inter-American Court of Human Rights, Advisory Opinion OC-23/17: Environment and Human Rights (State Obligations in relation to the Environment within the Framework of the Protection and Guarantee of the Rights to Life and to Personal Integrity) (15 November 2017). Inter-American Court of Human Rights, *Advisory Opinion OC-32/25: Climate Emergency and Human Rights* (29 May 2025).

¹¹⁷ Inter-American Court of Human Rights, *Lhaka Honhat (Nuestra Tierra) Indigenous Community v Argentina* (Judgment, 6 February 2020).

¹¹⁸ Communication No.364/2019, *Daniel Billy et al v Australia*, UN Doc. CCPR/C/135/D/3624/2019.

¹¹⁹ *ibid* para 11.

¹²⁰ *J.T. et al. v Finland* (Views) Committee on Economic, Social and Cultural Rights, Communications Nos 251/2022 and 289/2022, 27 September 2024, UN Docs E/C.12/76/D/251/2022 and E/C.12/76/D/289/2022, paras 14.1–14.11.

interferences with reindeer herding.¹²¹ In *M.E.V. v. Finland*, the Committee on the Rights of the Child held that Finland violated the child author's rights under Articles 2(1), 8, 24, 27 and 30 of the CRC by granting a mineral exploration permit in the centre of Sámi winter-herding lands without an adequate impact assessment and without securing the effective participation of the child or her community.¹²² The Committee accepted evidence that climate change-induced frozen and mouldy pastures, extreme snow conditions and ecosystem instability had already rendered traditional reindeer herding precarious, and that the introduction of drilling machinery, heavy vehicles and repeated disturbances in the winter grazing cycle would cumulatively undermine the sustainability of Sámi reindeer herding, upon which the child's culture, language, livelihood and intergenerational transmission of knowledge depend.¹²³

Future generations

86. The climate crisis compels a clear articulation of intergenerational justice and its legal expression in the principle of intergenerational equity by the African Court. Intergenerational equity operates as the temporal dimension of sustainable development, which has long been understood as 'development that meets the needs of the present generation without compromising the ability of future generations to meet their own needs'.¹²⁴ In international law, this idea is given concrete effect through intergenerational equity, a principle embedded in major environmental and climate treaties, affirmed by customary international law, and increasingly reflected in international human rights jurisprudence.

87. Intergenerational equity is understood to require present generations (1) to conserve the *quality* of cultural and natural resources, (2) to maintain a diversity of *options* for future generations, and (3) to guarantee non-discriminatory *access* to these resources across time.¹²⁵ These elements have been endorsed in international law, including in evolving human rights standards, as they avoid authorising unreasonable exploitation by the present generation, do not impose unreasonable burdens upon present generations, and preserve flexibility for future generations to pursue their own

¹²¹ *ibid* para 12.5.

¹²² *M.E.V. et al. v Finland* (Views) UN Committee on the Rights of the Child, 13 September 2024, CRC/C/97/D/172/2022, paras 9.2–9.26.

¹²³ *ibid*.

¹²⁴ World Commission on Environment and Development, *Our Common Future* (Report) UN GAOR 42nd Session, Agenda Item 83(e), UN Doc A/42/427 (1987) annex 1, Principle 2, para 27.

¹²⁵ UN Secretary-General, *Intergenerational Solidarity and the Needs of Future Generations*, UN Doc A/68/322 (15 August 2013) para 24; *Habitantes de La Oroya v Peru* (Inter-American Court of Human Rights, Series C No 511, 2023) paras 140, 156–158; Edith Brown Weiss, 'The Theoretical Framework for International Legal Principles of Intergenerational Equity and Implementation through National Institutions' in Marie-Claire Cordonier Segger and others (eds), *Intergenerational Justice in Sustainable Development Treaty Implementation: Advancing Future Generations' Rights through National Institutions* (Cambridge University Press 2021) 16–45, 20, 21–22; Pulp Mills on the River Uruguay (*Argentina v Uruguay*) (Separate Opinion of Judge Cançado Trindade) [2006] ICJ Rep 135, 120–122; Whaling in the Antarctic (*Australia v Japan: New Zealand intervening*) (Separate Opinion of Judge Cançado Trindade) [2014] ICJ Rep 226, paras 41–47; Advisory Opinion OC-29/22, *The Climate Emergency and Human Rights* (Inter-American Court of Human Rights, 15 November 2023) para 308.

pathways.¹²⁶ The role of present generations is therefore not to determine the ends that future generations must adopt, but to ensure that current acts and omissions do not create irreversible or reasonably foreseeable harms that discriminate against future generations or materially diminish their ability to access the conditions necessary for the intergenerational continuum of life.¹²⁷ However, ongoing climate change, biodiversity loss, and ecological degradation already prevent present generations from passing on the environment, natural resources and cultural foundations in at least as good a condition as they were received.¹²⁸ The cumulative and accelerating nature of these crises has narrowed the space within which comparable environmental quality, options and access can be maintained without urgent and far-reaching action.¹²⁹

88. There is a growing recognition in international and human rights law that future generations refer to ‘all those who do not yet exist but will exist and will inherit the Earth, including future persons, groups and Peoples’.¹³⁰ Present generations, in turn, refers to all those alive today, spanning children, youth, adults and older persons. A degree of temporal overlap between different generational cohorts thus exists. This reflects the view of the Maastricht Principles on the Human Rights of Future Generations, affirmed in the Inter-American Court Advisory Opinion, which emphasise:

‘Human generations exist within an unbroken continuum that is continually renewed and redefined as untold new members join the living human

¹²⁶ Edith Brown Weiss, ‘Intergenerational Equity’ (April 2021) *Max Planck Encyclopedia of Public International Law*, para 8.

¹²⁷ *Maastricht Principles on the Human Rights of Future Generations* (Maastricht, 3 February 2023) <https://www.rightsoffuturegenerations.org/the-principles/english>, Principles 6 and 7 (*Maastricht Future Generations Principles*); G Basson, S Liebenberg, M Wewerinke-Singh, A Khalfan, C Muffett, M Kothari, M Sepúlveda Carmona and S Venne-Manyfingers, ‘Commentary to the Maastricht Principles on the Human Rights of Future Generations’ (2025) 47 *Human Rights Quarterly* 754 (also available at <https://www.rightsoffuturegenerations.org/commentary>) Commentary to Principle 6, p 806 para 6 (*Maastricht Commentary Future Generations Principles*); UN Secretary-General, *Intergenerational Solidarity and the Needs of Future Generations*, UN Doc A/68/322 (15 August 2013) para 25

¹²⁸ Committee on Economic, Social and Cultural Rights, *General Comment No 27 (2025) on Economic, Social and Cultural Rights and the Environmental Dimension of Sustainable Development* (UN Doc. E/C.12/GC/27, 26 September 2025, Advance Unedited Version) paras 1–2, 7.

¹²⁹ *ibid.* Surya Deva, *Report of the Special Rapporteur on the Right to Development: Right to Development of Children and Future Generations* (Human Rights Council, 57th Session, UN Doc A/HRC/57/43, 24 July 2024) paras 71–72.

¹³⁰ *Maastricht Future Generations Principles*, Principle 1; *Maastricht Commentary Future Generations Principles*, Commentary to Principle 1, pp 758–762; Surya Deva, *Report of the Special Rapporteur on the Right to Development: Right to Development of Children and Future Generations* (Human Rights Council, 57th Session, UN Doc A/HRC/57/43, 24 July 2024) para 2; *Pact for the Future*, Declaration on Future Generations, Annex II, GA Res 79/1, U.N. GAOR, 79th Sess., Agenda Item 3, UN Doc A/RES/79/1 (22 September 2024), preamble para 4; Committee on Economic, Social and Cultural Rights, *General Comment No 27 (2025) on Economic, Social and Cultural Rights and the Environmental Dimension of Sustainable Development* (UN Doc. E/C.12/GC/27, 26 September 2025, Advance Unedited Version) para 7 fn 15; International Court of Justice, ‘Obligations of States in respect of Climate Change’ (Advisory Opinion, 23 July 2025), Separate Opinion of Vice-President Sebutinde, para 7.

community. Any treatment of human generations and their respective rights must recognize and reflect this continuum'.¹³¹

89. John Knox, former Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, explains in his report on the rights of children and the environment:

'the division between present and future generations is less sharp than it sometimes appears to be. Concerns about future generations and sustainable development often focus on the state of the environment in particular years in the future, such as the year 2030 or 2100. Many people that will be living in 2100 are not yet born, and in that sense truly belong to future generations. But many people who will be living then are already alive today. [...] Moreover, the line between future generations and today's children shifts every time another baby arrives and inherits their full entitlement of human rights. It is critical, therefore, that discussions of future generations take into account the rights of the children who are constantly arriving, or have already arrived, on this planet. We do not need to look far to see the people whose future lives will be affected by our actions today. They are already here'.¹³²

90. For this reason, children are sometimes described as the 'living future generation' or as the first generational cohort whose lives extend deep into the periods where future generations constantly arrive.¹³³ At the same time, it is important to clarify that future generations cannot be reduced to children, nor can children's rights be used as a substitute for addressing long-term intergenerational harms.¹³⁴ This distinction is reflected in the 2024 *Pact for the Future*, in which UN Member States observed:

'We recognize that children and youth are distinct groups from future generations. We must ensure that decision-making and policymaking today takes greater account of the needs and interests of the generations to come, and that they are balanced with the needs and interests of current generations'.¹³⁵

¹³¹ *Maastricht Principles Future Generations*, Preamble III; Inter-American Court of Human Rights, *Advisory Opinion OC-32/25 on the Climate Emergency and Human Rights* (29 May 2025) Series A No 32. [588], [589]–[590].

¹³² John H Knox, *Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment: Children's rights and the environment*, UN Doc A/HRC/37/58 (24 January 2018) para 68.

¹³³ UNCRC, General Comment No. 26, para 11; Surya Deva, *Report of the Special Rapporteur on the Right to Development: Right to Development of Children and Future Generations* (Human Rights Council, 57th Session, UN Doc A/HRC/57/43, 24 July 2024) para 2.

¹³⁴ Aoife Nolan, 'Children and Future Generations Rights Before the Courts: The Vexed Question of Definitions' (2024) 13 *Transnational Environmental Law*.

¹³⁵ *Pact for the Future*, GA Res 79/1, UN General Assembly, 79th Session, Agenda Item 3, UN Doc A/RES/79/1 (22 September 2024), p 23.

112. A failure to observe this distinction risks narrowing the content of children’s rights in the present and instrumentalising them for claims concerning future generations. In the climate context, therefore, States must secure the full enjoyment of children’s human rights today and ensure that their rights as future adults are not compromised. Children should not be treated as the default representatives of future generations and neither should the burden of representing future generations fall exclusively on them.¹³⁶ However, because of their temporal proximity to future generations, children and youth should be recognised as important voices in decision-making on long-term and intergenerational risks. The Maastricht Principles on the Human Rights of Future Generations, and affirmed by the UN Committee on the Rights of the Child, recognise:

‘Children and youth are closest in time to generations still to come and thus occupy a unique position, and have an important role to play, within this transition to long-term, multigenerational thinking. Accordingly, their perspectives and participation in decision-making with respect to long-term and intergenerational risks must be accorded special weight’.¹³⁷

States must therefore ensure the participatory rights of children, adolescents and youth in decisions that affect both their present rights, their rights as future adults and, as important voices, in decision-making concerning future generations, when they are advocating for human rights on behalf of themselves and future generations in the climate change context.¹³⁸

91. The definition of future generations should also encompass future persons, groups and Peoples as future generations will emerge from those living today. The Special Rapporteur on the right to development, Surya Deva, in his report on the right to development of children and future generations, emphasised the need for an intersectional approach, noting that:

‘The representation of future generations in decision-making mechanisms should be informed by an intersectional approach to capture differential and disproportionate impacts on them, because like present generations, future generations will not be homogeneous. Therefore, the present representatives of future generations should reflect diversity in terms of factors such as age,

¹³⁶ UN Human Rights Council, Mary Lawlor, “*We are not just the future*”: *Challenges faced by child and youth human rights defenders. Report of the Special Rapporteur on the situation of human rights defenders*, (17 January 2024) UN Doc A/HRC/55/50.

¹³⁷ *M.E.V. et al. v Finland* (Views) UN Committee on the Rights of the Child, 13 September 2024, CRC/C/97/D/172/2022, Partially Concurring Individual Opinion of Ann Skelton, paras 3–4.

¹³⁸ *Maastricht Principles Future Generations*, Principles 7(b) and 22(c).

race, ethnicity, caste, gender, sexual orientation, ability, religion, socioeconomic condition, Indigeneity and migrant status'.¹³⁹

As elaborated in paragraphs 27-49, an intersectional understanding of discrimination requires States to address historic and present forms of discrimination in order to prevent cycles of systemic disadvantage from being replicated and intensified across generations. Without positive measures, these entrenched inequalities will inevitably be transmitted to the descendants of affected groups and will deepen over time.

92. The above conceptualisation of future generations provides the temporal frame within which the Court must assess State obligations in the African Charter in the climate change context. It is important to recognise that this intergenerational perspective is reflected in human rights jurisprudence and in the African Charter's own philosophical foundations, as well as in the wider constitutional practice of African States.

93. This temporal perspective is reflected in the constitutional provisions and legislative enactments of African States. More than half of the Constitutions of African Union member States entrench obligations toward future generations, often through explicit references to environmental protection, natural-resource stewardship, sustainable development, and intergenerational equity.¹⁴⁰ These provisions typically affirm that natural resources belong to the people across time; require the environment to be protected for the benefit of present and future generations; mandate that public finance, land management and natural-resource exploitation be governed with regard to the rights and interests of future generations; and impose duties on individuals and communities to preserve the environment for future generations. Several Constitutions also frame development, democratic governance and cultural heritage as responsibilities owed to future generations and provide institutional mechanisms, such as sustainable development commissions, to safeguard these interests. They provide concrete evidence that African States understand environmental protection, natural-resource governance and sustainable development as obligations that extend across time. This regional practice supports

¹³⁹ Surya Deva, *Report of the Special Rapporteur on the Right to Development: Right to Development of Children and Future Generations* (Human Rights Council, 57th Session, UN Doc A/HRC/57/43, 24 July 2024) para 84.

¹⁴⁰ Constitution of the People's Democratic Republic of Algeria, art 64; Constitution of the Republic of Angola 2010, art 39(1)–(2); Constitution of the Republic of Burundi 2018, art 35; Constitution of Côte d'Ivoire 2016, Preamble; Constitution of the Arab Republic of Egypt 2014, arts 32, 46, 78; Constitution of Eritrea 1997, Preamble and art 8(3); Constitution of Kenya 2010, Preamble, arts 42, 201(c); Constitution of Lesotho 1993, s 36; Draft Constitution of Libya 2017, arts 173(4), 175(4), 184, 185, 187; Constitution of Madagascar 2010, Preamble; Constitution of the Republic of Malawi 1994, s 13(d); Constitution of the Kingdom of Morocco 2011, art 35; Constitution of the Republic of Mozambique 2004, art 117(2)(d); Constitution of Niger 2010, arts 35, 149; Constitution of Senegal 2001, art 25-3; Transitional Constitution of the Republic of South Sudan 2011, Preamble, ss 41(2)–(3), 173(2)(m), 178(3); Constitution of the Kingdom of Eswatini 2005, ss 210(2), 216(1); Constitution of the Republic of Tunisia 2014, Preamble, arts 42, 129; Constitution of the Republic of Uganda 1995, National Objective XXVII(i)–(ii); Constitution of Zimbabwe 2013, ss 73(1)(b), 289(e), 298(1)(c); Constitution of the Republic of the Congo 2015, art 236; and Constitution of the Republic of South Africa 1996, s 24(b).

an interpretation of the African Charter that recognises intergenerational equity as intrinsic to its guarantees of development, environment and natural resources, and as an essential element of States' obligations in the climate context. These developments resonate with, and can be reinforced by, African philosophies that conceive past, present and future generations within an unbroken continuum, also reflected in international and other regional approaches to interpretation.

94. The Inter-American Court's judgment of *Bámaca Velásquez v Guatemala* illustrates the intertemporal dimension of human rights obligations. The Separate Opinion of Judge Cançado Trindade powerfully surfaces the 'links between the living and the dead' which must be understood as an 'expression of solidarity' where the living have duties toward honouring the suffering and sacrifices made by the dead. Judge Cançado Trindade highlighted:

'human kind, ought, thus, in my understanding, to be better appreciated in its essentially temporal (and not static) dimension, comprising in the same way also future generations [...]. No one would dare to deny the duty that we have, the living beings, to contribute to construct a world in which future generations find themselves free from the violations of human rights which victimized their predecessors (sic) (the guarantee of non-repetition of past violations)'.¹⁴¹

He further indicated that intergenerational solidarity manifests along integrated temporal and spatial dimensions. The temporal dimension manifests 'among the generations who succeed each other in the time, taking the past, present and future altogether', whereas the spatial dimension manifests in the space and environment shared by all generations. Drawing on the African Charter, he highlighted the importance of time-tested and traditional knowledges in sustaining these connections, where living generations, their ancestors, and descendants exist in close harmony with the natural world.¹⁴²

95. Vice-President Weeramantry also captured this imperative in his Separate Opinion in the International Court of Justice's *Gabčíkovo-Nagymaros Project* case, where he stressed that principles of sustainability and intergenerational responsibility must be read in light of humanity's accumulated wisdom, including traditional, cultural and Indigenous knowledge systems, 'at a time when [...] harmony between humanity and its planetary inheritance is a prerequisite for human survival'.¹⁴³ These insights reinforce the relevance of temporal reasoning to the African Charter's interpretive framework and open naturally into the Charter's own philosophical foundations.

¹⁴¹ *Bámaca-Velásquez v Guatemala* (Merits) (Separate Opinion of Judge Cançado Trindade) Inter-American Court of Human Rights Series C No 70 (25 November 2000) paras 6–14, 22.

¹⁴² *ibid* paras 24–27.

¹⁴³ ICJ, *Gabčíkovo-Nagymaros Project* (Hungary/Slovakia) (Separate Opinion of Vice-President Weeramantry) [1997] ICJ Rep 7, 99, 109–110.

96. The Preamble of the Charter directs that African philosophy should ‘inspire and characterize’ the conception of human and peoples’ rights expressed in the Charter. In the climate change context, and amid escalating threats that endanger the continuity of humanity, this interpretive lens is essential. It situates human rights within a temporal view that extends beyond the living in the following ways. Across diverse African philosophies, lifeways and worldviews, a shared thread recognises an ‘onto-triadic structure of be-ing’,¹⁴⁴ in which past generations (the ‘living dead’), present generations and future generations form part of an extended continuum of the human community.¹⁴⁵ This emphasises the long-term consequences of present actions and the need to maintain harmonious relations with Nature and the broader ‘web of life’.¹⁴⁶ This is articulated in the Afrik-Akili Declaration stating:

‘A living systems approach is fundamental to our understanding of the world. We view time, nature, communities, and work as expressions of the dynamism of life. We believe in a profound connection between the ecological gifts from our ancestors, and the abundance of opportunity present in the fecund futures we share with all living systems in nature, and those yet to be born.

We are future-oriented and embrace the opportunities of a time yet to come while we retain a fluid sense of time & space in which the past, present and future co-exist. This wisdom we learn from a deep respect for spiritual eternity and the prolific cycles of nature’.¹⁴⁷

This African temporal lens is embedded in the Charter’s provisions, including equality and non-discrimination, development, environment, and natural resources, which already presuppose that past, present and future generations form an unbroken continuum. The next paragraphs set out how this is reflected in the Charter’s multidimensional conception of development and intergenerational equity in the climate change context.

¹⁴⁴ Mogobe B Ramose, *African Philosophy Through Ubuntu* (Mond 2005) 88.

¹⁴⁵ E.g., Kevin G Behrens, ‘Interspecific, Intergenerational Justice in African Thought’ in Gabriela Mádlo (ed), *Is Planet Earth Green?* (2013) 94, 97; Kevin G Behrens, ‘Moral Obligations Towards Future Generations in African Thought’ (2012) 8 *Journal of Global Ethics* 179, 182; Sylvia Tamale, *Decolonization and Afro-Feminism* (Daraja Press 2020) 80–91, 187–234; Dorine E Van Norren, ‘African Ubuntu and Sustainable Development Goals’ (2022) 43 *Third World Quarterly* 2791, 2793; Workineh Kelbessa, ‘Intergenerational Justice and the Environment in Africa’ in Hiroshi Abe and others (eds), *Intercultural Philosophy and Environmental Justice Between Generations: Indigenous, African, Asian, and Western Perspectives* (2024) 57, 63–64; Roman Krznaric, *The Good Ancestor* (2020) 71–91; Johnson M Ole Kaunga, ‘The Use of Indigenous Traditional Knowledge for Ecological and Bio-Diverse Resource Management by the Laikipia Maasai and the Samburu’ in Marie M Roué and others (eds), *Knowing Our Lands and Resources: Indigenous and Local Knowledge of Biodiversity and Ecosystem Services in Africa* (UNESCO 2015) 6–17.

¹⁴⁶ Munyaradzi F Murove, ‘An African Commitment to Ecological Conservation: The Shona Concepts of Ukama and Ubuntu’ (2004) 45 *Mankind Quarterly* 196–215.

¹⁴⁷ Afrik-Akili Declaration (2022) <https://www.afrik-akili.org/declaration>. (International Day of the World’s Indigenous Peoples, 9 August 2022).

Intergenerational equity obligations under the African Charter

97. The African Charter adopts a multidimensional conception of development that is fundamental in crafting responses to the climate emergency. Article 22 establishes the right of all peoples to their ‘economic, social and cultural development’, while Article 24 guarantees the right to a ‘general satisfactory environment favourable to their development’. Article 21 protects the right of all peoples to natural wealth and resources and prohibits forms of exploitation that deprive peoples of the benefits of those resources. Together, these provisions establish that development under the Charter encompasses environmental integrity, social well-being, cultural continuity, and equitable economic conditions, all of which should be conceived through an intergenerational lens.
98. The *travaux préparatoires* confirm this vision. In his opening address to the drafting meeting in Dakar, President Léopold Sédar Senghor stated that the right to development includes the right to peace and security, a healthy environment, a fair international economic order, participation in the common heritage of humankind and the right to natural wealth and resources.¹⁴⁸ He emphasised that development ‘is first and foremost a change of the quality of life and not only an economic growth required at all costs’ and described it as ‘a form of humanism; a moral and spiritual fact, both material and practical’, grounded in each person’s full development within their community. He further observed that African conceptions of well-being rest on living ‘in peace and harmony, with the dead and living, with the natural environment and the spirits inhabiting or livening it up.’
99. This vision is directly relevant to the climate crisis. Climate change disrupts each dimension. It degrades the environmental and ecological conditions required for the habitability of humans, non-human beings and Nature, intensifies existing inequalities, threatens the transmission of cultural heritage and severely restricts the development pathways available to present and future generations.¹⁴⁹ Article 24 confirms that environmental integrity is a precondition for the right to development encapsulated in an environment which is ‘favourable’ for development. This in turn requires, under Article 21, that natural wealth and resources be governed in the interests of the people, understood as existing across time.¹⁵⁰
100. In international and regional human rights law, intergenerational equity has crystallised around several interrelated features that are particularly salient for the

¹⁴⁸ Léopold Sédar Senghor, ‘Address Delivered at the Opening of the Meeting of African Experts Preparing the Draft African Charter’ (Dakar, 28 November–8 December 1979), reprinted in Issa G Shivji, *The Concept of Human Rights in Africa* (Codesria 1989) 121. Referring to the words of Malcolm Adiseshish and Professor Collomb for the following two respective quotes.

¹⁴⁹ E Boshoff, ‘Rethinking the premises underlying the right to development in African human rights jurisprudence’ (2022) 31 *RECIEL* 27.

¹⁵⁰ F Ouguergouz, *The African Charter on Human and Peoples’ Rights: A Comprehensive Agenda for Human Dignity and Sustainable Democracy in Africa* (Martinus Nijhoff Publishers 2003) 321.

climate crisis, which we wish to bring to the African Court's attention to clarify to States how to discharge their intergenerational human rights obligations.

Trusteeship, custodianship, and stewardship

101. An integral feature of intergenerational equity is the 'partnership among all generations', where each generation acts as trustees, custodians, and stewards of a shared natural and cultural heritage.¹⁵¹ This partnership conceives all generations as holding the Earth in common as a form of trust, with those alive today understood both as beneficiaries entitled to use environmental and resource systems and as trustees or custodians under a duty to pass them on in a condition that is, on balance, no worse than that in which they were received.¹⁵²
102. Trusteeship has been recognised in international and domestic jurisprudence. The International Court of Justice has affirmed in its Advisory Opinion on Climate Change that 'intergenerational equity is an expression of the idea that present generations are trustees of humanity tasked with preserving dignified living conditions and transmitting them to future generations'.¹⁵³ Likewise, the Inter-American Court held that present generations 'act as custodians' and must hand over the environment to future generations 'in equal or better conditions' than they received it, and that no act or omission that degrades environmental quality is compatible with States' obligations.¹⁵⁴ In *Fuel Retailers v Director General*, the South African Constitutional Court affirmed that those alive today act as custodians of the environment for future generations and that courts are responsible for ensuring that these trusteeship duties are honoured.¹⁵⁵ Similarly, in *Advocates Coalition for Development v Attorney General*, the High Court of Uganda found that approving a sugar company's use of a forest reserve without meaningful community engagement or a proper environmental impact assessment breached the State's public-trust obligations.¹⁵⁶
103. The stewardship perspective is also embedded in the African Charter. Articles 21, 22 and 24 locate natural resources, development, and the environment within a

¹⁵¹ Edith Brown Weiss, 'In Fairness to Future Generations and Sustainable Development' (1992) 8 *American University International Law Review* 19, 20–23.

¹⁵² Edith Brown Weiss, *The Planetary Trust: Conservation and Intergenerational Equity*, 11 *Ecology Law Quarterly* 495, 498 (1984); B Nkrumah, 'Future Citizens: Intergenerational Equity in Climate Activism' in *Climate Litigation and Justice in Africa* (Bristol University Press 2024) 316; Anél A du Plessis, 'Climate Change, Public Trusteeship and the Tomorrows of the Unborn' (2015) 31 *South African Journal on Human Rights* 269.

¹⁵³ ICJ, 'Obligations of States in respect of Climate Change' (Advisory Opinion, 23 July 2025), para 156.

¹⁵⁴ *Habitantes de La Oroya v Peru* (Inter-American Court of Human Rights, Series C No 511, 2023) para 93.

¹⁵⁵ *Fuel Retailers Association of Southern Africa v Director-General: Environmental Management, Department of Agriculture, Conservation and Environment, Mpumalanga Province* 2007 (6) SA 4 (CC) para 102.

¹⁵⁶ *Advocates Coalition for Development and Environment v Attorney General* (High Court of Uganda, Misc Cause No 0100 of 2004) pp 6–8 and 10–11.

framework of solidarity, common heritage, and shared responsibility. The African Commission has affirmed that in terms of Article 21 and 24, the State ‘has the main responsibility for ensuring natural resources *stewardship* with, and for the interest of, the population’ and must fulfil this mission in accordance with human rights.¹⁵⁷ It has further emphasised that Articles 21 and 24 rest on principles of solidarity and shared interests and that a ‘generally satisfactory environment’ is a shared good, whose protection and preservation engage duties of States, communities, and individuals.¹⁵⁸

104. Trusteeship responsibilities are not confined to States alone. For present generations to discharge their intergenerational obligations, States must ensure that future generations are meaningfully represented in present-day decision-making structures.¹⁵⁹ This requires creating institutional and procedural avenues through which perspectives for future generations can be expressed, including mechanisms that guarantee standing before courts. States must recognise representative bodies established by indigenous peoples, local and traditional communities; ensure that children and youth can exercise their participatory rights, including when advocating on behalf of future generations; and establish accessible and independent institutions such as ombudspersons, guardians, trustees or designated parliamentary seats. States must also protect all individuals and groups who work to advance the rights of future generations, as highlighted under the section with regard to environmental human rights defenders.

Intergenerational discrimination

105. There is a prohibition of intergenerational discrimination, reflected in the listed ground of ‘birth’ in Article 2 of the African Charter, which the Court may clarify as encompassing future generations when interpreted in light of the temporal dimension inherent in the ground, since the conditions into which future generations will be born are largely determined by present decisions.¹⁶⁰ According to the UN Secretary-General’s report on intergenerational solidarity and the interests of future generations, the foundation of duties owed to those yet to come rests on ‘the equal concern and respect that we owe to all humans, regardless of where and when they may have been born.’¹⁶¹ The UNESCO Declaration on the Responsibilities of the Present Generations Towards Future Generations similarly stresses that the present generation must ‘refrain from taking any action or measure which would have the

¹⁵⁷ Explanatory Note to the State Reporting Guidelines on the Contents and the Rights and Obligations under Articles 21 And 24 Of The African Charter, 7 May 2018, para 3. Emphasis added.

¹⁵⁸ *ibid.*

¹⁵⁹ *Maastricht Future Generations Principles*, Principles 8, 22, 30(c) and *Maastricht Commentary Future Generations Principles*, pp 822–833, 918–931, 991–992 (for an elaboration of the legal sources contained in human rights law).

¹⁶⁰ *Maastricht Future Generations Principles*, Principle 6 and *Maastricht Commentary Future Generations Principles*, pp 803–805.

¹⁶¹ UN Secretary-General, *Intergenerational Solidarity and the Needs of Future Generations*, UN Doc A/68/322 (15 August 2013) para 13.

effect of leading to or perpetuating any form of discrimination for future generations.’¹⁶² The CESCR has also affirmed that States must take into account ‘the rights of future generations to equal enjoyment of all human rights’ and refrain from acts or omissions likely to result in or perpetuate discrimination against them.¹⁶³ Future generations may also receive protection through other grounds, such as age, sex, gender, disability and fortune, when these grounds are interpreted intersectionally and with attention to the intergenerational transmission of disadvantage that affects these groups. Taken together, these considerations confirm that future generations are a protected group under the African Charter.

106. At least two forms of intergenerational discrimination are relevant in the climate context:¹⁶⁴

(1) waste, destruction, unsustainable use, or depletion of life-supporting resources and the erosion of environmental conditions, and

(2) shifting the burdens of addressing and responding to the climate emergency generated by past and present generations onto future generations.

These two forms of intergenerational discrimination are reflected across regional, international and domestic human rights bodies and courts worldwide. The Human Rights Committee describes environmental degradation, climate change and unsustainable development as among the most significant risks to the ability of ‘present and future generations to enjoy the right to life.’¹⁶⁵ Likewise, the Inter-American Court of Human Rights has held that ‘guaranteeing the interests of both present and future generations, and the conservation of the environment against its radical degradation, is essential for the survival of humanity’.¹⁶⁶

107. States must therefore give effect to their non-discrimination obligations in a manner that embeds an intergenerational perspective into the substantive content of life-supporting rights, ensuring that these rights remain ‘accessible’ and ‘available’ to both present and future generations. The African Commission’s Guidelines on the Right to Water in Africa express concern ‘about the negative effects of overuse and pollution of water resources and other development activities threatening the rights of present and future generations, the realisation of which depends on equitable

¹⁶² Declaration on the Responsibilities of the Present Generations towards Future Generations (adopted 12 November 1997) UNESCO General Conference Res 29C/44, 27th plenary meeting, Art 11 on non-discrimination.

¹⁶³ Committee on Economic, Social and Cultural Rights, *General Comment No 27 (2025) on Economic, Social and Cultural Rights and the Environmental Dimension of Sustainable Development* (UN Doc. E/C.12/GC/27, 26 September 2025, Advance Unedited Version), para 39.

¹⁶⁴ *Maastricht Future Generations Principles*, Principle 6(e)(i)–(iii); *Maastricht Commentary Future Generations Principles*, pp 813–816.

¹⁶⁵ Human Rights Committee, *General Comment No 36: Article 6 (Right to Life)*, UN Doc CCPR/C/GC/36 (30 October 2018) para 62.

¹⁶⁶ *Habitantes de La Oroya v Peru* (Inter-American Court of Human Rights, Series C No 511, 2023) para 129.

access to water'.¹⁶⁷ The Guidelines stress that States 'shall develop comprehensive integrated strategies addressing the realisation of all water-related rights in such a way so as to ensure the individual and collective rights of present and future generations', and note that sustainability is 'intrinsically linked to the principle of equitable use of water resources'.¹⁶⁸ States are required, inter alia, to establish a clear legal framework for sustainable development that makes the realisation of human rights a prerequisite for sustainability, to halt unsustainable extraction, diversion and damming, to implement human rights consistent climate mitigation and adaptation measures, to monitor water reserves, to ensure that development projects do not interfere with access to adequate water, and to prohibit and repress water pollution and contamination of watersheds and water-related ecosystems.¹⁶⁹ Similarly, with regard to the right to food, the African Commission's Guidelines on Economic, Social and Cultural Rights indicate that States must '[p]revent the destruction of natural resources of the country, in order to protect the right to food and health of future generations'.¹⁷⁰

108. General Comment 27 of the Committee on Economic, Social and Cultural Rights emphasises that current environmental crises are driven by 'unsustainable levels of production and consumption' and an economic model based on unlimited growth, and that, at the current rate of resource exploitation and pollution, it is impossible to achieve the equal realisation of Covenant rights for present and future generations.¹⁷¹ It requires States to adopt and implement mitigation and adaptation measures that reflect the highest possible ambition in order to meet the global temperature goal, to phase down the expansion of fossil fuel infrastructure, to phase out inefficient fossil-fuel subsidies that do not address energy poverty or just transitions, and to conserve, protect and restore forests, land, wetlands and marine ecosystems as critical climate sinks and reservoirs.¹⁷² It clarifies that progress in realising Covenant rights cannot be regarded as adequate where it ignores long-term impacts on future generations, and that failing to consider the long-term impacts of environmental degradation, including climate change, may amount to impermissible retrogression of life-supporting rights for future generations.¹⁷³ Equally, the Covenant demands that rights be realised within ecological limits, so measures that reduce unsustainable consumption are not regressive, whereas sustaining harmful consumption patterns may amount to retrogression by undermining the equitable

¹⁶⁷ African Commission on Human and Peoples' Rights, *Guidelines on the Right to Water in Africa* (adopted 30 July 2019, 26th Extraordinary Session, Banjul), preamble.

¹⁶⁸ *ibid* para 28.1.

¹⁶⁹ *ibid* para 28.2.

¹⁷⁰ Principles and Guidelines on the Implementation of Economic, Social and Cultural Rights in the African Charter on Human and Peoples' Rights, 24 October 2011, para 86(q).

¹⁷¹ Committee on Economic, Social and Cultural Rights, *General Comment No 27 (2025) on Economic, Social and Cultural Rights and the Environmental Dimension of Sustainable Development* (UN Doc. E/C.12/GC/27, 26 September 2025, Advance Unedited Version), paras 2 and 15–17.

¹⁷² *ibid*.

¹⁷³ *ibid* para 22.

enjoyment of rights over time.¹⁷⁴ A growing body of jurisprudence regionally and globally reflects these obligations.

109. The Supreme Court of Kenya's judgment in *EPZA v NEMA* arose from long-standing lead contamination in Owino-Uhuru Village caused by a battery-recycling plant licensed through regulatory failures.¹⁷⁵ The Court confirmed that the toxic discharges had caused serious illness and deaths, and held both agencies responsible for violating Articles 42 and 43 of the Constitution through their acts and omissions. In relation to future generations, the Court emphasised that the constitutional right to a clean and healthy environment includes the right to have the environment protected for the benefit of future generations', affirming that environmental rights possess both individual and collective dimensions. The Court drew on the Constitution's Preamble, which commits Kenya to sustaining the environment as 'the people's heritage', and affirmed that these obligations extend to preventing continuing violations that jeopardise the life, health, and environmental interests of future generations.
110. In *Verein Klimaseniorinnen v Switzerland*, the European Court of Human Rights emphasised that 'intergenerational burden-sharing' is essential, both among contemporaneous generations and between present and future generations.¹⁷⁶ The Court observed that 'future generations are likely to bear an increasingly severe burden of the consequences of present failures and omissions to combat climate change ... and that, at the same time, they have no possibility of participating in the relevant decision-making processes.'¹⁷⁷ It further stressed that preventing a disproportionate burden falling on future generations requires immediate action, including the adoption of adequate intermediate reduction targets on the pathway to net neutrality.¹⁷⁸ These obligations must, as a priority, be embedded in a binding domestic regulatory framework and supported through effective implementation.
111. Courts in other regions have similarly recognised the intergenerational character of environmental harm. In *Minors Oposa v Factoran*, a case brought on behalf of children, the Supreme Court of the Philippines affirmed children's 'right to a balanced and healthful ecology' and held that natural resource management must ensure equitable sharing of benefits among 'the different segments of the present as well as future generations'.¹⁷⁹ It warned that failure to safeguard the environment would leave future generations with 'nothing but the parched earth incapable of sustaining life', echoing national policy that identifies each generation as 'trustee and guardian of the environment for succeeding generations'.

¹⁷⁴ *ibid* para 23.

¹⁷⁵ [2024] KESC 75 KLR paras 3–4 and 90.

¹⁷⁶ *Verein KlimaSeniorinnen Schweiz and Others v Switzerland* (App no 53600/20) (ECtHR, 9 April 2024) paras 419–420.

¹⁷⁷ *ibid* para 420.

¹⁷⁸ *ibid* paras 547–548, 550–554.

¹⁷⁹ *Minors Oposa v Factoran* (Supreme Court of the Philippines, 30 July 1993) 224 SCRA 792, pp 811–12, 829.

112. In *Future Generations v Colombia*, the Supreme Court ruled in favour of youth plaintiffs and found that the State's failure to curb deforestation and address climate change violated the rights of present and future generations to a healthy environment, life, health, food and water.¹⁸⁰ The Court characterised the worsening environmental conditions as an attack on both present and 'future life' and found that deforestation posed 'short, medium, and long term imminent and serious damage' to all inhabitants, including future generations. The Court grounded the rights of future generations in ethical duties owed to the Earth and all beings, and emphasised that present generations must assume responsibility for 'the care and stewardship of natural resources and the future world' to prevent the depletion of life-supporting systems.
113. The Federal Constitutional Court in *Neubauer v Germany* held that Germany's emissions targets were insufficient to protect the 'natural foundations of life' for future generations, as required by Article 20a of the Basic Law.¹⁸¹ The Court stressed that Article 20a concerns not only climate protection but also the distribution of environmental burdens 'between different generations'. It held that fundamental rights function as 'intertemporal guarantees of freedom' and that the burden of emissions reduction cannot be 'unilaterally offloaded onto the future'. The Court criticised the legislature for allowing the present generation to consume a disproportionate share of the remaining carbon budget, which would compel future generations to undertake drastic mitigation efforts and endure 'serious losses of freedom'. It stressed that safeguarding future generations requires avoiding short-sighted and inequitable allocation of intergenerational burdens.
114. As already shown in the other sections of this submission, obligations toward future generations cannot be separated from obligations owed to disadvantaged groups in the present. States must adopt special measures aimed at eliminating and preventing the intergenerational transmission of inequality and poverty.¹⁸² They must therefore accelerate efforts to prohibit and address discrimination on the ground of 'fortune' listed in the African Charter. The African Commission has interpreted the prohibition of discrimination on the ground of 'fortune' in Article 2 to mean that 'economic status' must never obstruct access to Charter rights, and has highlighted how commercialised social services can entrench and perpetuate

¹⁸⁰ *Future Generations v Ministry of the Environment and Others* (Supreme Court of Colombia, STC4360-2018, 5 April 2018) pp 3, 13, 21–22, 34.

¹⁸¹ *Neubauer and Others v Germany* (BVerfG, 1 BvR 2656/18, 24 March 2021) paras 122, 144–147, 183, 192, 193, 196–198.

¹⁸² *Maastricht Future Generations Principles*, Principle 6(d) and *Maastricht Commentary Future Generations Principles*, pp 812–813; Inter-American Court of Human Rights, *Advisory Opinion OC-32/25 on the Climate Emergency and Human Rights* (29 May 2025) Series A No 32, paras 619–629.

inequality ‘over generations’.¹⁸³ The UN Secretary-General’s report on intergenerational solidarity and the interests of future generations emphasises that eliminating poverty has both intra- and intergenerational dimensions, noting that deprivation in one generation often persists into the next. The report highlights:

‘sustainable development does not endorse the sacrifice of the legitimate aspirations of the poorest in the name of future generations. At the same time, this in no way implies that the needs of present generations always enjoy priority over those of future generations; at the very least, the poorest and most vulnerable should not be called upon to make sacrifices for the long-term good of humanity’.¹⁸⁴

In sum, in the climate change context, States must design mitigation and adaptation measures that reduce existing inequalities, avoid shifting disproportionate burdens to marginalised and disadvantaged groups, and prevent foreseeable harms that will fall most heavily on disadvantaged groups.

Prevention, precaution, and reasonable foreseeability in the climate context

115. To give concrete effect to the intergenerational obligations arising under the African Charter, there is a need to clarify the obligation of prevention, the precautionary principle and the standard of reasonable foreseeability of substantial risk of harm structure the expected State conduct of due diligence in relation to their human rights and environmental obligations in the climate change context.¹⁸⁵

116. The obligation of prevention requires States to take all appropriate measures to avert substantial and reasonably foreseeable *risks* of harm.¹⁸⁶ Prevention applies where risks are known or ought to be known.¹⁸⁷ It is a continuing obligation that

¹⁸³ African Commission, *General Comment No. 7: State Obligations under the African Charter in the Context of Private Provision of Social Services*, 72nd OS, 2022 [18].

¹⁸⁴ UN Secretary-General, *Intergenerational Solidarity and the Needs of Future Generations*, UN Doc A/68/322 (15 August 2013) para 16.

¹⁸⁵ UN Conference on the Human Environment, *Declaration of the United Nations Conference on the Human Environment* (1972), principle 24; UN Conference on Environment and Development, *Rio Declaration on Environment and Development* (1992), principles 14 and 15 (‘Rio Declaration’); Convention on the Ban of the Import into Africa and the Control of Transboundary Movement and Management of Hazardous Wastes within Africa (adopted 30 January 1991, entered into force 22 April 1998) 2101 UNTS 177, article 4(3)(f) (‘Bamako Convention’); Committee on Economic, Social and Cultural Rights, ‘General Comment No 25: Science and Economic, Social and Cultural Rights (article 15(1)(b), (2), (3) and (4))’ (2020) UN Doc E/C.12/GC/25, paras 56–57; *Habitantes de La Oroya v Peru* (Judgment) Inter-American Court of Human Rights Series C No 511 (2023), paras 127–28, 207; ICJ, ‘Obligations of States in respect of Climate Change’ (Advisory Opinion, 23 July 2025), para 135.

¹⁸⁶ Whaling in the Antarctic (*Australia v Japan: New Zealand intervening*) (Separate Opinion of Judge Cançado Trindade) [2014] ICJ Rep 226, paras 60 and 71; International Court of Justice, ‘Obligations of States in respect of Climate Change’ (Advisory Opinion, 23 July 2025), Separate Opinion of Judge Charlesworth, para 4; Inter-American Court of Human Rights, *Advisory Opinion OC-32/25 on the Climate Emergency and Human Rights* (29 May 2025) Series A No 32, para 228.

¹⁸⁷ *Maastricht Future Generations Principles*, Principle 9(1) and *Maastricht Commentary Future Generations Principles*, p 835; Inter-American Court of Human Rights, *Advisory Opinion OC-32/25 on the*

requires States to identify and regulate activities known to increase greenhouse-gas emissions, degrade ecosystems, or expose populations to climate hazards.¹⁸⁸ Prevention is engaged once the substantial risks are sufficiently understood on the basis of the best available scientific evidence.¹⁸⁹ While distinct, the precautionary obligation forms part of the due-diligence framework by guiding and intensifying the obligation of prevention in situations of scientific *uncertainty*.¹⁹⁰ It applies where there are reasonable grounds to believe that any conduct or omission may create a substantial risk of serious or irreversible harm to the rights of present or future generations or to the biogeophysical ecological systems on which those rights depend.¹⁹¹ In such circumstances, States must take protective measures even in the absence of full scientific certainty.¹⁹² The principle requires reliance on the best available science and mandates action proportionate to the urgency, severity, irreversibility and likelihood of the risk.¹⁹³ Given the epistemic limits inherent in assessing long-term and intergenerational impacts, due diligence demands that States respond to plausible indications of severe or irreversible environmental harm by acting promptly to avoid such outcomes. In *Habitantes de La Oroya v Peru*, the Inter-American Court underscored the role of the precautionary principle as a central tool for protecting both present and future generations from environmental and health harms, stating:

‘States must act in accordance with the precautionary principle in order to prevent the violation of people’s rights in cases where there are plausible

Climate Emergency and Human Rights (29 May 2025) Series A No 32, para 226; United Nations Framework Convention on Climate Change (adopted 9 May 1992, entered into force 21 March 1994) 1771 UNTS 107, art 3(3) (‘UNFCCC’).

¹⁸⁸ *Maastricht Future Generations Principles*, Principle 9(1) and *Maastricht Commentary Future Generations Principles*, p 835; Bamako Convention, article 4(3)(e); UNFCCC, article 3(3); Committee on Economic, Social and Cultural Rights, *General Comment No 27 (2025) on Economic, Social and Cultural Rights and the Environmental Dimension of Sustainable Development* (UN Doc. E/C.12/GC/27, 26 September 2025, Advance Unedited Version) para 11; *Habitantes de La Oroya v Peru* (Judgment) Inter-American Court of Human Rights Series C No 511 (2023) para 126.

¹⁸⁹ Paris Agreement, article 4(1) (indicating that States must ‘undertake rapid reductions thereafter in accordance with best available science’); International Court of Justice, ‘Obligations of States in respect of Climate Change’ (Advisory Opinion, 23 July 2025), paras 132–139.

¹⁹⁰ Rio Declaration, principle 15; UNFCCC, article 3(3); Bamako Convention, article 4(3)(f); Jonathan B Wiener, ‘Precaution and Climate Change’ in Cinnamon P Carlarne, Kevin R Gray and Richard G Tarasofsky (eds), *The Oxford Handbook of International Climate Change Law* (OUP 2016) 163.

¹⁹¹ See, e.g., Committee on Economic, Social and Cultural Rights, ‘General Comment No 25: Science and Economic, Social and Cultural Rights (article 15(1)(b), (2), (3) and (4))’ (2020) UN Doc E/C.12/GC/25, paras 56–57; *Habitantes de La Oroya v Peru* (Judgment) Inter-American Court of Human Rights Series C No 511 (2023) paras 127–128; Rio Declaration, principle 15; UNFCCC, Article 3(3).

¹⁹² *ibid.*

¹⁹³ Committee on Economic, Social and Cultural Rights, *General Comment No 27 (2025) on Economic, Social and Cultural Rights and the Environmental Dimension of Sustainable Development* (UN Doc. E/C.12/GC/27, 26 September 2025, Advance Unedited Version) para 11; *Habitantes de La Oroya v Peru* (Judgment) Inter-American Court of Human Rights Series C No 511 (2023), para 239; Inter-American Court of Human Rights, *Advisory Opinion OC-32/25 on the Climate Emergency and Human Rights* (29 May 2025) Series A No 32, paras 232–235; International Court of Justice, ‘Obligations of States in respect of Climate Change’ (Advisory Opinion, 23 July 2025) paras 280–300.

indications that an activity could result in severe and irreversible damage to the environment, even in the absence of scientific certainty. Therefore, even in the absence of scientific certainty, where there is evidence that suggests a significant risk to human health from exposure to high levels of environmental pollution, the States must take effective measures to prevent exposure to such pollution. For this reason, the Court considers that a lack of scientific certainty on the specific effects that environmental pollution may have on human health cannot be a justification for States to postpone or avoid the adoption of preventive measures, nor can it be invoked as justification for the failure to adopt general measures of protection for the population.¹⁹⁴

117. An emerging standard for attributing State responsibility for intergenerational human-rights violations is one of reasonable foreseeability. The reasonable foreseeability standard is clearly articulated in General Comment 36 on the right to life, where the Human Rights Committee stated:

‘The obligation of States parties to respect and ensure the right to life extends to reasonably foreseeable threats that life-threatening situations that can result in loss of life. States Parties may be in violation of article 6 even if such threats and situations do not result in loss of life.’¹⁹⁵

In *Billy v Australia*, the Human Rights Committee held that present and future generations of Indigenous inhabitants of the Torres Strait faced a substantial and reasonably foreseeable risk of harm owing to the State’s failure to adopt adequate mitigation and adaptation measures.¹⁹⁶ The Committee rejected the State’s argument that the impacts were only possible future harms and found that the ‘risk of impairment’ was ‘more than a theoretical possibility’ with real and ongoing adverse effects.¹⁹⁷ In *Portillo Cáceres v Paraguay*, the Human Rights Committee also held that well-documented evidence of harm from agrotoxins constituted a ‘reasonably foreseeable threat’, and that failure to act breached the State’s obligations.¹⁹⁸ Similarly, in *Sacchi v Argentina*, the Committee on the Rights of the Child found that climate-related harms can be regarded as ‘reasonably foreseeable’ when they have the potential to affect children over the course of their lives.¹⁹⁹ It also noted that children’s distinct rights and heightened vulnerability require States to adopt

¹⁹⁴ *Habitantes de La Oroya v Peru* (Judgment) Inter-American Court of Human Rights Series C No 511 (2023), para 239. (footnotes in original omitted)

¹⁹⁵ Human Rights Committee, ‘General Comment No 36: Article 6: Right to Life’ (2018) UN Doc CCPR/C/GC/36, para 7.

¹⁹⁶ Human Rights Committee, *Billy et al v Australia* (Communication No 3624/2019) UN Doc CCPR/C/135/D/3624/2019 (22 September 2022) paras 2.1–2.8, 3.1–3.7, 5.2–5.8, 5.3, 6.1, 7.9–7.10, 8.12, 8.14, 9.

¹⁹⁷ *ibid* para 7.10

¹⁹⁸ Human Rights Committee, *Portillo Cáceres v Paraguay* (Communication No 2751/2016) UN Doc CCPR/C/126/D/2751/2016 (9 October 2019) para 7.5.

¹⁹⁹ *Sacchi et al v Argentina* (Communication No 104/2019) Committee on the Rights of the Child, UN Doc CRC/C/88/D/104/2019 (2021) paras 10.13–10.14

strengthened measures to address such foreseeable harms.²⁰⁰ The Committee adopted a pragmatic threshold for ‘substantial’ harm: the harm or risk must be real, identifiable and of meaningful consequence, but does not need to rise to the level of acute or grave seriousness.²⁰¹ This approach recognises the cumulative and intergenerational nature of climate impacts.

118. In *Urgenda v Netherlands*, the Dutch Supreme Court clarified the meaning of a ‘real and immediate risk’ under the engaged provisions of the ECHR in the context of climate change:²⁰²

‘the term “real and immediate risk” must be understood to refer to a risk that is both genuine and imminent. The term “immediate” does not refer to imminence in the sense that the risk must materialise within a short period of time, but rather that the risk in question is directly threatening the persons involved. The protection of Article 2 [European Convention on Human Rights] also regards risks that may only materialise in the longer term’.

119. The standard of reasonable foreseeability demonstrates that the temporal remoteness of future generations does not preclude the recognition of violations emanating from present conduct or omissions. What this means is that the fact that future generations are not yet in existence and cannot represent themselves in the present where their rights are violated does not mean that these violations can only be registered once they come into being.²⁰³ Future generations’ *existence* may be temporally remote, but this does not imply that any violations of their rights in the present lack material and temporal proximity in terms of *causation*.²⁰⁴ The threshold remains one where there is a reasonable foreseeability of a substantial risk of harm.

120. This Court’s approach is consistent with these human rights standards, and should be extended to intergenerational human rights violations. In *LIDHO v Côte d’Ivoire*, interpreting the right to a general satisfactory environment, the Court held that the State had an obligation not only to prevent the dumping of toxic waste but to take full and effective measures to ensure decontamination once dumping had occurred in order to prevent future violations.²⁰⁵ This Court emphasised that the State was required to ‘ensure’ that the environment was protected from the ‘harmful

²⁰⁰ *ibid.*

²⁰¹ *ibid* para 10.12 drawing on *Advisory Opinion OC-23/17, Environment and Human Rights* (Inter-Am Ct HR, 15 November 2017) para 136.

²⁰² *Stichting Urgenda v The State of the Netherlands (Ministry of Infrastructure and the Environment)* (C/09/456689/HA ZA 13-1396) Hague District Court, 24 June 2015, para 5.2.2. (citations omitted).

²⁰³ *Maastricht Future Generations Principles*, Principle 29 and *Maastricht Commentary Future Generations Principles*, p 980–987.

²⁰⁴ *ibid.*

²⁰⁵ *Ligue ivoirienne des droits de l’homme (LIDHO) and Others v Côte d’Ivoire* (Application No 041/2016) Judgment (AfCHPR, 5 September 2023) paras 183–185 read with the guarantees of non-repetition order at paras 240–249.

effects which *could result*’ from the conduct in question.²⁰⁶ This reflects a clear due-diligence obligation to act upon foreseeable and substantial risks.

121. Taken together, these standards support the conclusion that, under the African Charter, States incur responsibility where their acts or omissions create, maintain or contribute to a substantial and reasonably foreseeable risk of climate-related harm to present and/or future generations. States parties’ due diligence obligations require protective measures to continue and intensify as knowledge improves, thereby rendering the impacts of climate change highly predictable.²⁰⁷ This is particularly important in the climate change context, where scientific consensus is strong, impacts unfold cumulatively, and the thresholds of irreversibility are well documented.²⁰⁸
122. The obligations of prevention and precaution apply with particular force to emerging climate-related technologies that generate new and insufficiently understood risks for present and future generations.²⁰⁹ The Human Rights Council Advisory Committee, in its study on emerging climate-related technologies, stressed that techniques such as carbon-dioxide removal and solar-radiation modification pose serious intergenerational human rights concerns.²¹⁰ These technologies may dramatically destabilise climatic systems, alter weather patterns, threaten food production and compromise water resources, thereby jeopardising a wide range of human rights over time.²¹¹ The Committee further observed that many new technologies intended for climate protection (NTCPs) are built on scientific models that have not been demonstrated at scale, and therefore entail considerable uncertainty.²¹² The report indicated that, due to the speculative nature of geo-engineering technologies, coupled with their uncertain impacts on ecosystems and human rights, preventative and precautionary obligations are required to protect the rights of present and future generations, as NTCPs may amplify existing inequalities

²⁰⁶ *ibid* para 184 (emphasis added).

²⁰⁷ *Pulp Mills on the River Uruguay* (Judgment) [2010] ICJ Rep 14, paras 197–204; Inter-American Court of Human Rights, *Advisory Opinion OC-32/25 on the Climate Emergency and Human Rights* (29 May 2025) Series A No 32, paras 233–235; Committee on the Rights of the Child, *Sacchi et al v Argentina* (Communication No 104/2019) UN Doc CRC/C/88/D/104/2019 (2021) paras 10.11; International Court of Justice, ‘Obligations of States in respect of Climate Change’ (Advisory Opinion, 23 July 2025), paras 283–284

²⁰⁸ International Court of Justice, ‘Obligations of States in respect of Climate Change’ (Advisory Opinion, 23 July 2025), paras 274–279 and 284; Committee on Economic, Social and Cultural Rights, *General Comment No 27 (2025) on Economic, Social and Cultural Rights and the Environmental Dimension of Sustainable Development* (UN Doc. E/C.12/GC/27, 26 September 2025, Advance Unedited Version) paras 11 and 17.

²⁰⁹ Committee on Economic, Social and Cultural Rights, *General Comment No 27 (2025) on Economic, Social and Cultural Rights and the Environmental Dimension of Sustainable Development* (UN Doc. E/C.12/GC/27, 26 September 2025, Advance Unedited Version) paras 18 and 75.

²¹⁰ Human Rights Council Advisory Committee, *Impact of New Technologies Intended for Climate Protection on the Enjoyment of Human Rights*, UN Doc A/HRC/54/47 (11 September–6 October 2023) paras 3–4, 16–18, 53.

²¹¹ *ibid* paras 15–20.

²¹² *ibid* paras 25–26.

and lead to extensive and irreversible environmental damage and moral hazard risks, delaying critical climate action.²¹³

Positive obligations and CBDR-RC

123. Article 22(2) of the African Charter provides that ‘States shall have the duty, individually or collectively, to ensure the exercise of the right to development’. When read alongside Article 21(4), which requires States Parties ‘individually and collectively’ to exercise the right to free disposal of their wealth and natural resources with a view to strengthening African unity and solidarity, and Article 1, which mandates that States ‘adopt legislative or other measures to give effect’ to all rights in the Charter, it becomes clear that development under the Charter is conceived as a shared responsibility among States and an enforceable human right. Together, these provisions generate positive obligations of domestic action and regional and international co-operation to secure conditions in which African peoples can realise their right to development in a climate-safe present and future.²¹⁴

124. They must also be understood against the historical context of the Charter’s adoption, when African States sought to reclaim collective self-determination over natural wealth, ecosystems and productive resources that had been appropriated and depleted under colonial rule.²¹⁵ The African Commission has emphasised this history in interpreting Article 21 of the Charter, noting that:

‘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. The drafters of the Charter obviously wanted to remind African governments of the continent’s painful legacy and restore co-operative economic development to its traditional place at the heart of African Society’.²¹⁶

This historical grounding is essential in the climate context, where African States continue to bear disproportionate and intensifying climate impacts despite contributing least to the crisis. It reinforces that the Charter’s development, environment, and natural-resource provisions must be interpreted as interrelated

²¹³ *ibid* paras 25, 30, 36–38

²¹⁴ Obiora Chinedu Okafor, ‘A Regional Perspective: Article 22 of the African Charter on Human and Peoples’ Rights’ in *Realizing the Right to Development: Essays in Commemoration of 25 Years of the United Nations Declaration on the Right to Development* (UN 2013) 373.

²¹⁵ James Thuo Gathii, ‘Africa and the Radical Origins of the Right to Development’ (2020) 1 *TWAIL Review* 28.

²¹⁶ Communication 155/96, *Social and Economic Rights Action Centre (SERAC) and Centre for Economic and Social Rights v Nigeria* 27 October 2001, para 56.

and as constituting positive obligations to prevent forms of extraction and environmental injustices that reproduce intergenerational inequality.

125. Seen in this light, the African Charter’s architecture of State obligations operates as a strong expression of the principle of common but differentiated responsibilities and respective capabilities (CBDR-RC), which is firmly embedded in international environmental law and increasingly reflected in international human rights law with respect to global responses to climate change.²¹⁷ CBDR-RC reflects intergenerational equity insofar as past actions determine the scale and timing of the duties that States owe to safeguard the rights and interests of current and future generations.²¹⁸ This principle recognises that all States share a common responsibility to address climate change and other global environmental harms, but that the scope and stringency of their obligations must be differentiated in light of their historical contributions to the problem and their current capabilities.²¹⁹ However, it is to be noted, in line with the Separate Opinion of Judges Bhandari and Cleveland in the ICJ Climate Change Advisory Opinion, that:

‘Nevertheless, the idea that States have differing responsibilities in addressing climate change “is not a get-out-of-jail card”. The obligations under the climate change treaties and customary international law apply to all States, and the principle of common but differentiated responsibilities and respective capabilities does not exempt any State from measures that are necessary, consistent with their capabilities and national circumstances, to fulfil the objectives of the climate change treaties and stringent due diligence obligations’.²²⁰

²¹⁷ UNFCCC art 3(1); Paris Agreement art 2(2); *Sacchi et al v Argentina* (Communication No 104/2019) UN Doc CRC/C/88/D/104/2019 (2021) para 10.10; Committee on the Rights of the Child, *General Comment No 26: Children’s rights and the environment with a special focus on climate change* (2023) UN Doc CRC/C/GC/26, paras 91, 98(b), 112; Committee on the Elimination of Discrimination against Women, *General Recommendation No 37 on gender-related dimensions of disaster risk reduction in a changing climate* (2018), para 19; Committee on Economic, Social and Cultural Rights, *General Comment No 27 (2025) on Economic, Social and Cultural Rights and the Environmental Dimension of Sustainable Development* (UN Doc. E/C.12/GC/27, 26 September 2025, Advance Unedited Version), paras 8, 17, 34.

²¹⁸ UNFCCC, arts 4(1), 4(3)–(5) (cooperation and assistance based on equity and CBDR-RC); Paris Agreement Art 9 (insert relevance here); Committee on Economic, Social and Cultural Rights, ‘General Comment No 26: Land and Economic, Social and Cultural Rights’ (2022) UN Doc E/C.12/GC/26, para 58; International Court of Justice, ‘Obligations of States in respect of Climate Change’ (Advisory Opinion, 23 July 2025), Separate Opinion of Judge Yusuf, paras 20–29 (for an elaboration of the CBDR-RC as an expression of intergenerational equity grounded in historical responsibility).

²¹⁹ International Court of Justice, ‘Obligations of States in respect of Climate Change’ (Advisory Opinion, 23 July 2025), paras 215–217, 246–249 (explicit allocation of differentiated burdens); Committee on Economic, Social and Cultural Rights, ‘General Comment No 26: Land and Economic, Social and Cultural Rights’ (2022) UN Doc E/C.12/GC/26, paras 27 and 58 (historical responsibility and differentiated capacities); Inter-American Court of Human Rights, *Advisory Opinion OC-32/25 on the Climate Emergency and Human Rights* (29 May 2025) Series A No 32, paras 226–228, 247–250 (financial/technical burdens fall on those with greater capabilities).

²²⁰ ICJ, *Advisory Opinion on Climate Change* (2025), Separate Opinion of Judges Bhandari and Cleveland, para 27

126. Against this background, and taking Articles 1, 21, 22 and 24 together, alongside States' international human rights obligations that require both individual and collective action from States,²²¹ the African Charter should be interpreted as expressing a distinctly regional framework of CBDR-RC as it applies to States' human rights obligations in the climate context. It is important to guide African States to advance robust domestic mitigation and adaptation measures, and to act together to ensure international cooperation that acknowledge historical responsibility, respect differentiated capabilities and protect Africa's developmental space in the face of accelerating climate risks for present and future generations.

Persons with Disabilities (PWD)

127. Disability can be experienced as physical, mental, psycho-social, intellectual, neurological, developmental, or sensory.²²² One person might experience multiple disabilities at once, for example, persons with albinism (PWA) experience a combination of hypersensitivity to sun exposure together with visual impairments.²²³ In addition, disability can be experienced intersectionally by women and girls, indigenous peoples, older persons, children, and other disadvantaged and vulnerable groups.²²⁴ Disability has a particularly pernicious cyclical relationship with poverty.²²⁵ Poverty can be a cause of disability.²²⁶ Likewise, PWD are at greater risk of exclusion from the paid labour market, from communities of care, and find it more

²²¹ As expressed in Constitutive Act of the African Union (adopted 11 July 2000, entered into force 26 May 2001), arts 3(j), 3(k), 4(n), 4(o), and Preamble paras 4–7 (affirming African solidarity, collective action, cooperation in all fields of human activity, and commitments to eradicate poverty, promote sustainable development, and advance common African positions in global governance); Charter of the United Nations, arts 55–56 (Member States pledge to take '*joint and separate action*' for universal respect for human rights), in which the African Charter is situated as per preamble paras 4 and 9; International Covenant on Economic, Social and Cultural Rights, art 2(1) (obligations to act 'individually and through international assistance and cooperation'); Committee on Economic, Social and Cultural Rights, *General Comment No 27 (2025) on Economic, Social and Cultural Rights and the Environmental Dimension of Sustainable Development* (UN Doc. E/C.12/GC/27, 26 September 2025, Advance Unedited Version), paras 8 and 34 (asserting that the international assistance and cooperation obligations for global environmental challenges require coordinated and cooperative action reflecting historical responsibility and differentiated capabilities); *ICJ, Advisory Opinion on Climate Change (2025)*, paras 179–183, 190–195 (duty to cooperate is customary international law and central to climate obligations); Inter-American Court of Human Rights, *Advisory Opinion OC-32/25 on the Climate Emergency and Human Rights (29 May 2025)* Series A No 32, paras 228–245 (cooperation as a core human rights obligation in the climate context, encompassing finance, technology transfer, capacity-building and equitable economic arrangements).

²²² Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities (African Protocol on Persons with Disabilities) in Africa, article 1, definition of 'persons with disabilities'; Convention on the Rights of Persons with Disabilities ('CRPD') Article 1.

²²³ Barbara Astle and others, 'Global Impact of Climate Change on Persons with Albinism: A Human Rights Issue' (2023) 9 *Journal of Climate Change and Health* 100190, p 1.

²²⁴ CRPD Preamble (p); African Protocol on Persons with Disabilities, preamble para 16.

²²⁵ CRPD Preamble (m); African Protocol on Persons with Disabilities, preamble paras 15, 16, 19.

²²⁶ Makomborero Allen Bowa, 'Ubuntu, Disability Inclusion, and Sustainable Development: Breaking the Disability–Poverty Nexus in Africa' in *The Palgrave Handbook of Ubuntu, Inequality and Sustainable Development* (Cham: Springer Nature Switzerland 2025) 577–601.

difficult to support themselves through subsistence agriculture, thus being a cause of poverty itself.²²⁷

128. The above factors intertwine to create a unique form of vulnerability that PWD experience by virtue of their disabled status for which positive, proactive State obligations arise. This is particularly so in the context of climate change. As the Inter-American Court has highlighted:

‘climate change factors may have a direct impact on injuries and exacerbate the health problems of persons with disabilities. These persons also face additional difficulties in the case of natural disasters because they are least able to access emergency support, and slow-onset events can seriously affect their access to food and nutrition, safe drinking water and sanitation, health-care services and medicines, education and training, adequate housing, and access to decent work. These difficulties increase when, intersectionally, these persons are living in poverty.’²²⁸

129. Persons with disabilities experience multiple disadvantages when climate disasters occur.²²⁹ These include inaccessible infrastructure for water sources, health facilities, or emergency shelters. During floods or droughts, evacuation plans often overlook their needs, leaving them at risk.

130. Similarly, persons with disabilities often face significant challenges in mobility and access to evacuation routes, shelters, and relief services, which are rarely designed with accessibility in mind. In many parts of Ethiopia, for instance, especially rural areas, infrastructure remains largely inaccessible to persons with disabilities and older persons. This limits their ability to respond to climate emergencies and access essential services. Their specific needs are often overlooked in both climate mitigation and humanitarian response measures. The Ethiopian Human Rights Commission's drought monitoring in Oromia and Somali Regions revealed that the emergency humanitarian aid provided did not meet the needs of older persons. The food items supplied were unsuitable for their age and physical condition, such as hard foods that they could not easily chew due to teeth loss. In addition, after the flood situation in Maiduguri, Borno State, the National Human Rights Commission of Nigeria received reports of exclusion of persons with disabilities in the sharing of relief funds made available to ameliorate the harsh impacts of climate change due to social stigma.

131. Inclusion in development of policies and responses to climate change remains weak. The National Climate Change Policy, 2021 in Botswana, for instance, references disability mainly under gender issues, without disaggregated data, clear adaptation

²²⁷ *ibid.*

²²⁸ Inter-American Court of Human Rights, *Advisory Opinion OC-32/25 on the Climate Emergency and Human Rights* (29 May 2025) Series A No 32, para 617.

²²⁹ Office of the United Nations High Commissioner for Human Rights, *Analytical Study on the Promotion and Protection of the Rights of Persons with Disabilities in the Context of Climate Change*, UN Doc A/HRC/44/30 (22 April 2020).

targets, or engagement of Organisations of Persons with Disabilities (OPDs). The National Human Rights Commission of The Gambia has conducted capacity building for the National Disaster Management Agency Training on Inclusion of Persons with Disabilities in Risk and Disaster Management Policies and Interventions in The Gambia. South Africa’s climate policies acknowledge persons with disabilities in general terms, but practical, disability-specific interventions, such as accessible early warning systems, inclusive shelters, or adapted disaster response protocols, remain largely underdeveloped or undocumented. Advocacy groups continue pushing for stronger inclusion.

132. Positive obligations are a hallmark of protections against disability discrimination. Under the CRPD and African Protocol on Persons with Disabilities, the denial of reasonable accommodation is a form of discrimination on the basis of disability.²³⁰ Reasonable accommodation means the ‘necessary and appropriate modifications and adjustments where needed in a particular case, to ensure to [PWD] the enjoyment or exercise on an equal basis with others of all human and people’s rights’.²³¹ Reasonable accommodation is owed from the moment a person with a disability requests it or when it becomes reasonably self-evident to the goods/service provider that such reasonable accommodation is necessary.²³²

133. Beyond reasonable accommodation, States Parties to the CRPD²³³ and the African Protocol on Persons with Disabilities (Article 15) also have the obligation to ensure accessibility. Their distinction is as follows: ²³⁴

Duties of accessibility are proactive, necessitating systemic changes to ensure the universal design of systems, processes and environments even before a disabled employee expresses the need for such. In contrast, reasonable accommodation duties are immediately enforceable, owed to a particular disabled person from the moment they express that it is needed, or when it became reasonably self-evident to the goods/service provider (including employers) that such reasonable accommodation is necessary. In this way, reasonable accommodation functions as a stopgap to ensure accessibility as universal design ... is progressively realised.

134. Universal design is defined in the CRPD as ‘the design of products, environments, programmes and services to be usable by all people, to the greatest extent possible, without the need for adaptation or specialized design’, which does not exclude ‘assistive devices for particular groups of persons with disabilities (i.e., reasonable accommodation)’.²³⁵ Its object is to mainstream accessibility into designs

²³⁰ CRPD, article 2 definition of ‘discrimination on the basis of disability’; African Protocol on Persons with Disabilities, article 1 definition of ‘discrimination on the basis of disability’.

²³¹ CRPD, article 2 definition; African Protocol on Persons with Disabilities, article 1 definition.

²³² CRPD General Comment 6, para 24.

²³³ CRPD General Comment 12, para 45.

²³⁴ Justin Winchester, ‘Making the World Differently: A Transformative Approach to Reasonable Accommodation’ (2024) 14 *Constitutional Court Review* 71, 93. Citations in original omitted.

²³⁵ CRPD, Article 2 “Universal Design”.

of infrastructure and products from the outset.²³⁶ Hence, '[i]mportantly, this minimises room for objections based on the costs of having to modify infrastructure, because each person's accessibility needs were to have been considered at the ideation stage and not as an afterthought'.²³⁷

135. Recently, the African Court held that Article 2 of the African Charter was violated because discrimination against persons with albinism (PWA) occurred 'by omission through failure to prevent discrimination by non-state agents, whereby the PWA are targeted on the basis of their albinism'.²³⁸

136. Positive obligations require a participative, context-sensitive, and purposive approach. Thus, the African Charter, alongside its equality and non-discrimination guarantees, states in Article 18(4) that persons with disabilities 'shall also have the right to special measures of protection in keeping with their physical or moral needs'. The right to 'special measures' expressly highlights the relevance of positive obligations.

137. This is given express formulation in Article 12 of the African Protocol on Persons with Disabilities which states that States Parties shall '[t]ake special measures to ensure the protection and safety of persons with disabilities in situations of risk, including ... forced-displacements, humanitarian emergencies and natural disasters'. Likewise, under Article 11 of the CRPD, States must take all necessary measures to ensure the protection and safety of persons with disabilities in situations of risks, including natural disasters. These are consequences of climate change. As the CRPD Committee has noted,²³⁹

'persons with disabilities are disproportionately affected by emergencies, with mortality rates up to four times higher than those without disabilities. Additionally, persons with disabilities face discrimination, exclusion, and limited access to basic services, rendering them vulnerable, and exacerbating the vulnerability of those with disabilities who live in institutions or segregated contexts'.

138. Thus, the CRPD has also noted that in the context of climate change 'Accessible infrastructure, communication systems, early warning mechanisms, and inclusive climate-resilient housing are essential components of protecting the rights and well-being of persons with disabilities in the face of climate threats'.²⁴⁰

²³⁶ CRPD General Comment 9, para 15.

²³⁷ Winchester, 'Making the World Differently', p 83.

²³⁸ App No.019/2018, *Centre for Human Rights and Others v Republic of Tanzania*, Judgment on merits and reparations, 5 February 2025, para 136.

²³⁹ Committee on the Rights of Persons with Disabilities, 'Statement on Persons with Disabilities Affected by Disasters' (31st session, 12 August–5 September 2024), para 4.

²⁴⁰ CRPD Committee, 'Statement on Disability Inclusion in Climate Action' (19 November 2024), para 4.

139. PWA are at heightened risks of skin cancer as they are hypersensitive to ultraviolet radiation from the sun. UV exposure worsens with the effects of climate change such as ozone depletion and reduced cloud cover.²⁴¹ This corresponds to their lower life expectancy coupled with stigma-motivated exclusions from healthcare and inadequate healthcare services and resources. This is particularly concerning for PWA in rural settings and/or who live in poverty. In such conditions, PWA spend extended hours outdoors and in the sun tending to agriculture and livestock or engaging in informal trading, increasing risks of skin cancer and damage to their vision.²⁴² However, even global warming itself, as one consequence of climate change, causes changes in human behaviour as people spend more time outdoors and in fewer clothes when they lack access to mitigation measures like air conditioning.²⁴³
140. Under the CRPD, a key feature of both accessibility and reasonable accommodation is that PWD must participate in discussions about the provision, implementation and monitoring of accessibility measures and of accommodations.²⁴⁴ The CRPD Committee has noted worryingly that ‘evidence ... demonstrates that persons with disabilities are not frequently included in disaster preparedness and response plans and frameworks. The lack of community based inclusive development limits the effective participation of persons with disabilities in humanitarian work and in accessing relief programs.’²⁴⁵ Addressing this requires adjusting community-based development to include PWD from the start. Similarly, the CRPD Committee calls on States Parties to ‘closely consult and actively involve persons with disabilities in disaster planning, [and have] dedicated leadership roles for disability experts in decision making is essential – persons with disabilities should be included in all policymaking and implementation for disaster resilience.’²⁴⁶ The CRPD Committee therefore calls on States Parties to ‘[p]rioritize disability inclusion as a key policy concern and a key objective for disaster risk reduction.’²⁴⁷
141. From a human-rights perspective, the objective of participation by PWD is not limited to assessing their risks or treating them as liabilities. Rather, States Parties must include PWD in ways that affirm their fundamental human dignity and capability to contribute towards problem-solving. Thus, States Parties must ‘[d]evelop and implement disability-inclusive climate adaptation and mitigation

²⁴¹ Muluka-Anne Miti-Drummond, ‘Climate Change and Persons with Albinism’ (Report of the Independent Expert on the enjoyment of human rights by persons with albinism) UN Doc A/78/190 (19 July 2023), para 20.

²⁴² Sarah L Boshia *et al*, *The Forgotten Ones: The Impact of Climate Change on the Health and Well-being of Persons with Albinism* (January 2025), page 3 (available at https://africualbinismnetwork.org/wp-content/uploads/2025/02/2024-GHPP-Albinism-Publication-11x8.5_FINAL-1.pdf).

²⁴³ Muluka-Anne Miti-Drummond, ‘Climate Change and Persons with Albinism’ (Report of the Independent Expert on the enjoyment of human rights by persons with albinism) UN Doc A/78/190 (19 July 2023), para 21.

²⁴⁴ CRPD General Comment 6 Equality and Non-Discrimination, 2018, para 24.

²⁴⁵ Committee on the Rights of Persons with Disabilities, ‘Statement on Persons with Disabilities Affected by Disasters’ (31st session, 12 August–5 September 2024), para 5.

²⁴⁶ *ibid*, para 7.

²⁴⁷ *ibid*.

strategies, ensuring that persons with disabilities are not only protected from climate risks but are also enabled to contribute their expertise and experiences to the broader climate agenda.’²⁴⁸

142. The ability for PWD to participate is fundamentally linked to access to healthcare. PWD ‘may have reduced access to health care and poorer health outcomes than others owing to a combination of structural factors, including stigma, social exclusion, poverty, discriminatory legislation and policies and the limited availability of tailored services and programmes.’²⁴⁹ Those same structural forces are perpetuated by the continued exclusion of PWD who are unable to express their distinct needs and proposals for addressing them.

143. Participation is also dependent on adequate access to information. In this respect, Article 21 of the CRPD requires that information be provided in accessible formats, ‘which is key for enabling participation in climate action and disseminating emergency warnings with information related to natural disasters and emergencies.’²⁵⁰

144. The CRPD Committee provides that States Parties should ‘[e]nsure that persons with disabilities are included in the target audience for allocated resources during natural disasters by benchmarking disability to assistance.’²⁵¹ Although the precise contours of this requirement cannot be determined in the abstract, two implications emerge that are instructive for State practice.²⁵²

145. First, participation by PWD is necessary not only to determine what allocation of resources they require, but also in designing the basket of resources used in climate mitigation and adaptation. PWD may have resource-based needs that are distinct from those of non-disabled persons, in which case a simple allocation will not do. Secondly, States Parties must be mindful that steps taken to provide resources for PWD do not negate, and should be factored into, a broader accessibility agenda. For example, it is often highlighted that PWA should be provided with high-protection sunscreen (SPF50) and protective clothing (including UV resistant sunglasses, hats, and long-sleeved clothing items).²⁵³

146. States should also ensure that relevant healthcare information and guidance to foster good sun protection practices, such as UV-index forecasts, are made publicly

²⁴⁸ Ibid.

²⁴⁹ OHCHR, *Analytical Study on the Promotion and Protection of the Rights of Persons with Disabilities in the Context of Climate Change*, UN Doc A/HRC/44/30 (22 April 2020), para 8.

²⁵⁰ Ibid, para 27.

²⁵¹ Committee on the Rights of Persons with Disabilities, ‘Statement on Persons with Disabilities Affected by Disasters’ (31st session, 12 August–5 September 2024), para 7.

²⁵² OHCHR, *Analytical Study on the Promotion and Protection of the Rights of Persons with Disabilities in the Context of Climate Change*, UN Doc A/HRC/44/30 (22 April 2020), paras 27, 40–41, 45–46

²⁵³ Muluka-Anne Miti-Drummond, ‘Climate Change and Persons with Albinism’ (Report of the Independent Expert on the enjoyment of human rights by persons with albinism) UN Doc A/78/190 (19 July 2023), paras 26–27 and 61–62.

available in accessible formats to for PWA with visual impairments, and should contain additional guidance that is specific to their condition.²⁵⁴ Further still, States Parties should create the conditions that minimise exposure to sun, such as providing adequate shelter and undercover areas in public spaces, including along public transport lines.²⁵⁵ The full suite of deprivations and inequalities in access to resources must be addressed, accounting for health, food security, adequate housing, water and sanitation, and livelihood and decent work.²⁵⁶

147. PWA face a unique risk of violence. As the Independent Expert on the human rights of PWA has put it, albinism:

‘is linked to superstition and harmful practices related to witchcraft accusations and ritual attacks, which, in turn, leads to marginalization and social exclusion. There have been cases of offences having been committed against persons with albinism, including killings, mutilations, rapes, grave robberies and trafficking in persons and body parts. In a number of African countries, the body parts of persons with albinism are believed to contain magical properties, which, when used in potions or spells, can bring good fortune.’²⁵⁷

148. Hence, climate change precipitates disasters and resource scarcity. This heightens the risk of PWA being killed or mutilated as sacrifices to obtain good fortune or to overcome extreme adversity. Women are at a particular risk within this category. Women who give birth to children with albinism are at risk of neglect from the child’s father as well as from their own families and support networks, heightening their vulnerability to climate harms.²⁵⁸ Higher temperatures resulting in increased time outdoors also heightens the risks for women with albinism to sexual violence, whether as punishment or fetishisation of their condition.²⁵⁹

149. Given the scale and diversity of PWD, especially considering intersectionally, capacity-building, data management, and information systems are crucial to ensure the effective enforcement of rights. The CRPD Committee has called on states to ‘[f]acilitate and support capacity-building relating to the management of disasters and humanitarian emergencies, including through the exchange, and sharing of

²⁵⁴ MT Carew and others, ‘Unprotected: the consequences of climate change for the health of persons with albinism’ (2023) 8 *BMJ Global Health*, page 2.

²⁵⁵ Muluka-Anne Miti-Drummond, ‘Climate Change and Persons with Albinism’ (Report of the Independent Expert on the enjoyment of human rights by persons with albinism) UN Doc A/78/190 (19 July 2023), para 34.

²⁵⁶ OHCHR, *Analytical Study on the Promotion and Protection of the Rights of Persons with Disabilities in the Context of Climate Change*, UN Doc A/HRC/44/30 (22 April 2020), paras 8–23.

²⁵⁷ Muluka-Anne Miti-Drummond, ‘Climate Change and Persons with Albinism’ (Report of the Independent Expert on the enjoyment of human rights by persons with albinism) UN Doc A/78/190 (19 July 2023), para 50.

²⁵⁸ Sarah L Bosha *et al*, *The Forgotten Ones: The Impact of Climate Change on the Health and Well-being of Persons with Albinism* (January 2025), p 12.

²⁵⁹ *ibid*.

information, experiences, training programmes and best practices for governments and organizations of and for persons with disabilities.’²⁶⁰ Likewise, States are required to ‘[c]ollect and disaggregate data on persons with disabilities to inform impact of climate change and development of climate policies. Such disaggregation should include factors such as age, gender, ethnic origin, sexual orientation, type of disability and socioeconomic status, while ensuring privacy and active participation from persons with disabilities.’²⁶¹

150. Article 32 of the African Protocol on Persons with Disabilities codifies the obligation of States to ‘ensure the systemic collection, analysis, storage and dissemination of national statistics and data covering disability to facilitate the protection and promotion of the rights of persons with disabilities’ through disaggregated data, disseminating statistics, ensuring ethical and privacy-conscious data acquisition and management, and the participation of PWD in the design, collection and dissemination of this data.

151. The CRPD Committee has stressed that persons with disabilities frequently experience reduced access to justice mechanisms due to physical, communicational, attitudinal and legal barriers that affect both the initiation and the conduct of proceedings.²⁶² These barriers are amplified in situations of risk created by climate impacts, where swift access to remedies may determine the difference between protection and severe harm.

152. Article 13 of the African Protocol on Persons with Disabilities obliges States to ensure access to justice ‘on an equal basis with others’, including procedural accommodations, accessible court services, and the provision of support to facilitate effective participation in legal proceedings. The obligation to provide reasonable accommodation applies at every stage of justice processes.²⁶³ In the climate context, meaningful access to justice requires that courts, tribunals and complaints mechanisms are equipped to address disability-specific harms caused or intensified by climate change. This includes the ability to receive evidence in accessible formats, communicate decisions in ways that are understandable to persons with sensory or intellectual disabilities, and provide accommodations so that persons with psychosocial disabilities can participate in hearings.²⁶⁴ Access to justice also requires that early warning systems, emergency-response decisions, and disaster-relief entitlements can be challenged promptly and effectively where they exclude or overlook persons with disabilities.²⁶⁵ Access to justice and effective remedies for PWD requires a holistic approach that integrates accessibility, reasonable accommodation, supported decision-making, and proactive State intervention. This ensures that

²⁶⁰ Committee on the Rights of Persons with Disabilities, ‘Statement on Persons with Disabilities Affected by Disasters’ (31st session, 12 August–5 September 2024), para 7.

²⁶¹ CRPD Committee, ‘Statement on Disability Inclusion in Climate Action’ (19 November 2024), para 7.

²⁶² CRPD General Comment 1 paras 38–39.

²⁶³ CRPD General Comment 1, para 37–39.

²⁶⁴ *ibid.*

²⁶⁵ CRPD General Comment 6, paras 43–46 read with 49 and 51–55.

persons with disabilities can challenge violations, participate in decision-making, and obtain timely and adequate redress for climate-related harms.

D. Role of NHRIs

153. The African Commission, ACERWC and African Court accord a special status to NHRIs, recognising the important role they play in promoting, protecting and raising awareness of human and peoples' rights.²⁶⁶
154. NHRIs can facilitate awareness raising and support the initiatives of climate change and human rights issues with national bodies and CSOs. The establishment of the Cote d'Ivoire CNDH-CSO Environment Mechanism, for example, is a platform for exchanges with social actors on general environmental issues as well as specific climate change issues. The Kenya National Commission on Human Rights, in 2021, partnered with the Kenya Forest Service (KFS) to infuse Human Rights Based Approach (HRBA) in programs and processes undertaken by KFS. In Togo, the CNDH, under the framework of corporate social responsibility according to its 2021-2025 strategic plan, has contributed to capacity building for certain actors such as businesses, civil society organizations (CSOs), citizens, etc., involved in the fight against climate change, in terms of opportunities to improve their profitability and enhance the carbon credit market, operationalizing mechanisms, and project origination, which must be of high overall quality, much more rigorous, and compatible with environmental and social impact studies (ESIAs), monitoring and evaluation criteria, good governance, transparency, taxonomy, and inclusion.
155. The integration of oversight and accountability mechanisms from institutions such as NHRIs are key for an efficient, transparent, effective and equitable climate change mitigation processes. In Nigeria, the NHRC developed a framework on Human Rights Based Approach to Disaster Management which it deployed to train state level agencies and humanitarian actors on mainstreaming human rights in emergency responses. In Guinea-Bissau, the Comissão Nacional para Direitos Humanos e Cidadania partnered with the UNDP.
156. NHRIs, such as the Commission Nationale des Droits Humains in Burkina Faso document the environmental and climate impacts on human rights, and can play a role in the promulgation of legal texts related to the environment. For instance, the National Human Rights Council (CNDH) in Morocco released, in February 2023, a Memorandum on *The Right to Water- Approaches to Confronting Water Stress in Morocco* which provides recommendations to institutions, relevant parties and the public on mitigating water stress, improving access to water-related rights, enhancing

²⁶⁶ African Commission, Resolution on the Granting of Affiliate Status to National Human Rights Institutions and specialized human rights institutions in Africa, ACHPR/Res. 370 (LX) 2017. ACERWC, Guidelines for Granting Affiliate/Associate Status to National Human Rights Institutions before the African Committee of Experts on the Rights and Welfare of the Child, adopted 2019, amended 2024.

water resource management and securing these rights for future generations. The South African Human Rights Commission has held public hearings and adopted investigative reports on environmental rights. The CNDH in Burkina Faso has documented violations of the rights of children exploited at gold mining sites, noting the hazardous work, exposure to chemicals (mercury, cyanide), and lack of access to education and healthcare. These monitoring activities highlight the connection between artisanal mining, local environmental degradation, increased risk of pollution, and climate impacts (deforestation, soil destabilization).

157. Some States have involved NHRIs in their climate governance structures, such as the Conseil National Des Droits De l'homme (CNDH) in Côte d'Ivoire, and the Kenya National Commission on Human Rights Commission is a member of the National REDD+ Technical Committee on Carbon Markets established and spearheaded by the Ministry of Environment and has sought to emphasise adoption of a human rights-based approach to guarantee a successful implementation of REDD+ through strong policy instruments and institutions to deliver long-term interventions, anchor various REDD+ environmental, policy and social safeguards for vulnerable groups. However, many NHRIs have not been included in such structures, thus depriving them of expert knowledge on the rights of those most affected by climate-related disruptions, as well as the ability to anchor human rights principles in climate laws and policies.²⁶⁷ For instance, the Climate Change Act 2021 in Nigeria, whilst representing a landmark legislative effort, failed to incorporate the National Human Rights Commission into the Climate Change Council.
158. However, while some NHRIs in Africa, such as the National Human Rights Council in Morocco (CNDH) consider they have the capacity and knowledge, others, including the Commission Nationale Indépendante des Droits de l'Homme in Burundi, the Comissão Nacional para Direitos Humanos e Cidadania in Guinea Bissau, the Independent National Commission on Human Rights (INCHR) in Liberia, the Zimbabwe Human Rights Commission, and the Ombudsman in Namibia, recognise they often lack the expertise, technical staff, budget and tools to monitor and report climate related harms and implement climate-human rights programs. This has resulted in weak coordination and limited data on climate impacts on vulnerable groups.
159. The African Commission has called on States, specifically in the context of Articles 21 and 24, to 'create conditions for the effective role of National Human Rights Institutions in promoting and protecting human rights at the national level. States should lay down the administrative, civil and criminal liabilities that result from the failure of non-state actors including businesses such as those in extractive industries

²⁶⁷ Global Alliance of National Human Rights Institutions (GANHRI) 'Outcome statement NHRIs and climate change' <https://ganhri.org/outcome-statement-nhris-and-climate-change/> (accessed 31 August 2024). See GANHRI 'GANHRI Statement adopted at the GANHRI annual conference on climate change: The role of national human rights institutions held on 4 December 2020'.

to comply with these standards and any harm or violations arising from such non-compliance'.²⁶⁸

E. Conclusion

160. The International Court of Justice declared that climate change represented an 'urgent and existential threat'.²⁶⁹ The escalating impacts of climate change in Africa—such as increased droughts, floods, desertification, and food insecurity—pose a unique and particular danger to the rights and livelihoods of vulnerable populations. They face risks as a result of their geography, weak institutional capacity and dependence on natural resources.

161. There is a need to emphasize swift and effective legal and policy responses that prioritise human rights, especially for marginalised groups who are most at risk.

²⁶⁸ Explanatory Note to the State Reporting Guidelines on the Contents and the Rights and Obligations under Articles 21 And 24 Of The African Charter, 7 May 2018, para 47.

²⁶⁹ International Court of Justice, Advisory Opinion. Obligations of States in Respect of Climate Change, 23 July 2025, para 73.